



**Explore, enjoy and protect the planet**  
**South King County Group**

The South King County Group of the Sierra Club submits this Written Statement on the Development Agreements for the Black Diamond Master Planned Developments (MPDs).

Our Group's Vision is to:

1. Protect and restore ecological integrity and natural biodiversity;
2. Explore, identify threats to, and protect our environment;
3. Establish long-term ecological sustainability; and
4. Educate and empower people to act.

There are several Environmental concerns with both the Development Agreements that we will detail. Although the MPDs have gone through the Environmental Impact Statement process, the Development Agreements do not provide sufficient detail to ensure that all those impacts identified can be adequately mitigated.

**The Development Agreements must meet provisions of the Black Diamond Municipal Code** which state that *"significant adverse environmental impacts are appropriately mitigated."* Unfortunately, there still remain a large variety of major impacts to the environment, both inside the MPDs and outside. These include adverse impacts to wildlife habitat; wildlife corridors; open space; air quality; water quality; wetlands; groundwater and recharging; and forest canopy. We also are concerned with how excess stormwater runoff and much larger volumes of vehicles on our roads will adversely impact our shared environment.

Unfortunately, many of these environmental impacts cannot be adequately mitigated, because of the massive size of the MPDs and their placement in highly-constrained environment of many wetlands, small streams, and lakes--all in a rapid (for this sparsely populated area of King County) buildout.

EXHIBIT 56

**The Development Agreements describe a massive urbanization of a small town and its surrounding areas.** They describe adverse impacts, without providing detailed plans for adequate mitigation, that extend beyond the City of Black Diamond into the rural areas and neighboring towns of Covington, Ravensdale, Maple Valley, and Enumclaw.

We are concerned with:

1. How wildlife purportedly can be “protected” when half their habitat is destroyed through clear-cutting.
2. How massive traffic and it’s attendant pollution can be “managed” with a dearth of existing roads that will be subject to insufficient mitigations, thus causing traffic backups resulting in more air and water quality impacts from exhaust products.
3. The effects of introducing up to four new schools in the rural areas away from where the students live resulting in more habitat destroyed, more roads, and more pollution.
4. How the Upper Green River Valley Agricultural Production District will remain viable?.
5. The massive polluted stormwater runoff from the deeply graded/contoured, stripped-bare lands triggering water-quality impacts to the highly vulnerable lakes, rivers, and streams in the watershed.

These are addressed in the following sections below.

### **Habitat, Wildlife, and Corridor Protection**

There exists a wide variety of habitats and attendant wildlife that forever will be disturbed, no matter what mitigations are put in place. Major impacts to existing wildlife food sources, protective cover, and movement corridors cannot be mitigated in any reasonable way to preserve the rich texture of the existing natural environment.

**The Development Agreement fails to provide plans for a high degree of connectivity and compatibility for wildlife on- and off-site.** The wildlife corridor winds through the Black Diamond Lake wetlands with no coordinated use of non-wetland habitat. The open space/habitat plan does not provide sufficient connectivity for wildlife.

**SOLUTION:** Add a **Wildlife and Habitat Preservation Plan** that addresses preservation and enhancement of existing habitat corridors for deer, elk, and other large animals to migrate on and off the sites.

### **Retention of Open Space**

Open Space is an important component of the City of Black Diamond Comprehensive Plan and Municipal Code. Unfortunately, the Development Agreements describe a scenario where most of the open space provided consists of wetlands, streams, and their buffers that are not developable. **The Development Agreements do not meet the 50% open space for the total project area** indicated in the Black Diamond Comprehensive Plan, Municipal Code, and the MPD Framework and Design Standards & Guidelines.

**SOLUTION:** **The Development Agreements must be rewritten to verifiably rectify this violation.**

### **Stormwater Runoff and Retention**

Although we commend that some sustainable building practices are proposed, there still will be a large amount of new impervious surfaces replacing existing natural permeable soils. Low-impact development technologies have advanced beyond what is proposed. They should be woven into the Development Agreements. In addition, massive grading will significantly change natural land contours and drainage pathways. All these will have major impacts on the natural environment, many of which **are not adequately mitigated by the plans outlined in the Development Agreements.**

**SOLUTION:** Add a **Stormwater Runoff Plan** to address both the *quality* and *quantity* of stormwater runoff and collection from all MPD lands.

### **Water Quality**

The Green River and its tributaries have runs of Chinook salmon and steelhead, both of which have been listed under the Federal Endangered Species Act. King County, its cities within the Green River Watershed, and other entities such as WRIA 9 Forum, the Corps of Engineers, Tacoma Public Utilities (Water Dept.), Green-Duwamish

Watershed Alliance, Sierra Club, et. al., have been working on habitat restoration efforts throughout the watershed. The effects on water quality, stormwater runoff, instream flows from these MPDs could wipe out these efforts to save our salmon.

There also may be heavy impacts to nearby lakes such as Lake Sawyer, Horseshoe Lake, Jones Lake, Black Diamond Lake, similar to those for the Green River and its tributaries. Some of those lakes are part of the habitat for salmon runs and many provide habitat for a variety of other fish. These lakes also provide valuable recreational opportunities in south King County, as does the Green River.

A proactive approach to the Phosphorus/Algae problem is required to maintain water quality. We have all learned to our regret that restoring water quality after it is damaged is very costly and unfortunately takes, in many cases, generations. **The Development Agreements provide no detail on how or what will trigger additional actions to correct stormwater deficiencies to meet requirements.**

SOLUTION: Add a strong **Water Quality Monitoring Plan** that calls for monitoring key water bodies in the Green River Watershed that is sufficiently frequent and rigorous and is backed up by enforceable provisions.

### **Wetlands Preservation**

There are numerous wetlands within the boundaries of the two proposed MPDs. Many of these areas would be negatively impacted by changes in water infiltration and stormwater runoff, etc. Wetlands are a vital part of the ecosystem of the Green River Watershed and its fish and wildlife. The impacts on the Green River watershed from these two MPDs could be irreversible.

The Development Agreements must meet the provisions of the City's Sensitive Areas Ordinance during buildout to protect fragile wetland and stream watershed complexes. **The Development Agreements provide no plans for the preservation and enhancement of wetlands. Neither do they detail mitigation measures to be implemented for the loss or alterations to wetlands caused by encroachments due to construction.**

**The Development Agreement fails to address Condition 105 to take measures to control stream bank erosion and bank/slope failures along stream corridors.**

The lands in question are highly susceptible to ground water contamination, but **the Development Agreements inadequately provide detailed measures targeted to protect ground-water quality.**

SOLUTION: Add a **Wetlands Preservation Plan** that addresses adequate buffers and encroachment into those buffers, as well as maintaining the natural hydrology on these sites. Also, the plan must address the construction phase and how impacts will be minimized via fencing or other pro-active methods.

### **Forest Preservation**

Much of the land to be developed is forested. Many trees would be cut down at a time when we are going forward with restoring forests for a variety of reasons, including helping fight the negative aspects of human-accelerated climate change.

In addition, we are endeavoring to expand recreational opportunities in nearby forests, and some of the forested areas that would be destroyed are in areas that contain many trails used by hikers and mountain bikers. **The Development Agreement needs to better address Condition 113 and should be modified to limit removal of hazard trees, plus increase buffers where numbers of hazardous trees exist.** No trees should be deemed "hazardous" unless public safety is an issue.

**The Development Agreements fail to address Condition 120 regarding Tree Inventories.**

Finally, per **Condition 87** any clearing and grading for logging for timber revenue should only be during the active phase of development. **That is not specified in the Development Agreements.**

SOLUTION: Add a **Forest Preservation Plan** that addresses maintaining clusters of significant trees, assesses hazardous trees, conducts a tree inventory, and provides adequate buffers.

### **Transportation and Emissions**

The greatly increased traffic flow, intersection overflow, and massive amounts of additional traffic will impinge upon already existing clogged major roads and minor arterials. This does not meet the letter and intent of Transportation Concurrency

requirements of both the WA State Growth Management Act, the King Comprehensive Plan, and the Black Diamond Comprehensive Plan. Rather than a well-planned master development that limits commute trips and provides adequate employment opportunities to new residents--all of which the Sierra Club strongly supports, urban sprawl continues unabated!

Due to the massive number of new car and truck trips in and out of the Black Diamond area on already congested roads, there would be even greater smog-producing vehicle emissions, thus making it even more difficult in mitigating any newly contemplated Federal EPA smog limits that will put King County in violation of air quality regulations. Greenhouse gas emissions also will jump in proportion to the increased traffic loads and resulting congestion.

**The Development Agreements provide no methodology to address mitigations that are insufficient or fail outright to mitigate the coming gridlock and attendant vastly increased smog, air pollution, and water pollution.**

SOLUTION: Add a **Transportation Plan** that addresses real mitigation backed up by strong modeling and analysis. The plan must include a strong Mass Transit component to truly address reducing the number of vehicles as called for in the Conditions.

### **Conclusions**

The Sierra Club is on record supporting the master planned development concept of a vibrant urban area, served by existing infrastructure, and built around mass transit hubs similar to the new Urban centers in King County. However, we withdraw our support when such a master planned development fails all three tests: the small town of Black Diamond is anything but a vibrant urban area; has little to no existing major infrastructure; and is a mass transit desert.

Our review shows **the Development Agreements fail to provide complete plans and implementation techniques in the areas of habitat, wildlife, and corridor protection; open space retention; stormwater runoff and retention; transportation; air quality; water quality; wetlands preservation; groundwater protection and recharging; and forest preservation.**

**The Development Agreements** lack sufficient detail to ensure plans will be put in place and enforced over a 20+ year timeframe that truly mitigate placing MPDs comprising 6,000+ units and up to 20,000 residents on the very edge of the King County Urban Growth Boundary where little to no infrastructure currently exists, nor can be put in place in any economically viable or environmentally sustainable way.

Thank you.

Dan Streiffert  
Chair, South King County Group  
Sierra Club

My name is Alice Baird. I live at 25214 SE 357<sup>th</sup> St. Auburn, WA 98092.

Your Honor: Mr. Hearing Examiner

I live just off the Green Valley Road and I am concerned about the Citizens living along the road, Road Safety, Slides and the Wildlife.

When Residents are trying to access Hwy.169 from Green Valley Road it is now and will be even more dangerous to enter Hwy.169 because of the increased traffic volume that will be using Hwy 169 from the villages. As we enter onto Hwy.169 from Green Valley Road there is a downward hill on the right and a slight curve that blocks your view to see the cars coming up that hill at 50mph. We definitely need a traffic light at this intersection.

According to King County Department of Transportation's Matthew Nolan, FEIS Expert's testimony March 2010, the Master Planned Developments would increase peak hour trips 300 to 400% on Green Valley Rd. This will make our entrance and exit onto Green Valley Road even more dangerous. Exiting 253<sup>rd</sup> St., the road our family enters and exits to the Green Valley Road along with almost 50 homes in the area, it is difficult to see oncoming traffic as there is a slight hill to the left which blocks the view until a car is at the top of the hill. To the right the dirt bank and tall weeds block the view until you are almost onto Green Valley Road. The 40 mph speed limit and often faster doesn't allow much time to safely get across the road going toward Auburn or toward Hwy. 169.

The report from KIRO TV, in 2010 on King County Executive Dow Constatine's plan, "Unincorporated King County Roads Need Major Overhaul, Strategic Plan" there is no money to fix our roads, pick up trash, etc. I submitted this report as an exhibit on Thursday, July 14, 2011.

In the area the road drops down the hill toward Flaming Geysers Park, the road is in bad shape. Places where the road has dropped, needs filling and are very rough, just imagine what several hundred more cars will create. Besides the poor condition of the road, we also have **landslides** on that hill which are bound to be worse with the Villages Development. I believe, because of the landslide hazard in this area, the City and Yarrow Bay should take into consideration the erosion impacts from the proposed Black Diamond Villages Master Planned Development. Leave the land above the area as open. Elk and Deer use this area for crossing to the river side and consequently there have been several elk and deer hit by motor vehicles. We also have bear in the area and we will be losing much of the habitat for the animals with the Villages Development. I believe this is not adequately addressed in the Development Agreements.

The picture below is just one slide area on the hill mentioned above. Since the Villages Development is on the hill above the slide areas then add more asphalt roads, that will directly affect the stormwater on this hill. With the weakened soil we will be impacted with more road closures from slides. The second picture is at the bottom of that slide showing how the debris does come down to road level and impacts the roadway.



The Paramatrix Study done for our road in my opinion seems to be worthless. It was completed during the winter, (November), which is a slower time on our road. Roundabouts just will not work for farm equipment. The so-called "Traffic Calming" measures suggested will be of no practical use and would cause undeserved hardships to Green Valley road residents and farms. I submitted the Paramatrix report as an exhibit when I spoke on July 14, 2011. I would like to quote from the Next Steps of the Paramatrix study "SE Green Valley Road is under King County jurisdiction. It is the County's responsibility, alongside the Green Valley road Review Committee, to review this study and any other necessary information to determine if traffic calming strategies along SE Green Valley Road are warranted, the preferred type of calming strategies, and the locations and extent of implementation." This says to me, Yarrow Bay and the City do not have to consider Green Valley Road yet we have to endure added traffic on the road caused by their developments when KC has no funds for roads.

Try driving our Green Valley Road road on a beautiful Spring or summer day! Because the GreenValleyRoad is a designated bike trail you will come across many, many bicyclists as they are riding in the road because the County cannot afford to keep the shoulders cleared of brush and berries which create a hazard. Because of the curves and vines on the bike path it is difficult to see a bicyclist until you are almost upon them. Often, they even split a group with some on one side and the rest on the other so you are forced to drive through the center so you have to watch both sides. This also I believe is not addressed adequately in the Development agreements.

Most importantly are our farmers and their equipment that have to travel the roads. It is so dangerous for them as their machinery does not go the speed cars do. With the increased traffic goes the increased danger.

There are very few safe passing areas. People get anxious and pass where they shouldn't. Being an agricultural area, you never know when you might come across a farm animal, tractor or horse on the road. This is not addressed in the Development Agreements.

We have fishermen as soon as the river opens and add to that when the Flaming Geyser Park is open it brings hundreds to the road. When the park is full and they close it to cars, those cars park on both sides of the road outside the park which creates more congestion. Add to that walkers, runners, innertubers who either walk back to their cars on GreenVValley Road or have a second car that picks them and their innertubes up and returns them to their first car. This also is not addressed adequately in the Development Agreement.

Driving the GVR many days you will see fences down because of cars speeding, carelessness, drinking etc. as you can see by just one instance in the pictures following.



A traffic sign, calming device does not stop this from happening and with the increased traffic, there will be more accidents and fences to be mended before animals get onto the road. I believe the way to correct these problems is to **build less**. Make sure there is **no connection** from the villages to Plass Road which will become a short cut to Green Valley Road.

**We do not want to lose the beauty and Heritage of our GREEN VALLEY ROAD.**

Thank you.

Alice Baird  
25214 SE 357<sup>th</sup> St.  
Auburn, WA 98092  
360-886-2777

1. 2010 Report of KIRO TV on King County Executive Dow Constatine's plan, "Unincorporated King County Roads Need Major Overhaul, Strategic Plan".

2. Paramatrix Study as required by condition No. 33 (a) of Ordinance No. 10-946 approving the Master Planned Development for the Villages.

**Steve Pilcher**

---

**From:** Mrdusingc@aol.com  
**Sent:** Saturday, July 30, 2011 8:22 AM  
**To:** Steve Pilcher  
**Subject:** development at Black Diamond

Community Development Director Steve Pilcher

Hearing Examiner Olbrechts:

We wish to state our disapproval of the proposed development of Black Diamond. It will adversely impact the traffic and general environment of Auburn.

Jim and Marilyn Creighton  
10806 SE 295th  
Auburn WA 98092

EXHIBIT 58

July 11, 2011

Hearing Examiner, Phil Olbrechts  
The City Council of Black Diamond

The 1990 Growth Management Act gives cities the tools to restrict development until the infrastructure, roads, water, etc exist to support it. The concept is called 'concurrency'. In the case of the Issaquah Highlands this concurrency led to the potential for traffic relief that the state otherwise could not afford on its own. Port Blakely (developer of Issaquah Highlands) could only build a certain number of homes with each phase of transportation improvements. In other words the roads came first, proactive, rather than after 800 plus homes were built, reactive.

Major developments such as the MPDs are required to meet Transportation Concurrency so that the road system can handle the new levels of traffic as required in the City's Comprehensive Plan and the State's RCW36.7-A.070.

For any mitigation plan to succeed, at a minimum, Transportation Concurrency must be met. However, the Development Agreements fail to provide any details on how concurrency analyses will be accomplished to ensure "concurrency at full build-out" (as referenced in MPD Approval Ordinances 10-946 & 10-947, Exhibit B—Conclusions of Law, paragraph 30). The Development Agreements also fail to describe and explain how any adjustments such as funding, timing, moratoriums will be made should a particular improvement fail the Concurrency test. This is required by the Ordinances' Condition 17 f. The Development Agreements don't discuss how Transportation Concurrency will be assessed.

The Development Agreements lack any details on how "necessary facilities, infrastructure and public services" will be provided in a timely manner (reference in MPD Approval Ordinances 10-946- & 10-947, Exhibit B—Conclusions of Law, paragraph 23A). This is paramount in any Traffic Mitigation Finance Plan.

The Development Agreements contain no plan to develop and conduct critical and timely Cost, Benefit, and Risk Analyses. Without such analyses and their results there is no way to anticipate critical funding needs and timing, thus leaving the city unprotected when the Master developer seeks 'cost recovery'. This is required by MPD Approval Ordinances 10-946 & 10-947, Exhibit C—Conditions of Approval, Condition 34 a.

The Development Agreements lack any details on the following items necessary to a successful Traffic Mitigation Plan: 1) A schedule to plan, design, finance, build, maintain and operate the vast Transportation infrastructure required to accommodate an additional 10,000+ vehicles daily and 2) enforcement mechanisms to be use to meet Transportation Concurrency.

You, the Hearing Examiner wrote as Condition 16 in your MPD Application Recommendation, Section VI-Recommendation: “The resulting project impacts and mitigations must be integrated into the development agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects.” Unfortunately the City Council eliminated your Condition 16 and did not replace it. The Development Agreements are deficient in the critical area of Traffic Mitigation. The Public still does not know what mitigations will work, how much they will cost, who ultimately will pay and when they will be in place.

Ulla Kemman  
29863 232<sup>nd</sup> Ave SE  
Black Diamond, WA 98010

## Black Diamond Development Agreement: Parks and Recreation

My name is Les Dawson. I am a member of the Greater Maple Valley Unincorporated Area Council, but submit my written testimony as a private citizen. I am testifying because of an issue our council had to resolve several years ago and as such I fear it may well become an issue the Development Agreements do not address.

First, a bit about me. I grew up living in West Seattle. As a youth in the 50's when our family went on a Sunday picnic, the first place my brother and I lobbied for was Lake Wilderness. We spent many a day in Maple Valley and its surroundings. As a part of our fun the Black Diamond area became one of the family's places to visit.

After graduation from WSU in 1967 I found myself with the opportunity to teach in Maple Valley. As this was one of the places I had grown to love I snatched the job as soon as it was offered. With over 40 years of working with the Tahoma School District I feel I have truly been lucky. As a part of my teaching career I had the opportunity to participate in many extra-curricular activities. I coached several sports, umpired baseball, and served as official at some track meets. As a part of these activities and my own adult participation in slow pitch, coaching my daughters in soccer and softball I have truly come to appreciate the value of parks and recreation facilities in the community.

Four years ago I retired. Through my life's activities and experiences I am only too aware of the need for available, safe activities for kids. In my growing up and as I became older I came to just assume parks would always be available. I used them all the time! Unfortunately I see no such availability of facilities and therefore opportunities accommodations for youth being created through the Black Diamond Development Agreements. I am tired of reading about youth problems caused chiefly by their not having safe, desirable activities available in their leisure time.

My understanding of the facilities supported in these Development Agreements gives some "pocket parks" (I think that is the term I heard for small parks at the end of a cul-de-sac) and some negotiated use of school fields to be built in the future. As a teacher, as a parent, as a south King County resident I expect these Development Agreements to accommodate the terribly important need that any society must meet for youth leisure time. The Level of Service accommodated by these Development Agreements is appalling in their lack of ability to support kids' activities let alone meet the needs of all segments of society.

It is a fact that Black Diamond is going to grow in population, not only just a bit but by perhaps 15,000 to 20,000 people. Like many of the issues these Development Agreements are supposed to address, I don't feel that the issue of Parks and Recreation are adequately settled.

The City needs to anticipate what is assured by the Development Agreements on the topic of trails, parks, and recreational facilities. Parks and trails help moderate urbanization impacts through not only recreation but also providing greenways, buffers, and visual separators. Much of the open space consists of sensitive areas and their buffers. The City needs to be ensured that

## Black Diamond Development Agreement: Parks and Recreation

open space is committed in areas other than those that cannot be used because of Critical Areas Ordinance issues. This land must be committed and available for parks, trails, and recreational facilities before approval of the Development Agreements. Currently, the City rates itself poor in existing facilities (Black Diamond Comprehensive Plan, Parks, Recreation, and Open Space, Chapter 8, June, 2009).

The City's Comprehensive Plan says, "...a full variety of park types, such as open space and neighborhood parks, as well as enough recreational facilities, such as baseball diamonds, to support the City's population". This is a current requirement. The Development Agreements do not meet this. BDMC 18.98.150(A) says: "An MPD shall provide onsite recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD." Here again is a requirement in the current code not met by the Development Agreements. Are there numerous trails, let alone the pedestrian walkways?

Condition 89 states "The details of the park and recreation facilities to serve the new demand from the MPD shall be set in the required Development Agreement, including whether such facilities may be constructed on- or off-site." [FEIS Mitigation Measure]. It seems to me that the Development Agreements don't tell whether these parks and recreation facilities will be on or off site. (Development Agreement, Section 9, table 9.5, June, 2011). They should be built on site. Off site to me seems a no go!

From my previous work with King County's Park and Recreation Department I believe it will be nearly impossible at this time to create new parks and recreational facilities in the unincorporated area as because of tax shortfalls, there simply is not enough money available at this time, or in the near future to build parks. At our July Greater Maple Valley Unincorporated Area Council meeting we were informed that the completed work on the community park at Ravensdale would be set back, chiefly in part because of cuts in the budget due to shortfalls. Furthermore, off-site construction of recreational facilities requires considerable acreage of land for baseball, soccer, tennis, and other recreational facilities to meet LOS requirements. The Development Agreement is inadequate in providing details and locations of on-and off-site park and recreational facilities with corresponding acreages to be committed. Additionally, due to the vagueness of the Development Agreements, Black Diamond is at risk of not meeting level of service requirements for distances of recreational facilities to residents.

Under Condition 91 it says "As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities." The Development Agreements (Section 9) are just too vague; they do not provide a concrete means to account for increases in costs for facilities built in the future. The

## Black Diamond Development Agreement: Parks and Recreation

Development Agreements need a Parks Plan that includes a formula to determine a fair lump-sum payment for recreational facilities constructed in the future. Future construction costs will be higher. The Development Agreements do not adequately protect payment of future additional costs.

Lump-sum payment to the City in lieu of construction of new recreational facilities is just too vague. The Development Agreements lack certainty on what the City is getting and where and when on parks and recreational facilities for both on-and off-site will be built. For example, the LOS requirement for the distance of the population from parks and recreational facilities is met when 90% and 75% of the population are within 1.5 and 0.5 miles, respectively (City of Black Diamond--Parks, Recreation and Open Space Plan, p.10, 2008). I don't see in the Development Agreements where the many recreational facilities would be placed on-site to meet these LOS standards. The Development Agreements do not specify where the recreational facilities will be located, or how many facilities are on-site or off-site. Randall Arendt, author of "Rural by Design" explains the first step in a four-step design process is to layout conservation areas (i.e., open space and parks) followed in order by placement of houses, aligning streets and trails, and finally lot-line determination (Randall Arendt, *Envisioning Better Communities*, p.30, 2010)

Condition 93 says "Dependent on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement." In the Development Agreements there is no commitment of land or the time construction is to take place. This is just too vague! Land must be set aside for parks and recreation. This should be a part of the initial design process. In Table 9.5.3, June 2011 the use of a "designated official" should be changed so that the Black Diamond City Council has that authority. This should be a legislative decision by the elected representative of Black Diamonds citizens. They are the ones to contemplate this situation. Also, there needs to be limits placed on the lump-sum payment as opposed to the in-lieu of construction.

In Condition 96 "*Parks 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, to the extent necessary to meet park level of service standards for the implementing project*" the final Development Agreement does provide for the timing of recreational facilities in Table 9-5. However, if the lump-sum payment option is used, the City's recreational needs could be postponed indefinitely. The Development Agreements need to place limits on the lump-sum payment option in order not to postpone the City's needs for recreation facilities indefinitely. Consequently, this may postpone the City's meeting recreation needs unnecessarily. Black Diamond, through their Development Agreements, must meet the needs of those they are inviting to live in their city. Parks, trails and recreation are basics needing to be met for those living in a municipality.

Four years ago the Greater Maple Valley Unincorporated Area Council was involved in a issue involving the residents of the Ravensdale area and many sports groups needing to find availability of sports fields for their activities-this involved soccer teams, baseball teams, softball teams, football teams as well as well as non-organized uses, such as "pick-up" games and

## Black Diamond Development Agreement: Parks and Recreation

picnickers. There was an attempt to change the neighborhood Ravensdale Park from a local park to a regional park which would be used by many non-local groups to the disadvantage of the local residents. These were legitimate needs on the part of these sports groups. There was also legitimate concern on the part of the residents of Ravensdale. This was their park to go on weekends, after work or school and play a game, or walk, or picnic. The proposed changes would have met the needs for many groups, many of whom were not local clubs and associations, but groups needing a place to play would be neglected, even possibly losing this facility to them. The infrastructure required by a regional park just could not be met in rural Ravensdale. In time a local, Ravensdale, group was formed, discussions between the county Department of Natural Resources and the groups involved ensued and changes to the park in Ravensdale have been worked out. Planned are a few more fields, set asides for play and picnics and additional infrastructure to support more use guaranteed.

Our council, the GMVUAC has been told there will not be county money available for parks and recreation needs for a long time. The Growth Management Act pretty much dictates that future growth will be in potential urban areas such as Black Diamond. There are not many, if any, plans to use county money to build new parks in the south King County area in the near future. Certainly, there is no money right now to even think about this. The MPD's must guarantee accommodations for their new residents with the respect of parks and recreation. The Development Agreements, as written, lack appropriate planning for future needs.

South King County is a wonderful place to live. Keeping its greatness is a responsibility all of us share. The Development Agreements are sadly lacking in meeting this responsibility.

**Before the City of Black Diamond Hearing Examiner  
Regarding Failure to Meet Condition 145 of the Lawson Hills MPD Development  
Agreement**

**Lawson Hills MPD Condition 145 is not met by the Development Agreement.**

Condition 145 states:

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.

Condition 145 recognizes that the developer has not provided fifty percent open space. Until that is achieved the developer is bound by BDMC 18.98.120(G).

Unless the proposed MPD applicant has elected to meet the open space requirements of Section 18.98.140(G), or is otherwise meeting the open space requirements of Section 18.98.140(F), the following conditions will apply, cannot be varied in a development agreement, and shall preempt any other provision of the code that allows for a different standard:

1. Clustering of residential units shall not be allowed;
2. Residential density shall not exceed four dwelling units per acre in any location;
3. The lot dimension requirements of [Section] 18.44.040 shall be met.

According to Section 9.1 of the Development Agreement, Yarrow Bay has not designated 9.3 acres of the additional 14.8 acres as required. Therefore they must provide a plan in the Development Agreement to provide the acreage as required by Condition 145. They have not done so. The only "plan" is a footnote to Table 9-1 that states:

Additional Open Space will be provided in the form of school playfields, trails and neighborhood parks that are not shown on Exhibit "A".

This is not a plan in any sense of the word. The footnote is an expectation of results, not a coherent plan for obtaining the additional acreage. It depends entirely upon future agreements and the results of implementing projects.

Section 9.1 speculates that there will be additional open space but provides no guarantees:

Each Implementing Project on the Lawson Hills Main Property shall account for how much Open Space has been provided throughout the MPD, how much Open Space is being proposed within the Implementing Project, and how much remaining Open Space is required to be provided. When the final Implementing Project is proposed, all remaining Open Space shall be provided prior to approval of the final Implementing Project.

This appears to ratchet implementation leaving the City no recourse if the additional open space is never provided. Hoping that the open space will be provided is not a useful plan.

The Development Agreement must be revised to either include the required acreage or include a coherent plan for providing the additional required acreage. The development should not be allowed to proceed until that has been accomplished. Unless it occurs, no implementing project should even be considered unless it meets the restrictions of BDMC 18.98.120(G).

Respectfully submitted,

Robert Edelman  
29871 232<sup>nd</sup> Ave SE  
Black Diamond, WA 98010  
(360) 886-7166

**Before the City of Black Diamond Hearing Examiner  
Regarding Fiscal Impact Analysis Section in MPD Development Agreements**

References in the following will be to The Villages Development Agreement but also apply to corresponding paragraphs in the Lawson Hills Development Agreement.

MPD Conditions 156 for The Villages and 160 for Lawson Hills require that the Development Agreements outline the exact terms and process for performing a fiscal analysis and that the analysis include a specific "MPD Funding Agreement". The fiscal impacts analysis is defined in Section 13.6 of the draft Development Agreements while the MPD Funding Agreement is contained in Exhibit "N".

**I. Summary**

The Fiscal Impacts Analysis does not meet the requirement of the MPD ordinance conditions. Paragraphs II(A) through II(I) below describe how the Fiscal Analysis lacks the definition required by the MPD conditions. Paragraph II(J) describes the failure to meet the MPD conditions for funding. Paragraphs III(A) through III(C) show that (1) the Funding Agreement cannot be considered to be part of the Development Agreement as required by MPD conditions; (2) that an included contemplated agreement for Yarrow Bay recovery of expenses through a City surcharge on permits is illegal under State law and conflicts with the municipal code; and (3) that organization of development personnel and functions of City government into a "Master Development Review Team" is proposed in a manner that conflicts with state law and gives extraordinary control of governmental functions to a private party.

The following sections also describe other fundamental problems with the approach to the Fiscal Impact Analysis and Funding Agreement and their lack of merit.

EXHIBIT

62

## II. Fiscal Analysis

### A. The Development Agreement fails to meet the “exact terms and process” requirement of the MPD ordinances for the fiscal impact analysis by leaving key parts of the process and key parameters open for future definition.

The Villages MPD Condition 156 and Lawson Hills MPD Condition 160 require:

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement

...

This does not require that every detail of the fiscal analysis be included in the Development Agreement but it does require that the “exact terms and process” be summarized. The Development Agreement does not and cannot meet this requirement because the methodology is not adequately defined and key defining decisions are left to future agreement between Yarrow Bay and the City. Deferring selection of terms and process to some future agreement will not suffice – the exact terms and process must be specified and described as required by the condition. Allowing methods, parameters, and assumptions to be dependent upon a future negotiation between City Staff and the developer does not define an “exact” process – it defers the definition. For example, selection of “efficiency factors” and “level of service adjustments” must not be deferred to a future negotiation nor should a decision as to whether to adjust revenues and expenses for inflation. Further, whenever an agreement by “the Designated Official and Master Developer” is required there must be provisions for when agreement is not reached.

The following are comments on a number of decisions left to future negotiation. (Emphasis is added in each citation).

1. Paragraph 1(e). “Expenses and revenues for the funds listed above in subsections 1(a) and 1(b) will be included in the fiscal analysis using one or more of the following methods to be selected by the preparer of the fiscal analysis as reasonably agreed to by the Designated Official and Master Developer:”

Rather than presenting a menu of methods, the Development Agreement should specify the application of each method to the analyses so that a determination can be made now if it is reasonably applied. This should not be left up to a future negotiation.

2. Paragraph 1(e)(iii). “Apply an indirect cost rate to the funds. The indirect cost rate shall be reasonably acceptable to the Designated Official and Master Developer”

Indirect cost rates must be determined at the outset of the analysis. This may involve an analysis of present indirect rates for each fund or zero based budgeting of indirect costs to determine the applicable rate. In any case, the rates should either be established now to determine their acceptability or the process for determining the rates should be detailed and agreed to.

3. Paragraph 1(e)(v). “Different comparable cities may be used for different departments or functions in order to provide the greatest comparability to Black Diamond’s characteristics when the development in the Phase is completed. The selection of alternative cities is subject to reasonable agreement by the Designated Official and Master Developer.”

This cannot be considered to be a case study/comparable city analysis if each department or each function is treated outside the context of the entire city. This is a totally subjective process that lacks definition and there is no definition or arbiter of what a “reasonable agreement” would be. If alternative cities are to be allowed then the precise criteria for selecting alternatives must be summarized and there must be provisions for when acceptable alternatives cannot be found

4. From Paragraph 1(e)(v). “The comparable cities to be used in the fiscal analysis shall be reasonably acceptable to the Designated Official and Master Developer.”

There is no definition or arbiter of what “reasonably acceptable” means.

5. From Paragraph 1(e)(v). “As of the date of this Agreement, the parties agree that the comparable city/case study method shall be used for police, fire, public works and parks and recreation departments and the per capita method shall be used for the remaining general fund departments. The parties agree that the case study method shall be used for the remaining special funds. Once a methodology is selected, subsequent analyses should follow the same methodology unless otherwise reasonably agreed to by the Designated Official and Master Developer.”

This paragraph leaves the door wide open for changes to the methodology that is supposed to be summarized in the development agreement. The phrase “As of the date of this Agreement, the parties agree that” should be deleted and changes should not be allowed to bypass the development agreement change process. If this method of change is accepted then there must be a definition of a reasonable agreement and an arbiter of reasonableness.

6. Paragraph 3(a). “Efficiency factors or level of service adjustments may be applied to general fund departments and special revenue funds as reasonably agreed to by the Designated Official and Master Developer.”

Efficiency factors or level of service adjustments cannot be left undefined for a future negotiation. These provide a means to completely change the results of the analysis. The values for these parameters and how they are applied or the exact methodology for determining these parameters must be defined and summarized.

7. Paragraph 4(a). “All revenues and expenses shall be in current dollars. No inflation adjustment will be made to any revenues or expenses unless otherwise agreed to by the Designated Official and Master Developer.”

All calculations could be in current dollars (present value) as long as funding commitments for losses are in future dollars. The word “dollar” must not be used in

financial calculations involving both present and future value without qualification. Otherwise it is an undefined term.

8. Paragraph 4(c). “The value for residential units shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected sale or rental value of the proposed units.”

Paragraph 4(d). “The values for non-residential development shall be based on market studies prepared by the applicant and reasonably acceptable to the City, and shall examine the projected market value of the proposed nonresidential development.”

The use of market studies is an acceptable approach to determining value and should not require acceptance by the City. However, the market studies should be performed by an independent firm certified to be expert in real estate market analysis rather than by a developer. Otherwise, the exact method of analysis must be defined and agreed to in advance.

9. Paragraph 4(g). “Square feet per employee shall be documented from sources reasonably acceptable to the City.”

Use of this parameter is of questionable strength in an analysis. If it is to be used its application and source can be established now and not left to a future negotiation.

10. Paragraph 5(a)(i). “The Master Developer may request to privatize certain facilities within the project. The decision to accept any such request remains within the sole, reasonable discretion of the City.”

The word “reasonable” is superfluous unless the developer is attempting to provide a means to challenge an exercise of discretion. See below for further discussion of Section 5.

**B. The case study analysis method lacks the definition required by the MPD ordinances.**

Case study analysis is proposed as the primary analysis tool. It is also referred to as “comparable city analysis” in the fiscal impact analysis section.

Specifying that the Case Study Method will be used for analysis doesn’t describe the exact methodology at all as required by the fiscal impact conditions cited above – it merely defines a class of research strategies. For the fiscal impact analysis, Case Study Analysis would properly be a prospective analysis where criteria are established first and then cases fitting those criteria are selected for study. Unless the first step of selecting criteria is accomplished, the analysis methodology is undefined. Criteria have not been established. The second step of selecting cases that fit the criteria is equally important. Case study analysis is extremely dependent upon case selection. It can be a useful research tool in the hands of an objective researcher but can be misused by anyone with a bias. The strength of this analysis strategy is highly dependent upon maintaining the steps in proper sequence – first define criteria, then select cases that fit the criteria.

It will be a major problem to find cities with the same projected demographics, size, and location. Black Diamond is often said to be unique and some MPD proponents claim that the future Black Diamond will be the first major integrated development ever contemplated of this size and scope. If either or both are true then it will be impossible to find useful cases to study.

To illustrate the problems with this method consider using the Case Study Method to analyze the Police Department budget as is proposed. The fiscal analysis section of the draft Development Agreement poses an analysis of Black Diamond when its projected population will reach 8000. Our current police budget is about \$1.7 million for a town of about 4200.<sup>1</sup> The only two cities of approximately 8000 population in Washington State are Dupont with a population of 7930 and Fife with a population of 8210.<sup>2</sup> The police budget for Dupont is

---

<sup>1</sup> Black Diamond 2011 final budget, p 49

<sup>2</sup> Municipal Research and Services Center City profiles

about \$1.6 million<sup>3</sup> while the police budget for Fife is about \$5.3 million.<sup>4</sup> The two cities are more similar to each other than to Black Diamond and yet their police budgets are widely different. Which city would be selected? Selection of Dupont might lead one to the conclusion that no increase in police budget is required while selection of Fife might lead to the conclusion that a tripling of the budget would be necessary. How does one account for the fact that Dupont and Fife are on an interstate highway while Black Diamond is relatively isolated? What are the differences in budgeting? Both Dupont and Fife are thriving communities with a substantial business base. Does that affect the budgets? Are we to assume that Black Diamond will have a comparable business base? Do the three cities use different accounting methods and budget categories?

The problems with Case Study analyses are manifold and, more importantly, specific methodology has not been defined. Paragraph 1(e)(v) demonstrates the lack of definition.

This paragraph includes the following:

Selection of comparable cities to be used in the fiscal analysis shall identify the factors used to identify and determine comparability, including such factors as population, employment, levels of service, services provided by city or by contract, etc.

This would leave factors used to identify and determine comparability completely open and allow the analyst to subjectively force-fit cities into being comparable. These factors must be identified in advance if comparable city analysis is to be used.

### **C. The format for the fiscal analysis is undefined.**

Section 1(c) allows the preparer of the fiscal analysis to choose a format that does not correspond to the City budget format. This does not meet the requirement for exact terms and conditions and conflicts with the requirement of section 6(a) which call for annual reviews.

Section 6(a) provides:

As part of the Annual Review pursuant to the terms of the Funding Agreement, the Designated Official and Master Developer shall meet to review the projections of the

---

<sup>3</sup> Dupont 2011 adopted budget, p 71

<sup>4</sup> Fife 2011 proposed budget, p 10

Fiscal Analysis compared to the City's budget. [Emphasis added]

It further provides:

If interim funding is provided pursuant to subsection 5.a.ii above, then the Annual Review shall include development of a payment schedule. The payment schedule shall be determined by comparing the projected revenues and expenses shown in the fiscal analysis to the City's projected budget for the upcoming calendar year. [Emphasis added]

The City budget with the fiscal projections must be in the same format if they are to be compared.

**D. The method for estimating taxable value is undefined.**

Paragraph 2(a) provides:

Property tax revenue will be calculated based on the estimated taxable value of development multiplied by the levy rate for each applicable property tax paid to the City, including any levy lid lifts that have been authorized. [Emphasis added]

There is no specification of who will estimate taxable value or definition of how it will be estimated. This is obviously a key parameter and should be done by totally independent real estate experts certified in the field.

**E. The methodology for determining sales tax revenue lacks adequate definition.**

1. Paragraph 2(b)(i) provides:

Sales taxes from businesses in the City will be calculated based on typical retail sales per square foot or per employee from the type(s) of businesses expected in the new development. A separate tax rate shall be used for restaurants and taverns. Since Black Diamond has too little commercial property to serve as an accurate predictor of future taxable sales, the sales taxes per square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond's characteristics when the development in the Phase is completed. [Emphasis added.]

The definition is incomplete unless it requires a market study of retail space occupancy. Existence of space is not a predictor of occupancy.

Previous comments about use of Comparable City analysis apply here. If a comparable

city analysis is to be used then all parameters for selection must be identified and fixed in advance.

2. Paragraph 2(b)(ii) provides

Sales taxes from sales to residents and businesses in the City from businesses outside the City (“streamlined sales tax”) will be calculated based on typical sales taxes per capita (or household) and per employee or square foot in the new development from sales from businesses outside the City. Since Washington’s experience with this revenue is relatively new, sales taxes per capita, per household, and per business can be from state or regional averages, or from one or more cities that are comparable to Black Diamond’s characteristics when the development in the Phase is completed. The analysis of streamlined sales tax revenue should exclude sales taxes from new construction of the new development which will be presented separately, as described below. [Emphasis added]

The same comments as (1) above apply.

3. Paragraph 2(b)(iii) provides

Sales taxes from sales to new residents in the City from existing businesses in the City will be calculated based on the lesser of (i) typical sales taxes per capita and per employee of new development from sales from existing businesses in the City or (ii) the percentage of household income spent on retail goods captured by the existing businesses in the City.

This is based on the assumption that per capita sales by businesses in the City will remain constant as new citizens are added. There is no justification so the parameter remains undefined.

**F. The methodology for determining utility tax revenue from commercial property lacks adequate definition.**

Paragraph 2(c)(ii) provides

Utility taxes from commercial property will be calculated based on typical utility tax revenue per square foot or per employee from the type(s) of businesses expected in the new development. Since Black Diamond has too little commercial property to serve as an accurate predictor of future utility usage, the utility taxes square foot or per employee for this analysis can be from one or more cities that are comparable to Black Diamond’s characteristics when the development in the Phase is completed.

The definition is incomplete unless it includes a definition of a market study of the

businesses that will be in the new development and occupancy of business space. The types of businesses cannot be determined by comparable city analysis unless parameters for selection are defined in advance and comparable cities can be identified. Again, existence of space is not a predictor of occupancy.

**G. The methodology for determining “non-formulaic” intergovernmental revenue remains undefined.**

Paragraph 2(f)(ii) provides that “Grants and other non-formulaic revenue will be calculated based on per- person (Per Capita)”. There is no demonstrable relationship between such revenue and population.

**H. The methodology for determining Municipal Court revenue remains undefined.**

Paragraph 2(i) provides that “Municipal court revenue will be calculated based on per-person (Per Capita)”. This assumes both no change in demographics and that court revenue is all generated by City residents. The former is probably a false assumption and the latter is definitely false.

**I. The methodology for determining “other” revenue remains undefined.**

Paragraph 2(k) provides that

Other revenue will be calculated based on per-person (Per Capita). Other revenue includes B & O Tax, Pull Tabs and Punch Board Tax, Gun Permits & Fingerprinting, Interest, Surplus Equipment and Other Miscellaneous.

This again assumes no change in demographics and is therefore invalid.

**J. Section 5 titled *Fiscal Analysis Results* does not meet the MPD condition 156.**

MPD Condition 156 requires:

The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and

equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding.

Section 5 of the Development Agreement proposed to implement the requirement by providing:

5. Fiscal analysis results:
  - a. If the results of the fiscal analysis show a revenue deficit after application of a credit equal to the Developer's Total Funding Obligation pursuant to the terms of the Funding Agreement, then the Master Developer shall prepare a supplemental analysis proposing how any projected City fiscal shortfall should be addressed. Possible options for addressing the shortfall may include, but are not limited to:
    - i. The Master Developer may request to privatize certain facilities within the project. The decision to accept any such request remains within the sole, reasonable discretion of the City. The facilities may include:
      - Retaining the right-of-way landscape maintenance obligation with the Master Developer or a Homeowners' Association;
      - Not dedicating some Parks to the City or by dedicating the Parks, but retaining Park maintenance obligations with the Master Developer or a Homeowners' Association; or
      - Not dedicating some private streets and/or cul-de-sacs serving less than 50 homes to the City or by dedicating the streets but retaining street maintenance obligations with the Master Developer or a Homeowners' Association.
    - ii. Pursuant to Condition of Approval No. 156, interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues. However, if a deficit is projected as part of the fiscal analysis for Phase 3, then a payment shall not be accepted by the City.

The following are failures of the above to meet the MPD requirement.

1. Condition 156 requires that the applicant include provisions for interim funding. Instead the applicant lists interim funding as one option for funding a shortfall.
2. In its "option" for interim funding the draft agreement replaces the requirement that the applicant "must address the projected shortfalls by means other than interim funding" if ongoing shortfalls for O&M of MPD facilities are identified with the

statement that “a payment shall not be accepted by the City”. The reason for this substitution is not understood.

3. All other options listed address privatization of facilities as methods of addressing shortfalls. The sole MPD ordinance provision for privatization is in Condition 22 for “all auto courts serving 20 units or less, and all alleys”. There are no other provisions for privatization in the MPD ordinance.

The assumptions listed in section 3 have been addressed in previous comments above.

In summary, the draft Fiscal Impact Analysis lacks the definition required by the MPD conditions that must be summarized in the Development Agreements. It depends heavily on future negotiations and invalid methods and assumptions. It is open to subjective treatment which could lead to overly optimistic results. Therefore its predictive strength is unacceptable. The hard requirements of MPD Condition 156 for the developer to be responsible for addressing fiscal shortfalls are replaced by proposals of options. The requirement to address ongoing fiscal shortfalls was replaced with a provision that the City not accept payment.

### III. Funding Agreement

A Funding Agreement is required to be part of the Development Agreement. The following are deficiencies in the draft Funding Agreement.

**A. The Funding Agreement is not an integral part of the Development Agreement as required by the MPD conditions.**

The Villages MPD Condition 156 and Lawson Hills MPD Condition 160 require:

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific 'MPD Funding Agreement,' which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

The Funding Agreement is included as Exhibit N to the development agreements. It is written as a stand-alone agreement complete with an execution date, recitals, contract boilerplate clauses and its own signature block. It was obviously structured to be an agreement to be executed about the same time as the development agreements rather than as a part of the Fiscal Analysis in the Development Agreement.

The plain language meaning of the condition is that the funding agreement is an integral part of the Development Agreement's fiscal analysis and does not require separate action by the Council. As such, the terms of the Funding Agreement have to be consistent with the entire Development Agreement. They are not. For example

- 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.
- The Development Agreement has a different assignment clause than the Funding Agreement. For example, the Development Agreement provides for partial assignment but the Funding Agreement does not.
- The term of the Funding Agreement begins with its execution, not execution of the Development Agreement.

- The Funding Agreement refers to “this Agreement or The Villages Development Agreement or Lawson Hills Development Agreement” thus differentiating between the Funding Agreement and development agreements.

This should be resolved by a total re-write of the Funding Agreement to correct all of the inconsistencies and to provide for actions that do not appear to be contemplated by the Funding Agreement. For example: What happens if there is a partial assignment of the MPD? How would a partial assignment of the Funding Agreement be done?

If it is determined that the Funding Agreement can be a separate agreement to be incorporated by reference into the Development agreement then the fact remains that its terms and conditions must be consistent with those of the Development Agreement. Further, it would have to be executed in advance of approval of the Development Agreement as a separate standalone agreement. Its passage would require legislative action and it could not be subjected to quasi-judicial procedures that limit public interaction with City Council members. Consideration of the funding agreement would also require proper public notice and hearings.

**B. Yarrow Bay recovery of expenses through a City surcharge on permits is illegal under State law, conflicts with the municipal code, and is without merit.**

The Funding Agreement includes definition of a potential Surcharge Agreement that might be passed by the City Council. The legislation would impose a surcharge on future building permits within the MPDs to recover costs that Yarrow Bay has expended under the current Black Diamond Staff and Facilities Funding Agreement (SFFA). The current SFFA is to be superseded by the new Funding Agreement. The purpose of the Surcharge Agreement is to supplant the reimbursement clause in the current SFFA with a Surcharge Agreement. The potential Surcharge Agreement is illegal, conflicts with the municipal code, lacks consideration by Yarrow Bay, potentially exposes the City to claims, and is unnecessary. Under the agreement the City would become an agent of Yarrow Bay.

**1. The Surcharge Agreement is illegal under State law.**

RCW 82.02.020 provides in part

Except as provided in RCW 64.34.440 [relating to conversion condominiums] and 82.02.050 through 82.02.090 [relating to impact fees] , no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. [Annotations added]

There are a number of exceptions, none of which apply to a surcharge on building permits.

**2. Applicant recovery of the costs of processing MPD applications conflicts with municipal code.**

The municipal code provides that the applicant shall pay the costs of processing an MPD permit application.

The applicant shall pay all costs incurred by the city in processing the MPD permit application, including, but not limited to, the costs of planning and engineering staff and consultants, SEPA review, fiscal experts, legal services, and overall administration. A deposit in an amount equal to the staff's estimate of processing the MPD, as determined after the preapplication conference shall be required to be paid at the time of application, and shall be placed in a separate trust account. The city shall establish procedures for periodic billings to the applicant of MPD review costs as such costs are incurred, and may require the maintenance of a minimum fund balance through additional deposit requests.

BDMC 18.98.040(C)

**3. The Surcharge Agreement lacks consideration from Yarrow Bay.**

The Surcharge Agreement is dependent upon future legislation that might be passed by the City Council in the future. The section begins:

As anticipated in the Staff and Facilities Funding Agreement, but only to the extent permitted by law or other agreement between Developer and its purchasers and only then if the City Council adopts a resolution, the City hereby agrees to apply a per dwelling unit or equivalent fee on each future building permit issued within the Villages MPD and the Lawson Hills MPD.

There is no obligation by the City Council to pass the agreement nor could there be. There is no benefit to the City to execute the Surcharge Agreement and therefore no consideration on the part of Yarrow Bay.

The agreement is completely one-sided. Yarrow Bay would recover costs that they expended under the current SFFA. As stated in the recital to the SFFA, Yarrow Bay has been receiving adequate consideration for their expenditures.

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.

The City has no obligation to repay Yarrow Bay for these costs. An agreement to do so through the surcharge mechanism would lack consideration. This would be simply a gift to Yarrow Bay.

**4. The Surcharge Agreement's hold harmless clause gives false assurance to the City.**

The agreement contains a hold harmless clause that promises to indemnify the City against claims resulting from application of the surcharge. (This may be in recognition of the illegality of the charge.)

The purpose of indemnification is to shift liability from one party to another. The clause is of no value unless the party assuming the liability has the assets to fulfill the obligation that it is assuming for potential claims. However, the developers, BD Village Partners and BD Lawson Partners, are limited partnerships. Liquid assets to support indemnification could well be minimal or non-existent other than funds to cover operating expenses. The liquid assets of the General Partner could also be minimal since the General Partner is a limited liability company, Yarrow Bay Development..

The City of Black Diamond could well find itself liable despite the indemnification clause if Yarrow Bay defaulted on a judgment or dissolved.

**5. Yarrow Bay could recover costs through other means.**

There is no expressed reason for Yarrow Bay to recover costs through the mechanism of the Surcharge Agreement. They could recover those costs by direct charges to purchasers of MPD property.

**C. Development personnel and functions of City government are organized into a “Master Development Review Team” in a manner that conflicts with state law and gives extraordinary control of governmental functions to a private party.**

The Funding Agreement establishes a Master Development Review Team (MDRT) that consists of City personnel paid by and devoted to serving Yarrow Bay. This agreement does not simply reimburse the City for MDRT expenses. It establishes an unheard of level of control over key functions of government by private parties. And that control is vested for twenty years. If the City Council approves this agreement it would be an attempt to abrogate state law that establishes their authority and that of future Councils to modify the organization of the City. RCW 35A.11.020 provides in part:

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people [emphasis added]

This is a power vested in code cities by State law and cannot be abrogated by the current Council members. Future Councils must be free to modify the City’s organization and duties of its personnel.

In addition to the illegality of attempting to abrogate state law, yielding control to a significant part of City Government to a developer is an extraordinarily bad idea. The following are a few of the key provisions that illustrate the extent of the problem:

- City employees on the MDRT are funded by Yarrow Bay and devoted primarily to the support of Yarrow Bay. “The primary function of the MDRT is to process, review, and implement development permits and development agreements of the Villages MPD and the Lawson Hills MPD.”
- The agreement specifies the organizational structure. “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.”
- Yarrow Bay has veto power over changes to the organization. “The MDRT composition may be modified by mutual agreement of the parties.”
- Yarrow Bay can reduce staffing unilaterally. “... BD Village and/or BD Lawson may elect to reduce, or eliminate, MDRT staffing during the Annual Review described in Section 6.”

The Staff positions designated in the agreement are the essential staff required to process all land used activity, not just that of Yarrow Bay. There is a built-in conflict of interest between being devoted “primarily” to supporting Yarrow Bay, their public obligation to the citizens of the City, and their responsibility to give equal treatment to other developers. That conflict is reinforced by the fact that their livelihood is dependent upon Yarrow Bay.

**D. Security specified in the Funding Agreement is inappropriate and inadequate.**

1. The Funding Agreement specifies that security will initially consist of a letter of credit for \$2,000,000 and a deed of trust for property purported to be worth \$1,000,000. Future value of the property is unknown and is not liquid. The City cannot pay its bills with property or a lien on property so there should not be agreement by the City to accept it as security.

2. 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.

An analysis should be performed at the beginning of each permitting activity to determine what amount of security should be provided in the event that the developer defaults on impact mitigation obligations.

Respectfully submitted,

Robert Edelman  
29871 232<sup>nd</sup> Ave SE  
Black Diamond, WA 98010  
(360) 886-7166

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

The Greater Maple Valley Unincorporated Area Council (GMVUAC) is an all-volunteer, locally elected advisory body to the King County Council. All our members reside in the unincorporated Rural Area. We represent and advocate with King County and state officials, as well as other organizations for our unincorporated area's citizens' interests.

Our Goals to support our community's Rural Character are:

1. Facilitate strong local ties and communication between the public, organizations, and government.
2. Support quality education.
3. Protect the environment and maintain landowners' rights and responsibilities.
4. Promote controlled and well-planned growth with appropriate infrastructure.
5. Ensure proper representation for rural interests and needs.
6. Support the health and safety and the privacy of our vibrant community.
7. Promote locally owned businesses.

We have deep reservations regarding the adverse impacts on our constituents of two huge Master Planned Developments (MPDs) proposed by Yarrow Bay in and around the City of Black Diamond. **These two proposed outsized developments total 6,050 dwelling units on 691 acres, and 1,165,000 sq ft of commercial/office space.** They are proposed on the rural/suburban fringe of the Urban Growth Boundary (UGB) along the Black Diamond-Maple Valley-Renton corridor where the existing transportation mainstay, the undivided two-lane SR-169, already is severely strained each work day morning and evening.

Our UAC's primary concerns with the MPDs are:

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

1. The addition of 10,000-plus vehicles on two-lane roads throughout southeast King County.
2. Major impacts on the Rural Area outside the Urban Growth Area (UGA) by siting of up to four new Schools to enable adjacent Urban development.
3. Further exploitation of the Rural Area by siting a large Stormwater Detention Facility outside the UGA.

Below we discuss each of these major concerns.

#### **Transportation**

The overloading of Rural Area roads such as **Green Valley Road** flagrantly damages a Historical resource, ignores an important Agricultural Production District, and poses severe safety problems for existing residents and their farm animals. The King County Department of Transportation is on record stating that up to 400% increase in traffic on Green Valley Road is to be expected. This increase will not be too deterred by a few speed bumps or other "traffic calming" devices proposed to be employed to the detriment of the Rural Area residents and home-based businesses that call Green Valley Road their home.

The **Issaquah-Hobart-Ravensdale Black Diamond Rd.** was ignored in the DEIS, FEIS, and MPD Applications and now has been ignored in the Development Agreements. We've been told: *"it's in the Traffic Model, but isn't being analyzed."* That doesn't pass the "smell test." This road is the most direct way southeast King County commuters have to Issaquah, Bellevue, and, yes, Seattle. How could it not be analyzed? One possible answer is that providing adequate mitigation for all the new

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

vehicle trips that will be generated on the Issaquah-Hobart-Ravensdale Black Diamond Rd. would, like is the case for SR-169, be cost prohibitive and, probably, geographically not feasible.

Other King County roads that weave through the Rural Area will be adversely impacted as commuters desperately seek any alternate routes other than the future “parking lots” of SR-169 (north and south) and SR-516 (east and west). These include Kent-Black Diamond Rd., Auburn-Black Diamond Rd., Lake Holm Rd., Covington-Sawyer Rd., and Thomas Rd. All are two-lane windy roads with limited sight distances, multiple hidden driveways, and few signaled intersections.

Throughout **Black Diamond Municipal Code Section 18.98** there is very clear language pertaining to infrastructure improvements and their timing. *“Provide needed services and facilities in an orderly, fiscally responsible manner.” “Timely provision of all necessary infrastructure equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops.” Prior to or concurrent with final plat approval the improvements have been constructed and accepted.”* We do not see how any of these provisions are met in the Development Agreements.

We also see potential conflicts with **King County Code Chapter 14.70--Transportation Concurrency Management--14.70.205**: *“Ensure that county level of service standards are achieved ‘concurrently’ with development, as required by the Growth Management Act and the Comprehensive Plan, by denying approval of development that would cause the level of service on transportation facilities to decline below county standards” and “Ensure that the concurrency program directly reflects the*

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

*financial commitments of the adopted CIP currently in effect.*” The Development Agreements do not discuss how Transportation Concurrency will be addressed or met.

The adverse impacts on SR-169, the major backbone of our southeast King County transportation infrastructure, have been well documented in all three Hearings of 2010 and in these present Hearings, and, more or less, ignored. The Development Agreements do not meet many of the transportation-related Conditions imposed by you the Hearing Examiner, especially constructing and using a new, credible Traffic Model to develop a new set of mitigations that could possibly be implemented and have a chance of working in the future. Yes, a new traffic model is under construction, but it won't be even be verified and used until 850 building permits have been issued. How will this allow transportation infrastructure to be designed, financed, and constructed in time to mitigate the adverse impacts on our Rural Area citizens? How can one small town like Black Diamond be allowed to adversely impact so many citizens who effectively have no voice?

The September 2010 **MPD Ordinances** include Conditions 11 through 34 (we cite The Villages numbering scheme) which detail stipulations on the transportation infrastructure. This is good, but the Development Agreements barely give lip service to the absolute needs for a new Traffic Demand Model, subsequent analyses, and a new set of Mitigations that can be tested over time. Further, the Development Agreements do not provide any detail on how mitigations will be altered should any be found inadequate. Where in the Development Agreements is such a plan?

Finally, the Development Agreements describe how mitigations will be “monitored” and then changes made once a problem occurs. Such a program that is not pro-active

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

is doomed to fail due to inadequate timing to complete needed projects once identified, resulting in more money spent after the fact, and continuing congestion. Rural Area citizens, not to mention Urban Area citizens and businesses, will be directly impacted by whatever Traffic Mitigation or, most likely, lack thereof is put in place and when it is put in place. This is the antithesis of Transportation Concurrency mandated by the **Growth Management Act. King County Code Chapter 14.70 -- Transportation Concurrency Management** provides for concurrency. The MPD Ordinances' *Exhibit B--Conclusions of Law (para. 30)* mentions ensuring "concurrency at full build-out." So, where is the State Law- and City Ordinance-required Transportation Concurrency in the Development Agreements?

Because SR-169 will become far more congested than it already is (in the midst of the greatest recession the country has experienced in 80 years!), the narrow, windy, hilly Rural Area roads throughout SE King County will be heavily impacted for many generations. It is unconscionable that the City of Black Diamond would be so irresponsible as to burden all their Rural Area neighbors, as well as their Urban neighbors, with massive traffic and safety issues.

#### **Urban Schools in Rural Area**

Unfortunately, the UACs' goals cited earlier are severely compromised by the siting of Schools in the Rural Area to primarily serve adjacent Urban needs and, thus, serve as an enabling factor for such urban development. Schools should be placed to serve the students, not on some cheaper land outside the City Limits.

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

The Villages Development Agreement in Exhibit A shows four school sites within the UGA, but does not show where the other two schools are located. Section 13.3 simply references the **Tri-Party Agreement**, which shows six school sites with three outside the UGA—one near the proposed Stormwater Detention Facility (another issue described in the next section) and two on Green Valley Road. Further, the **Tri-Party Agreement** is written in such a way that Yarrow Bay has great latitude in what school sites it conveys to the Enumclaw School District (ESD). This is all vague, at best, or contradictory, at worst. The Development Agreements must be consistent within themselves and consistent with the **Tri-Party Agreement**.

The siting of up to four new Schools outside the UGA will require additional unwanted and unneeded infrastructure in the Rural Area including roads, water lines, and sewer lines. This clearly is being done because the land outside the UGA is owned by Yarrow Bay and allows them to make more of their land inside the UGA available for development. That certainly makes a lot of sense if you are only concerned with Yarrow Bay's "bottom line," but it makes a mockery of the State's Growth Management Act, in general, and the County's UGA agreements, in particular.

Three of the schools shown in the Rural Area eventually will require direct connections to Green Valley Road, invariably for Public Safety reasons, further exacerbating a bad situation.

The Development Agreements provide no mitigations for any of this, nor provide any rationale for siting any schools in the Rural Area to begin with.

We agree with King County when it stated in comments provided on January 5, 2011: *"Review of the Development Agreements and Comprehensive School Agreement*

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

*indicate that three new schools and regional drainage facilities to serve future urban development continue to be proposed to be located within the rural area. The issues we have raised in the EIS process do not appear to be resolved. Therefore, we now express further concerns in the context of the Development Agreements and the Comprehensive School Agreement that impacts of the proposed Master Planned Developments on the adjacent unincorporated rural areas must be identified and mitigated.”*

Further **King County Code Chapter 14.70--Transportation Concurrency Management--Subsection 14.70.285--Minor developments and certain public and educational facilities** states the following: *“The following public and educational facilities are subject to the concurrency test: [subparagraph] J. Any public elementary, middle or junior high school facilities, including new facilities; and [subparagraph] K. Private elementary, middle or junior high schools. To qualify a school must prepare and implement a transportation demand management plan submitted to and approved before the issuance of the building permit. The school demand management plan shall pertain to the entire school and shall specify measures to be implemented to reduce single occupant vehicle travel by students, faculty and staff. The plan shall further specify how the school and department of transportation will cooperate in monitoring the implementation of such measures.”*

The **MPD Ordinances** Condition 98 states: *“All school sites shall be located either within the MPDs or within one mile of the MPDs.”* What guidelines suggest that 1-mile radius satisfies walkable criteria for school children? Would placement of schools outside the UGA by a one-mile radius within the Rural Area cause problems with the

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

intent of the Growth Management Act? The schools should be put where the students live, not out in the Rural Area because the land is cheaper! This would be better for the students, better for the taxpayers, and better for Rural Area citizens. This is clearly greed trumping common sense, the common good and, of course, Rural Area citizens.

#### Enabling Urban Development

Possibly the most egregious direct exploitation of the Rural Area is the siting of needed Urban Facilities in the Rural Area. There is no justification whatsoever given for siting the large multi-acre Stormwater Detention Facility west of the UGA, except to minimize or eliminate the necessity to site many smaller Detention Ponds within the MPDs. The **MPD Ordinances'** Condition 74 states: *"The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent."* Where in the Development Agreements is that Stormwater Plan? How does the Plan account for one large off-site Stormwater Detention Facility? How does its siting meet Ordinance requirements to properly and safely manage stormwater flow?

We again agree with King County comments provided January 5, 2011: *"Proposed Infiltration Pond in Section 21 will be on private land in the rural area. Infiltration pond location as shown may impact the regional Green to Cedar River Trail corridor in Section 21. Easement #20060323001826 establishes this corridor along the eastern 100 feet of Section 21, and would likely not allow for infiltration pond to be placed in the easement. King County Water & Land Resources Division may have concerns about an infiltration pond for urban stormwater being located in the rural area. This would be*

## MPD Development Agreement Hearings

### Greater Maple Valley Unincorporated Area Council Written Statement

*placed directly on land that is to be dedicated to King County for permanent open space under 1996 Black Diamond Urban Growth Area Agreement. This type of pond development would be unacceptable to have on King County open space. The Infiltration Pond located west of the city of Black Diamond within unincorporated King County is proposed to be located on land designated as King County Open Space. This is not an appropriate use for open space and should not be allowed."*

The **MPD Ordinances'** Condition 78 states: *"The applicant shall obtain all necessary permits from King County..."* Our UACs, along with Green Valley Road residents and businesses, will lobby very hard for King County to deny any permits for placing this ill-conceived and poorly sited Stormwater Detention Facility in the Rural Area to serve adjacent urban needs.

#### **Conclusions**

1. The MPDs, as presented in the Development Agreements, directly exploit the Rural Area and its residents outside the Black Diamond UGA.
2. The Development Agreements lack any basis in reality for such massive projects going forward.
3. The Development Agreements must be rejected and rewritten to eliminate such unwarranted and blatant exploitation of the Rural Area.

Thank you.

Steve Hiester

Chair, Greater Maple Valley Unincorporated Area Council

**Before the City of Black Diamond Hearing Examiner  
Regarding Identification of Vesting in Development Agreements**

**Vesting of rights and entitlements is incorrectly identified in Section 15.1 of the Development Agreements. The Development Agreements must be revised to be consistent with proper vesting.**

The Villages MPD Condition 159 and Lawson Hills Condition 164 require:

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.

The Development Agreements incorrectly identify vesting in the Black Diamond Municipal Code (BDMC) as of the date of MPD Permit Approval and do not identify the correct rights and entitlements for implementing projects.

Exhibit 1 is the vesting section of the draft Villages Development Agreement, Section 15.1. Comments apply to corresponding language in the Lawson Hills Development Agreement.

**A. The Development Agreement incorrectly asserts that implementing projects are vested to and governed by “applicable BDMC provisions” as of the date of the MPD Permit Approval.**

The City and Yarrow Bay have taken the position that MPDs are project-specific actions that vested when the vesting moratorium was lifted. However, Section 15.1 also asserts that the MPDs are vested when approved. Both cannot be true if the MPDs are project permits.

When Yarrow Bay’s application was submitted there were two possibilities for vesting. They could either be vested as of the date their application was deemed

complete (July 6, 2009) per the pre-application agreement with the City or they could be vested when the applications were approved (September 28, 2010) per BDMC 18.98.195. They could not choose both or selectively waive one for the other if their project permit claims are correct. The Washington State Court of Appeals found in *East County Reclamation Co. v. Bjornsen* that vested rights are not waivable; a developer cannot selectively benefit from old and new regulations:

East is correct that the general purpose of vesting land use regulations is to benefit developers. But another important purpose of the vesting rule is to

establish a date certain upon which the owner's right to use his or her property in a particular way becomes fixed so that in determining the applicable law the court is not required to search through the moves and countermoves of the parties, and "the stalling or acceleration of administrative action in the issuance of permits" in each case.

*Norco Constr., Inc. v. King County*, 29 Wn. App. 179, 189, 627 P.2d 988 (1981) (citations omitted) (quoting *Hull v. Hunt*, 53 Wn.2d 125, 130, 331 P.2d 856 (1958)). It is well settled that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission. See, e.g., *Friends of the Law*, 123 Wn.2d at 522; *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 275, 943 P.2d 1378 (1997); *W. Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 50-51, 720 P.2d 782 (1986). Under East's position, application review would require that the reviewing entity search through all regulations enacted since the application date and determine whether the applicant had waived its "vested rights" and had chosen to have its application evaluated under some of the new regulations.

*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 438.

If Yarrow Bay wanted its MPD applications to be vested when the City took action then it should not have vested its applications on June 28, 2009. Instead, they desire both and their draft Development Agreements assert the following:

:

Pursuant to MPD Condition of Approval No. 159 of the MPD Permit Approval and per the Pre- Application and Development Agreement between the Master Developer and City dated April 16, 2009, the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009, the date the moratorium imposed by the City pursuant to Ordinance No. 08-885, was lifted by the City Council's adoption of Ordinance No. 09-913. All Development within The Villages MPD shall be implemented through Implementing Projects. The Implementing Projects of The Villages MPD shall be vested to and governed by the applicable BDMC provisions and other City standards in effect as of the date of the MPD Permit Approval. The applicable codes and substantive standards are included as Exhibit "E" and the MPD Permit Approval is included as Exhibit "C".

By vesting at the point the moratorium was lifted, Yarrow Bay and the City had concluded that the BDMC had been updated as contemplated by their pre-application agreement. (See Exhibit 2.) Section 5.2 of that agreement stated the vesting intent:

The MPD application shall vest to the City policies, standards, application requirements, and land use regulations in effect on the date the moratorium referenced in paragraph 5.1 is lifted or otherwise expires ("Vested Standards").

Since the moratorium was lifted the municipal code has undergone several changes which Yarrow Bay now wants to vest in to their advantage. (See Exhibit 3 for a partial list of new legislation since vesting.) They could have withdrawn their application and resubmitted but chose instead to proceed with the approval process. The die was cast.

**B. The Development Agreements must be revised to reflect the proper development regulations in force at the time of vesting. This includes Exhibit "E" and language affecting implementing projects.**

The moratorium shown in Exhibit 2 was enacted and extended to complete updating of development regulations before applications were accepted. The

intent that vesting would occur upon application was made clear in the recitals and was the very purpose of the moratorium.

It would be detrimental to the public health, safety and welfare to allow large portions of the City to vest to the old development standards until such time as the new development regulations are adopted by the City, as development applications might vest to the old standards unless the premature filing of applications is prevented.

It was intended that vesting would be after development regulations were updated and the moratorium was lifted. However, regulations continued to be updated after vesting. Exhibit 3 is a partial listing. Some are quite significant including extensive revisions to Title 17 for subdivision of land and the new Chapter 18.14 for vesting of project permits. Yarrow Bay cannot be vested in these changes if the MPDs are considered to have been vested as project-specific actions.

If Yarrow Bay's other vesting claims are correct then the vesting language of Section 15.1 must be corrected to identify proper vesting, Exhibit "E" must be changed to reflect vested development regulations, and the language of the Development Agreement must be revised to reflect development regulations in force at the time of vesting.

Respectfully submitted,

Robert Edelman  
29871 232<sup>nd</sup> Ave SE  
Black Diamond, WA 98010  
(360) 886-7166

## 15.0 GENERAL PROVISIONS

### 15.1 BINDING EFFECT & VESTING

This Agreement constitutes and shall be recorded as a covenant running with the land, benefiting and burdening the Project Site. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City.

Pursuant to MPD Condition of Approval No. 159 of the MPD Permit Approval and per the Pre-Application and Development Agreement between the Master Developer and City dated April 16, 2009, the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009, the date the moratorium imposed by the City pursuant to Ordinance No. 08-885, was lifted by the City Council's adoption of Ordinance No. 09-913. All Development within The Villages MPD shall be implemented through Implementing Projects. The Implementing Projects of The Villages MPD shall be vested to and governed by the applicable BDMC provisions and other City standards in effect as of the date of the MPD Permit Approval. The applicable codes and substantive standards are included as Exhibit "E" and the MPD Permit Approval is included as Exhibit "C". Pursuant to BDMC 18.98.195(B) (Exhibit "E"), vesting as to stormwater regulations shall be on a Phase by Phase basis as outlined in Section 7 of this Agreement. Pursuant to BDMC 18.98.195(C) (Exhibit "E"), vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis as outlined in Section 13.6 of this Agreement. Updated building codes will apply pursuant to Subsection 12.8.1.

In accordance with RCW 36.70B.180, during the Build-Out Period the City shall not impose upon The Villages MPD new or additional development standards except as set forth in this Agreement or to the extent required by a serious threat to public health and safety. Provided, however, that this Agreement can be amended during the Build-Out Period in accordance with the procedures in Section 10 of this Agreement and RCW 36.70B.170 through RCW 36.70B.210. Amendments of the MPD Permit Approval or this Agreement pursuant to Section 10 of this Agreement do not affect vesting.

## VILLAGES MPD PRE-APPLICATION AGREEMENT

1. **Date and Parties.** This document, entitled BD Village Partners, LP MPD Pre-Application Agreement ("Agreement") is dated the 14 day of April, 2009, and is entered into by and between BD Village Partners, LP ("Village Partners") and the City of Black Diamond ("City"), a Washington municipal corporation.

2. **General Recitals and Agreement Purpose.**

2.1 The City, Palmer, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA").

2.2 In order to implement the BDUGAA provisions the City is developing a new set of development regulations, policies, and planning documents.

2.3 The City imposed a moratorium on certain types of land use activity while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA.

2.4 The City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions.

2.5 Certain large scale developments identified in City regulations as Master Planned Developments ("MPD"), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process.

2.6 The City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885.

2.7 Village Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Villages MPD.

2.8 The BDUGAA provisions set forth the general framework for the annexation of certain properties identified in the BDUGAA, and referenced herein, as the South Annexation Area, the West Annexation Area, and the East Annexation Area. The West and South Annexation Areas are intended to be included within the Villages MPD. The West Annexation has already occurred.

2.9 The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement ("Core Funding Agreement"), which provided for the funding for needed City staff and other related items.

2.10 This agreement will: 1) provide clarity on the interrelationship between the City's fee resolution, the MPD Code, and the Core Funding Agreement; 2) allow the early processing of the Villages MPD application, as authorized by City Ordinance 08-885; and 3) define the relationship between the finalization of the South Annexation process and the hearings on the Villages MPD application.

### 3. South Annexation.

3.1 The City agrees to commence processing the Villages MPD application, which will include the South Annexation Area, prior to completion of the annexation process for the South Annexation Area. The public hearings on the Villages MPD Application shall not be scheduled until the South Annexation Area has been annexed into the City, and any appeals finalized, or the South Annexation Area has been removed from the Villages MPD Application.

3.2 A request to commence the annexation process for the South Annexation Area has been received by the City. The parties agree that before the City authorizes the circulation of the petition to annex the South Annexation Area, the parties shall negotiate a pre-annexation agreement that will provide for the implementation of the remaining BDUGAA conditions relative to annexation of the South Annexation Area so that the pre-annexation agreement can be integrated into the annexation process at the time the circulation of the petition to annex is authorized. The parties agree to immediately commence negotiating the pre-annexation agreement. Village Partners waives the requirement in RCW 35A.14.120 that a meeting with the initiating parties must be held within 60 days of submitting the notice of intent to annex. The City agrees that since the petition to annex will include signatures of the owners of all of the property to be annexed, that it will hold the meeting with the initiating parties and authorize the circulation of the petition in the same meeting.

3.3 The cost of processing the South Annexation shall be paid in accordance with the City's fee resolution.

### 4. Relationship of Core Funding Agreement to City's Fee Resolution for MPD Processing.

4.1 The Core Funding Agreement provides a funding mechanism, funded by BD Lawson Partners, L.P. and BD Village Partners, L.P, for needed City staff and City facilities and equipment until such time as the City can independently provide funding for those costs. It also provides that the City shall not charge for City staff time used in reviewing and processing a land use application that is otherwise being paid for pursuant to the Core Funding Agreement provisions. It is the City's intent that all applicants for land use entitlements shall be treated the same, and pay the same fees.

4.2 The City shall designate for City staff whose salaries and overhead are funded by the Core Funding Agreement, what percentage of their time will be allocated to

processing MPD applications. That percentage of the total amount paid for their salary and overhead, shall then be deducted from the amount that is funded by the Core Funding Agreement. Any time that those employees then spend on processing an MPD application shall be charged to the particular MPD application in accordance with the City's fee resolution and the City's MPD ordinances.

4.3 Although the Core Funding Agreement provisions relating to non-duplicative payments only applies to land use applications, and an annexation is not a land use application, since the annexation is also inextricably linked to the MPD land use application the staff time associated with the South Annexation shall also be subject to the provisions of paragraph 4.2.

4.4 The MPD application shall be processed in accordance with the City's fee resolution and MPD ordinance. Provided, in lieu of the amount of the required deposit being the estimated cost to process the application, the parties agree that the deposit amount shall be \$25,000, and the security provided in the Core Funding Agreement for payment of amounts owed to the City shall also serve as security for the payment of any amounts to become due and owing to the City as a result of the MPD application process.

## 5. MPD Vesting.

5.1 This section 5 shall apply to any MPD application that is submitted by any party hereto and/or for lands owned by a party hereto, while the moratorium imposed by City Ordinance 08-885, or any extension thereof, remains in effect.

5.2 The MPD application shall vest to the City policies, standards, application requirements, and land use regulations in effect on the date the moratorium referenced in paragraph 5.1 is lifted or otherwise expires ("Vested Standards").

5.3 The applicant and landowner of land included in the MPD application, assume the risk that the City policies and development regulations to which they will vest will be significantly different than the policies and development regulations in effect on the date they submit their application, including the loss of some land use activity or densities that might have otherwise been permitted under the existing regulations.

5.4 The applicant, at its expense, will modify its MPD application, as necessary, in order to meet the Vested Standards. If the applicant concludes, after reviewing its application in accordance with the provisions of the Vested Standards, that it believes no modifications to its application is necessary, then it shall notify the City, in writing that it does not intend to modify its application. Otherwise, it will notify the City that it intends to modify its application in order to comply with the Vested Standards.

5.5 The MPD application date shall be either the date that the applicant provides the City with the notice referenced in paragraph 5.4 that it does not intend to amend its application, or when the applicant submits its modified application referenced in paragraph 5.4 ("MPD Application Date").

5.6 The City shall commence its review of the MPD application upon receipt, even though some of that review may be of application materials that will have to be modified after the MPD Application Date, resulting in additional charges to the applicant. The applicant will be responsible for these additional costs as application costs under the City's fee resolution and MPD ordinance.

5.7 The City shall not commence its review of the application as to whether or not it is a complete application until the MPD Application Date. The application shall vest to the applicable City policies, standards and development regulations in effect on the date a complete application, as defined in the MPD ordinance in effect on the MPD Application Date, is submitted.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. **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: Gwendolyn Voelpel, City Administrator  
City of Black Diamond  
25510 Lawson St.  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Loren Combs  
YSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424  
Facsimile: (253) 922-5848

To Village Partners: Brian Ross  
BD Village Partners, LP  
825 5<sup>th</sup> Ave., Suite 202  
Kirkland, WA 98033  
Facsimile: (425) 202-3694

John Hempelmann  
Caincross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Facsimile: (206) 587-2308

14. **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.

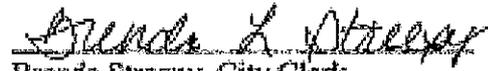
15. **Mediation, Attorneys' Fees and Costs.** In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing party shall be entitled to receive its attorneys' fees and costs at trial, at any alternative dispute resolution proceeding, and on appeal.

CITY OF BLACK DIAMOND



Howard Botts, Mayor

Attest:



Brenda Streepy, City Clerk

Approved as to form:

\_\_\_\_\_  
Loren D. Combs, City Attorney

BD VILLAGE COMMUNITIES

BD Village Partners, LP



By: Brian Ross

Title: Managing Partner

**Black Diamond Municipal Code**  
**Partial List of Legislation after MPDs were Vested**

Ordinance No. 09-920

An ordinance of the City of Black Diamond, King County, Washington regarding the regulation of signs and amending Black Diamond Municipal Code Sections 18.82.020, 18.82.050(A), 18.82.050(H), 18.82.060, 18.82.080, and 18.82.090, and repealing Section 18.82.070.

Effective August 30, 2009

Ordinance No. 10-933

An ordinance of the City Council of the City of Black Diamond, King County, Washington, amending Chapter [sic] Section 19.04.250 of the Municipal Code regarding the SEPA appeal process.

Effective January 17, 2010

Ordinance No. 10-935

An ordinance of the City Council of the City of Black Diamond, King County, Washington, regarding timelines for Hearing Examiner decisions on appeals and Master Planned Development applications and amending Sections 18.08.220 and 18.98.060 of the Black Diamond Municipal Code.

Effective February 28, 2010

Ordinance No. 10-941

An ordinance of the City of Black Diamond, King County, Washington regarding the division of land and amending Black Diamond Municipal code Sections 17.04.010, 17.04.020, 14.04.030 [sic], 17.08.010, 17.08.040, 17.12.010, 17.12.020, 17.12.030, 17.15.020, 17.15.030, 17.16.010, 17.16.020, 17.16.030, 17.20.010, 17.20.020, 17.20.030, 17.20.040, 17.20.050, 17.20.060, 17.20.070, 17.20.080, 17.32.010, 17.32.020, 17.32.030, 17.32.040, 17.32.050, 17.32.060, 17.32.070, 17.32.090, 17.32.100, 17.34.020(a), 17.34.060(a), 17.36.030, 17.36.040, 17.36.050, 17.36.060, 17.36.080, adding new Sections 17.20.090 and 17.32.055, and repealing Chapter 17.14 and Sections 17.32.110 and 17.36.070, providing for severability; and establishing an effective date.

Effective June 13, 2010

Ordinance No. 10-942

An ordinance of the City Council of the City of Black Diamond, King County, Washington, relating to vesting of project permit applications and expiration of project permits and adding a new Chapter 18.14 to the Black Diamond Municipal Code.

Effective June 27, 2010

Ordinance No. 10-943

An ordinance of the City of Black Diamond, Washington, updating the Technical Codes; repealing Chapters 15.04, 15.10, 15.12, 15.16, 15.18, 15.20 and 15.36 of the Black Diamond Municipal Code; amending Chapter 15.28 of the Black Diamond Municipal Code; re-enacting Chapter 15.04 of the Black Diamond Municipal Code as the Technical Codes of the City; conforming the Technical Codes to the State Building Code; providing for the administration and enforcement of the Technical Codes; providing for appeals to be heard by the Hearing Examiner; providing for severability; and establishing an effective date.

Effective June 27, 2010

Ordinance No. 10-945

An ordinance of the City Council of the City of Black Diamond, King County, Washington, amending Chapter 14.04 of the Municipal Code regarding stormwater regulations.

Effective July 15, 2010

August 1, 2011

Dear Mr. Hearing Examiner:

Now is the time.

I am 84 years old and have lived in Black Diamond since I was 60. I have tried to volunteer at The Bakery, community center, police station and as of lately at the Museum. I believe helping a city grow is what makes a city a nice place to live. I have seen a lot of changes, the street in front of the bakery, the community center that used to be a bank, Rainier View, the scenic park, and the police station just to mention a few. Now I think it is time we all get behind Yarrow Bay and their effort and money to give us a planned and beautiful city.

Recently my wife and I drove to DuPont, a city by Fort Lewis. I was really surprised. This is very similar to what Yarrow Bay has planned for Black Diamond - go see for yourself. What do some of the people from Lake Sawyer mean by density? My friend who lives on Lake Sawyer says that it is when I shake hands with my neighbor and say have a nice day from my kitchen window to his bathroom window. I guess this is density. And I understand that a big majority of the homes on Lake Sawyer are on septic tanks. Does the run of water go down to the Lake or is it evaporated into the air?

Please help us grow our town by supporting the Development Agreements. Thanks to the people who print the truth like School Board Member Chris Van Hoof in the Covington Herald.

*Don A. Daniels*

*32709 - 2<sup>nd</sup> Ave.  
Black Diamond Wa. 98010*

EXHIBIT 65





# Washington State Senate

**Senator Pam Roach**

31st Legislative District

**Olympia Office:**  
202 Newhouse Building  
PO Box 40431  
Olympia, WA 98504-0431  
Phone: (360) 786-7660

**District Address:**  
PO Box 650  
Auburn, WA 98071  
Phone: (253) 735-4210  
e-mail: roach\_pa@leg.wa.gov

August 2, 2011

**COMMUNITY DEVELOP.**

City of Black Diamond

**AUG 02 2011**

Community Development Committee

**RECEIVED**

Attn: Steve Pilcher, Hearing Examiner

Proposed residential and commercial developments being considered for the Black Diamond area by Yarrow Bay Corporation fails to address serious infrastructure concerns, specifically adequate roads and traffic control. With the expected influx of new population, current road and highway conditions would impact traffic flow and create serious safety issues.

As the Washington State Department of Transportation (WSDOT) has both a severe funding shortfall and a long backlog of projects, funding for proposed MPDs in Black Diamond and improvements along state highway 169 presents major concerns. Funds for affected county road improvements face a similar budgetary roadblock.

Also, it is probable that State grant monies will not be available through 2020 and the newly proposed Community Facility Districts will be unable to generate sufficient monies to meet the needs that the proposed MPDs will generate along SR 169 between the cities of Enumclaw and Maple Valley.

Consequently, since no provisions are being made, nor are any expected in the near future, to adequately accommodate the serious impacts of the proposed residential expansion in Black Diamond, any final approval should be tabled until such concerns are resolved.

I am available anytime and would like to be notified of any additional opportunities to provide information. The public safety of everyone traveling along SR 169 will be seriously jeopardized without significant mitigation.

Sincerely,

State Senator, 31<sup>st</sup> District

Cc: Staff members (3)

EXHIBIT

66



## ***Lake Sawyer Flooding***

My comments and recommendations apply to both Development Agreements. The Villages Development Agreement makes clear reference to special measures which are planned for the stormwater management systems to maintain water balance for Horseshoe Lake because of known flooding which has occurred at that lake (Condition 62.). But, **no mention is made of the flooding which has also occurred at Lake Sawyer which will be exacerbated by much larger stormwater runoff volumes from developments in Lawson Hills and The Villages.**

During the previous MPD Hearings I voiced my concern regarding the historical flooding of Lake Sawyer which has occurred about twice per decade over the past 65 years my family has had a residence on the Lake. I used the example of a particular heavy storm that occurred in January of 2009 when the water level was near its annual high and described how runoff from that storm caused flooding of my property and those of others. And I included pictures of my front yard under water. My very specific example gave an estimate of how much higher the water would have risen under the same circumstances with additional runoff from the post-developed MPDs.

Subsequent to my testimony a Mr. Alan Fure, from Triad Associates, rebutted my example by stating how the detention ponds proposed for the MPDs would attenuate the peak runoff from that kind of storm and add less water level rise than in my calculations. Based upon that rebuttal your Honor concluded that flooding of Lake Sawyer would not be caused by the MPDs and no conditions were written to address this potential by either you or the City. However, peak runoff from storms is not the only flooding threat from the MPDs to Lake Sawyer.

While the peak runoff effect to Lake Sawyer from the MPDs may be attenuated by the use of large detention ponds (except when they overflow) the increased volume of water generated from new impervious surfaces which drain slowly from the ponds is not retained. **Runoff from this greatly increased impervious surface will add to lake level throughout the year and increase the normal high-water levels in the winter.** Next I'll show why flooding is a valid concern. And I'll use data from a recent report prepared by Yarrow Bay consultant, Triad Associates, to show how the large volumes of runoff will exacerbate flooding.

The Villages MPD Condition 81 and Lawson Hills Condition 82 state that *"Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer."*

A letter provided to the City, dated 1-25-11, by Mr. Alan Fure of Triad Associates on behalf of Yarrow Bay provided the estimated total annual phosphorous load to Lake Sawyer anticipated from both the pre-developed and post-developed MPD properties. In the attachments to the letter total phosphorous load to Lake Sawyer is calculated by multiplying the anticipated phosphorous concentrations by the volume of runoff leaving the sites both before and after development to determine the total annual amount of phosphorous that will flow into tributaries to Lake Sawyer. So by subtracting the pre-developed runoff water volume from the post-developed runoff water volume in the Triad Associates data it's easy to determine the net new total annual runoff volume that will come to Lake Sawyer. (See calculations in Table 1 below using Triad Associates data.) References to the specific portions of the Triad Associates report where data is obtained are also shown for reference.

# Table 1 Calculated MPD Runoff to Lake Sawyer in December and January

Source of data: Triad Associates Memo to City of Black Diamond dated 1-25-2011 on Estimated Total Phosphorous loading to Lake Sawyer

## Use of data in Triad Associates Memo to BD (1/25/11) to Determine Increase in Runoff Volume to Lake Sawyer

### Total Runoff

#### Pre-development Runoff Volume

Villages North + Main Pre-developed Effluent Volume (Runoff) = 124.0 acre-ft  
 Lawson Hills North & Main Pre-developed Effluent Volume (Runoff) = 300.2 acre-ft  
 Combined Total Pre-developed Effluent Volume (Runoff) = **424.2** acre-ft

#### Post-development Runoff Volume

Villages North + Main Post-developed Effluent Volume (Runoff) = 298.0 acre-ft  
 Lawson Hills North + Main Post-developed Effluent Volume (Runoff) = **741.0** acre-ft  
 Combined Total Post-developed Effluent Volume (Runoff) = **1,039** acre-ft

#### Annual Increased Runoff Volume

Increased Runoff Volume from Both Developments = **615** acre-ft  
 % Increase in Runoff Volume from Developments = 145% Increase

Annual Rainfall of 54.05 inches used for Black Diamond = 54.05 inches  
 Average Black Diamond Annual Rainfall in December = 7.47 inches  
 % Average Black Diamond Annual Rainfall in December = 13.8%  
 Calculated Increased Runoff to Lake Sawyer during December = 85.0 acre-ft

Equivalent Increase in Lake Sawyer Water Level in December = **3.5** inch

Average Black Diamond Annual Rainfall in January = 7.13 inches  
 % Average Black Diamond Annual Rainfall in January = 13.2%

Calculated Increased Runoff to Lake Sawyer during January = 81.1 acre-ft  
 Equivalent Increase in Lake Sawyer Water Level in January = **3.3** inch

Total Potential Impact to Lake Sawyer Water Level Dec.-Jan. = **6.8** inches

#### Data Source Notes and Comments

1-25-11 Triad Associates Memo-Executive Summary, page 6  
 1-25-11 Triad Associates Memo-Executive Summary, pages 6 & 7 (6.1 ac-ft + 294.1 ac-ft)

1-25-11 Triad Memo-Appendix C, Table 4 (67.1+42.3+26.7+3.9+77.7+43.8+18.9+12.5+5.1 ac-ft)  
 1-25-11 Triad Memo-Appendix C, Table 4 (421.7+14.4+46.7+13.9+30.6+122.8+47.2+14.7+17.3+11.7 ac-ft)

acre-ft = 325,851 gallons

Additional water coming to Lake Sawyer = **200,333,195** gallons/yr  
 Post-development runoff is 2.5 times as great as pre-development

1-25-11 Triad Associates-Memo Appendix D-Associated Earth Sciences, Inc (Appendix 10, page 24)  
 1-25-11 Triad Associates-Memo Appendix D-Associated Earth Sciences, Inc (Appendix 10, page 24)

(= 85/295) Assumed area of Lake Sawyer + Frog Lake = 295 acres

1-25-11 Triad Associates-Memo Appendix D-Associated Earth Sciences, Inc (Appendix 10, page 24)

(= 81/295) Assumed area of Lake Sawyer + Frog Lake = 295 acres

(Lake Sawyer already rises 2.5 inches per month in Dec. and Jan.)

The data in this report prepared by Triad Associates show that on an annual basis the total runoff leaving the MPD sites after development and flowing to tributaries to Lake Sawyer will be **1,039 acre-ft.** That's 2.5 times the water Triad Associates calculates flows from the MPD properties in the pre-developed state (424.2 acre-ft.). And that's **615 acre-ft. of new runoff** that will be flowing to Lake Sawyer. Lake Sawyer is 280 acres in area and its associated wetland, Frog Lake, is about 15 acres for a total receiving body of 295 acres. Dividing the 615 acre-ft. of water by the receiving body acreage of 295 acres means that **a little over two vertical feet (25 vertical inches) of new water will be coming to the Lake from the detention ponds annually.**

The monthly rainfall data in the appendices of the 1-25-2011 Triad Associates document (*Appendix 10 in Appendix D*), used to make the runoff calculations, show that 14% of the annual rainfall is in December and another 13% of the annual rainfall is in January. So multiplying those percentages of rainfall times the new 25 vertical inches of annual runoff volume shows that on average **3 ½ vertical inches** of new additional water will come to Lake Sawyer in December and an additional **3 ¼ vertical inches** in January (see Table 1 above). **This new additional runoff comes at a time of year when the water in the Lake is already high and rising rapidly.**

During the years 1996 through 2006 King County made daily measurements of Lake Sawyer's water level each year. That database which can be downloaded from <http://your.kingcounty.gov/dnrp/wlr/water-resources/small-lakes/data/DailyData.aspx> shows that on average the lake level already rises about 2 ½ inches each month in January and February. That's because the water falling directly into the lake, and flowing into the lake from the watershed, is greater than the water able to flow out of the lake's outlet to Covington Creek. When the water level in Lake Sawyer reaches approximately 10 inches above the weir the water below the weir in Covington Creek backs up due to downstream flow restrictions. At higher levels the water level in the outlet becomes equal to the Lake Sawyer water level and water is no longer pouring over the weir (the weir is totally submerged). In fact Covington Creek turns into a flooded small lake and little water actually exits Lake Sawyer under these conditions. The dramatic impact of the blockage to Lake Sawyer's outlet at high water conditions can be seen in Figure 1 below as very rapid spikes in lake-water level. Note the very rapid rise in water levels for 1996 when the lake rose 14.1 inches in one day (maroon spike line on upper left corner of graph). This situation occurred when the lake level was already at 11.2 inches above the weir and Covington Creek was backed up into a small lake. **So the nearly seven vertical inches of combined new water runoff in December and January coming to the Lake can be a very significant addition if lake levels are already high and Covington Creek is constricted. During December and January Lake Sawyer cannot absorb or release large quantities of new water.**

Flooding on Lake Sawyer occurs when the water rises high enough to flow over bulkheads and onto low lying properties. Even when the water rises only a few inches over a bulkhead it can traverse across relatively level yards and into the first floor of people's homes. The higher the water rises the more homes are affected and the more damage done. There are approximately 30 to 40 homes on Lake Sawyer that have been affected by these relatively infrequent floods that have occurred during my 65 years of residence on the lake and nearly all are at risk today if the water goes higher. The location of these low-lying properties is identified in the aerial view of Lake Sawyer shown in Figure 2 below. As I stated earlier, this flooding has averaged about twice a decade and usually occurs in January when a "Pineapple Express" heavy rainfall storm hits at peak high water level. The most recent episodes occurred in January of 1997, 2006, and 2009. **And, as noted above, a particularly bad flooding occurred in February, 1996 when water rose more than 25 inches above the weir and damaged many homes.** So like Horseshoe Lake, Lake Sawyer has a long history of periodic flooding.

**Figure 1 Annual Water Level Relative to the Mean (10.1 inches above the Outlet Weir)**

Source: King County Measurements of Lake Sawyer water level 1996-2006

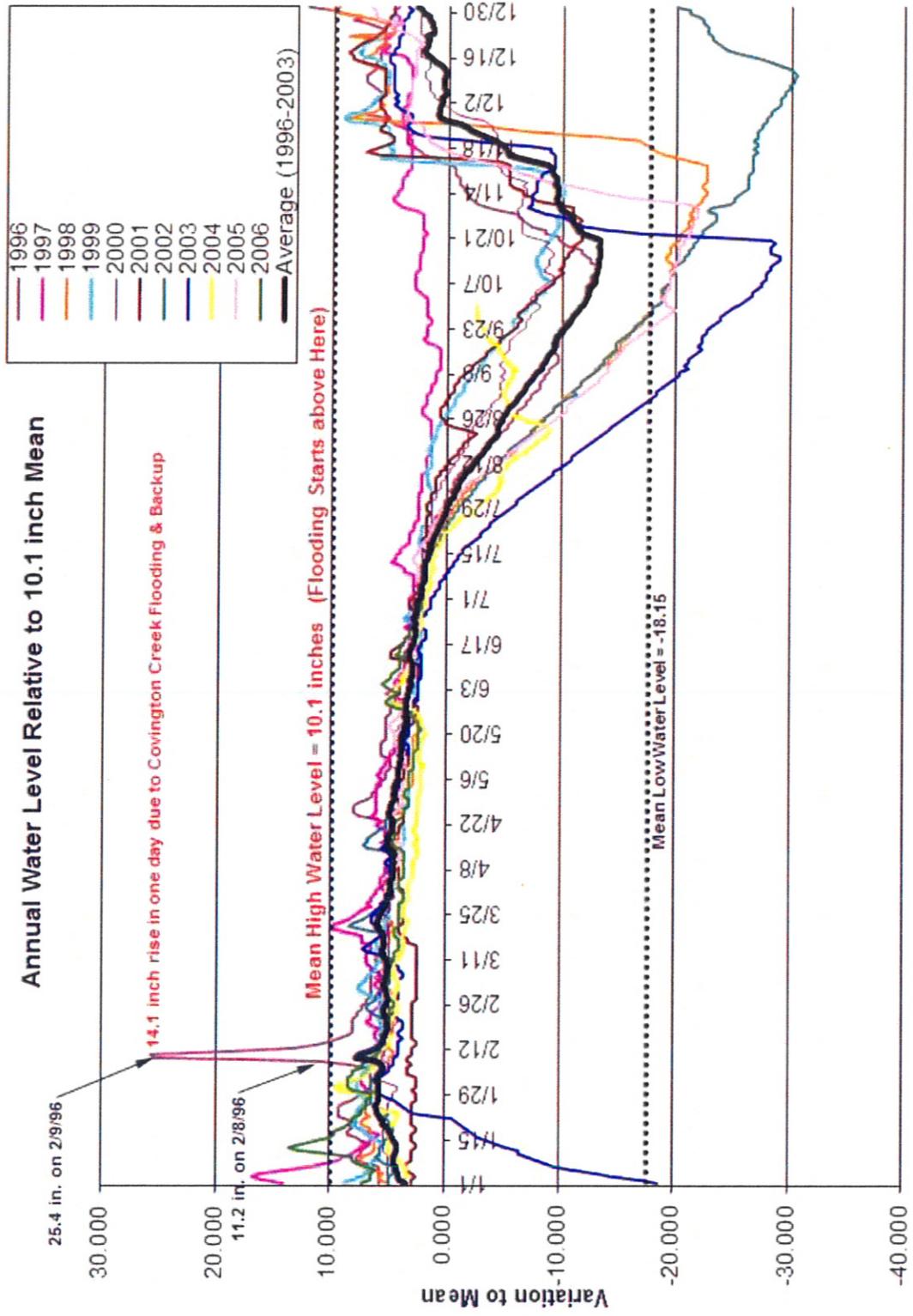
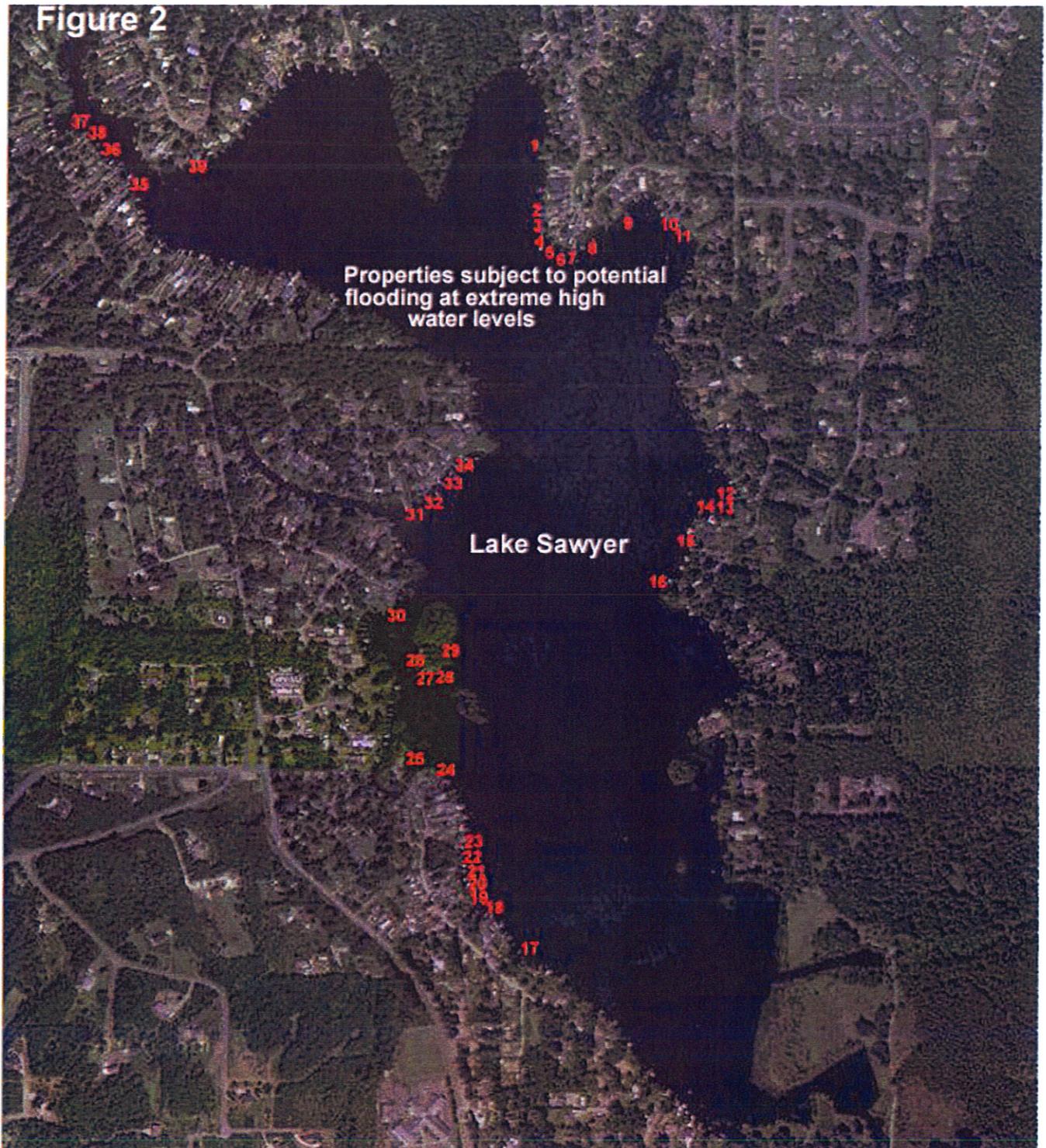


Figure 2



The most recent flooding incidents have occurred when the water level was more than 10 inches above the weir. On January 9, 2009 the water in Lake Sawyer reached a level of 17 inches above the weir which made it 7 inches above the threshold where flooding of the lowest lying properties occurs. Figure 3 below shows how the water reached the tops of docks on the lake and breached my front bulkhead and was well into my front yard. Several other properties were flooded as my property is higher than the lowest properties.

If on average Lake Sawyer receives another seven vertical inches of additive water in the December-January period from MPD runoff, the Lake will experience more frequent and severe incidences of flooding. **Even a few inches of flood-water in a yard can damage septic systems which are very costly to replace. And nearly all homes on Lake Sawyer rely on septic systems.**

Requirement 5 of the "Minimum Technical Requirements" section of the 2005 DOE Stormwater Management Manual (required by MPD Conditions) states that: *"On-site Stormwater Management Projects shall employ On-site Stormwater Management BMPs to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible without causing flooding or erosion impacts."* In the Development Agreements there is also a requirement to *"Maintain a stormwater system that allows for adaptive management of detention and discharge rates and allows for redirection of stormwater overflows when environmental advantages become apparent."* But in the MPDs and Development Agreements there is nothing which specifically addresses the issue of increased flooding potential at Lake Sawyer and how the stormwater management systems plan to design detention facilities to prevent it. **This is particularly alarming now that the estimated runoff volumes in the Yarrow Bay sponsored Triad Associates report shows that runoff volume from developed MPD properties will increase by a factor of 2.5.**

Figure 4 below shows Lake Sawyer water level as measured daily during the past year starting in early August of 2010. These measurements are being taken by a private party from an automated water level gauge on the western shore of the Lake and plotted in graphical format by the undersigned. Data measured last year starting in August and since the beginning of this year are shown compared to the daily average of the eight years of complete annual measurements taken daily by King County from 1996 to 2003 (heavy black line in graph). Please note that three times during the winter of 2010/2011 the lake level has come very close to the level at which initial flooding of low lying properties occurs (10 inches above the weir). Fortunately the peak water levels this past winter didn't exceed the level at which flooding begins. But these were close calls and if the large quantity of water projected by Yarrow Bay (Triad Associates) subsequent to development had been added in December and January clearly some flooding would have occurred. If you can imagine that the water level in the Lake could on average be upwards of seven inches higher in January after build-out I think you will see why this is cause for alarm and requires some form of specific mitigation. This rise caused by the nearly seven inches of additional MPD runoff is a direct result of the constriction in downstream Covington Creek which prevents Lake Sawyer outflow during winter high water levels. Without this restriction the new MPD runoff water would pass through the lake and its outlet with only a minor rise in lake level.

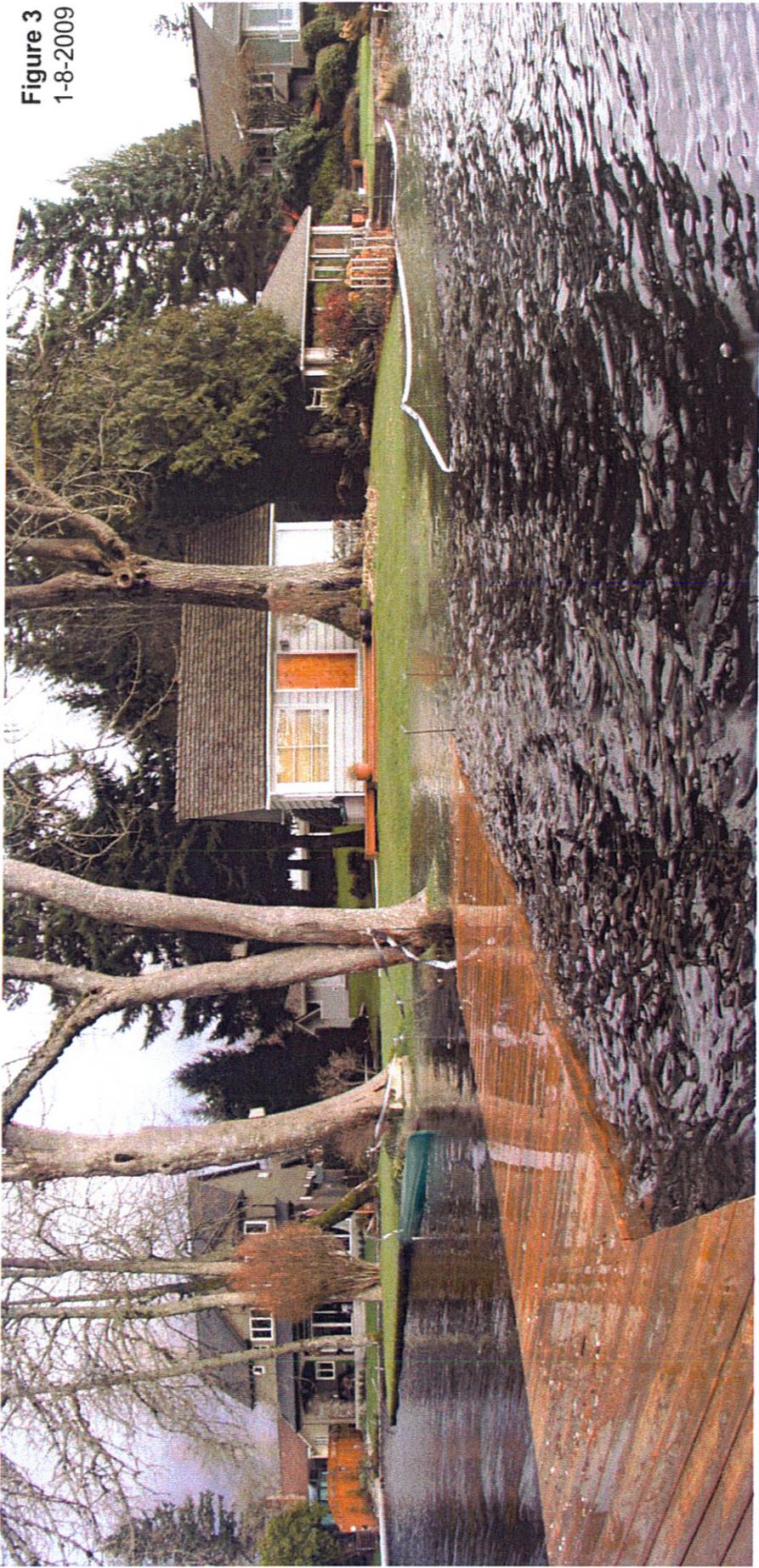
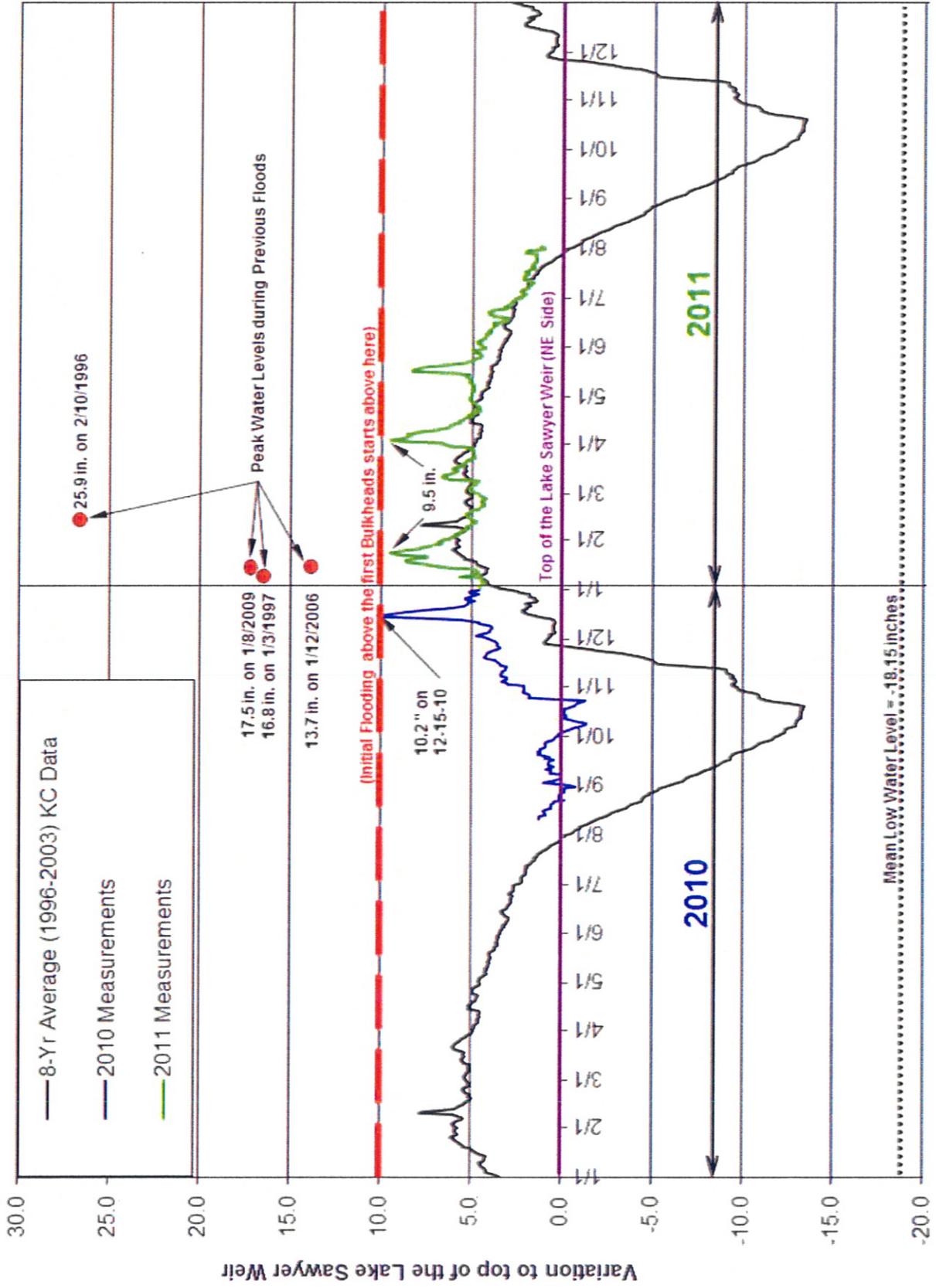


Figure 3  
1-8-2009

**Figure 4 Recent Lake Sawyer Water Level Relative to Measured History**



Your Honor, I am gravely concerned about the very large quantities of additional water which will exacerbate the infrequent, but damaging, floods seen historically on Lake Sawyer. I ask your Honor to consider what I have presented herein and to make a recommendation that the applicant specifically address the flooding potential at Lake Sawyer for low lying properties.

The flooding problem was recognized in the Villages Condition #62 and the Villages Development Agreement for Horseshoe Lake and the applicant has made special stormwater management provisions for preventing flooding conditions at that lake. I caution that many more homes are at risk at Lake Sawyer and there is also a demonstrated history of flooding on this lake as well. **I specifically ask for the same kind of consideration in pond design to be required for Lake Sawyer to prevent flooding damage during and after development build-out.**

Washington State code on Development Agreements, RCW 36.70B.170 (4), states: *"The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health or safety."* (Red type emphasis added).

An additional provision needs to be added to both Development Agreements to protect the safety of low-lying properties on Lake Sawyer from additional large new volumes of MPD runoff. The following added new statement for both the Lawson Hills and Villages Development Agreements is proposed and is similar to that which has already been incorporated for Horseshoe Lake in paragraph 7.4.3.G of the Villages Development Agreement: ***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.***

There is no reason why Lake Sawyer should be forced to serve as one giant detention pond so that Yarrow Bay can develop more property at the risk and expense of Lake Sawyer property owners.

Respectfully submitted,

Jack C. Sperry  
29051 229<sup>th</sup> Ave SE  
Black Diamond, WA 98010

## Sewer Systems

The Villages Development Agreement states "This Agreement provides sewer availability to service 4,800 Dwelling Units on the Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement." A similar statement assures availability for Lawson Hill's 1,250 units. How can these Development Agreements provide sewer availability to service 6,050 dwelling units plus commercial units when according to knowledgeable King County Wastewater Division staff the Black Diamond Sewer system is currently limited to approximately 3,600 total connections until capacity improvements are built? That number of maximum connections is based upon estimates made many years ago and includes all the existing City connections. So, new connections are probably limited to between 2,000 to 2,500 hook-ups pending new capacity improvements to be provided by the County.

The Development Agreement also states: "The Villages MPD Conceptual Sewer Plan (Figure 7.3) shows the general location of the proposed sewer collection system, force mains and up to four (4) new pump stations that will pump wastewater to a City designated discharge location." Figure 7.3 in the Villages Development Agreement (below) shows all wastewater being pumped to a storage facility in the northwest corner of the property. This facility will be designed and built by King County; however no agreement has yet been made on its location. This very simple conceptual layout in Figure 7.3 provides no useful information considering that this storage facility may be located elsewhere in the City most likely in the opposite corner of town near the existing King County pump station close to Jones Lake. This total lack of definition provides no confidence that a sewer system design is feasible at this time.

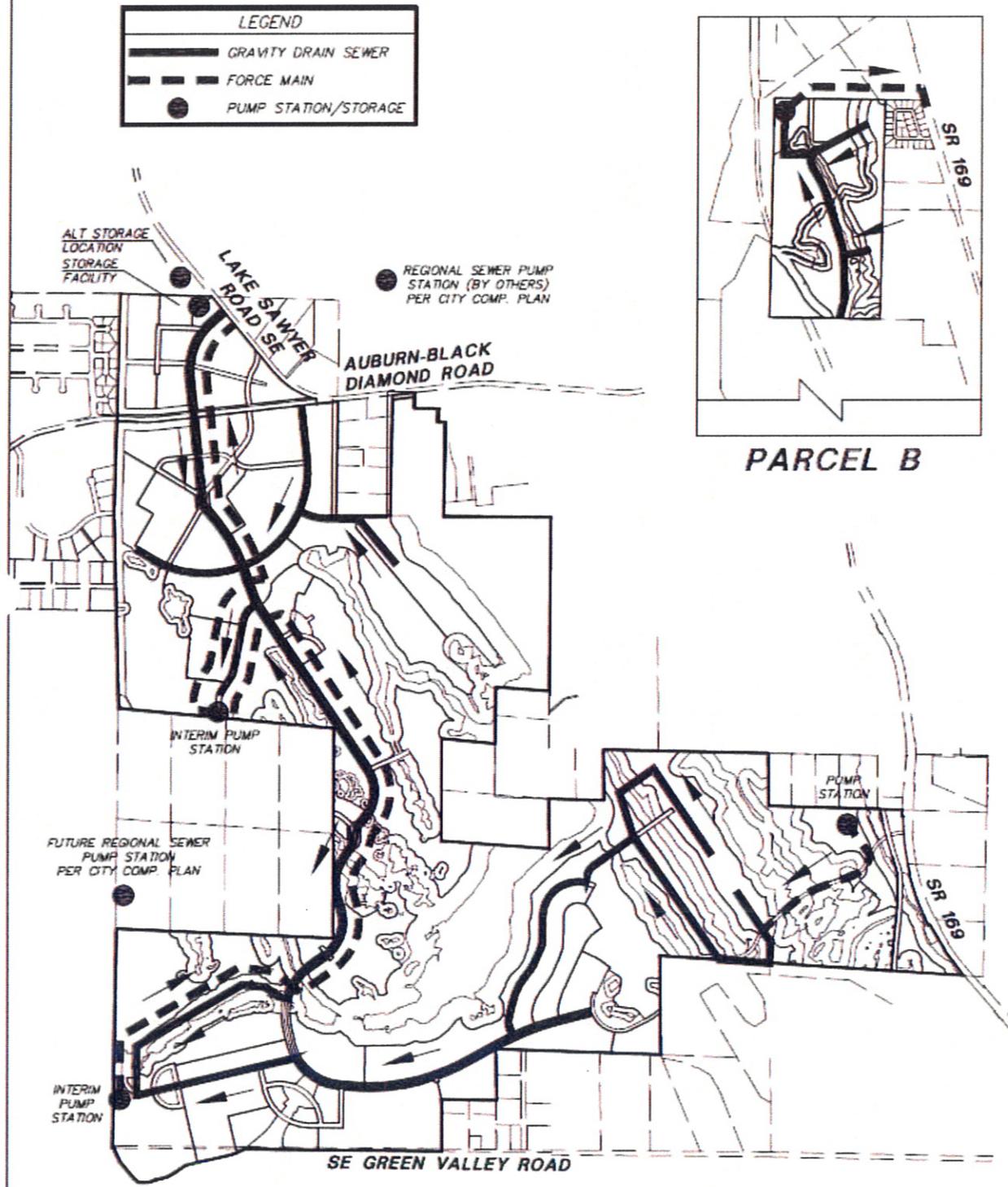
Per Figure 7.3 in the Villages Development Agreement, the northern Regional Sewer Pump Station is to be provided by others. However, the Development Agreement in paragraph 7.3.2 states that all onsite and offsite sewer facilities required by the development, other than those which will be owned or maintained by King County, will be designed and constructed by the Master Developer. This conflict needs to be resolved.

Figure 7.3 in the Villages Development Agreement (included below) shows an Alternate Peak Flow Storage facility just outside and north of Yarrow Bay property. This location is outside the UGA and King County policy is specifically opposed to siting facilities in the rural area to support urban development and likely would refuse a permit based upon that policy. Furthermore, this location is on King County property that was provided via a grant for a park and cannot be used by Yarrow Bay, or King County, for siting of a wastewater storage facility per staff personnel in King County's Wastewater Treatment Division.

The Lawson Hills Development Agreement states: "The Lawson Hills Conceptual Sewer Plan (Figure 7.3) shows the general location of the proposed sewer collection system, including force mains and gravity mains. Approximate facility locations are shown on attached Figure 7.3. Final locations are subject to City review and approval." The conceptual sewer plan shown for Lawson Hills in Figure 7.3 (included below) is even vaguer than for The Villages, and shows six different possible sewer line routings (A through F) which either bring the wastewater to Black Diamond's current Pump Station near Jones Lake or to an alternate location (Route F) outside the map area that would pump it completely across town to the proposed peak flow storage facility at the opposite northwest corner of the City on Parcel C.

**The Villages  
Development Agreement**

**FIGURE 7.3:  
CONCEPTUAL SEWER PLAN**

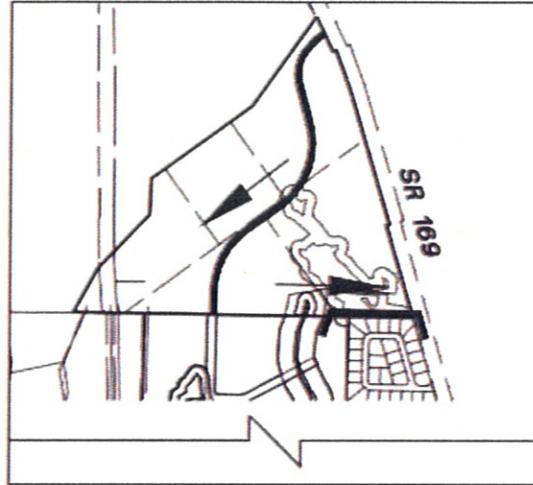


**Section 7 - Utilities  
May 2011**

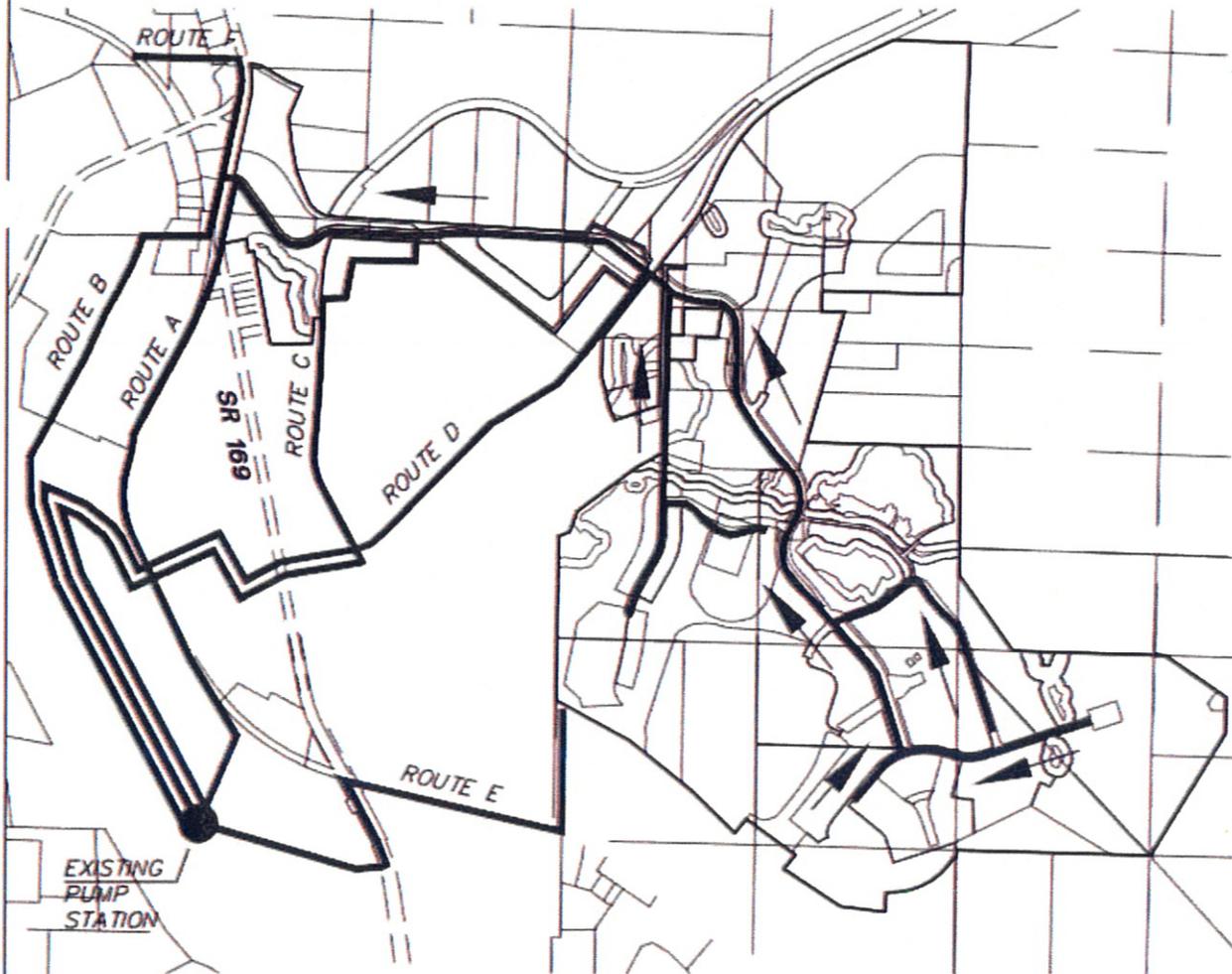
**Lawson Hills  
Development Agreement**

**FIGURE 7.3:  
CONCEPTUAL SEWER PLAN**

LEGEND	
	GRAVITY DRAIN SEWER
	PUMP STATION/STORAGE



**NORTH TRIANGLE PROPERTY**



**Section 7 - Utilities  
May 2011**

These Development Agreements, which will increase Black Diamond's population and sewer requirements by a factor of four or five, should not be approved without a definitive sewer system plan demonstrating that wastewater in very large quantities can be safely conveyed and that a reliable system design approach is feasible. This cannot be done until a location and design concept for the Peak Flow Wastewater Storage Facility has been agreed to between the City and King County. The simplistic multiple concepts referenced in the figures 7.3 of the Development Agreements certainly don't demonstrate that a detailed plan exists to meet the future needs of the MPDs. And what is proposed is not entirely in agreement with the City's Comprehensive Plan.

The conceptual plans in both Development Agreements assume that a new "City designated discharge location" will be provided. This in fact will be the Peak Flow Wastewater Storage Facility to be designed, built, and maintained by King County. However, there is no agreement in place with the future system operator, King County, on where to even site this facility. In fact King County is not pleased with the City's and Yarrow Bay's proposed site for this storage facility in the NW corner of the Villages or its design approach using a flow equalization chamber and control valve.

On August 18, 2010 King County supplied Black Diamond with a comprehensive analysis of the City's and Yarrow Bay's proposed "West Storage Facility". (The "West Storage Facility" location is identical to the location shown in Figure 7.3 of the Villages Development.) This is a 750,000 gallon storage reservoir proposed by the City and Yarrow Bay to attenuate and store future peak flows from the Yarrow Bay developments. King County's analysis provides in great detail the many concerns they have with the City's and Yarrow Bay's proposed site location and system design. The County's report concludes that a different storage site, together with a different design, located near the current lack Diamond pumping station near Jones Lake is superior to the proposed site in terms of:

1. System configuration
2. Long term operation
3. Constructability
4. Safety
5. Public health
6. Reduced traffic disruption during construction
7. Environmental impacts
8. and also Costs

The County is also concerned that the system proposed by the City and Yarrow Bay has serious inherent reliability issues in its design approach. (A copy of King County's August, 2010 technical review of the proposed "West Storage Alternative" facility proposed by Black Diamond and Yarrow Bay and its shortcomings is attached to this document along with the County's transmittal letter.)

On January 11, 2011 the City met with representatives of King County Wastewater Treatment Division and asked the County to study the location the City prefers for the peak flow storage facility and to tell the City what it is going to take to make their chosen location work. The County agreed to conduct this additional study at additional taxpayer expense to see how costly and technically feasible it would be to design a system that would meet County requirements at the City's desired northwest location (shown in Figure 7.3 above for the Villages). This study was to be complete in late March or early April, 2011. Additional meetings were subsequently held between the City and King County, but the study has not begun because the City has yet to provide necessary information that the County requires to begin its analysis. So the study won't be complete for many months at best.

The Hearing Examiner should not approve these Development Agreements (i.e. 15 to 20 year contracts) when the City and the system operator (King County) haven't even agreed on how the central part of the sewer system should be designed and where it should be located?

Section 7.3.1 of The Villages Development Agreement states "This Agreement provides sewer availability to service 4,800 Dwelling Units on the Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement."

Section 7.3.1 of the Lawson Hills Development Agreement states "This Agreement provides sewer availability to service 1,250 residential Dwelling Units on the Lawson Hills MPD (930 Single Family and 320 Multi-family) as well as 390,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement."

The above two statements make no sense and the Development Agreements cannot just will the sewer service into being. Future sewer capacity in Black Diamond is limited to a total of approximately 2,000 to 2,500 additional residence units until increased capacity is provided for wastewater acceptance by King County. Until a new wastewater peak flow storage facility design and its location is agreed to between the City and the County there is no plan to fully support these developments. The City should not make the commitment for the full 6,050 Dwelling Units until it has a firm agreement with King County on how to handle that capacity. The Development Agreements should not be approved until a viable sewer system design has been laid out, sited, and agreed to between the City and King County.

The City and County are still debating over where to site this critical peak flow storage facility and how it should be designed. And this facility is not currently in the County's 2011 Capital Improvement Program Plan or budget for years through 2016.

The County has to have a highly reliable system that will last for 50 to 100 years and not be saddled with a potentially risky design approach and location that happens to suit the convenience of a developer who may be long gone in ten to fifteen years. How can Development Agreements (i.e. 15 to 20 year contracts) be approved between the City and a developer when the system operator (King County) hasn't even agreed on how the central part of the sewer system should be designed and where it should be located? And won't for many months!

Respectfully submitted,

Jack C. Sperry  
29051 229<sup>th</sup> Ave SE  
Black Diamond, WA 98010

*Attachment 1: King County Cover Letter dated August 18, 2010 for the Review in Attachment 2*

*Attachment 2: King County Wastewater Treatment Division document dated August, 2010 "Review of Alternative Site Evaluation for a Wastewater Storage Facility in Black Diamond, Washington"*



## King County

Department of Natural Resources and Parks

### Wastewater Treatment Division

King Street Center, KSC-NR-0500  
201 South Jackson Street  
Seattle, WA 98104-3855

August 18, 2010

Seth Boettcher, Public Works Director  
City of Black Diamond  
P. O. Box 599  
24301 Roberts Drive  
Black Diamond, WA 98010

Dear Mr. Boettcher:

Thank you for giving the Wastewater Treatment Division (WTD) the opportunity to review RH2 Engineering's (RH2's) *Wastewater Peaking Facility Alternative Site Evaluation Report, June, 2010* prepared for the City of Black Diamond. We appreciate the opportunity to review the report and provide the City with our findings.

Our review focused on comparing and contrasting the West Storage Alternative described in RH2's Report with WTD's Alternative D storage facility described in the *Task 360 Alternatives Analysis Report, May 2009*. Based on our review we have concluded that both the design and location of the Alternative D Storage Pipe would meet regional conveyance needs in the area more efficiently, safely, and cost-effectively than the design and location of the West Storage Alternative. The Alternative D Storage Pipe would provide the most reliable flow equalization service to city residents and to the region as a whole. Our conclusion is shaped largely by the fact that the design of the West Storage Facility includes routing the existing gravity sewer through the flow equalization chamber, relying on a flow control valve to meter the downstream flow rate, and allowing up to four identified pump stations to direct wastewater into the flow equalization chamber without any means of control or coordination (referred to as "run wild" in the RH2 Report). Our experience shows that such a facility would pose a significantly greater risk of odor generation, clogging as a result of solids accumulation at the flow control valve, and upstream surcharging and overflows both from clogging and from uncontrolled pump station flows competing for space in the flow equalization chamber.

WTD has also reviewed the West Storage Alternative in relation to the Alternative D storage facility to determine how each alternative compares in terms of system operations, constructability, community impacts, environmental impacts, and cost. Overall, we have concluded that both the design and location of the Alternative D storage facility is superior to the design and location of the West Storage Alternative.

WTD is aware that the City has concerns about the design and location of the Alternative D Storage facility. As was described in the Task 360 Alternatives Analysis Report, development of the Alternative D storage facility presents design and construction challenges. However, these

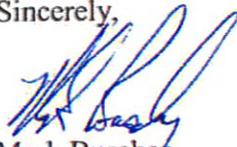
Seth Boettcher  
August 17, 2010  
Page 2

challenges can be addressed through the application of engineering standards for wastewater facilities, adherence to facility design, permitting, and operating standards administered by the Department of Ecology, and through incorporating mitigation features into the design and construction of the storage facility that can eliminate long-term community impacts.

Enclosed is a detailed report that contains our complete findings related to our review of the West Storage Alternative in relation to WTD's Alternative D storage facility. We are available to meet with you to answer questions and discuss any details.

I also want to remind you that because of the timing associated with approving the master planned developments, funding for the Alternative D storage facility is no longer included in WTD's capital improvement program budget. In order for the storage facility to be re-incorporated into the 2011 capital budget, WTD must receive by early September a permitting and development schedule from the City that details when permits will be issued, and when construction will begin. This is necessary so that WTD can complete design and permitting work, and build the facility in time to serve the master planned developments. If the City needs more time, we can work with you to re-incorporate the project into the capital budget in 2012.

Sincerely,



Mark Buscher

cc: Pam Elardo, Interim Director, Wastewater Treatment Division (WTD), Department of Natural Resources and Parks (DNRP)  
Norm Alberg, Acting Manager, Project Planning and Delivery Section (PPD), WTD, DNRP  
Shirley Marroquin, Manager, Planning and Asset Management Unit, PPD, WTD, DNRP  
Laura Wharton, Supervisor, Comprehensive Planning and Asset Management Program Development Workgroup, PAM, PPD, WTD, DNRP  
Brian Duncan, Project Manager III, Project Management Unit, PPD, WTD, DNRP

---

# **Review of Alternative Site Evaluation for a Wastewater Storage Facility in Black Diamond, Washington**

---

August 2010



**King County**

Department of  
Natural Resources and Parks  
**Wastewater Treatment Division**

***For comments or questions, contact:***

Mark Buscher  
King County Wastewater Treatment Division  
201 South Jackson Street  
KSC-NR-0512  
Seattle, WA 98104-3856  
206-684-1242  
[Mark.Buscher@kingcounty.gov](mailto:Mark.Buscher@kingcounty.gov)

This information is available in  
alternative formats on request at  
206-684-1280 (voice) or 711 (TTY).

# Table of Contents

---

1.0.	Introduction.....	1
2.0.	Description of West Storage Facility.....	2
2.1	Location.....	2
2.2	Physical Features.....	2
2.3	Operational Features.....	2
3.0.	Observations and Findings.....	4
3.1	System Operation and Configuration.....	4
	Stage 1 – Low Flow Condition.....	4
	Stage 2 – Equalizing Required.....	4
	Stage 3 – Control Description.....	5
	Stage 5 – Emptying.....	5
	Stage 6 – Flushing.....	6
	Reliability.....	6
	System Operation and Maintenance.....	6
	Odor Potential.....	7
3.2	Long-Term Operation and System Planning.....	8
	Managing All Flows Through the West Storage Facility.....	8
	Redirecting Flows Away from the Jones Lake Pump Station.....	8
	Risk of Overflows.....	8
3.3	Construction Considerations.....	9
	Disruption.....	9
	Geotechnical.....	9
	Coal Mine Hazard Areas.....	10
	Upgrade Existing Local Sewers.....	10
	Impacts to Utilities.....	10
	Risk of Property Damage.....	10
	Soil or Groundwater Problems.....	11
3.4	Community Considerations.....	11
	Safety.....	11

Public Health.....	11
Permanent Visual Impacts .....	11
Traffic Disruptions.....	12
Recreational Impacts.....	12
Condemnation.....	12
3.5 Environmental Considerations .....	12
Proximity of Wastewater Facilities to Wetlands and Wetland Buffers .....	12
Construction Impacts to Wetlands and Wetland Buffers.....	13
Coal Mine Hazards .....	13
Fish and Wildlife Habitat.....	14
Critical Aquifer Recharge Areas.....	14
Groundwater .....	14
3.6 Cost Estimate.....	14
Operation and Maintenance Costs .....	14
Capital Cost for Storage.....	15
3.7 Miscellaneous Observations.....	15

## Figures

Figure 1. Mapped Coal Mine Hazard Areas (West Alternative) .....	17
Figure 2. Mapped Erosion and Flood Hazard Areas (West Alternative).....	18
Figure 3. Mapped Wetland Areas (West Alternative) .....	19
Figure 4. WDFW Priority Habitat and Species (West Alternative).....	20
Figure 5. Mapped Coal Mine Hazard Areas (Alternative D).....	21
Figure 6. Mapped Erosion and Flood Hazard Areas (Alternative D) .....	22
Figure 7. Mapped Wetland Areas (Alternative D).....	23
Figure 8. WDFW Priority Habitat and Species (Alternative D).....	24

# 1.0. INTRODUCTION

---

This report documents the King County Wastewater Treatment Division’s (WTD) review of the City of Black Diamond’s proposed West Storage Facility as described in *City of Black Diamond Wastewater Peaking Facility, Alternative Site Evaluation* (RH2 Engineering, Inc., June 2010) (RH2 Report). The RH2 Report recommends locating a peak storage facility (West Storage Facility) west of King County’s Black Diamond Pump Station (referred to as the Jones Lake Pump Station), rather than adjacent to the Jones Lake Pump Station as recommended in *King County, Black Diamond Wastewater Infrastructure Upgrade, Phase 1 Storage Facility, Task 360: Alternatives Analysis Report* (Tetra Tech and Associated Firms, March 2009) (Task 360 Report). The Task 360 Report recommends design and construction of Alternative D—Pipeline Storage, Open Cut Excavation (Alternative D Storage Pipe)—after planned development in the city resumes.

The purpose of this review is to determine whether the proposed West Storage Facility effectively meets near-term and long-term regional conveyance needs in the City of Black Diamond. The review focuses on comparing the West Storage Facility with WTD’s planned Alternative D Storage Pipe in terms of system operation and configuration, long-term operation and system planning, constructability, community considerations (such as safety, public health, and traffic disruption), environmental impacts, and costs.

Overall, the review finds that both the design and location of the planned Alternative D Storage Pipe would meet regional conveyance needs in the area more efficiently, safely, and cost-effectively than the design and location of the West Storage Alternative. The Alternative D Storage Pipe would provide the most reliable flow equalization service to city residents and to the region as a whole. Our conclusion is shaped largely by the fact that the design of the West Storage Facility includes routing the existing gravity sewer through the flow equalization chamber, relying on a flow control valve to meter the downstream flow rate, and allowing up to four identified pump stations to direct wastewater into a flow equalization chamber without any means of control or coordination (referred to as “run wild” in the RH2 Report). Our experience shows that such a facility would pose a significantly greater risk of odor generation, clogging as a result of solids accumulation at the flow control valve, and upstream surcharging and overflows both from clogging and from uncontrolled pump station flows competing for space in the flow equalization chamber.

The following sections briefly describe the features of the West Storage Facility and present specific observations and findings of the review. Figures referenced in the text are located at the end of the report.

## **2.0. DESCRIPTION OF WEST STORAGE FACILITY**

---

### **2.1 Location**

- The preferred location given in the RH2 Report for the 0.75-million gallon (MG) tank is west of downtown Black Diamond on property owned by Yarrow Bay Development Corporation. This property is located on the west side of Lake Sawyer Road north of its intersection with SE Auburn Black Diamond Road.
- The RH2 Report also states that the facility could be located on the east side of Lake Sawyer Road or in the street right-of-way.

### **2.2 Physical Features**

- The proposed facility consists of an underground single-cell detention vault (20 x 600 x 6 feet deep).
- The control structure includes a “flow equalization chamber” with a flow control valve to restrict flow downstream to the Black Diamond Trunk.
- The flow equalization chamber would be constructed such that the existing gravity sewer main leaving Black Diamond and up to five proposed force mains from four future pump stations in Black Diamond would be routed through it.

### **2.3 Operational Features**

- The RH2 Report does not recommend the need for telemetry control or communication between the proposed storage facility and the four identified pump station systems. The proposed control strategy is to let the force mains direct wastewater into a flow equalization chamber without any means of control or coordination and to adequately size the equalization chamber and storage facility to manage and control the flows.
- The discharge flow rate from the equalization chamber is to be controlled through the use of a flow control valve to regulate flow in the Black Diamond Trunk, not to exceed 1.0 million gallons per day (mgd). The flow control valve will be actuated (throttled open and closed) using a downstream flow measuring device such as an overflow weir or a float control.
- The water level in the equalization chamber would increase and decrease based on the difference between the inflow rate of all force mains and the controlled discharge rate out of the equalization chamber regulated through the flow control valve (limited to 1.0 mgd).
- When the water elevation exceeds the maximum capacity of the equalization chamber, wastewater would overflow through a pipe to storage when necessary.

- The elevation of the existing gravity sewer line in Lake Sawyer Road would need to be lowered to provide the required inlet and outlet invert elevations in the flow equalization chamber. This lowering would involve reinstallation of approximately 2,000 linear feet (LF) of 16-inch-diameter sewer in Lake Sawyer Road.
- After the peak event has passed, the stored volume in the tank would drain back by gravity into the equalization chamber through a pipe located at the bottom of the tank. The flow would be regulated through a check valve in the equalization chamber that would open once the water level in the equalization chamber recedes.
- The storage facility would be cleaned through the use of a flushing chamber with a flushing gate. Stored wastewater would be held behind a flushing gate at the upstream end of the storage facility and would be released to clean the tank.

## 3.0. OBSERVATIONS AND FINDINGS

---

### 3.1 System Operation and Configuration

The following are observations and findings related to system operation and configuration of the West Storage Facility described in the RH2 Report.

#### Stage 1 – Low Flow Condition

System control of the West Storage Facility involves flow monitoring using a flow meter and an actuated flow control valve in the equalization chamber. This type of system is problematic because wastewater flow metering systems typically clog with debris and level sensors foul and fail. Also, the entire proposed diversion and flow management system would be subject to failure because the system depends on this type of critical control point. In comparison, the Alternative D Storage Pipe does not rely on a flow control valve or flow metering system; peak flows are diverted by gravity over a weir when the wet well elevation in the Jones Lake Pump Station rises.

#### Stage 2 –Equalizing Required

Several observations were noted in regard to the description in the RH2 Report of Stage 2 – equalizing required:

- The description states that at full buildout conditions in the city, five pump stations with a combined capacity not to exceed a flow rate of 1.0 mgd on average may exceed 1.0 mgd on a peak instantaneous basis. However, the flow rate at the existing Jones Lake Pump Station alone regularly approaches and has sometimes exceeded 1.0 mgd. WTD estimates a peak hour flow rate of 2.38 mgd in 2010 and 4.29 mgd in 2020. Since flows from the Jones Lake Pump Station will be among the five future stations pumping to this proposed storage facility, the amount of flow that will be managed in the equalization chamber will regularly exceed 1.0 mgd several times a day. These exceedances will cause flow to back up in the flow equalization chamber for long periods and will result in solids deposition, clogging of the flow control valve, and increased potential for odor and corrosion.
- The description states that the equalization chamber will provide enough volume to contain peak instantaneous flow from all five pump stations. No order-of-magnitude dimensions or sizes were given for this equalization chamber. Our concern is that the equalization chamber would have to be quite large to effectively control the highly variable flows anticipated from multiple force mains discharging into the vault. As mentioned above, we find this problematic because wastewater will be detained for extended periods, causing solids deposition, clogging of the control valve, and odor and corrosion potential.
- To maintain a maximum discharge rate of 1.0 mgd, an orifice opening of 4 inches in diameter is required over 5 feet of driving head. (WTD estimated this headwater elevation based on information in Figure 5 of the RH2 Report.) A 4-inch-diameter

opening is too restrictive for wastewater service. Solids will clog in the opening, causing wastewater to back up in the equalization chamber and storage tank during non-peak events. There is significant risk that the flow control valve in the equalization chamber would clog with solids, which could potentially lead to sanitary sewer overflows at the proposed West Storage Facility.

- The RH2 Report characterizes the equalization chamber as being designed such that it would be self-cleaning and would be operated and maintained like a wet well. In practice, however, the proposed equalization chamber would not be self-cleaning and would clog and cause odor potential as indicated in the observations above. Wastewater wet wells are specifically designed to keep solids in suspension and maintain scouring velocities through the use of a solids handling pump (not a flow control valve).<sup>1</sup> To effectively maintain a self-cleaning condition, the chamber would need to be designed as a wet well with a solids handling pump installed to regulate flow through the chamber and keep solids in suspension. Including these features would essentially convert the proposed facility into another wastewater pump station.

### **Stage 3 – Control Description**

The RH2 Report states that the West Storage Facility will fill during large storm events. While this may be the case in the earlier years of use, this facility is being constructed to provide base flow and peak flow storage capacity. As the city’s population increases, daily (or “diurnal”) peaks from base flows may need to be stored. This is an important point because base flows will have a higher waste strength, solids content, and thus odor potential. Problems in the operation of the flow control valve and the operation and maintenance of the flow equalization chamber will occur as solids collected in this chamber cause significant clogging and odor control issues.

### **Stage 5 – Emptying**

The drain from the proposed West Storage Facility relies on a check valve in the equalization chamber that would open when the water level in the equalization chamber subsides. It is likely that this configuration would not work because the flow control valve at the downstream end of the equalization chamber may be partially closed for long periods to control flow to the Black Diamond Trunk and to accommodate regular flow spikes throughout the day from multiple force main discharges. When the flow control valve is closed, water will back up in the equalization chamber and will seat the check valve from the storage tank in the closed position, not allowing the storage tank to drain. As a result, the storage tank may not empty (or completely empty) before the next peak event occurs and volumes need to be diverted to storage. In fact, the figure used in the RH2 Report (“Stage 5 – Emptying” on page 7 of 24) indicates that water would back up against the check valve.

The water level in the equalization chamber would need to reach the “low flow” condition for an uninterrupted period of at least 8 hours to effectively drain the 0.75-MG volume from the storage tank and to flush and clean the tank so that the tank is ready for the next peak

---

<sup>1</sup> King County typically requires pump station wet wells to be designed in accordance with Hydraulic Institute standards.

event. As development continues to occur in the city and daily wastewater flows increase, the storage tank may need to accommodate up to three peak storage events throughout the course of a typical 24-hour day from routine customer usage (high usage in the morning, early evening, and late evening). These diurnal peaks would be in addition to peak events caused by infiltration and inflow (I/I) from rain events.

## **Stage 6 – Flushing**

The control description and design of the West Storage Facility rely on wastewater for flushing. C-2 (or “air-gap”) water would also need to be used to ensure that solids are adequately flushed from the system and do not cause odor potential.

## **Reliability**

The RH2 Report states that the proposed West Storage Facility works by gravity flow and is therefore more reliable than the Alternative D Storage Pipe configuration, and implies that the Alternative D Storage Pipe is not a gravity-operated solution because a drain pump is required to empty a residual volume at the bottom of the pipe. Our review indicates that the West Storage Facility depends on components to drain storage—a flow control valve, flow metering system (weir or float), and a check valve—that are not reliable in a wastewater environment and that are highly subject to failure because of clogging.

The Alternative D Storage Pipe has a gravity diversion that is not restricted by a flow control valve. Access to storage is far more reliable with the Alternative D Storage Pipe than with the proposed West Storage Facility because the pump station would control the flow to the Black Diamond Trunk and any additional volumes would be diverted directly to the large-diameter storage pipe by spilling over a weir and flowing by gravity to storage.

## **System Operation and Maintenance**

The following are observations and findings related to system operation and maintenance (O&M) of the West Storage Facility described in the RH2 Report:

- The RH2 Report states that the proposed flow control valve and flow measurement system/floats are reliable and are used regularly for combined sewer systems. The County’s experience is that systems that rely on orifices, flow control valves, floats, and flow meters are not accurate and reliable. They get fouled with debris and then clog and fail. The report says that these valves and controls are not expected to require significant maintenance. In our judgment, this is not likely to be the case.
- Also unlikely is the assertion that the proposed flow control valve and flow monitoring system would share the same O&M considerations as other alternatives the County considered for drain pumping, monitoring and control, and diversion systems. All alternatives documented in the Task 360 Report divert flows in excess of the Jones Lake Pump Station capacity to an alternative storage or peak flow pumping system through the use of an overflow weir. This is a more reliable operational method than use of flow monitors, flow control valves, or floats to divert wastewater to storage.

- The RH2 Report indicates that the Alternative D Storage Pipe relies on pumping to drain the storage volume. However, the design for the Alternative D Storage Pipe calls for over 90 percent of the stored volume to drain by gravity back into the Jones Lake Pump Station wet well after the peak event passes. The less than 10 percent that remains would be pumped because a small portion of the lowest reach of the pipe is below the wet well elevation. This drain pump is not a critical element because it is not required for reliable access to storage.
- Throughout the RH2 Report, the West Storage Facility is characterized as an offline storage facility. We question this characterization because the equalization chamber acts as an inline storage facility similar to what was previously proposed in *Technical Memorandum 2.0, West Alternative Wastewater Storage Location Analysis* (Pac West Engineering, December 3, 2009). The combined total of peak instantaneous flows from up to five upstream pump stations will likely result in wastewater backup in the equalization chamber for extended periods. Such backup will contribute to septic conditions and solids deposition, resulting in increased odor and corrosion potential and increased maintenance to the remove solids, maintain odor control facilities, and respond to odor complaints.

## **Odor Potential**

Conditions that create odor or the potential for odor in wastewater conveyance systems include extended detention times, turbulent conditions at force main discharges, and deposition of solids in pipes and vaults. WTD has an aggressive odor control program with a two-tiered approach: (1) eliminate, through proper design, conditions that can cause potential for odors and (2) provide effective odor control equipment designed to county standards for areas where odor potential exists. We are concerned about odor potential in the equalization chamber of the proposed West Storage Facility and the need for extensive odor control measures, for the following reasons:

- The flow control valve in the equalization chamber will restrict flow when upstream force mains discharge at a flow rate higher than the allowed discharge rate of 1.0 mgd to the Black Diamond Trunk. This flow restriction will result in highly variable flows and turbulent conditions in the equalization chamber and will facilitate the continuous release of hydrogen sulfide gas from the force main discharges, which will greatly contribute to odor and corrosion potential.
- The flow control valve will often have to restrict significant flows, resulting in wastewater backup and solids deposition in the equalization chamber. These conditions will contribute to odor generation and will require frequent emergency service calls to clear clogs and remove solids. Odor can also escape during service calls, increasing the likelihood of odor complaints.

## **3.2 Long-Term Operation and System Planning**

The following are observations and findings related to long-term operation and system planning discussed in the RH2 Report.

### **Managing All Flows Through the West Storage Facility**

Section 7 of the RH2 Report states that managing all flows through the proposed West Storage Facility would be better than routing and managing flows through the existing Jones Lake Pump Station. However, the Jones Lake Pump Station provides a far higher level of operational flexibility, operational control, and reliability than the proposed flow control valve in the equalization chamber that would be actuated by a flow meter or float. The variable speed motors allow the pumping system to actively pass solids and respond effectively to a wider range of flows.

### **Redirecting Flows Away from the Jones Lake Pump Station**

Section 7 of the RH2 Report suggests rerouting the Morgan Drive and North Basin areas in the city as part of the recommended long-term management of the Black Diamond wastewater system. The report states that this rerouting would reduce peak flows to the Jones Lake Pump Station by 25–35 percent. For this to be a viable consideration, collection system models of the existing and future Black Diamond system would need to be developed and calibrated to quantify the benefits and risks associated with redirecting these basins while allowing for planned future infill development in the city. Without a specific, well-defined plan for managing flows, there would be a risk that the Jones Lake Pump Station would not have sufficient capacity in the future. Further, without a detailed understanding of the proposed flow management changes in the city, there is risk of capacity and flow management problems downstream in the Soos Creek system in addition to the anticipated flow management problems in the city.

Even though the City has said that it will redirect flow away from the Jones Lake Pump Station, the County would be faced with the same capacity problems that the Alternative D Storage Pipe is intended to address if flows to the station were to significantly increase for any reason. A capacity shortfall could result in the need for an immediate major pump station and pipeline upgrade and/or a second storage facility. Proper operation, maintenance, and management of two storage facilities in the Black Diamond area would be challenging and costly.

### **Risk of Overflows**

Section 10 of the RH2 Report states that the Alternative D Storage Pipe will be sized for a 5-year peak event level-of-service (LOS) and that this is a potential fatal flaw because of risks of overflows. This assumption implies that there is a 20-percent chance of an overflow at the Jones Lake Pump Station in any given year. In fact, the Phase 1 storage facility will be designed to provide a 20-year LOS initially and would gradually reduce toward a 5-year LOS during a 10- to 15-year horizon (2010 through 2020). During the 10- to 15-year timeframe, the Phase 2 facility (additional conveyance capacity or satellite treatment) would be planned, designed, and constructed to continue to provide a 20-year peak LOS for the Black Diamond

area. Between completion of the Phase 1 and Phase 2 projects, King County would continue to monitor and evaluate the capacity of the pump station and the storage facility in conjunction with the rate of development in the city.

### **3.3 Construction Considerations**

The following are observations and findings related to construction considerations discussed in the RH2 Report.

#### **Disruption**

Section 7 of the RH2 Report states that upgrades of the existing sewers in the city would be more disruptive than construction of the West Storage Facility. This statement does not acknowledge that there would be significant construction-related impacts along Lake Sawyer Road to reinstall 2,000 LF of the existing 16-inch-diameter Black Diamond Trunk and to maintain sewer conveyance service during construction. Additionally, the City’s existing sewers have significant I/I problems that make controlling flows at the existing Jones Lake Pump Station difficult. Many of the existing sewers in the city are at the end of their design life and will need to be repaired or replaced. Construction of the West Storage Facility does not eliminate the need for upgrades of existing city sewers.

#### **Geotechnical**

In regard to the Alternative D Storage Pipe, Section 10 of RH2 Report states that pipe construction in the wetland buffer represents “significant engineering challenge and unresolved construction risk,” that the “pipe and bedding material may act as a 12-foot-high cutoff wall and/or subsurface drainage system,” and that it “will impact the hydrogeological conditions in the area in unpredictable ways and could result in long-term impacts to the groundwater and surface drainage systems on adjacent private properties” (see Figures 3 and 7 below). The RH2 Report goes on to say that construction could result in private property damage, legal claims, and permanent impacts to the adjacent wetlands, streams, and lakes.

The potential geotechnical challenges for the Alternative D Storage Pipe (and for all alternatives) were well documented and considered during the alternatives development and evaluation process. The Task 360 Report acknowledges hydrogeological and geotechnical challenges and considerations. It includes recommendations to conduct detailed hydrogeological and geotechnical investigations during design to minimize or eliminate these potential construction risks.

We do not consider hydrogeological and geotechnical risks as a potential fatal flaw, nor do we feel that the risks cannot be mitigated. Pipelines have been installed throughout Western Washington and the United States in wetlands and wetland buffer areas, and potential risks have been mitigated. Additionally, an existing gravity pipeline and force main in the proposed alignment has been successfully installed and provides adequate service without damage or disruption to the wetland or groundwater system.

## **Coal Mine Hazard Areas**

The RH2 Report states that the Alternative D Storage Pipe would be located in a coal mine hazard area and that it would be difficult to predict short-term and long-term impacts that may develop from construction of the project in this area. Although the proposed West Storage Facility is just outside of the mapped coal mine hazard area, the vast majority of Black Diamond is in the designated area (see Figures 1 and 5 below). Construction of all types of facilities has been successful in the city and in the designated hazard area. Using the logic stated in the RH2 Report, all development in Black Diamond should be reconsidered including the proposed local pump stations that would presumably be subject to the same short-term and long-term risks. Additionally, the existing Jones Lake Pump Station and associated sewer pipelines have been in place for several decades and have not experienced problems. The Alternative D Storage Pipe would be parallel and adjacent to these existing facilities. Potential problems associated with coal mines would be no different for construction of the Alternative D Storage Pipeline than for any other construction in the city limits.

## **Upgrade of Existing Local Sewers**

The RH2 Report states that the ability of the City to upgrade its existing sewers is questionable because the pipes are located in developed areas, in easements, and through wetlands or wetland buffers. This reason is put forth as a potential fatal flaw for locating the Alternative D Storage Pipe adjacent to the Jones Lake Pump Station. However, the City is responsible for conducting long-term wastewater facility planning in accordance with state requirements. We do not see how the City's ability to conduct long-term maintenance and planning of its collection system can be posed as a reason for saying that the location of the Alternative D Storage Pipe is fatally flawed.

## **Impacts to Utilities**

Section 8 of the RH2 Report indicates that the West Storage Facility would involve minimal utility relocation and other impacts to utilities because the proposed site is undeveloped. It appears that the impact on utilities to reinstall 2,000 LF of the 16-inch-diameter Black Diamond Trunk would be far more significant than indicated because temporary sewer bypass service would be required along Lake Sawyer Road. Traffic disruptions through this major arterial during construction would be significant.

## **Risk of Property Damage**

The RH2 Report states that the West Storage Facility would provide less risk of property damage during construction because it would be located in an undeveloped area. The report goes on to say that since the Alternative D Storage Pipe is located along private properties and is closer to existing building structures, there is more potential for property damage than at the proposed West Storage Facility location. Our experience indicates that the risk of potential damage can be reduced or eliminated through the use of proper construction methods.

## **Soil or Groundwater Problems**

The RH2 Report states that the West Storage Facility should not have any foundation soil or groundwater problems associated with construction of a tank on the park property site. WTD's review of this same alternative when it was first put forth by the City in September 2008 indicates that groundwater and foundation soil problems are a potential risk in that area. During development of the Task 360 Report, standing groundwater was observed during a field visit of the gravel pit site adjacent to the park location. This standing groundwater was identified as a potential problem for constructability and flotation. Most storage tanks installed in high groundwater must be designed so that they will not float and rise above the ground surface when empty (similar to a boat). This flotation can be mitigated through the use of tie-downs and/or the design of a thicker base slab. In addition to these design features, a proper geotechnical study of the area would be required to determine if this site has high groundwater levels and to better understand the construction-related risks associated with the site's geology and groundwater.

## **3.4 Community Considerations**

The following are observations and findings related to community considerations discussed in the RH2 Report.

### **Safety**

Section 8.1 of the RH2 Report states that the County's proposed location for the Alternative D Storage Pipe poses a risk of property damage and bodily injury to the public. As with all public works construction, measures are taken to eliminate or significantly reduce risk to private property. Moreover, all facilities are constructed to current OSHA standards and would not pose a threat of bodily injury to the public.

### **Public Health**

Section 8.1 of the RH2 Report states that public health risks would be reduced by locating the wastewater storage facility to the west because the facility would be outside of existing developed areas. The report goes on to state that because the West Storage Facility is controlled by gravity, it would be safer for the public than the Alternative D Storage Pipe. (See "Reliability" above.) However, all wastewater facilities must be designed, permitted, and operated in accordance with Washington State Department of Ecology (Ecology) standards. Facilities are designed with adequate levels of redundancy to ensure public health and safety. The proposed Alternative D Storage Pipe (and any wastewater facility constructed and operated in Washington State according to Ecology standards) would not pose a threat to public health.

### **Permanent Visual Impacts**

The RH2 Report states that the West Storage Facility would have minimal visual impacts because the storage tank would be underground and any aboveground facilities can be screened from view. The same would be true of the Alternative D Storage Pipe, which is also an underground storage facility with comparable aboveground ancillary equipment.

## **Traffic Disruptions**

The RH2 Report states that traffic disruptions from construction of the West Storage Facility would be minimal and that construction in the right-of-way would be mitigated by working in off-peak traffic hours. As previously mentioned, our review indicates that this impact is understated. Reinstalling 2,000 LF of 16-inch-diameter Black Diamond Trunk to a depth greater than 20 feet in some areas would have a significant impact on traffic. Another key consideration is that the Black Diamond Trunk is the main wastewater interceptor for conveying all flows out of the city. Temporary service would have to be installed and maintained during construction. Additionally, several force mains would have to be constructed to redirect flow to this facility in accordance with the flow management plan described in the RH2 Report. These installations would pose significant traffic impacts as well.

## **Recreational Impacts**

The RH2 Report claims a potential recreational benefit from locating the storage facility at the west location because the site could be used as a controlled multiple-use open space. A storage facility requires access to the tank and odor control system for routine maintenance. Unless absolutely necessary, King County would not want the public to use the facility, property, and access drive.

## **Condemnation**

Section 10 of the RH2 Report states that the Alternative D Storage Pipe is fatally flawed from a property acquisition standpoint for two reasons: (1) potential property owner resistance to granting an easement for a large-diameter storage pipe adjacent to the Jones Lake Pump Station and (2) the County's inability to gain an easement through condemnation because the proposed West Storage Facility is considered a "less expensive and viable" alternative. WTD does not consider the West Storage Facility as a technically viable alternative and can demonstrate the technical necessity of locating a storage facility adjacent to the Jones Lake Pump Station. The technical assessment is documented in the Task 360 Report and in County planning work conducted in the past.

## **3.5 Environmental Considerations**

The following are observations and findings related to environmental considerations discussed in the RH2 Report.

### **Proximity of Wastewater Facilities to Wetlands and Wetland Buffers**

The RH2 Report indicates that the City does not support construction of a storage facility at the Jones Lake Pump Station site because of its proximity to wetlands and sensitive areas (see Figures 3 and 7 below). The report says that overflows in this location would contaminate Jones Lake, wetlands, and Lake Sawyer. Our understanding of the area indicates that if an overflow were to occur in this area, it would likely impact Jones Lake and nearby wetlands but not Lake Sawyer. It is important to note that a wastewater overflow at the Jones

Lake Pump Station is not any more likely to occur than at any other location in the City's wastewater collection system. In fact, the risk of an overflow at the West Storage Facility location could be greater because up to five force mains would discharge uncontrolled in the equalization chamber. This uncontrolled discharge increases the risk of flow spikes and overflows if the flow control valve were to clog. The proposed equalization chamber and flow control valve strategy is an unconventional method for controlling flows of this nature and for managing storage. The existing Jones Lake Pump Station provides a high degree of control and reliability in managing all of the city flows.

Locating wastewater facilities in a wetland buffer is not fatally flawed because all wastewater facilities are designed, permitted, and operated in accordance with Ecology requirements. Many wastewater conveyance, storage, and treatment facilities throughout Western Washington and the United States are located near sensitive areas and wetland buffer areas when hydraulics and other operational requirements so dictate. The Jones Lake Pump Station, gravity sewer, and force main are an example. Ecology design requirements provide adequate levels of reliability and redundancy for the operation of the existing pump station and conveyance system.

In fact, locating a storage facility at a remote location to the existing pump station could pose a greater risk to the immediate environment around the Jones Lake Pump Station than locating storage adjacent to the pump station. If the storage facility is located adjacent to the existing pump station as proposed for the Alternative D Storage Pipe, peak flows would be effectively captured and stored. However, if the storage facility is located away from the Jones Lake Pump Station and if the City does not reduce peak flows to the pump station, there is a potential for overflows near the pump station that may impact the adjacent wetlands and wetland buffers.

## **Construction Impacts to Wetlands and Wetland Buffers**

Construction activities associated with the West Storage Facility would be located outside any mapped wetland or wetland buffer (see Figure 3 below). While no mapped wetlands are located along the route, unmapped wetlands may be present in association with the Rock Creek riparian area. The Alternative D Storage Pipe is located in a wetland buffer area (see Figure 7 below). Field reconnaissance indicates that there would be no direct wetland impact from construction of the Alternative D storage pipe.

## **Coal Mine Hazards**

Construction of the West Storage Facility would occur outside mapped coal mine hazard areas; construction of associated conveyance (Force Mains 2 and 4) would occur in mapped coal mine hazard areas (see Figure 1 below). The Alternative D Storage Pipe is located in a mapped coal mine hazard area (see Figure 5 below). Portions of the force main routes for the West Storage Facility and the Alternative D Storage Pipe (routing future force mains to the Jones Lake Pump Station) would be located in mapped coal mine hazard areas and fish and wildlife habitat areas (see Figures 4 and 8 below).

As shown in Figures 1 and 5, the vast majority of the Black Diamond area is mapped as a coal mine hazard area. The RH2 Report's statements that construction of the Alternative D Storage Pipe adjacent to the existing Jones Lake Pump Station poses an unacceptable risk

because the area is mapped as a potential coal mine hazard is not valid. Construction of all types of facilities has been successful in areas of the city mapped as a coal mine hazard area.

### **Fish and Wildlife Habitat**

Part of the conveyance (Force Mains 2 and 4) associated with the West Storage Facility would be located in the riparian zone for Rock Creek (see Figures 4 and 8 below). The RH2 Report states that impacts to sensitive areas would be avoided by constructing the force mains in the proposed road right-of-way in the future development area for Yarrow Bay. The report also asserts that construction of the West Storage Facility would have fewer impacts to habitat than the Alternative D Storage Pipe because impacts could be attributed to road construction rather than solely to force main construction. Construction of the new roads would be expected to result in substantial impacts to the Rock Creek riparian area, which includes fish and wildlife habitat areas. Disruption to the wetland buffer area attributable to the Alternative D Storage Pipe would be temporary and would be mitigated after the pipe has been backfilled.

### **Critical Aquifer Recharge Areas**

While not addressed in the RH2 Report, the area identified for the West Storage Facility would be located in a mapped Category II critical aquifer recharge area (see Figures 2 and 6 below). Critical aquifer recharge areas include mapped areas that King County has determined (1) to have a medium susceptibility to groundwater contamination and are located in a sole source aquifer or a wellhead protection area or (2) are highly susceptible to groundwater contamination and are not located in a sole source aquifer or wellhead protection area.

### **Groundwater**

Based on past field work to develop the Task 360 Report, it is anticipated that groundwater will be encountered during construction of the West Storage Facility. Preliminary investigations did not indicate that groundwater flow or surface water drainages would be disrupted as a result of construction of the storage facility. Additional geotechnical studies would need to be conducted during the predesign and design phases of the project to identify any potential impacts and corresponding mitigation measures.

## **3.6 Cost Estimate**

The following are observations and findings related to costs discussed in the RH2 Report.

### **Operation and Maintenance Costs**

The RH2 Report states that O&M costs for the West Storage Facility would be similar to O&M costs for the Alternative D Storage Pipe. However, the West Storage Facility would require significantly more odor control because solids will accumulate in the equalization chamber and will increase odor potential and would require more frequent servicing of the odor control equipment, such as carbon replacement, fan maintenance, and odor monitoring. In addition, the RH2 Report states that the equalization chamber will be self-cleaning like a

wet well. As mentioned above, a wastewater pump station wet well has the benefit of a pump station inlet suction to pull solids through the system. We would expect that the West Storage Facility would require much more labor to address solids removal, clogging, and emergency responses than the Alternative D Storage Pipe. Depending on flows and solids content, response calls could occur daily.

Furthermore, the Alternative D Storage Pipe will have a lower comparative O&M cost because the design will rely in part on the existing odor control system and solids management capabilities of the Jones Lake Pump Station and wet well. The West Storage Facility would require a larger odor control facility, and the County would be responsible for operating and maintaining two odor control facilities at separate locations rather than one facility at the existing pump station.

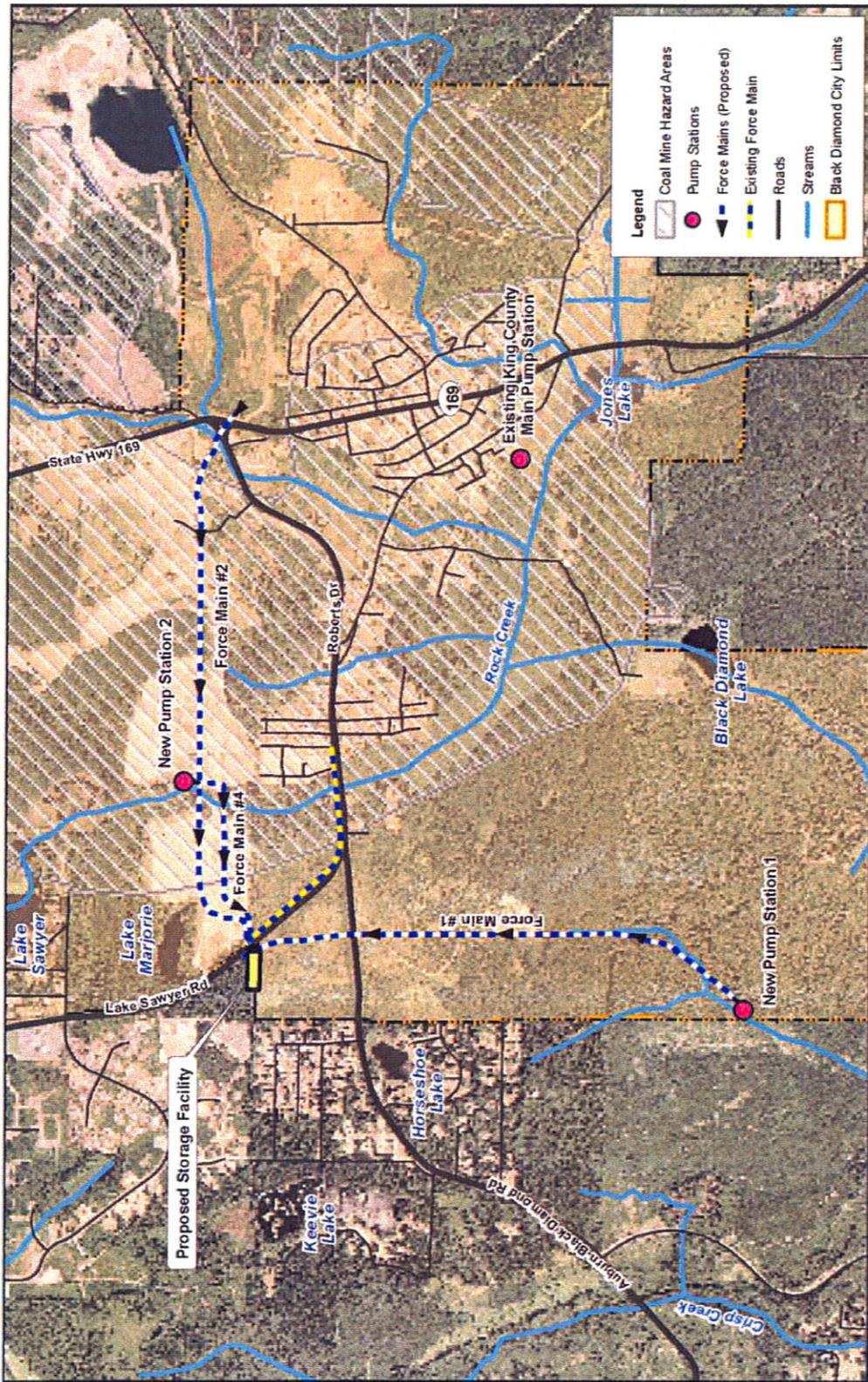
### **Capital Cost for Storage**

The RH2 Report estimates the cost of constructing the storage tank for the West Storage Facility at \$2/gallon and the cost of the entire facility (including excavation and ancillary equipment, pipe works, contingency) at approximately \$6.70/gallon. This estimate seems low for a wastewater storage facility. The Task 360 Report estimated the cost of storage in the \$17 to \$20/gallon range based on cost curve information, with additional amounts estimated for alternative-specific features such as risk allowance and odor control.

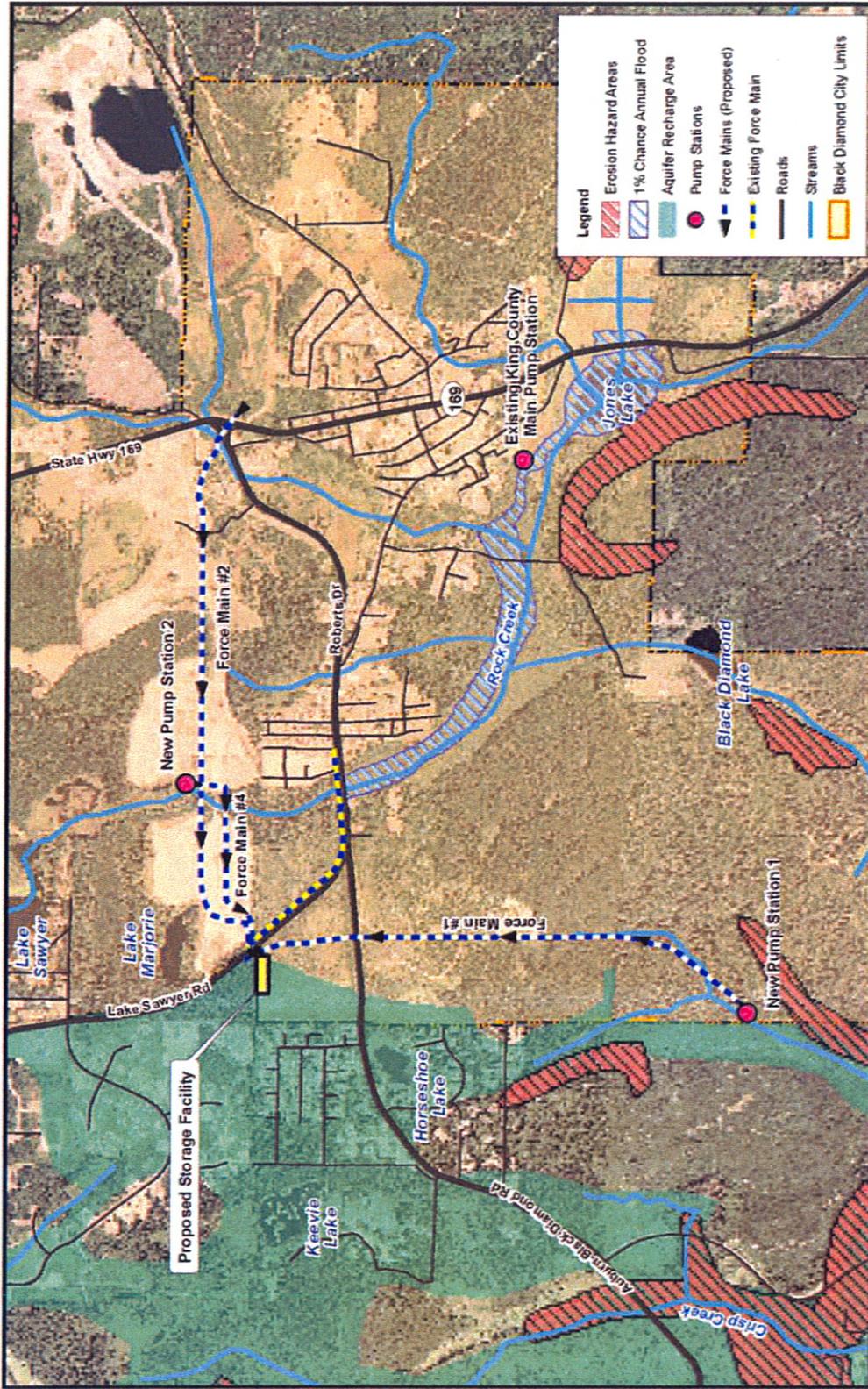
## **3.7 Miscellaneous Observations**

The RH2 Report states that the County has not studied an alternative that involves siting a storage facility west of the Jones Lake Pump Station during its alternative development and evaluation process. In fact, the proposal in the RH2 Report is the third time the City has asked the County to evaluate a west location for a storage facility. The City first proposed this alternative during the evaluation process documented in the Task 360 Report, and WTD responded with a technical memorandum dated September 12, 2008. This memorandum is included as Appendix B in the Task 360 Report.





**Figure 1**  
**Mapped Coal Mine Hazard Areas (West Alternative)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility

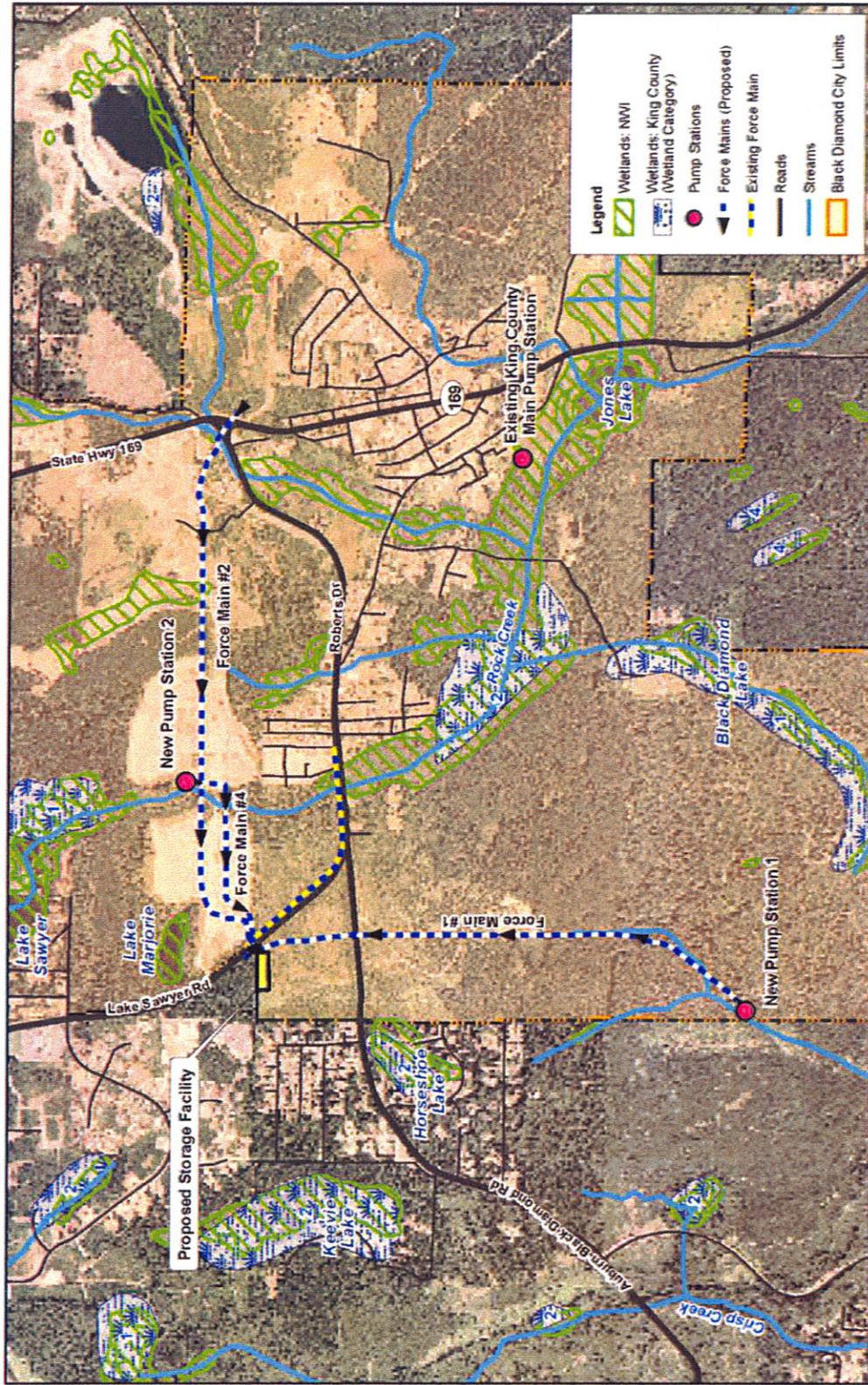


SOURCE: ESRI, 2005; King County, 2006, 2007; USDA, 2006 (Aerial Photo)

**Figure 2**  
**Mapped Erosion and Flood Hazard Areas**  
**(West Alternative)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility

and is subject to change without notice. King County makes no representation or warranty, express or implied, regarding the accuracy, completeness, or reliability of the information contained in this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

**King County**  
 Department of Natural Resources and Parks  
 Wastewater Treatment Division

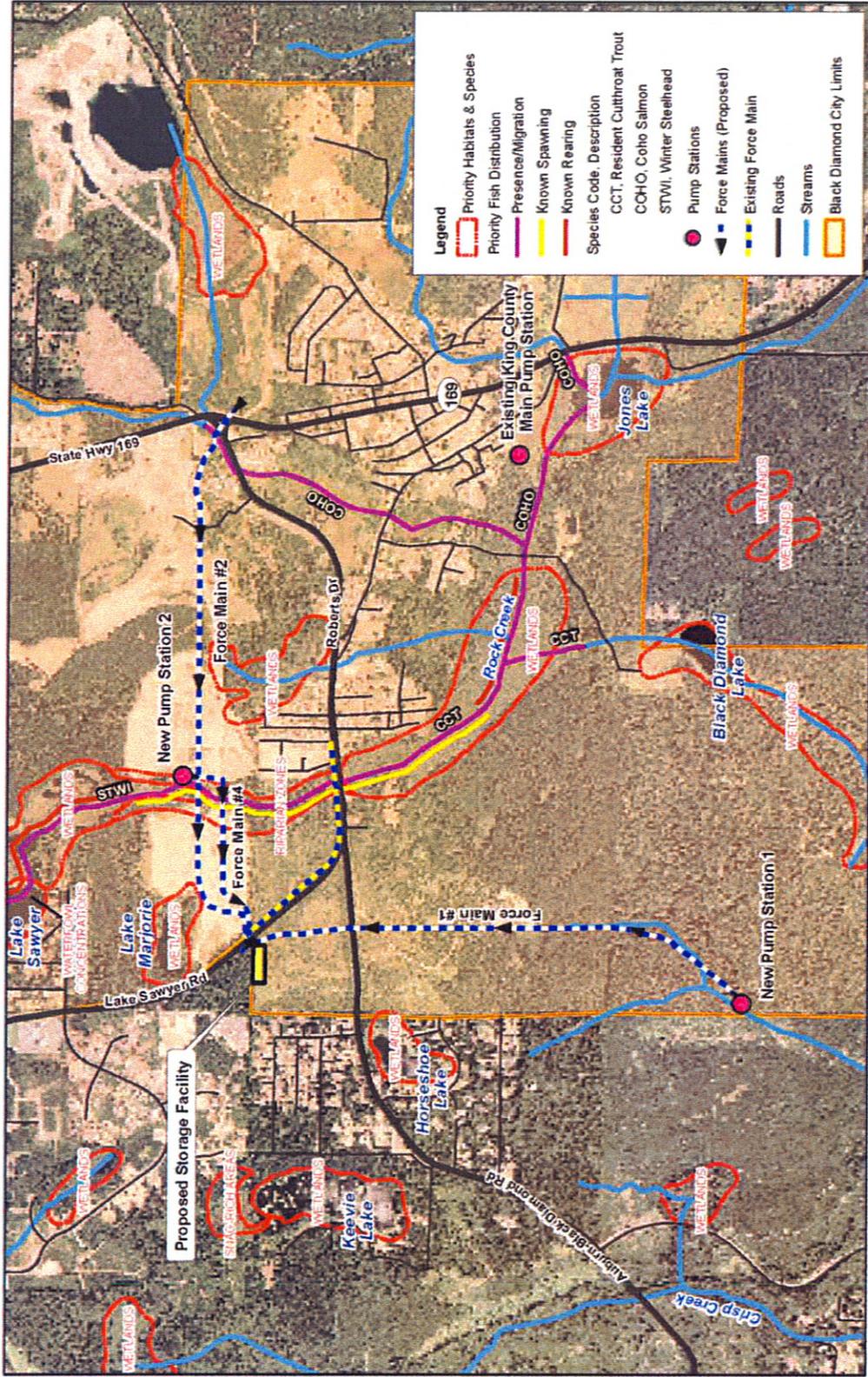


1004 BlackDiamondMAPS.mxd  
 SOURCE: ESRI, 2005; King County, 2006, 2007; USDA, 2006 (Aerial Photo)

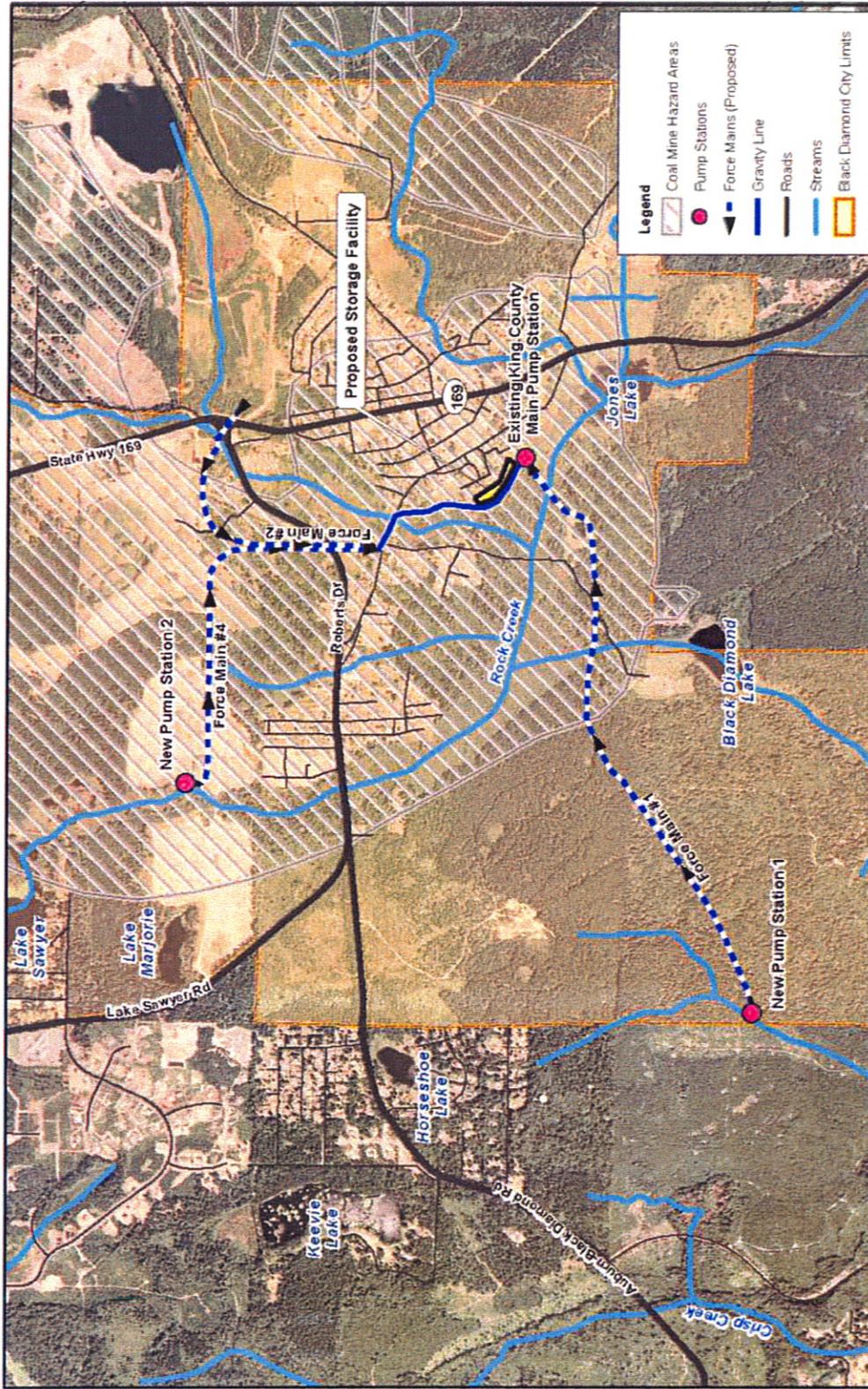
**King County**  
 Department of Natural Resources and Parks  
 Wastewater Treatment Division

THE INFORMATION CONTAINED HEREIN IS FOR YOUR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. KING COUNTY ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS, OR FOR ANY DAMAGE, LOSS, OR LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE USE OF THIS INFORMATION. THIS DOCUMENT IS NOT INTENDED FOR USE AS A SURVEY INSTRUMENT, AND KING COUNTY SHALL NOT BE LIABLE FOR ANY GENERAL OR PROFESSIONAL LIABILITY ARISING FROM THE USE OF THIS INFORMATION. KING COUNTY SHALL NOT BE LIABLE FOR ANY GENERAL OR PROFESSIONAL LIABILITY ARISING FROM THE USE OF THIS INFORMATION. KING COUNTY SHALL NOT BE LIABLE FOR ANY GENERAL OR PROFESSIONAL LIABILITY ARISING FROM THE USE OF THIS INFORMATION.

**Figure 3**  
**Mapped Wetlands (West Alternative)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility



**Figure 4**  
**WDFW Priority Habitat and Species (West Alternative)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility

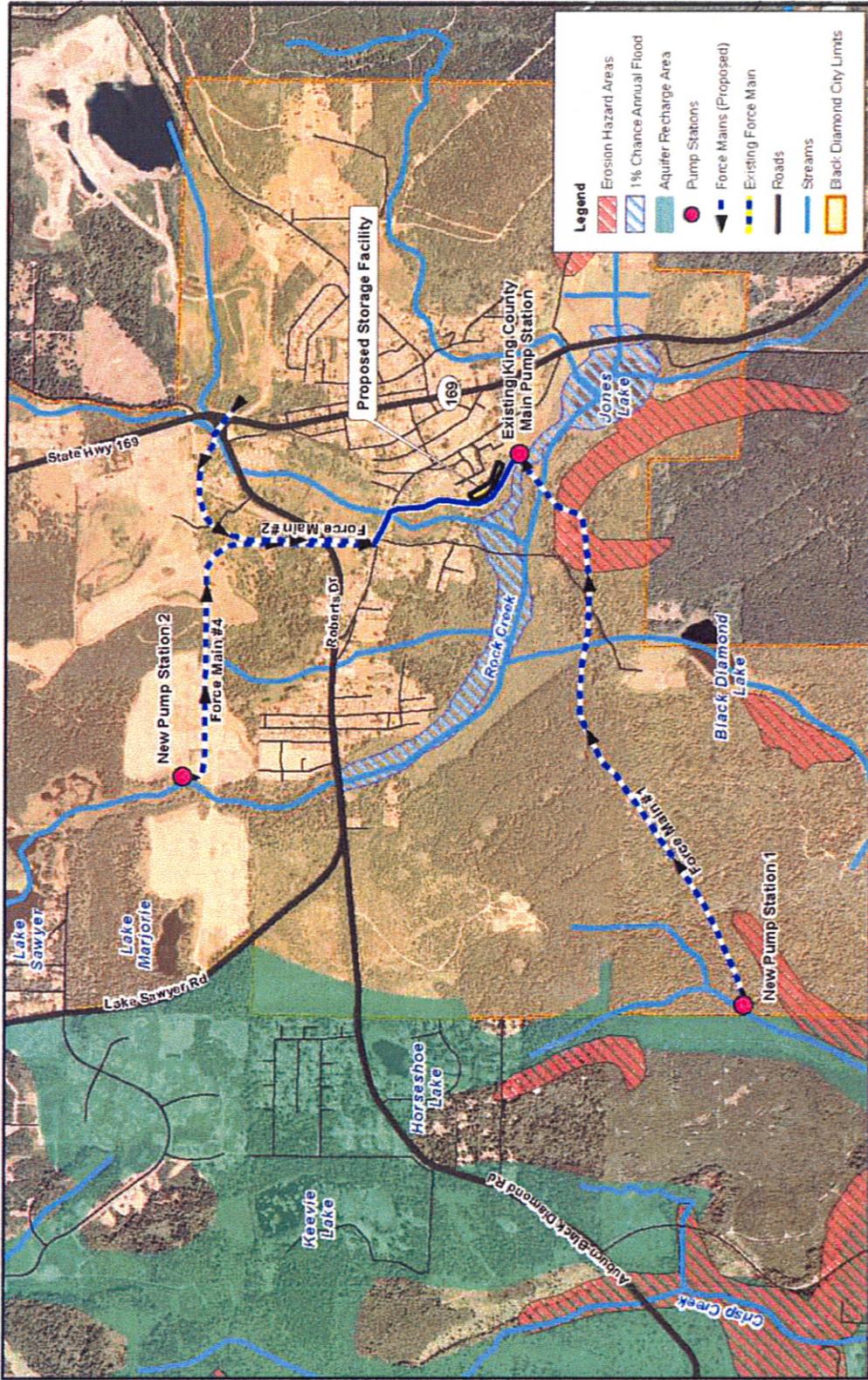


1006 BlackDiamondWAFS.mxd  
 SOURCE: ESRI, 2005; King County, 2006, 2007; USDA, 2006 (Aerial Photo)

**King County**  
 Department of Natural Resources and Parks  
 Wastewater Treatment Division

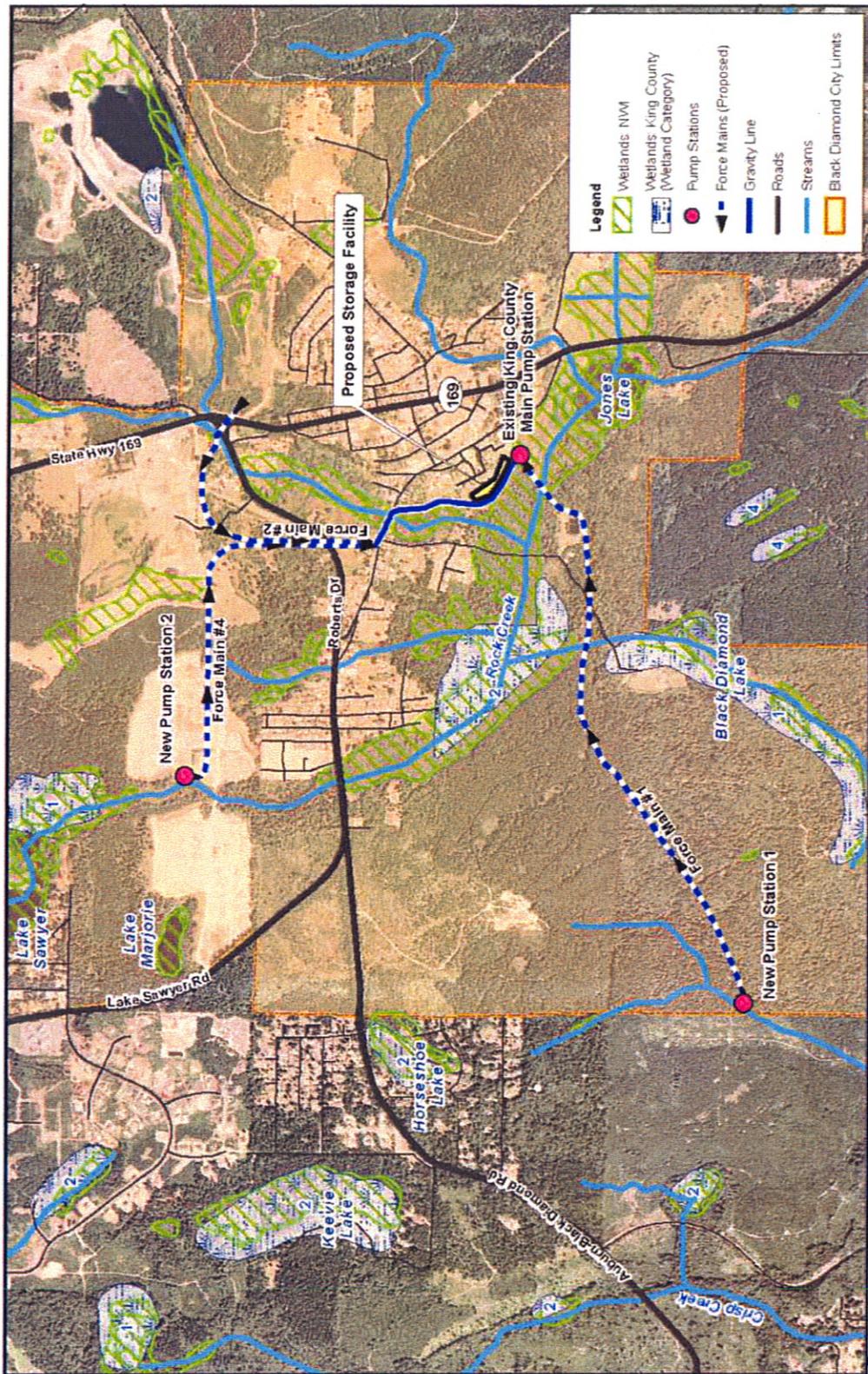
The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representation or warranty, express or implied, as to the accuracy, completeness, timeliness, or rights to the use of such information. This information is provided for informational purposes only and does not constitute a contract. No special, indirect, incidental, or consequential damages, including, but not limited to, lost profits, shall be recoverable from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

**Figure 5**  
**Mapped Coal Mine Hazard Areas (Alternative D)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility



The information included on this map has been compiled by King County with data from a variety of sources and is subject to change without notice. King County makes no representation or warranty, express or implied, as to the accuracy, completeness, timeliness, or quality of such information. This information is provided for informational purposes only and is not intended to be used for any special, direct, incidental, or consequential damages, including, but not limited to, loss of profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.





**Figure 7**  
**Mapped Wetland Areas (Alternative D)**  
 Black Diamond Wastewater Infrastructure Upgrade-Phase 1 Storage Facility



30846 229<sup>th</sup> Place South East  
Black Diamond, WA 98010  
August 2, 2011

DEAR HEARING OFFICER,

Once again we try as citizens of Black Diamond to reach you. (My husband, Robert E. Taeschner, and I, Jacqueline Paolucci Taeschner, spoke just recently, once more time after we had tried to be heard last year.)

Now I write to alert you, simply to be certain that my daughter's testimony of August 5, 2007, that included photographs, reached you in full. Her letter is dated March 11, 2010. To ask you to look again, I will mention what was included in her statement via my oral testimony for her and my then leaving the documents with the lawyer for Black Diamond on the same date. Additionally, I want to alert you to the fact that I am not satisfied with Yarrow Bay's plans regarding the bald eagle and how Black Diamond needs to be in agreement with and to enforce state and federal laws. Then I will add a two page document from a commercial website that may be of help so that a failsafe method might be in force to see that the plans through every phase of building pinpoints specifically the roosts and nests

that are a part and/or are close to the areas where Yarrow Bay will build, no matter in how many phases and that these points may be checked by a State expert to see that Yarrow Bay is being accurate and specific when it claims that it is taking these sensitive roosts and nests into account. Lastly, I will attempt to re-send as documents the letter from Jay Shepherd, Threatened and Endangered Species Biologist of the Washington Department of Fish and Wildlife, written to me in 2007, plus a few of the pages of my daughter's web research so that you can be sure to see them in connection with our most recent concern

First to my daughter's testimony, which is listed on the Black Diamond city website, recorded as being sent, but of which I cannot see any contents other than the fact that she sent a letter and "a photograph":

Our daughter, whose residence is the same as ours, had taken the approach of researching the net and adding to that research some aerial photos and a letter I myself had been sent, Written by Jay Shepherd, Threatened and Endangered Species Biologist of the Washington Department of Fish and Wildlife. This was written in 2007 regarding the fact that close to our own home here on Lake Sawyer there is an active nest. It pertained to the shoreline management zone and the WAC, the administrative code that needs to be enforced—BUT THAT IS UP TO THE CITY OF BLACK DIAMOND. Now, however, the enforcement is questionable, since we have already seen that the city did not truly enforce its heritage trees code when Yarrow Bay "mistakenly cut down" over one hundred trees and had its lawyer apologize. That was it, an apology, no fine as was

supposed to have been assigned. The mayor's *fiat* took care of the "problem" and absolved Yarrow Bay.

We are concerned, along with our daughter, Angela, who alerted you in her letter last year, that specific sites of eagle roosts and nests have not been pointed on Yarrow Bay's maps that they so proudly displayed in the recent public hearing meetings. A general promise made in writing by Yarrow Bay to respect nests and roosts simply cannot suffice for accurate searching for and specifically recording on their maps EXACTLY the locations of these extremely important bald eagle territories. We can see no endorsement by either a federal or a state expert that the locations, even if mentioned in the plans (and we have found none) are correct, which is what is sorely needed if we are to be faithfully protecting this threatened and protected species of wildlife. Moreover such a watch must be constant, by state and federal experts, so that Yarrow Bay remains in correct location-reporting as it goes about doing its building and building in stages. We cannot see that the federal and state regulations are being honored insofar as months of the year when there should be no building or earthmoving even near to roosts or active nests. (Eagles can return to an "abandoned" nest time after time, even after a hiatus of a year or more. This, too was mentioned by our daughter in her letter to you last year.) Angela also noted that bald eagle nests are huge and heavy. They require huge, tall trees to bear their weight. SPECIFIC LOCATIONS OF THESE MUST BE PINPOINTED and ENDORSED by wildlife experts, not by Yarrow Bay "experts." Further, an established LEGAL AGREEMENT must be made between The City of Black Diamond and Yarrow Bay **that state and federal regulations are being totally identified, honored, and enforced into perpetuity**, that they cannot be wiped out and new agreements and regulations slipped in later.

WE NEED A FAILSAFE METHOD OF CHECKS FOR ROOSTS AND NESTS FOR THE SAKE OF THE BALD EAGLE PROTECTION PLACED IN ANY AND ALL AGREEMENTS WITH BLACK DIAMOND AND YARROW BAY.

Enclosed then, are the following scanned papers:

- Jay Shepherd's Letter
- Three aerial photographs of eagle habitat and existing nest locations on Lake Sawyer
- Five pages of American Bald Eagle-Nesting & Young researched by Angela Taeschner and submitted to the Black Diamond Planning Commission on March 12, 2010
- Letter by Angela Taeschner dated March 12, 2010
- Two pages of e-mail print from ParcelPoint Technology ([www.corelogic.com](http://www.corelogic.com))

With sincere hopes that our bald eagles are protected here, now, and in perpetuity.  
WHEN WILDLIFE IS GONE, IT IS GONE FOREVER.

Jacqueline Paolucci Taeschner

TO THE HEARING OFFICER

Letter to be added to my testimony to you on Thursday, March 11, 2010, regarding the Yarrow Bay Developments and the Need to Rethink

March 12, 2010

Your Honor,

Last night the time for my testimony ended before I could finish what I needed to say, so please add the following to my recorded testimony.

First, the eagle roost definition and information contained in what I read about Washington State laws which apply to the bald eagles is important in the light of what I told you about the eagle nest in the immediate vicinity of 30846-229<sup>th</sup> Pl, S.E., where I live. In the document I read last night about the Washington State laws pertaining to the bald eagles, under the section about eagle roosts, it states,

Night roosts are usually on forested slopes up to 5 miles from the foraging (feeding) areas... Site-specific Bald Eagle Management Plans are required for activities within ¼ mile of communal night roosts. Activities within ¼ mile of eagle roosts are restricted in the winter, generally from Nov 1 to Feb 15... Leave tree buffers are also required... Timber harvest within communal night roosts is not permitted. (The Bald Eagle Management Plan)

As I mentioned last night, I live within 400 feet of an eagle perch/foraging area very near Lake Sawyer. This is documented on the wildlife biologist's map which I submitted last night and in his letter to my mom which I also read and submitted last night. Both developments, Lawson Hills, and the Villages, are within a five-mile radius of this eagle perch. We are within five miles of the developments. Therefore, it is conceivable that there is at least one eagle roost (within five miles of 30846-229<sup>th</sup> Pl, S.E.) in the development area. Has this even been checked out by Yarrow Bay? It should be and be addressed. The biologist who sent my mom the letter I submitted and read last night should be contacted as soon as possible, because it could very well be that "our" eagles are roosting within the future development sites.

A second set of concerns I want to mention and I did not get time for last night is the following:

Territories are:

occupied year after year, although it is not unusual for a territory to be unoccupied for one or several years at a time. Sometimes, nests that have not been used for many years are reoccupied by a new pair of eagles that take over part of another pair's territory. The most extreme example known from Washington was a nest that was unoccupied for 12 years before a new pair moved in to take over the north part of the resident pair's

territory. Examples such as these demonstrate why it is important to maintain large trees capable of supporting nests, in order to provide for the species as a whole. Nest structures may blow or fall out of a tree, or even be dismantled by energetic chicks, but as long as the tree is capable of supporting a new nest, the tree is protected as a nest site. Individual nest sites within a territory are removed from the list of protected sites only if the tree falls naturally or breaks in such a way as to prevent new nest construction. (Bald Eagle Management Plan).

One can readily see how it is also vital to maintain enough tall trees to support eagle nests. (Remember, these nests can weigh up to two tons.) That takes a very BIG tree to support it!

Furthermore, there are specific times of the year when eagles are particularly susceptible to human interference (noise we create, for example: what about the noise which will be created by all of those heavy trucks which will be hauling dirt for seven years as was told to us by a fellow speaker last night?). The Bald Eagle Management Plan states:

#### Timing of Logging or Construction

The Bald Eagle Management Plan is focused on maintaining habitat (nest trees, perch trees, and associated screening trees). As of December 2001, WDFW recommends but does not require that construction or logging activities take place during the least sensitive times periods for eagles, July 15 - January 31.

Eagles are most sensitive to disturbance Feb 1 - April 15. They are establishing territories and beginning incubation at this time. The chicks typically hatch in mid to late April. Once the chicks have hatched, the adults are less likely to abandon as a result of disturbance. The chicks are able to keep themselves warm and feed themselves by late April to early May, so are more easily able to survive periods when the adult is off the nest due to temporary disturbance. The young typically fledge (leave the nest) in mid July. At that time, just before fledging, they are vulnerable and can be frightened off the nest before they are able to fly. When conducting activities that are noisy or that involve people within 400 feet of a nest tree, landowners should take the following approximate schedule into account as much as possible: Feb 1 - May 1, more sensitive; May 1-July 1, less sensitive; July 1-July 15, more sensitive; July 15 - Jan 31, least sensitive. (Bald Eagle Management Plan)

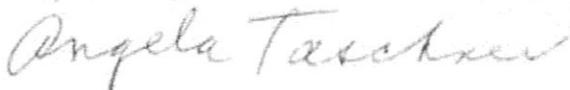
So, there are very specific times to pay attention to when people are logging or constructing which it will be vital for Yarrow Bay to pay attention to when conducting these activities. Will it indeed do so? We must also remember that the federal law also protects bald eagles:

Bald eagles are protected by both state and federal law. This document covers Washington state law, which addresses bald eagle habitat protection. Federal law, which addresses both nest tree protection and protection from disturbance, is discussed in the Harm or Harassment of Eagles section, below. In July 2007, the bald eagle was removed

from protection under the federal Endangered Species Act. However, two other federal laws still provide protection for the bald eagle, the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. These laws primarily address nest tree protection and protection from harassment. Federal laws and regulations come into play when a federal permit is required (such as a dock permit from the Army Corps of Engineers), or when a federal crime, such as harm to an individual eagle or nest, is suspected. The federal delisting is expected to be followed by state downlisting. However, bald eagles will remain protected under other state and federal laws. Federal law protects the eagles from harassment and is intended to protect them from disturbance.

I hope that You will consider these additional points I have made in this letter in your judicious decisions regarding both Yarrow Bay's developments by keeping in mind the federal and state laws regarding the American bad eagles in our area. They cannot speak for themselves, so I am speaking out for them now!

Very sincerely,



Angela Therese Taeschner  
30846-229<sup>th</sup> Pl., S.E.  
Black Diamond, WA 98010  
(360) 886-1262

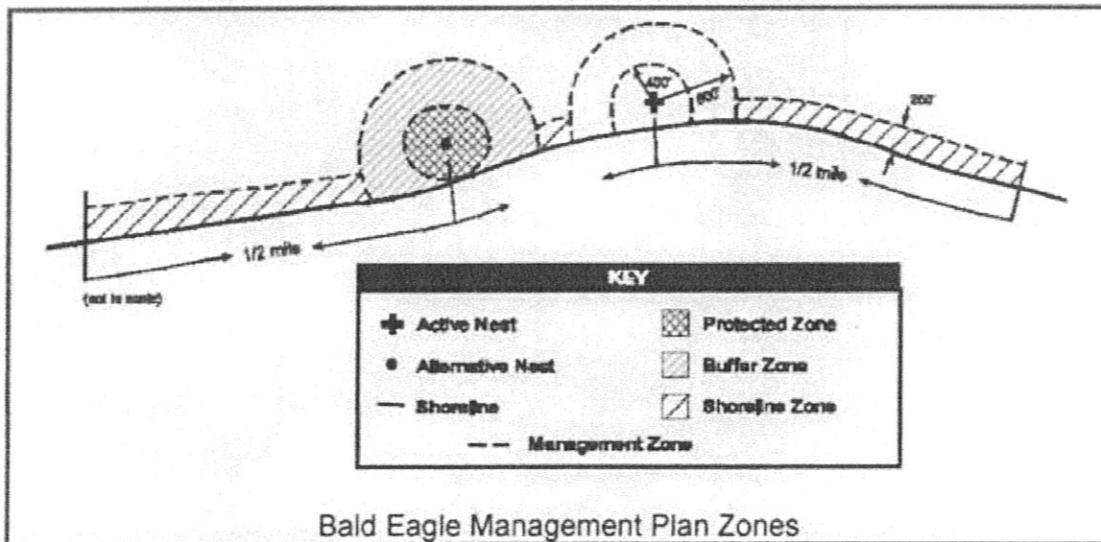
# Bald Eagle Protection in Washington State

## The Communal Roost Bald Eagle Management Plan

Bald eagle communal night roosts are important winter habitat. Eagles use night roosts as protection from inclement weather and temperature extremes. Night roosts may also serve important social functions. Winter night roosts are generally associated with large, salmon-bearing rivers, although there are some associated with coastal foraging areas. Night roosts are usually on forested slopes, up to 5 miles from the feeding areas. The combination of topography and trees provides the microclimate that is important to roosting eagles. For the purpose of inclusion in the WDFW database of protected sites, a roost is defined as a tree or a group of trees in which at least 3 eagles roost for at least 2 nights and during more than one year. The definition refers to at least 3 eagles to differentiate the communal roost from a perch used by a territorial pair of eagles. Site-specific Bald Eagle Management Plans are required for activities within ¼ mile of communal night roosts. Activities within ¼ mile of eagle roosts are restricted in the winter, generally from Nov 1 to Feb 15, although this may be modified (shortened) for roosts with known activity periods that do not extend through the entire winter season. Leave tree buffers are also required, although the buffer distance varies with the conditions of the site. Timber harvest within communal night roosts is not permitted.

## How Do I Find Out What Kind of Plan I Need?

Your county planning or permit desk can tell you whether you need a bald eagle management plan and if you are eligible to use the Standard Plan. The Department of Natural Resources will direct you to the WDFW bald eagle biologist for your area. In all cases, you can request a site-specific bald eagle plan from the WDFW bald eagle biologist for your area.



Bald Eagle Management Plan Zones

Management Plan Zones are defined by distance from a bald eagle active nest tree:

- Within 400' (Requires a Site-Specific BEMP from WDFW)
- From 400' to 800' (Eligible for a Standard 1-Page WDFW BEMP)
- Shoreline Zone: within 250 ft of shoreline if also within ½ mile of a nest. (Eligible for a Standard 1-Page WDFW BEMP)

## How Long Are Eagle Management Plans Good For?

Each year bald eagles return to the same area, known as a breeding territory. In many cases, there are several nests per territory, only one of which will be occupied at a given time. Territories are generally

This document was prepared in November 2005 as a general response to frequently asked questions by Julie Stofel, WDFW Endangered Species Biologist, Region 4 (Northwest Washington). It was revised and updated in 2007 and 2008 by Elizabeth Rodrick, WDFW Bald Eagle Management Coordinator, and Gretchen Blatz, WDFW Wildlife Data Management Biologist

ANGELA TAESCHNER

(A)

American Bald Eagle Information  
**Bald Eagle - Nesting & Young**  
 bald eagle info.com

Home	Eagle Description	Eagle Feathers	Eagle's Eyesight	Feeding Habits	Nesting & Young	Eagle Migration
Bald Eagle History	Bald Eagle's Future	Our National Emblem	Bald Eagle Viewing	The Eagle Lady	Myths and Legends	Eagle Poems
Old Eagle Tree	Old Abe	Golden Eagle	Hairy Eagle	Essence of Eagles	Eagles of the World	Free Screen Savers
Free Greeting Cards	Links of Interest	Eagle Facts Sheet	Bald Eagle Photos	Wild Bird Photos	TX Wildlife Slides	SD & CO Wildlife Slides

There are an estimated 7,066 nesting pairs of bald eagles, due to the efforts of federal agencies, tribes, state and local governments, conservation groups, universities, corporations, and thousands of individuals.

US map of estimated breeding pairs in each state.

**Nests** - The shape of the eagle nest or **erie** is determined mainly by the branch point where it's built. Sticks placed in tree forks result in **cylindrical** or conical shaped nests. **Disk shaped** nests are built on the ground or a tree branch which is nearly level. **Bowl shaped nests** occur where the tree trunk branches off into smaller upright branches.

Bald eagles build their nests in large trees near rivers or coasts. A typical nest is around 5 feet in diameter. Eagles often use the same nest year after year. Over the years, some nests become enormous, as much as 9 feet in diameter, weighing two tons. Even when a nest tree falls or a strong wind blows a nest down, the established pair usually rebuilds at or near the site within a few weeks if it is near the breeding season. The nest may be built in a tree, on a cliff, or even on the ground if there are no other options available.

NB



©Hope Rutledge

Eagles are territorial during nesting season. They will keep other eagles out of their own nesting area. Their nesting territory is usually one to two square miles.

**Sexual maturity** - An eagle reaches sexual maturity at around four or five years of age. At that time, the eagle's energies become concentrated on the effort of finding a mate and raising offspring. **Bald eagles mate for life**, but when one dies, the survivor will not hesitate to accept a new mate.

During breeding season, both birds protect the nest territory from other eagles and predators.

**Mating season** - varies greatly by region. In the South it may last from late September through November, while in the Great Plains and Mountain West, it may last from January through March. In Alaska it lasts from late March to early April.

One way to determine the sex of an eagle is to examine its beak. Females have deeper (distance from top to chin) beaks than males.

Pairs of bald eagles have been seen whirling through the air with talons locked together. This could be a form of courtship or a ritualized battle between an intruding eagle and one defending its territory. Whichever it is, eagles do not actually copulate in the air. Copulation usually takes place on a branch near the nest or on the ground.



© Hope Rutledge

On rare occasions, bald eagles have remained locked together by their talons long enough to fall to the ground. I received an email telling of two talon locked eagles falling into a bush beside a person's home. They remained locked for about eight hours, and then unlocked and flew away. Another case reported in a Georgia newspaper article, tells of a locked pair falling to the ground in a golf course. They were stunned by the fall and remained locked for several hours. Only after one eagle was touched by a bystander, did they unlock and fly away.

Some eagles do not breed every year. Bald eagles are capable of breeding annually from the age of four, but some of the adults, though paired, seem to choose not to breed. It might be an instinctive decision, based on the weather; availability of nesting sites, or food.

Because an eagle lives up to 30 years in the wild, it has many years in which to produce offspring.

**Eggs** - In the Vancouver area eggs are laid in late March and early April, while in northern Canada and Alaska eggs are laid in May. In Florida, eggs are laid from November through January. Eagles lay from one to three eggs. Five to ten days after a successful copulation, the female lays a speckled off-white or buff colored egg about the size of a goose's. The second egg is laid a few days later, followed by a possible third.

Bald eagle nesting seasons

At three or four weeks, this eaglet is covered in its secondary coat of gray down. In another two weeks or so, black juvenile feathers will begin to grow in. While downy feathers are excellent insulators, they are useless as air foils, and must be replaced with juvenile feathers before an eaglet can take its first flight, some 10 to 13 weeks after hatching.

**Quiet Please - Eaglets Growing** by Carolyn Stearns / David Aiken (illustrator) describes the successful efforts of school children to save their eagle neighbors from developers near Chesapeake Bay.



This nest can be seen clearly from a busy road. There's also a road about 100 yards from the nesting tree, which goes into a business area. There isn't a road shoulder, so when there wasn't traffic, I stopped and took a couple of quick shots from my truck window. (400mm lens, with x2 extender...cropped photo)

### First Flights

Down is gradually replaced by feathers, while the eaglets grow still stronger. Finally, an important moment arrives.



In *An Eagle to the Sky* (1970), Frances Hamerstrom, who spent many hours observing eagles, described the process for one young bird:

The.....EAGLET WAS now alone in the nest.

Each time a parent came flying in to toward the nest he called for food eagerly; but over and over again, it came with empty feet, and the eaglet grew thinner. He pulled meat scraps from the old dry-up carcasses lying around the nest. he watched a sluggish carrion beetle, picked it up gingerly, and ate it. His first kill.

Days passed, and as he lost body fat he became quicker in his movements and paddled ever more lightly when the wind blew, scarcely touching the nest edge; from time to time he was airborne for a moment or two.

Parents often flew past and sometimes fed him. Beating his wings and teetering on the edge of the nest, he screamed for food whenever one flew by. And a parent often flew past just out of reach, carrying delectable meals: a half-grown jack rabbit or a plump rat raided from a dump. Although he was hungry almost all the time, he was becoming more playful as he lost his baby fat;

sometimes, when no parent bird was in sight, he pounced ferociously on a scrap of prairie dog skin or on old bits of dried bone.

The male eaglet stayed by himself for the most part. He was no longer brooded at night. Hunger and the cold mountain nights were having their effect, not only on his body but on his disposition. A late frost hit the valley, and a night wind ruffled his feathers and chilled his body. When the sunlight reached the eyrie's (*the brood in a nest of a bird of prey*) edge, he sought its warmth; and soon, again, he was bounding in the wind, now light and firm-muscled.

A parent flew by, downwind, dangling a young marmot in its feet. The eaglet almost lost his balance in his eagerness for food. Then the parent swung by again, closer, upwind, and riding the updraft by the eyrie, as though daring him to fly. Lifted light by the wind, he was airborne, flying--or more gliding--for the first time in his life. He sailed across the valley to make a scrambling, almost tumbling landing on a bare knoll. As he turned to get his bearings the parent dropped the young marmot nearby. Half running, half flying he pounced on it, mantled, and ate his fill.

*Elf the Eagle*, written by Ron Smith and illustrated by Ruth Campbell is a delightful children's book about a baby eagle who worries about many things, including the distance from his nest, high



FEB 1 - APR 15

2 ESTABLISHING TERRITORIES 3 BEGINNING INCUBATION

35 DAYS OF INCUBATION } NB EAGLES ARE MOST SENSITIVE TO DISTURBANCE AT THIS TIME!

The 35 days of incubation duties are shared by both male and female, but it is the female who spends most of her time on the nest. Trading places on the nest can be a tense time. The brooding parent may have to call for relief, or may be reluctant to leave and have to be pushed off the eggs or young. During incubation, the male bald eagle regularly brings green sprigs of conifer branches to the nest. Why he does this, no one knows, but it could be for deodorizing the nest or possibly providing shade for the eaglets.

During incubation, one parent is always on the nest, not only to keep the eggs warm but to protect them from squirrels, ravens, and gulls which will break open and eat the eggs.

Live Eagle Cam - Blackwater Refuge in Cambridge, Maryland

Kent Eagle Cam - Washington Dept. of Fish & Wildlife

Puget Sound Eagle Cam - Washington Dept. of Fish & Wildlife

NCTC Eagle Cam - US Fish & Wildlife Service National Conservation Training Center

Forest Service NatureWatch Program Live Eagle Cam - The nest/camera is located in the Oregon Cascade Mountains, near Willamette Pass.

Eagle Cam - Norfolk Botanical Garden

Live Streaming Wildlife Cams - Hancock Wildlife Foundation in BC, Canada (Hornby Island, Victoria/Sidney, and Delta OWL nests)

Caltrans Eagle Cam - Turtle Bay Exploration Park in Redding, CA

Human disturbance can have an impact on the bald eagle, as most of them need some privacy and quiet to breed. People wanting to observe or photograph the eagles can disturb them enough to cause them to abandon a nest. Use binoculars and spotting scopes for viewing, and keep at a reasonable distance.



Bald eagle disturbance sensitivity chart during the nesting cycle.

The eggs hatch in the order they were laid. Eaglets break through the shell by using their egg tooth, a pointed bump on the top of the beak. It can take from twelve to forty-eight hours to hatch after making the first break in the shell (pipping). Once the eggs begin to hatch, the female's vigilance becomes nearly constant. The male provides the majority of the food needed by his rapidly growing family. Eventually the female will take up her share of the hunting, but in the early days, all of her attention is given to the young eaglets in the nest.

Chicks - Sometimes two chicks will survive, but it is not uncommon for the older eaglet to kill the smaller one, especially if the older is a female, as females are consistently larger than males. Should one chick decide to kill its sibling, neither parent will make the slightest effort to stop the fratricide.

Newly hatched, eaglets are soft, grayish-white down covers their small bodies, their wobbly legs are too weak to hold their weight, and their eyes are partially closed eyes, limiting vision. Their only protection is their parents.

Eagles feed their young by shredding pieces of meat from their prey with their beaks. The female gently coaxes her tiny chick to take a morsel of meat from her beak. She will offer food again and again, eating rejected morsels herself, and then tearing off another piece for the eaglet.

While on the nest with very young eaglets, parents move about with their talons balled into fists to avoid accidentally skewering their offspring.

Eaglet Growth - The young birds grow rapidly, they add one pound to their body weight every four or five days. At about two weeks, it is possible for them to hold their head up for feeding.

This photo was taken from the back deck of a home atop a ridge which surrounds a public park beside a university in the middle of a city. The nesting tree is located in the park at the bottom edge of the ridge. As a result, the height of the nest in the tree matches that of the deck, with 40 - 50 yards between. I asked permission from the homeowners to photograph the eagles. Having nested there for 10+ years, the eagles are very used to people on the deck; they go about their nesting duties and do not pay any attention. (400mm lens, with x2 extender...cropped photo)

By three weeks they are 1 foot high and their feet and beaks are very nearly adult size.

Between four and five weeks, the birds are able to stand, at which time they can began tearing up their own food. At six weeks, the eaglets are very nearly as large as their parents.

At eight weeks, the appetites of the young birds are at their greatest. While parents hunt almost continuous to feed them, back at the nest the eaglets are beginning to stretch their wings in response to gusts of wind and may even be lifted off their feet for short periods.

up in a tree, to the ground, way, way down below.

Elf is an inspiring story, told with gentle humor. It will delight children, who will relate to Elf's fears and will realize, as he does, that they too will grow into their wings and fly, when the time is right.

Approximately 40% of young eagles do not survive their first flight.

Once the young eagles have fledged (to acquire the feathers necessary for flight) they remain around the nest for four or five weeks, taking short flights while their primary feathers grow and strengthen. Their parents still provide all of their food.

The young birds, with the exception of their color, resemble their parents, but are nothing like them in behavior. They have to learn how to hunt, and they only have the remainder of the summer to learn. After that, they're on their own. The first winter is the most dangerous and difficult part of an eagle's life.

Higher predators are born with instincts that urge them to fly, to bite or to pounce, but precisely how to do these things is another matter. Through months of trial and error, eagles acquire basic skills such as lighting on perches or stooping on prey through practice. Eagles practice with almost fully developed bodies, and so sharpen their skills quickly.

The immature bald eagle, such as seen here, is sometimes mistaken for a golden eagle. However, young bald eagles have more white mottled into their coloration overall. The golden eagle is more solid in color, and it has a beak that is more blue-black, with a nearly black tip.

Eagles molt in patches, taking almost half a year to replace feathers, starting with the head and working downward. Not all feathers are replaced in a given molt. Until the bald eagle is mature, the replacement feathers are of different colors. As adults, the belly and back are dark, while the head is pure white. The distinct juvenile pattern, signaling that a bird is not ready to breed, may reduce aggression from territorial adults.

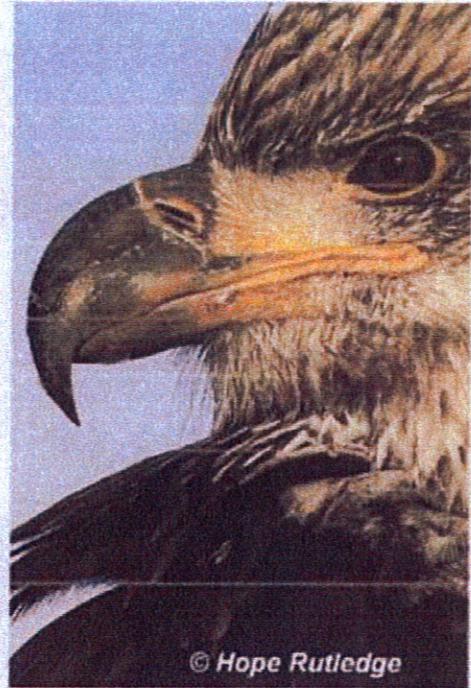
As juvenile bald eagles mature, their head and tail feathers gradually turn white; simultaneously the eyes and beak gradually turn yellow. Complete transformation to maturity is achieved sometime in the fifth year.

After fledging, young eagles stay near the nest for six to nine weeks practicing their ability to fly and hunt. The parents cannot tell juveniles how to hunt, they have to learn by watching the parents and practicing. During this time, they seem to spend more time looking at prey than they do actually attacking it.

Until the first winter after they fledge, young eagles near the nest are often still fed by their parents, but have little other contact with them. Although a young eagle has the instincts to hunt, it lacks the skills. Eventually, they learn to soar and spot prey. If food is scarce during the winter, it could die.

**Nesting cycle** - From the time the parents build the nest and the young are on their own, takes about 20 weeks. During the nesting cycle the parents remain within one to two miles of the nest.

**Communal gatherings** of bald eagles offer many advantages to younger inexperienced eagles. Not only is food abundant on the salmon spawning grounds, but here the juveniles can watch their elders to learn how food is caught. They also learn very quickly how to steal food.



© Hope Rutledge

**Bibliography**

<a href="#">Home</a>	<a href="#">Eagle Description</a>	<a href="#">Eagle Feathers</a>	<a href="#">Eagle's Eyesight</a>	<a href="#">Feeding Habits</a>	<a href="#">Nesting &amp; Young</a>	<a href="#">Eagle Migration</a>
<a href="#">Bald Eagle History</a>	<a href="#">Bald Eagle's Future</a>	<a href="#">Our National Emblem</a>	<a href="#">Bald Eagle Viewing</a>	<a href="#">The Eagle Lady</a>	<a href="#">Myths and Legends</a>	<a href="#">Eagle Poems</a>
<a href="#">Old Eagle Tree</a>	<a href="#">Old Abe</a>	<a href="#">Golden Eagle</a>	<a href="#">Hairy Eagle</a>	<a href="#">Essence of Eagles</a>	<a href="#">Eagles of the World</a>	<a href="#">Free Screen Savers</a>
<a href="#">Free Greeting Cards</a>	<a href="#">Links of Interest</a>	<a href="#">Eagle Facts Sheet</a>	<a href="#">Bald Eagle Photos</a>	<a href="#">WI Bird Photos</a>	<a href="#">TX Wildlife Slides</a>	<a href="#">SD &amp; CO Wildlife Slides</a>

The information and photos on this web site may be used for student projects as long as neither are placed on other web sites. The photographs are copyrighted by Hope Rutledge, the owner and author of the American Bald Eagle Information web site, and are NOT available for other web sites, photo galleries or commercial use of any kind.

Copyright © 2010 baldeagleinfo.com

## Steve Pilcher

---

**.om:** Robert Taeschner <rjtaeschner@hotmail.com>  
**Sent:** Tuesday, August 02, 2011 10:31 PM  
**To:** Peter Rimbos; Steve Pilcher; rjtaeschner@hotmail.com  
**Subject:** More from the Taeschners  
**Attachments:** Parcel Point 1.jpg; Parcel Point 2.jpg

# ParcelPoint Technology

## X Marks the Spot

Understanding actual parcel boundaries significantly improves the accuracy of any property location data. ParcelPoint® captures boundary and centroid data for more than 2,200 counties and townships, accounting for more than 127 million parcels nationwide. It assigns latitude and longitude coordinates to each of these parcel boundaries.

Whether you are delivering the next generation of location-based solutions or need highly precise parcel data to improve business processes, ParcelPoint is an unparalleled solution that is accurate, current and comprehensive.

## Accuracy Matters

ParcelPoint is a geospatial solution that enables you to access the highest level of positional accuracy for developing location-based solutions, managing assets, maximizing efficiency and enhancing business analytics. With ParcelPoint, you have access to:

- Parcel boundaries
- Parcel centroid that is defined by latitude/longitude
- APN or Tax ID Number
- Property address or SITUS
- Ownership information



The defining elements of ParcelPoint create a powerful data set for unparalleled positional accuracy.

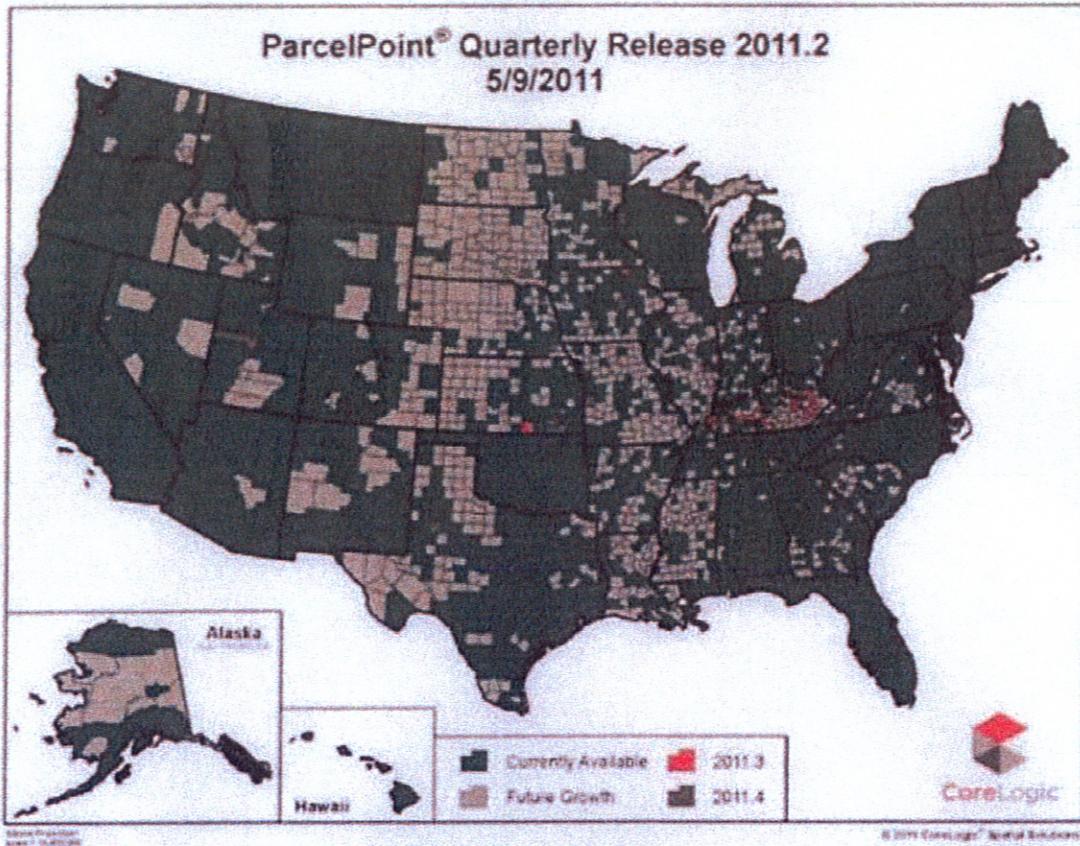
Unlike other solutions that require you to buy additional software or utilize a proprietary interface, ParcelPoint is platform independent. We deliver the data in shapefile format, giving you the flexibility to access that data via the platform you prefer.

## Keep Current

Information is only useful if it's up to date. At CoreLogic, we are committed to keeping our national parcel database current, ensuring confidence in the data you're using. We update ParcelPoint quarterly with new parcel information and updates to existing parcel data. Parcels are constantly changing, and we strive to keep up so that you can stay a step ahead.

## Coverage Counts

We offer the nation's most comprehensive parcel database—with more than 124 million parcels. ParcelPoint allows you to harness this breadth of data to meet a variety of business needs



## ParcelPoint® Technology Key Benefits

- Most comprehensive data set of parcel information in the United States
- Patent-pending methodology results in unparalleled accuracy
- Parcel data is regularly updated to be as current as possible
- Comprehensive, accurate and current data can enhance business processes, improve decision making and streamline asset management

## Key Industries

- Government
- Insurance
- Navigation and Mapping
- Oil and Pipeline
- Real Estate
- Routing: Delivery Services
- Routing: Emergency Services
- Tax
- Utility
- Wireless

**Before the City of Black Diamond Hearing Examiner**

**Development Agreement Section 11**

**Unless otherwise noted this shall apply to both the Villages and Lawson MPDs**

BDMC 18.98.080 A (3) requires that the project (s) will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. MPD Conditions 156 for The Villages and 160 for Lawson Hills reiterate these requirements. The Development Agreement is the document that implements the MPD conditions.

The Development Agreement is irrevocable and will be the standard established for the Master Developer over the next 15-20 years. However there are fundamental problems with the Development Agreements' ability to enforce BDMC 18.98.080 A (3) and Conditions No. 156 and No. 160. Beyond the extensive problems with section 13.6 Fiscal Impacts Analysis and the companion Exhibit N Funding Agreement; there are potentially catastrophic issues with Section 11.0 Phasing as it relates to the comprehensive construction and funding of all major and regional infrastructure items required to be completed by the Master Developer.

Unlike school and fire mitigation the Development Agreement does not have alternate sources of funding of the major infrastructure, such as a Developer Lid or Impact Fees. Instead the Development Agreement relies solely on the belief that the Master Developer has the financial ability to self-finance the entire infrastructure package of the MPDs.

The following paragraphs describe the approach to the Regional Facilities identified in Tables 11-3-1, 11-3-2, 11-3-3, and 11-3-4.

**11.3.B. Construction and Funding:** Except as provided in the WSFFA and Municipality of Metropolitan Seattle City of Black Diamond Agreement for Sewage Disposal dated September 12, 1990, the Master Developer shall design and Construct (or cause to be Constructed) the onsite Regional Facilities identified in Tables 11-3-1, 11-3-2, 11-3-3, and 11-3-4 below. For purposes of this Section 11 and because Regional Facilities were evaluated based upon both the needs of The Villages MPD and the Lawson Hills MPD, anytime funding or construction responsibility for Regional Facilities is assigned to the Master Developer, the Master Developer may, pursuant to a separate agreement and with written notice to the City, transfer or allocate such responsibility (or a portion thereof) to the master developer of the Lawson Hills MPD. While the Master Developer of either the Lawson Hills MPD or The Villages MPD may elect to construct certain facilities prior to a demonstrated need to obtain adequate capacity, nothing in this Section 11 shall be construed to require the Master Developer of either Lawson Hills MPD or The Villages MPD to Construct any infrastructure facility, or pay one hundred percent (100%) of any infrastructure facility cost, which is unnecessary to provide adequate capacity for an Implementing Project of the Lawson Hills MPD or The Villages MPD, respectively...

...Notwithstanding anything to the contrary above, the City shall work in good faith and use reasonable best efforts to: (i) apply for grants and use funds awarded under such

grants; and (ii) seek mitigation payments for impacts associated with growth occurring outside the City boundaries pursuant to the State Environmental Policy Act (“SEPA”), to reimburse the Master Developer for the off-site Regional Facilities construction costs it incurs in excess of its proportionate share.

The Development Agreement does not identify or allow the City any other mechanism to collect money for regional facilities/infrastructure from the Developer other than self-performance. This is critical because the Applicant’s Attorney, John W. Hempelmann, Cairncross & Hempelmann repeatedly told the City Council as late as May 12, 2012 at a Council Work-study on Capital Facilities Districts, that it would be too expensive and impossible for his client (Yarrow Bay) to complete the infrastructure financing for the MPDs unless they had access to Capital Facilities Districts.<sup>1</sup> For example, there was this exchange at approximately 41.5 minutes into the recorded transcript:

**Council Member Goodwin:** In the case of the MPDs it would seem fairly clear that responsibility for financing infrastructure is that of Yarrow Bay as the developer. And I can see clearly the advantage to Yarrow Bay in this; a source of tax-exempt financing, potentially the ability to have long-term bonds rather than the need to do their own financing and basically a way to get their money out without having a liability at that point in time. What’s the advantage ... So I fully understand why Yarrow Bay would be wanting to see this happen. What’s the advantage to the City in terms of this because, again in this case, we were dealing with a lot of the failed issues in the past that Mr. Hurst was discussing there was not clear responsibility for providing infrastructure. Here, it would appear, we have very clear responsibility for providing infrastructure. So, how does the City gain? So, what’s in it for us?

**Mr. Hempelmann:** What’s in it for you is, for the City, and there are a couple of assumptions here. We start with the assumption that growth should pay for itself. You also start with the assumption that most of these public facilities are going to be dedicated to the City. So the City ends up with brand new infrastructure at no cost to the City, with no impact on the City’s credit either in terms of full faith and credit of the City being on the hook, and there’s no impact on the City’s bonding capacity at all.

**Council Member Goodwin:** But that’s true in either case; whether Yarrow Bay finances it directly or whether we have a CFD. Or maybe I misunderstand.

**Mr. Hempelmann:** No, no. I don’t think you are. I don’t want to make a categorical statement, but the finance ... There isn’t financing out there in the traditional lending environment – banks, insurance companies – to finance the long-term cost of infrastructure. So if we ... If we are going to proceed to accommodate growth in Central Puget Sound as mandated by the Growth Management Act, then there has to be a new source of financing for public infrastructure. The City will get ... I think maybe the best way to put it, the City will get a Master Planned Development, Council Member, and

---

<sup>1</sup> [http://www.ci.blackdiamond.wa.us/Depts/Clerk/Agendas/2011\\_agendas.html](http://www.ci.blackdiamond.wa.us/Depts/Clerk/Agendas/2011_agendas.html) Council 20110512.mp3 (CD ROM Attached as an exhibit)

they'll get it with new infrastructure that they may not get in the same time-frame because the financing is not available. This is primarily a financing tool. And if the City approves Master Planned Developments, and I know you voted to do that already, you want those to proceed in the way that they are outlined then Yarrow Bay will need to take advantage of this type of financing. So what does the City get? The City will get Master Planned Developments with this infrastructure financed on a long-term basis with Yarrow Bay burdening its property for special assessments. So it's a judgment call that you make again as to whether or not you want the MPDs.

Furthermore, about (8) minutes into the audio State Rep. Chris Hurst and Mr. Hempelmann discussed the dire position of the State of Washington in regards to getting any infrastructure grants out of the State for the City's proportionate share of any improvements.

This raises several financial risks as well as undermining the future public participation and legislative process regarding Capital Facilities Districts (CFDs) CFDs are a new financing tool recently made available under Chapter 36.145 of the RCW. Although Condition No 157 of the Villages and No. 161 contemplate the use of CFDs and state that the Applicant *may* petition for use of a CFD, it does not state that the financing shall or must be in the form of a CFD as Yarrow Bay now seems to argue.

It should be noted that the developers are limited partnerships whose limited partners are a limited partnerships and a limited liability company, and whose general partners are a limited liability company whose sole member is a corporation. These layers of liability protection for the developers could very well expose the City to massive financial burdens for partially completed projects in the event of developer default on its obligations.

Based upon the above cited statements by Yarrow Bay, they have insufficient financing to complete the infrastructure projects without CFDs. Given that fact and the limitations on liability inherent in the structure of the developers' organizations, the Development Agreements are not complete until CFDs or some other financing mechanism is added to the agreements. Otherwise, the requirement that there be no negative financial impact to the City cannot be met.

I am not opposed to CFDs, however, if the CFD is truly the only possible way for the Master Developer to reasonably finance the regional infrastructure requirements of the MPD conditions and Development Agreement standards, than that public hearing and process required to authorize CFDs must take place prior to the finalization of the Development Agreement or the Development Agreement must be deemed insufficient and incomplete.

Additionally, the Development Agreement should be amended to:

- Clarify what happens in the event that the City is unable to obtain grants for its proportionate share of regional infrastructure cost; BDMC 18.98.080 A (3) clearly states that the projects must have no adverse impact on the City.

- Add clarifying language regarding the proposed process for Eminent Domain procedures in regards to public infrastructure projects i.e. will the City be the Agent for the Master Developer and enter into an Inter-local Agreement with the Master Developer; it is important that the public is clearly aware of the timeline and process related to acknowledged Eminent Domain requirements

If not deemed incomplete due to lack of an existing CFD approval, than the Development Agreement should contain additional infrastructure financing tools such as Developer Lid and/or Impact Fees, which shall have an independent fiscal analysis to ensure fiscal neutrality for the City.

Enc: RCW 36.145; May 12, 2011 CFD Workstudy.

---

Cindy Proctor 718 Griffin Ave #241 Enumclaw, WA 98022

Chapter 36.145 RCW  
Community facilities districts

RCW Sections

- 36.145.005 Findings.
- 36.145.010 Definitions.
- 36.145.020 Formation by petition -- Requirements -- Amendment.
- 36.145.030 Public hearing on petition -- When held.
- 36.145.040 Public hearing on petition -- Notice requirements.
- 36.145.050 Receipt of material evidence--Inclusion and removal of land.
- 36.145.060 Approval of petition -- Requirements.
- 36.145.070 Appeals to formation.
- 36.145.080 Board of supervisors -- Members -- Vacancies.
- 36.145.090 Powers.
- 36.145.100 Financing district costs, expenses, and facilities -- Prohibitions.
- 36.145.110 Special assessments -- Procedures and requirements -- Notice.
- 36.145.120 Payment of bonds -- Related costs.
- 36.145.130 Bonds sole obligation of district.
- 36.145.140 District treasurer -- How appointed, duties and powers.
- 36.145.150 Individual assessments on district property -- Liens.

---

**36.145.005**  
**Findings.**

The legislature finds that:

(1) The state is projected to experience substantial population growth in the next two decades and this growth will require substantial new housing, places of employment, community facilities, and supporting local, subregional, and regional infrastructure;

(2) In most areas of the state projected to accommodate substantial growth, there are inadequate community facilities and infrastructure to facilitate and support such growth. In addition, current public financing options and resources are not adequate to provide the needed community facilities and local, subregional, and regional infrastructure;

(3) A more flexible type of financing mechanism known as a community facilities district should be available to counties, cities, and towns so that needed community facilities and local, subregional, and regional infrastructure can be provided;

(4) This chapter is intended to facilitate voluntary landowner financing of community facilities and local, subregional, and regional infrastructure by authorizing the creation of community facilities districts, while creating jobs and facilitating economic development; and

(5) It is in the interest of the people of the state of Washington to authorize the establishment of community facility [facilities] districts as independently governed, special purpose districts, vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements in accordance with this chapter and to carry out the purposes specifically authorized under this chapter.

[2010 c 7 § 101.]

---

**36.145.010**  
**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Board of supervisors" or "board" means the governing body of a community facilities district.

(2) "Community facilities district" or "district" means a district created under this chapter.

(3) "Facility" or "facilities" means the local improvements included under RCW

36.145.100.

(4) "Legislative authority" means the governing body of a county, city, or town to which a petition or amended petition is submitted.

(a) If the proposed district is located entirely within unincorporated land, then the county is the exclusive "legislative authority" for purposes of approving formation of the district under RCW 36.145.020 through 36.145.070, inclusive, and RCW 36.145.080.

(b) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the "legislative authority" for purposes of approving formation of the district under RCW 36.145.020 through 36.145.070, inclusive, and RCW 36.145.080 includes the governing bodies of the county and the city or town surrounding the unincorporated land.

(c) If the proposed district is located entirely within incorporated land, then the city or town is the exclusive "legislative authority" for purposes of this chapter, and all powers and responsibilities of a county under this chapter must be exercised by that city or town.

(5) "Petition" means a request, meeting the requirements of RCW 36.145.020, made by landowners to form a community facilities district and to voluntarily submit their land to the assessments authorized under this chapter and includes an amended petition meeting the requirements of RCW 36.145.020(3).

(6) "Special assessment" means an assessment imposed in accordance with the requirements of this chapter.

[2010 c 7 § 102.]

---

### 36.145.020

#### Formation by petition — Requirements — Amendment.

Community facilities districts are authorized to be formed for the purposes authorized under this chapter. Community facilities districts may only include land within urban growth areas designated under the state growth management act, located in portions of one or more cities, towns, or counties when created in accordance with this chapter. A district may include one or more noncontiguous tracts, lots, arcsels, or other properties meeting the requirements of this chapter.

(1) To form a community facilities district, a petition must be presented to the applicable legislative authorities. The petition must:

(a) Designate and describe the boundaries of the district by metes and bounds or reference to United States townships, ranges, and legal subdivisions;

(b) Be executed by one hundred percent of all owners of private property located within the boundaries of the proposed district. The property owners must include a request to subject their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(c) Include a certification by the petitioners that they want to voluntarily submit their property to the authority of the district under this chapter to approve the petitioner's request to submit their property to the assessments, up to the amount included in the petition and authorized under this chapter;

(d) Include a general explanation of the objective and plan of the district and describe the specific facilities that the district anticipates financing;

(e) Declare the district will be conducive to public health, safety, and welfare;

(f) Assert that the purpose for forming the district will be a benefit to the land located in the district;

(g) Be accompanied by an "obligation" signed by at least two petitioners who agree to pay the costs of the formation process;

(h) Include a list of petitioners or representatives thereof who are willing and able to serve on the board of supervisors. All petitioners within a proposed district who are natural persons, or natural persons who are designated representatives of petitioners, are eligible to include their name on the list of eligible supervisors. The petitioners may nominate qualified professions to serve on the board of supervisors in lieu of the petitioners or representatives of the petitioners;

(i) If it proposes a special assessment, include: (i) A diagram showing each separate lot, tract, parcel of land, or other property in the district; (ii) the acreage of the property; (iii) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; (iv) a preliminary assessment roll showing the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property; and (v) a proposed method or combination of methods for computing special assessments, determining the benefit to assessed property or use from facilities or improvements funded directly or indirectly by special assessments under this chapter; and

(j) Include an explanation of what security will be provided to ensure the timely payment of assessments and the timely payment of bonds issued by the district.

(2) The petition must be filed with the auditor of each county in which property included within the proposed district is located. The auditor for the county in which the largest geographic portion of the proposed district is located must be the lead auditor for the purposes of this section. Within thirty days of the lead auditor's receipt of the petition, the lead auditor must confirm that the petition has been validly executed by one hundred percent of all owners of the property located within the proposed district, including confirmation by the auditors of all other counties with whom the petition was filed. Within ten days of the lead auditor's finding that the petition either does or does not contain the required signatures, the lead auditor must either (a) transmit the petition, together with a certificate of sufficiency attached thereto, to each legislative authority petitioned for formation of the district; or (b) return the petition to the petitioners with a list of property owners who must sign the petition in order to comply with this section. There are no restrictions on the number of petitions that may be submitted by one or more property owners.

(3) A petition may be amended for any reason if the amendment is signed by one hundred percent of the owners of property located within the district proposed in the amended petition.

[2010 c 7 § 201.]

---

### **36.145.030**

#### **Public hearing on petition — When held.**

A public hearing on the petition for formation of a district must be held by each applicable legislative authority, not less than thirty, but not more than sixty days, from the date that the lead county auditor issues the certificate of sufficiency required under RCW

36.145.020.

[2010 c 7 § 202.]

---

### **36.145.040**

#### **Public hearing on petition — Notice requirements.**

Notice of all public hearings must include a description of the proposal, be mailed to all petitioners, and must be published once a week for three consecutive weeks in the official paper for each applicable legislative authority, prior to the date set for the hearing. The notice must be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district and in three public places for each applicable legislative authority. Each notice must contain the time, date, and place of the public hearing.

[2010 c 7 § 203.]

---

### **36.145.050**

#### **Receipt of material evidence — Inclusion and removal of land.**

At the time and place of the public hearing, the legislative authority must consider the petition. The legislative authority may receive any evidence it deems material that supports or opposes the formation of the district, including the inclusion or exclusion of land. Unless an amended petition satisfying the requirements of RCW

36.145.020 is approved in accordance with the requirements of this chapter, no land outside the boundaries described in the petition may be included within the proposed district. No land inside the boundaries of an approved petition may be removed from the district unless an amended petition satisfying the requirements of RCW 36.145.020 is approved in accordance with the requirements of this chapter.

[2010 c 7 § 204.]

---

### **36.145.060**

#### **Approval of petition — Requirements.**

(1) The legislative authority may act on the petition to form a community facilities district at the public hearing held under RCW

36.145.050 and in no event may the legislative authority's decision be issued later than thirty days after the day of the public hearing. The applicable legislative authority may approve the petition by resolution if the applicable legislative authority determines, in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the best interest of the county, city or town, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act.

(2) A community facilities district may not be formed unless each applicable legislative authority makes the finding required under subsection (1) of this section.

(3) All resolutions approving a petition must conform to the terms and conditions contained in the petition, including the maximum amounts of special assessments set forth in the petition, and must designate the name and number of the community facilities district being formed.

[2010 c 7 § 205.]

---

### **36.145.070**

#### **Appeals to formation.**

(1) Any person who objects to formation of the district may appeal the final decision of a legislative authority to approve a petition for formation of a community facilities district by filing an appeal with the superior court of the county in which any part of the district is located within thirty days of the effective date of the resolution approving formation of the district.

(2) If no appeal is timely filed, then the legislative authority's decision is deemed valid, complete, and final, and neither the legal existence of the district, nor the terms and conditions of an approved petition can thereafter be challenged or questioned by any person on the grounds of procedural defect or otherwise. Certified copies of each resolution approving a district must be filed with the auditor of the county or counties in which the community facilities district is located.

[2010 c 7 § 206.]

---

### **36.145.080**

#### **Board of supervisors — Members — Vacancies.**

(1) A community facilities district must be governed by a board of supervisors possessing the powers set forth under RCW

36.145.090. The board of supervisors must be appointed by each applicable legislative authority within sixty days of the formation of the district. Except as expressly provided under this section, each applicable legislative authority is authorized to appoint members to the board of supervisors only from among the members of its own governing body. Each applicable legislative authority must appoint the petitioner members or nominees required under subsection (2) or (3) of this section. The term of office of each supervisor is three years and until a successor is appointed, except that the supervisors first appointed serve for one and two years respectively from the date of their appointments, as designated in their appointments.

(2) Except as provided in subsection (3) of this section, if the proposed district is located entirely within a single jurisdiction, then the board of supervisors consists of: (a) Three members of the legislative authority of the jurisdiction; and (b) two members appointed from among the list of eligible supervisors included in the petition as provided in RCW 36.145.020(1)(h). All members of the board of supervisors must be natural persons.

(3) If all or a portion of the proposed district is located within unincorporated land that is entirely surrounded by an incorporated city or town, then the board of supervisors consists of: (a) Two members appointed from the county legislative authority; (b) two members appointed from the legislative authority of the city or town that is the additional legislative authority under RCW 36.145.010(4); and (c) one member appointed from the list of eligible petitioners included in the petition as provided in RCW 36.145.020(1)(h), depending on the number of additional members that are required to result in an overall odd number of supervisors.

(4) If the county, city, or town is the exclusive legislative authority pursuant to RCW 36.145.010, then the board of supervisors consists of: (a) Three members appointed from such county, city, or town; and (b) two members from the list of eligible petitioners or nominees included in the petition, as provided in RCW 36.145.020(1)(h), to result in an overall odd number of supervisors.

(5) The legislative authorities may appoint qualified professionals with expertise in municipal finance in lieu of one or more appointments authorized in this section. A jurisdiction's appointments to the board of supervisors may consist of a combination of qualified professionals authorized under this section and one or more members from the applicable legislative authority. Nothing contained in this section authorizes a legislative authority to exceed the maximum number of appointments set forth under subsection (2) or (3) of this section.

(6) A vacancy on the board must be filled by the legislative authority authorized to make the appointment to the applicable supervisor position under this section. Vacancies must be filled by a person in the same position vacating the board, which for initial

petitioner members or nominees includes successor owners of property located within the boundaries of an approved district. If the approved district was originally located entirely on unincorporated land and the unincorporated land has been annexed into a city or town, then, as of the effective date of annexation, the city or town is deemed the exclusive legislative authority for the purposes of this chapter and the composition of the board must be structured accordingly, as provided in this section. Supervisors must serve without compensation, but they are entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. The board must designate a chair from time to time.

[2010 c 7 § 301.]

---

**36.145.090**  
**Powers.**

(1) A community facilities district created in accordance with this chapter is an independently governed, special purpose district, vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements by special assessment in accordance with this chapter. Nothing in this chapter exempts the public improvements and facilities provided by a district from the regulatory and land use permitting requirements of the county, city, or town in which the improvements are to be located.

(2) Subject to the terms and conditions of an approved petition, a community facilities district has the powers necessary to carry out the specific purposes authorized under this chapter in order to carry out the specific objectives, plan, and facilities identified in the approved petition including, but not limited to, the authority to:

(a) Acquire, purchase, hold, lease, finance, manage, occupy, construct, and sell real and personal property, facilities, or any interest therein, either inside or outside of the boundaries of the district, except that any such property, facilities, or interests outside the boundaries of the district must directly serve facilities or benefit properties within the district;

(b) Finance and construct facilities authorized under this chapter;

(c) Enter into and perform any and all contracts;

(d) Levy and enforce the collection of special assessments against the property included within a district;

(e) Enter into lease-purchase agreements with or without an option to purchase;

(f) Enter into executory conditional sales contracts, leases, and installment promissory notes;

(g) Borrow money to the extent and in the manner authorized by this chapter;

(h) Hold in trust property useful to accomplishment of the authority granted under this chapter;

(i) Issue revenue bonds in accordance with chapter

39.46 RCW and assessment bonds in accordance with chapter 35.45 RCW, and the requirements of this chapter, payable from revenue or assessments, respectively, of the district that is legally available to be pledged to secure the bonds;

(j) Contract with any municipal corporation, governmental, or private agencies to carry out the purposes authorized by this chapter;

(k) Sue and be sued;

(l) Accept and receive on behalf of the district any money or property donated, devised, or bequeathed to the district and carry out the terms of the donation, devise, or bequest, if it is within the powers granted by law to community facilities districts or, in the absence of such terms, expend or use the money or property for district purposes as determined by the board of supervisors;

(m) Transfer to any county, city, or other municipal corporation, without compensation, any property or other assets of the district; and

(n) Do any and all lawful acts required and expedient to carry out the express authority provided in this chapter.

[2010 c 7 § 401.]

---

**36.145.100****Financing district costs, expenses, and facilities — Prohibitions.**

) Through the use of district revenue derived through special assessments and bonds authorized under this chapter and, consistent with the terms and conditions of a petition approved in accordance with this chapter, a community facilities district may finance all or a portion of the following costs, expenses, and facilities whether located inside or outside the boundaries of an approved district:

- (a) The cost, or any portion thereof, of the purchase, finance, lease, sublease, construction, expansion, improvement, or rehabilitation of any facility with an estimated life of five years or longer;
- (b) The planning and design work that is directly related to the purchase, construction, expansion, improvement, or rehabilitation of a facility, including engineering, architectural, planning, and inspection costs;
- (c) Facilities listed in RCW 35.43.040 to the extent not specified in this section;
  - (d) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use, and discharge;
  - (e) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use, and discharge;
  - (f) Water systems for domestic, industrial, irrigation, municipal, or community facilities purposes, including production, collection, storage, treatment, transport, delivery, connection, and dispersal;
  - (g) Highways, streets, roadways, and parking facilities, including all areas for vehicular use for travel, ingress, egress, and parking;
  - (h) Areas for pedestrian, equestrian, bicycle, or other nonmotor vehicle use for travel, ingress, egress, and parking;
  - (i) Pedestrian malls, parks, recreational facilities, and open-space facilities for the use of members of the public for entertainment, assembly, and recreation;
  - (j) Landscaping, including earthworks, structures, lakes, and other water features, plants, trees, and related water delivery systems;
  - (k) Public buildings, public safety facilities, and community facilities;
  - (l) Publicly owned natural gas transmission and distribution facilities, facilities for the transmission or distribution of electrical energy, and limited communications facilities, specifically poles, trenches, and conduits, for use of any communications provider;
  - (m) Street lighting;
  - (n) Traffic control systems and devices, including signals, controls, markings, and signage;
  - (o) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of mass transportation facilities, including passenger, terminal, station parking, and related facilities and areas for passenger and vehicular use for travel, ingress, egress, and parking;
  - (p) Library, educational, and cultural facilities; and
  - (q) Facilities similar to those listed in this section.

(2) The district may not finance public or private residential dwellings, nonprofit facilities as defined in RCW 43.180.300, health care facilities as defined in RCW 70.37.020, higher education institutions as defined in RCW 28B.07.020, or economic development activities as defined in RCW 43.163.010.

[2010 c 7 § 501.]

**36.145.110****Special assessments — Procedures and requirements — Notice.**

(1) The board of supervisors of a community facilities district may impose special assessments on property located inside the district and benefited by the facilities and improvements provided, or to be provided, by a district, whether the facilities and improvements are located inside or outside of the boundaries of the proposed district. The requirements and powers of a district relating to the formation, assessment, collection, foreclosure, and other powers of a special assessment district are as set forth in chapters

35.43, 35.44, 35.49, and 35.50 RCW, except where otherwise addressed under this chapter. In any case where the provisions of this chapter conflict with the requirements under any other chapter that applies to the formation, assessment, collection, foreclosure, or

other powers of a special assessment district, the provisions of this chapter control.

(2) Except as otherwise expressly provided under this chapter, the special assessments imposed and collected on property within a district may not exceed the amount set forth in a petition or amended petition approved in accordance with this chapter.

(3) The term of the special assessment is limited to the lesser of (a) twenty-eight years or (b) two years less than the term of any bonds issued by or on behalf of the district to which the assessments or other revenue of the district is specifically dedicated, pledged, or obligated.

(4) The computation of special assessments must follow the requirements of chapter 35.44 RCW, including the authority to use any method or combination of methods to compute assessments which may be deemed by the board of supervisors to fairly reflect the benefit to the properties being assessed. The method of assessment may utilize the supplemental authority granted under chapter 35.51 RCW. A petition meeting the requirements of RCW 36.145.020 may provide for the reduction or waiver of special assessments for low-income households as that term is defined in RCW 36.130.010.

(5) The board must set a date, time, and place for hearing any objections to the assessment roll, which hearing must occur no later than one hundred twenty days from final approval of formation of the district. Petitioners or representatives thereof serving on the board of supervisors must not participate in the determination of the special assessment roll or vote on the confirmation of that assessment roll. The restriction in this subsection does not apply to members of the board of supervisors appointed from among the qualified professionals that petitioners may nominate under RCW 36.145.020(1)(h).

(6) The procedures and requirements for assessments, hearings on the assessment roll, filing of objections to the assessment roll, and appeals from the decision of the board approving or rejecting the assessment roll, must be as set forth in RCW 35.44.010 through 35.44.020, 35.44.080 through 35.44.110, and 35.44.190 through 35.44.270.

(7) At the hearing on the assessment roll and, in no event later than thirty days after the day of the hearing, the board may adopt a resolution approving the assessment roll or may correct, revise, raise, lower, change, or modify the assessment roll or any part thereof, and provide the petitioner with a detailed explanation of the changes made by the board.

(8) If the assessment roll is revised by the board in any way, within thirty days of the board's decision, the petitioner(s) must unanimously make one of the following elections: (a) Rescind the petition; or (b) accept the changes made by the board, upon which occurrence the board must adopt a resolution approving the assessment roll as modified by the board.

(9) Reassessments, assessments on omitted property, and supplemental assessments are governed by the provisions set forth under chapter 35.44 RCW.

(10) Any assessment approved under the provisions of this chapter may be segregated upon a petition of one hundred percent of the owners of the property subject to the assessment to be segregated. The segregation must be made as nearly as possible on the same basis as the original assessment was levied and approved by the board. The board, in approving a petition for segregation and amendment of the assessment roll, must do so in a fashion such that the total of the segregated parts of the assessment equal the assessment before segregation. As to any property originally entered upon the roll the assessment upon which has not been raised, no objections to the approval of the petition for segregation, the resulting assessment, or the amended assessment roll may be considered by the jurisdiction in which the district is located, the board, or by any court on appeal. Assessments must be collected in districts pursuant to the district's previous assessment roll until the amendment to the assessment roll is finalized under this section.

(11) Except as provided under chapter 35.44 RCW, assessments may not be increased without the approval of one hundred percent of the property owners subject to the proposed increase.

(12) Special assessments must be collected by the district treasurer determined in accordance with RCW 36.145.140.

(13) A notice of any special assessment imposed under this chapter must be provided to the owner of the assessed property, not less than once per year, with the following appearing at the top of the page in at least fourteen point, bold font:

**\*\*\*\*NOTICE\*\*\*\***

**THIS PROPERTY IS SUBJECT TO THE ASSESSMENTS ITEMIZED BELOW AND APPROVED BY COMMUNITY FACILITIES DISTRICT # . . . . . AS THE OWNER OR POTENTIAL BUYER OF THIS PROPERTY, YOU ARE, OR WOULD BE, RESPONSIBLE FOR PAYMENT OF THE AMOUNTS ITEMIZED BELOW.**

**PLEASE REFER TO RCW 36.145.110 OR CONTACT YOUR COUNTY AUDITOR FOR ADDITIONAL INFORMATION.**

(14) The district treasurer responsible for collecting special assessments may account for the costs of handling the assessments and may collect a fee not to exceed the measurable costs incurred by the treasurer.

010 c 7 § 502.]

---

### **36.145.120**

#### **Payment of bonds — Related costs.**

(1) The district may utilize the special assessments and revenue derived in accordance with this chapter for the payment of principal and interest on bonds issued pursuant to the authority granted under this chapter to fund or reimburse the costs of facilities authorized under this chapter and prior to the issuance of bonds, may utilize the revenue to directly fund the costs of providing the facilities authorized under this chapter on a pay-as-you-go basis.

(2) The board of supervisors may establish, administer, and pay or otherwise dedicate, pledge, or obligate the assessments and revenue generated in accordance with this chapter into a specific fund created by or on behalf of the district, in order to guarantee payment of obligations incurred in connection with facilities provided under this chapter, including the payment of principal and interest on any bonds issued by or on behalf of the district.

(3) The proceeds of any bond issued pursuant to this chapter may be used to pay any and all costs related to providing the facilities authorized under this chapter, including expenses incurred in connection with issuance of the bonds.

(4) The reporting requirements of RCW

39.44.210 apply to any bond issuance under this chapter.

[2010 c 7 § 503.]

---

### **36.145.130**

#### **Bonds sole obligation of district.**

No bonds issued by or on behalf of a community facilities district are obligations of any city, town, county, or the state of Washington or any political subdivision thereof other than the district and the bonds must so state.

[2010 c 7 § 504.]

---

### **36.145.140**

#### **District treasurer — How appointed, duties and powers.**

(1) If a district includes land that is entirely within a county and the land is not surrounded entirely by a city or town, then the treasurer of that county is the treasurer of the district. If a district includes land that is entirely within a county and the land is entirely surrounded by a city or town, or, if parts of the district include land within or surrounded by more than one jurisdiction, then the board of supervisors may, with the concurrence of the treasurers of all jurisdictions within which the district lies, appoint the treasurer of any of those jurisdictions to serve as the district treasurer. Except as specifically provided under this chapter, the duties of a district treasurer are as provided under applicable law.

(2) The district treasurer must establish a community facilities district fund, into which must be paid all district revenues. The district treasurer must also maintain any special funds created by the board of supervisors of the community facilities district, into which the district treasurer must place all money as the board of supervisors may, by resolution, direct. The treasurer may create such subfunds, accounts, and subaccounts as he or she deems necessary, consistent with applicable law.

(3) The district treasurer must pay assessment bonds and revenue bonds and the accrued interest thereon in accordance with their terms from the appropriate fund when interest or principal payments become due.

(4) All interest collected on community facilities district funds belongs to the district and must be deposited to its credit in the proper district funds.

[2010 c 7 § 505.]

---

**36.145.150**

**Individual assessments on district property — Liens.**

il assessments imposed on the respective lots, tracts, parcels of land, and other property included within the boundaries of an approved district in accordance with this chapter are a lien upon the property from the date of final approval and are paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes.

[2010 c 7 § 601.]



**CITY OF BLACK DIAMOND**  
**May 12, 2011 Special Meeting/Workstudy Agenda**  
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

**4:00 P.M. – CALL TO ORDER, ROLL CALL**

- 1.) Executive Session – To discuss with legal counsel litigation pursuant to RCW 42.30.110(1)(i) with no action to follow.
- 2.) Workstudy – Community Facilities Districts (CFDs)
  - a. CFD Basics – Yarrow Bay – John W. Hempelmann, Cairncross & Hempelmann
  - b. CFD Points to Consider from a City’s perspective- Hugh Spitzer, Foster Pepper
  - c. CFD-Follow-up-Yarrow Bay
  - d. Council-Staff Q & A
- 3.) Adjournment

# WASHINGTON COMMUNITY FACILITIES DISTRICTS (CFDs)

Briefing by John W. Hempelmann

Cairncross & Hempelmann

May 12, 2011

## Topics to be covered:

- What is a CFD?
- What a CFD is not.
- Why is a CFD needed?
- How is a CFD created?
- How does a CFD work?
- How might a CFD be used in Black Diamond?

## What is a CFD?

- A CFD is a Special Purpose District to finance and potentially construct, local and sub-regional improvements/infrastructure needed to support growth.
  - Constitution: Article VII, Section 9
  - Statute: RCW Chpt. 36.145
- A CFD is a “Super” Local Improvement District or LID.
  - Inclusion in the CFD district is 100% voluntary.
  - District property owners pay 100% of formation and operations costs associated with the District.
  - Residents and businesses outside the District’s boundaries are not subject to assessments.
- A CFD is a financing tool. CFD bonds are secured **ONLY** by the land inside the District.
- CFD improvements may be financed by the District prior to, during or after completion of improvements.

## What a CFD is not.

- A CFD is not a separate government. All improvements must be permitted, and approved, by the city.
- A CFD does not burden municipal finances or debt capacity.
- A CFD is not backed by the full faith and credit of the state or city.
- A CFD is not funded, or paid for, by any property owner, resident or business outside the district.

### **Why is a CFD Needed?**

- Growth is occurring and it requires new infrastructure – roads, sewers, water and other utility systems. RCW 36.145.005
- Much of the required infrastructure has a sub-regional benefit and existing infrastructure financing tools are limited in their ability to fund these types of improvements. The CFD expands the list of eligible improvements.
- Local, state and federal funding is very limited.
- Growth should pay for growth. Those who benefit from new facilities over time pay for the new facilities over time. To ensure assessments are equitable and reasonable, the costs are shared by the original property owners and developers and by all future builders, businesses and homeowners within the CFD. These costs remain within the CFD and are not shared beyond the boundaries of the CFD.
- CFD assessment bonds are long-term, lower cost, tax exempt bonds. Banks and traditional private lending sources will not provide long-term financing for infrastructure. Assessment bonds have been used for decades to fund infrastructure improvements and are familiar to those who purchase bonds.

### **How is a CFD Created?**

1. A petition to the city is submitted to form a CFD. The petition must be executed by 100% of property owners within the proposed district.
  - The petition proposes improvement projects that benefit property in the District.
  - The petition proposes special assessments on property within the CFD to finance bonds to pay for projects.
  - The petition nominates 2 of 5 members of the CFD Board of Supervisors.
2. The city gives notice of a public hearing and the community has an opportunity to participate in the public hearing process.
3. Approval by city: The city must find the CFD is “in best interests of” the city.
4. The city appoints a 5 member CFD Board of Supervisors with 3 chosen by the city (either elected officials or qualified representatives).
5. A CFD is final only after the appeal period expires.

### **How Does a CFD Work?**

1. After approval of a CFD by the city, the CFD Board hires, or contracts for, staff and/or consultants and counsel to conduct the business of the District.
2. The CFD finalizes project plans (in accordance with the city's design and permitting process and requirements).
3. The CFD finalizes project finances and special assessments based on a special benefits study and obtains permits from the city.
4. The CFD constructs, leases or purchases improvements or contracts with others to construct improvements based on public works requirements.
5. The CFD sells assessment or revenue bonds to pay for improvements and to establish bond reserve account. The use of General Obligation bonds is prohibited by the legislation.
6. Assessments are collected like property taxes to pay bond principal and interest. Assessments are split many times as property is divided over periods of development.
7. Bonds are paid off. Assessments terminate.

### **How Might a CFD Be Used in Black Diamond?**

To finance improvements that matter to both current and future residents and businesses such as:

- a. Roads and transportation improvements
- b. Water and sewer facilities
- c. Stormwater facilities
- d. Parks
- e. Trails

### **QUESTIONS?**

---

**WHAT a CFD IS, ISN'T,**  
*(and a few things for a city to think  
about when forming one)*

---

Hugh Spitzer, Foster Pepper PLLC  
Affiliate Professor  
University of Washington  
School of Law

---

# **A CFD Is a Financing Tool**

**(Not Really a Separate Government)**

---

---

**RCW 36.145.090 labels a CFD**

**“an independently governed,  
special purpose district”**

---

---

# Independent?

- Created by a city
  - Board controlled by a city
  - Probably separate for liability purposes
  - Closest analogies: transportation benefit district; public development authority
-

---

# **A CFD Is Governmental**

- Subject to Open Public Meetings
- Subject to Public Records Law
- Subject to Public Works Bidding Laws
- Subject to State Audit

**Compliance takes time and care**

---

---

## What a CFD Isn't

- Not a taxing district, like California CFDs
- Not a private, developer-controlled entity
- Not an entity with broad authority

(*authority is very limited*)

---

---

## **What a CFD Does . . .**

**Just one thing:** Create and manage special assessments districts to finance listed improvements subject to city local improvement district laws.

Tax-exempt financing substantially lowers infrastructure costs for developers. (But the public works requirement increases costs somewhat.)

---

---

## Basic Special Assessment Rules

- Capital improvements
  - Must be public improvements
  - Improvements must increase property value at least as much as the assessments
  - Assessments must be fairly distributed
  - Can't be used for improvements that don't confer "special benefit"
-

---

## Why CFD's Rather Than LID's?

- Slightly broader list of improvements
  - Shifts risk entirely to developer/property owners
  - No claim on City Guaranty Fund
-

---

## Things to Think About (!)

- Pros & cons of strong City control of Board
  - Pros & cons of City staffing the CFD
  - Impact of CFD assessments on future voted bonds (“taxpayer fatigue”)
  - Can the CFD really work, financially?  
(The challenge of “greenfield financings”)
  - How will CFD exercise eminent domain?
-

---

## **More Things to Think About**

- Limiting the scope of each CFD - picking the “low hanging fruit”
  - Should the City have its own team of consultants/financial advisors/lawyers?
  - Developer Guarantee & Escrow Contract(s)?
-

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE SENATE BILL 6241

Chapter 7, Laws of 2010

61st Legislature  
2010 Regular Session

COMMUNITY FACILITIES DISTRICTS--CREATION

EFFECTIVE DATE: 06/10/10

Passed by the Senate February 15, 2010  
YEAS 43 NAYS 2

BRAD OWEN

\_\_\_\_\_  
President of the Senate

Passed by the House March 2, 2010  
YEAS 75 NAYS 22

FRANK CHOPP

\_\_\_\_\_  
Speaker of the House of Representatives

Approved March 10, 2010, 2:16 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6241 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
Secretary

FILED

March 10, 2010

Secretary of State  
State of Washington

---

ENGROSSED SUBSTITUTE SENATE BILL 6241

---

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Senate Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer and Delvin)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to creating community facilities districts; and  
2 adding a new chapter to Title 36 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 PART I

5 GENERAL PROVISIONS

6 NEW SECTION. Sec. 101. The legislature finds that:

7 (1) The state is projected to experience substantial population  
8 growth in the next two decades and this growth will require substantial  
9 new housing, places of employment, community facilities, and supporting  
10 local, subregional, and regional infrastructure;

11 (2) In most areas of the state projected to accommodate substantial  
12 growth, there are inadequate community facilities and infrastructure to  
13 facilitate and support such growth. In addition, current public  
14 financing options and resources are not adequate to provide the needed  
15 community facilities and local, subregional, and regional  
16 infrastructure;

17 (3) A more flexible type of financing mechanism known as a

1 community facilities district should be available to counties, cities,  
2 and towns so that needed community facilities and local, subregional,  
3 and regional infrastructure can be provided;

4 (4) This chapter is intended to facilitate voluntary landowner  
5 financing of community facilities and local, subregional, and regional  
6 infrastructure by authorizing the creation of community facilities  
7 districts, while creating jobs and facilitating economic development;  
8 and

9 (5) It is in the interest of the people of the state of Washington  
10 to authorize the establishment of community facility districts as  
11 independently governed, special purpose districts, vested with the  
12 corporate authority included under Article VII, section 9 of the state  
13 Constitution to make local improvements in accordance with this chapter  
14 and to carry out the purposes specifically authorized under this  
15 chapter.

16 NEW SECTION. **Sec. 102.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Board of supervisors" or "board" means the governing body of  
19 a community facilities district.

20 (2) "Community facilities district" or "district" means a district  
21 created under this chapter.

22 (3) "Facility" or "facilities" means the local improvements  
23 included under section 501 of this act.

24 (4) "Legislative authority" means the governing body of a county,  
25 city, or town to which a petition or amended petition is submitted.

26 (a) If the proposed district is located entirely within  
27 unincorporated land, then the county is the exclusive "legislative  
28 authority" for purposes of approving formation of the district under  
29 sections 201 through 206 of this act, inclusive, and section 301 of  
30 this act.

31 (b) If all or a portion of the proposed district is located within  
32 unincorporated land that is entirely surrounded by an incorporated city  
33 or town, then the "legislative authority" for purposes of approving  
34 formation of the district under sections 201 through 206 of this act,  
35 inclusive, and section 301 of this act includes the governing bodies of  
36 the county and the city or town surrounding the unincorporated land.

1 (c) If the proposed district is located entirely within  
2 incorporated land, then the city or town is the exclusive "legislative  
3 authority" for purposes of this chapter, and all powers and  
4 responsibilities of a county under this chapter must be exercised by  
5 that city or town.

6 (5) "Petition" means a request, meeting the requirements of section  
7 201 of this act, made by landowners to form a community facilities  
8 district and to voluntarily submit their land to the assessments  
9 authorized under this chapter and includes an amended petition meeting  
10 the requirements of section 201(3) of this act.

11 (6) "Special assessment" means an assessment imposed in accordance  
12 with the requirements of this chapter.

## 13 PART II

### 14 COMMUNITY FACILITIES DISTRICT FORMATION

15 NEW SECTION. **Sec. 201.** Community facilities districts are  
16 authorized to be formed for the purposes authorized under this chapter.  
17 Community facilities districts may only include land within urban  
18 growth areas designated under the state growth management act, located  
19 in portions of one or more cities, towns, or counties when created in  
20 accordance with this chapter. A district may include one or more  
21 noncontiguous tracts, lots, parcels, or other properties meeting the  
22 requirements of this chapter.

23 (1) To form a community facilities district, a petition must be  
24 presented to the applicable legislative authorities. The petition  
25 must:

26 (a) Designate and describe the boundaries of the district by metes  
27 and bounds or reference to United States townships, ranges, and legal  
28 subdivisions;

29 (b) Be executed by one hundred percent of all owners of private  
30 property located within the boundaries of the proposed district. The  
31 property owners must include a request to subject their property to the  
32 assessments, up to the amount included in the petition and authorized  
33 under this chapter;

34 (c) Include a certification by the petitioners that they want to  
35 voluntarily submit their property to the authority of the district

1 under this chapter to approve the petitioner's request to submit their  
2 property to the assessments, up to the amount included in the petition  
and authorized under this chapter;

4 (d) Include a general explanation of the objective and plan of the  
5 district and describe the specific facilities that the district  
6 anticipates financing;

7 (e) Declare the district will be conducive to public health,  
8 safety, and welfare;

9 (f) Assert that the purpose for forming the district will be a  
10 benefit to the land located in the district;

11 (g) Be accompanied by an "obligation" signed by at least two  
12 petitioners who agree to pay the costs of the formation process;

13 (h) Include a list of petitioners or representatives thereof who  
14 are willing and able to serve on the board of supervisors. All  
15 petitioners within a proposed district who are natural persons, or  
16 natural persons who are designated representatives of petitioners, are  
17 eligible to include their name on the list of eligible supervisors.  
18 The petitioners may nominate qualified professions to serve on the  
19 board of supervisors in lieu of the petitioners or representatives of  
20 the petitioners;

21 (i) If it proposes a special assessment, include: (i) A diagram  
22 showing each separate lot, tract, parcel of land, or other property in  
23 the district; (ii) the acreage of the property; (iii) the name and  
24 address of the owner or reputed owner of each lot, tract, parcel of  
25 land, or other property as shown on the tax rolls of the county  
26 assessor; (iv) a preliminary assessment roll showing the special  
27 assessment proposed to be imposed on each lot, tract, parcel of land,  
28 or other property; and (v) a proposed method or combination of methods  
29 for computing special assessments, determining the benefit to assessed  
30 property or use from facilities or improvements funded directly or  
31 indirectly by special assessments under this chapter; and

32 (j) Include an explanation of what security will be provided to  
33 ensure the timely payment of assessments and the timely payment of  
34 bonds issued by the district.

35 (2) The petition must be filed with the auditor of each county in  
36 which property included within the proposed district is located. The  
37 auditor for the county in which the largest geographic portion of the  
proposed district is located must be the lead auditor for the purposes

1 of this section. Within thirty days of the lead auditor's receipt of  
2 the petition, the lead auditor must confirm that the petition has been  
3 validly executed by one hundred percent of all owners of the property  
4 located within the proposed district, including confirmation by the  
5 auditors of all other counties with whom the petition was filed.  
6 Within ten days of the lead auditor's finding that the petition either  
7 does or does not contain the required signatures, the lead auditor must  
8 either (a) transmit the petition, together with a certificate of  
9 sufficiency attached thereto, to each legislative authority petitioned  
10 for formation of the district; or (b) return the petition to the  
11 petitioners with a list of property owners who must sign the petition  
12 in order to comply with this section. There are no restrictions on the  
13 number of petitions that may be submitted by one or more property  
14 owners.

15 (3) A petition may be amended for any reason if the amendment is  
16 signed by one hundred percent of the owners of property located within  
17 the district proposed in the amended petition.

18 NEW SECTION. Sec. 202. A public hearing on the petition for  
19 formation of a district must be held by each applicable legislative  
20 authority, not less than thirty, but not more than sixty days, from the  
21 date that the lead county auditor issues the certificate of sufficiency  
22 required under section 201 of this act.

23 NEW SECTION. Sec. 203. Notice of all public hearings must include  
24 a description of the proposal, be mailed to all petitioners, and must  
25 be published once a week for three consecutive weeks in the official  
26 paper for each applicable legislative authority, prior to the date set  
27 for the hearing. The notice must be posted for not less than fifteen  
28 days prior to the date of the hearing in each of three public places  
29 within the boundaries of the proposed district and in three public  
30 places for each applicable legislative authority. Each notice must  
31 contain the time, date, and place of the public hearing.

32 NEW SECTION. Sec. 204. At the time and place of the public  
33 hearing, the legislative authority must consider the petition. The  
34 legislative authority may receive any evidence it deems material that  
supports or opposes the formation of the district, including the

1 inclusion or exclusion of land. Unless an amended petition satisfying  
2 the requirements of section 201 of this act is approved in accordance  
3 with the requirements of this chapter, no land outside the boundaries  
4 described in the petition may be included within the proposed district.  
5 No land inside the boundaries of an approved petition may be removed  
6 from the district unless an amended petition satisfying the  
7 requirements of section 201 of this act is approved in accordance with  
8 the requirements of this chapter.

9 NEW SECTION. **Sec. 205.** (1) The legislative authority may act on  
10 the petition to form a community facilities district at the public  
11 hearing held under section 204 of this act and in no event may the  
12 legislative authority's decision be issued later than thirty days after  
13 the day of the public hearing. The applicable legislative authority  
14 may approve the petition by resolution if the applicable legislative  
15 authority determines, in its sole discretion, that the petitioners will  
16 benefit from the proposed district and that the formation of the  
17 district will be in the best interest of the county, city or town, as  
18 applicable, and that formation of the district is consistent with the  
19 requirements of Washington's growth management act.

20 (2) A community facilities district may not be formed unless each  
21 applicable legislative authority makes the finding required under  
22 subsection (1) of this section.

23 (3) All resolutions approving a petition must conform to the terms  
24 and conditions contained in the petition, including the maximum amounts  
25 of special assessments set forth in the petition, and must designate  
26 the name and number of the community facilities district being formed.

27 NEW SECTION. **Sec. 206.** (1) Any person who objects to formation of  
28 the district may appeal the final decision of a legislative authority  
29 to approve a petition for formation of a community facilities district  
30 by filing an appeal with the superior court of the county in which any  
31 part of the district is located within thirty days of the effective  
32 date of the resolution approving formation of the district.

33 (2) If no appeal is timely filed, then the legislative authority's  
34 decision is deemed valid, complete, and final, and neither the legal  
35 existence of the district, nor the terms and conditions of an approved  
petition can thereafter be challenged or questioned by any person on

1 the grounds of procedural defect or otherwise. Certified copies of  
2 each resolution approving a district must be filed with the auditor of  
3 the county or counties in which the community facilities district is  
4 located.

5 **PART III**

6 **COMMUNITY FACILITIES DISTRICT BOARD OF SUPERVISORS**

7 NEW SECTION. **Sec. 301.** (1) A community facilities district must  
8 be governed by a board of supervisors possessing the powers set forth  
9 under section 401 of this act. The board of supervisors must be  
10 appointed by each applicable legislative authority within sixty days of  
11 the formation of the district. Except as expressly provided under this  
12 section, each applicable legislative authority is authorized to appoint  
13 members to the board of supervisors only from among the members of its  
14 own governing body. Each applicable legislative authority must appoint  
15 the petitioner members or nominees required under subsection (2) or (3)  
16 of this section. The term of office of each supervisor is three years  
17 and until a successor is appointed, except that the supervisors first  
18 appointed serve for one and two years respectively from the date of  
19 their appointments, as designated in their appointments.

20 (2) Except as provided in subsection (3) of this section, if the  
21 proposed district is located entirely within a single jurisdiction,  
22 then the board of supervisors consists of: (a) Three members of the  
23 legislative authority of the jurisdiction; and (b) two members  
24 appointed from among the list of eligible supervisors included in the  
25 petition as provided in section 201(1)(h) of this act. All members of  
26 the board of supervisors must be natural persons.

27 (3) If all or a portion of the proposed district is located within  
28 unincorporated land that is entirely surrounded by an incorporated city  
29 or town, then the board of supervisors consists of: (a) Two members  
30 appointed from the county legislative authority; (b) two members  
31 appointed from the legislative authority of the city or town that is  
32 the additional legislative authority under section 102(4) of this act;  
33 and (c) one member appointed from the list of eligible petitioners  
34 included in the petition as provided in section 201(1)(h) of this act,  
35 depending on the number of additional members that are required to  
result in an overall odd number of supervisors.

1 (4) If the county, city, or town is the exclusive legislative  
2 authority pursuant to section 102 of this act, then the board of  
supervisors consists of: (a) Three members appointed from such county,  
4 city, or town; and (b) two members from the list of eligible  
5 petitioners or nominees included in the petition, as provided in  
6 section 201(1)(h) of this act, to result in an overall odd number of  
7 supervisors.

8 (5) The legislative authorities may appoint qualified professionals  
9 with expertise in municipal finance in lieu of one or more appointments  
10 authorized in this section. A jurisdiction's appointments to the board  
11 of supervisors may consist of a combination of qualified professionals  
12 authorized under this section and one or more members from the  
13 applicable legislative authority. Nothing contained in this section  
14 authorizes a legislative authority to exceed the maximum number of  
15 appointments set forth under subsection (2) or (3) of this section.

16 (6) A vacancy on the board must be filled by the legislative  
17 authority authorized to make the appointment to the applicable  
18 supervisor position under this section. Vacancies must be filled by a  
19 person in the same position vacating the board, which for initial  
20 petitioner members or nominees includes successor owners of property  
21 located within the boundaries of an approved district. If the approved  
22 district was originally located entirely on unincorporated land and the  
23 unincorporated land has been annexed into a city or town, then, as of  
24 the effective date of annexation, the city or town is deemed the  
25 exclusive legislative authority for the purposes of this chapter and  
26 the composition of the board must be structured accordingly, as  
27 provided in this section. Supervisors must serve without compensation,  
28 but they are entitled to expenses, including traveling expenses,  
29 necessarily incurred in discharge of their duties. The board must  
30 designate a chair from time to time.

#### 31 PART IV

#### 32 COMMUNITY FACILITIES DISTRICT POWERS

33 NEW SECTION. **Sec. 401.** (1) A community facilities district  
34 created in accordance with this chapter is an independently governed,  
35 special purpose district, vested with the corporate authority included  
under Article VII, section 9 of the state Constitution to make local

1 improvements by special assessment in accordance with this chapter.  
2 Nothing in this chapter exempts the public improvements and facilities  
3 provided by a district from the regulatory and land use permitting  
4 requirements of the county, city, or town in which the improvements are  
5 to be located.

6 (2) Subject to the terms and conditions of an approved petition, a  
7 community facilities district has the powers necessary to carry out the  
8 specific purposes authorized under this chapter in order to carry out  
9 the specific objectives, plan, and facilities identified in the  
10 approved petition including, but not limited to, the authority to:

11 (a) Acquire, purchase, hold, lease, finance, manage, occupy,  
12 construct, and sell real and personal property, facilities, or any  
13 interest therein, either inside or outside of the boundaries of the  
14 district, except that any such property, facilities, or interests  
15 outside the boundaries of the district must directly serve facilities  
16 or benefit properties within the district;

17 (b) Finance and construct facilities authorized under this chapter;

18 (c) Enter into and perform any and all contracts;

19 (d) Levy and enforce the collection of special assessments against  
20 the property included within a district;

21 (e) Enter into lease-purchase agreements with or without an option  
22 to purchase;

23 (f) Enter into executory conditional sales contracts, leases, and  
24 installment promissory notes;

25 (g) Borrow money to the extent and in the manner authorized by this  
26 chapter;

27 (h) Hold in trust property useful to accomplishment of the  
28 authority granted under this chapter;

29 (i) Issue revenue bonds in accordance with chapter 39.46 RCW and  
30 assessment bonds in accordance with chapter 35.45 RCW, and the  
31 requirements of this chapter, payable from revenue or assessments,  
32 respectively, of the district that is legally available to be pledged  
33 to secure the bonds;

34 (j) Contract with any municipal corporation, governmental, or  
35 private agencies to carry out the purposes authorized by this chapter;

36 (k) Sue and be sued;

37 (l) Accept and receive on behalf of the district any money or  
property donated, devised, or bequeathed to the district and carry out

1 the terms of the donation, devise, or bequest, if it is within the  
2 powers granted by law to community facilities districts or, in the  
absence of such terms, expend or use the money or property for district  
4 purposes as determined by the board of supervisors;

5 (m) Transfer to any county, city, or other municipal corporation,  
6 without compensation, any property or other assets of the district; and

7 (n) Do any and all lawful acts required and expedient to carry out  
8 the express authority provided in this chapter.

9 **PART V**

10 **COMMUNITY FACILITIES DISTRICT FINANCES**

11 NEW SECTION. **Sec. 501.** (1) Through the use of district revenue  
12 derived through special assessments and bonds authorized under this  
13 chapter and, consistent with the terms and conditions of a petition  
14 approved in accordance with this chapter, a community facilities  
15 district may finance all or a portion of the following costs, expenses,  
16 and facilities whether located inside or outside the boundaries of an  
17 approved district:

18 (a) The cost, or any portion thereof, of the purchase, finance,  
19 lease, sublease, construction, expansion, improvement, or  
20 rehabilitation of any facility with an estimated life of five years or  
21 longer;

22 (b) The planning and design work that is directly related to the  
23 purchase, construction, expansion, improvement, or rehabilitation of a  
24 facility, including engineering, architectural, planning, and  
25 inspection costs;

26 (c) Facilities listed in RCW 35.43.040 to the extent not specified  
27 in this section;

28 (d) Sanitary sewage systems, including collection, transport,  
29 storage, treatment, dispersal, effluent use, and discharge;

30 (e) Drainage and flood control systems, including collection,  
31 transport, diversion, storage, detention, retention, dispersal, use,  
32 and discharge;

33 (f) Water systems for domestic, industrial, irrigation, municipal,  
34 or community facilities purposes, including production, collection,  
35 storage, treatment, transport, delivery, connection, and dispersal;

1 (g) Highways, streets, roadways, and parking facilities, including  
2 all areas for vehicular use for travel, ingress, egress, and parking;  
3 (h) Areas for pedestrian, equestrian, bicycle, or other nonmotor  
4 vehicle use for travel, ingress, egress, and parking;  
5 (i) Pedestrian malls, parks, recreational facilities, and open-  
6 space facilities for the use of members of the public for  
7 entertainment, assembly, and recreation;  
8 (j) Landscaping, including earthworks, structures, lakes, and other  
9 water features, plants, trees, and related water delivery systems;  
10 (k) Public buildings, public safety facilities, and community  
11 facilities;  
12 (l) Publicly owned natural gas transmission and distribution  
13 facilities, facilities for the transmission or distribution of  
14 electrical energy, and limited communications facilities, specifically  
15 poles, trenches, and conduits, for use of any communications provider;  
16 (m) Street lighting;  
17 (n) Traffic control systems and devices, including signals,  
18 controls, markings, and signage;  
19 (o) Systems of surface, underground, or overhead railways,  
20 tramways, buses, or any other means of mass transportation facilities,  
21 including passenger, terminal, station parking, and related facilities  
22 and areas for passenger and vehicular use for travel, ingress, egress,  
23 and parking;  
24 (p) Library, educational, and cultural facilities; and  
25 (q) Facilities similar to those listed in this section.  
26 (2) The district may not finance public or private residential  
27 dwellings, nonprofit facilities as defined in RCW 43.180.300, health  
28 care facilities as defined in RCW 70.37.020, higher education  
29 institutions as defined in RCW 28B.07.020, or economic development  
30 activities as defined in RCW 43.163.010.

31 NEW SECTION. **Sec. 502.** (1) The board of supervisors of a  
32 community facilities district may impose special assessments on  
33 property located inside the district and benefited by the facilities  
34 and improvements provided, or to be provided, by a district, whether  
35 the facilities and improvements are located inside or outside of the  
36 boundaries of the proposed district. The requirements and powers of a  
district relating to the formation, assessment, collection,

1 foreclosure, and other powers of a special assessment district are as  
2 set forth in chapters 35.43, 35.44, 35.49, and 35.50 RCW, except where  
3 otherwise addressed under this chapter. In any case where the  
4 provisions of this chapter conflict with the requirements under any  
5 other chapter that applies to the formation, assessment, collection,  
6 foreclosure, or other powers of a special assessment district, the  
7 provisions of this chapter control.

8 (2) Except as otherwise expressly provided under this chapter, the  
9 special assessments imposed and collected on property within a district  
10 may not exceed the amount set forth in a petition or amended petition  
11 approved in accordance with this chapter.

12 (3) The term of the special assessment is limited to the lesser of  
13 (a) twenty-eight years or (b) two years less than the term of any bonds  
14 issued by or on behalf of the district to which the assessments or  
15 other revenue of the district is specifically dedicated, pledged, or  
16 obligated.

17 (4) The computation of special assessments must follow the  
18 requirements of chapter 35.44 RCW, including the authority to use any  
19 method or combination of methods to compute assessments which may be  
20 deemed by the board of supervisors to fairly reflect the benefit to the  
21 properties being assessed. The method of assessment may utilize the  
22 supplemental authority granted under chapter 35.51 RCW. A petition  
23 meeting the requirements of section 201 of this act may provide for the  
24 reduction or waiver of special assessments for low-income households as  
25 that term is defined in RCW 36.130.010.

26 (5) The board must set a date, time, and place for hearing any  
27 objections to the assessment roll, which hearing must occur no later  
28 than one hundred twenty days from final approval of formation of the  
29 district. Petitioners or representatives thereof serving on the board  
30 of supervisors must not participate in the determination of the special  
31 assessment roll or vote on the confirmation of that assessment roll.  
32 The restriction in this subsection does not apply to members of the  
33 board of supervisors appointed from among the qualified professionals  
34 that petitioners may nominate under section 201(1)(h) of this act.

35 (6) The procedures and requirements for assessments, hearings on  
36 the assessment roll, filing of objections to the assessment roll, and  
37 appeals from the decision of the board approving or rejecting the

1 assessment roll, must be as set forth in RCW 35.44.010 through  
2 35.44.020, 35.44.080 through 35.44.110, and 35.44.190 through  
3 35.44.270.

4 (7) At the hearing on the assessment roll and, in no event later  
5 than thirty days after the day of the hearing, the board may adopt a  
6 resolution approving the assessment roll or may correct, revise, raise,  
7 lower, change, or modify the assessment roll or any part thereof, and  
8 provide the petitioner with a detailed explanation of the changes made  
9 by the board.

10 (8) If the assessment roll is revised by the board in any way,  
11 then, within thirty days of the board's decision, the petitioner(s)  
12 must unanimously make one of the following elections: (a) Rescind the  
13 petition; or (b) accept the changes made by the board, upon which  
14 occurrence the board must adopt a resolution approving the assessment  
15 roll as modified by the board.

16 (9) Reassessments, assessments on omitted property, and  
17 supplemental assessments are governed by the provisions set forth under  
18 chapter 35.44 RCW.

19 (10) Any assessment approved under the provisions of this chapter  
20 may be segregated upon a petition of one hundred percent of the owners  
21 of the property subject to the assessment to be segregated. The  
22 segregation must be made as nearly as possible on the same basis as the  
23 original assessment was levied and approved by the board. The board,  
24 in approving a petition for segregation and amendment of the assessment  
25 roll, must do so in a fashion such that the total of the segregated  
26 parts of the assessment equal the assessment before segregation. As to  
27 any property originally entered upon the roll the assessment upon which  
28 has not been raised, no objections to the approval of the petition for  
29 segregation, the resulting assessment, or the amended assessment roll  
30 may be considered by the jurisdiction in which the district is located,  
31 the board, or by any court on appeal. Assessments must be collected in  
32 districts pursuant to the district's previous assessment roll until the  
33 amendment to the assessment roll is finalized under this section.

34 (11) Except as provided under chapter 35.44 RCW, assessments may  
35 not be increased without the approval of one hundred percent of the  
36 property owners subject to the proposed increase.

37 (12) Special assessments must be collected by the district  
treasurer determined in accordance with section 505 of this act.

1 (13) A notice of any special assessment imposed under this chapter  
2 must be provided to the owner of the assessed property, not less than  
3 once per year, with the following appearing at the top of the page in  
4 at least fourteen point, bold font:

5 **\*\*\*\*NOTICE\*\*\*\***

6  
7 **THIS PROPERTY IS SUBJECT TO THE ASSESSMENTS ITEMIZED BELOW AND APPROVED**  
8 **BY COMMUNITY FACILITIES DISTRICT # . . . . . AS THE OWNER OR**  
9 **POTENTIAL BUYER OF THIS PROPERTY, YOU ARE, OR WOULD BE, RESPONSIBLE FOR**  
10 **PAYMENT OF THE AMOUNTS ITEMIZED BELOW.**  
11 **PLEASE REFER TO RCW 36.--.--- (section 502, chapter . . ., Laws of 2010**  
12 **(section 502 of this act)) OR CONTACT YOUR COUNTY AUDITOR FOR**  
13 **ADDITIONAL INFORMATION.**

14 (14) The district treasurer responsible for collecting special  
15 assessments may account for the costs of handling the assessments and  
16 may collect a fee not to exceed the measurable costs incurred by the  
17 treasurer.

18 NEW SECTION. **Sec. 503.** (1) The district may utilize the special  
19 assessments and revenue derived in accordance with this chapter for the  
20 payment of principal and interest on bonds issued pursuant to the  
21 authority granted under this chapter to fund or reimburse the costs of  
22 facilities authorized under this chapter and prior to the issuance of  
23 bonds, may utilize the revenue to directly fund the costs of providing  
24 the facilities authorized under this chapter on a pay-as-you-go basis.

25 (2) The board of supervisors may establish, administer, and pay or  
26 otherwise dedicate, pledge, or obligate the assessments and revenue  
27 generated in accordance with this chapter into a specific fund created  
28 by or on behalf of the district, in order to guarantee payment of  
29 obligations incurred in connection with facilities provided under this  
30 chapter, including the payment of principal and interest on any bonds  
31 issued by or on behalf of the district.

32 (3) The proceeds of any bond issued pursuant to this chapter may be  
33 used to pay any and all costs related to providing the facilities  
34 authorized under this chapter, including expenses incurred in  
35 connection with issuance of the bonds.

1 (4) The reporting requirements of RCW 39.44.210 apply to any bond  
2 issuance under this chapter.

3 NEW SECTION. **Sec. 504.** No bonds issued by or on behalf of a  
4 community facilities district are obligations of any city, town,  
5 county, or the state of Washington or any political subdivision thereof  
6 other than the district and the bonds must so state.

7 NEW SECTION. **Sec. 505.** (1) If a district includes land that is  
8 entirely within a county and the land is not surrounded entirely by a  
9 city or town, then the treasurer of that county is the treasurer of the  
10 district. If a district includes land that is entirely within a county  
11 and the land is entirely surrounded by a city or town, or, if parts of  
12 the district include land within or surrounded by more than one  
13 jurisdiction, then the board of supervisors may, with the concurrence  
14 of the treasurers of all jurisdictions within which the district lies,  
15 appoint the treasurer of any of those jurisdictions to serve as the  
16 district treasurer. Except as specifically provided under this  
17 chapter, the duties of a district treasurer are as provided under  
18 applicable law.

19 (2) The district treasurer must establish a community facilities  
20 district fund, into which must be paid all district revenues. The  
21 district treasurer must also maintain any special funds created by the  
22 board of supervisors of the community facilities district, into which  
23 the district treasurer must place all money as the board of supervisors  
24 may, by resolution, direct. The treasurer may create such subfunds,  
25 accounts, and subaccounts as he or she deems necessary, consistent with  
26 applicable law.

27 (3) The district treasurer must pay assessment bonds and revenue  
28 bonds and the accrued interest thereon in accordance with their terms  
29 from the appropriate fund when interest or principal payments become  
30 due.

31 (4) All interest collected on community facilities district funds  
32 belongs to the district and must be deposited to its credit in the  
33 proper district funds.

34 **PART VI**

MISCELLANEOUS PROVISIONS

1

3       NEW SECTION.   **Sec. 601.** All assessments imposed on the respective  
4 lots, tracts, parcels of land, and other property included within the  
5 boundaries of an approved district in accordance with this chapter, are  
6 a lien upon the property from the date of final approval and are  
7 paramount and superior to any other lien or encumbrance whatsoever,  
theretofore or thereafter created, except a lien for general taxes.

8       NEW SECTION.   **Sec. 602.** Sections 101 through 601 of this act  
9 constitute a new chapter in Title 36 RCW.

10       NEW SECTION.   **Sec. 603.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

Passed by the Senate February 15, 2010.  
Passed by the House March 2, 2010.  
Approved by the Governor March 10, 2010.  
Filed in Office of Secretary of State March 10, 2010.

**Before the City of Black Diamond Hearing Examiner**

**References in the following will be to The Villages Development Agreement, but also apply to corresponding paragraphs in the Lawson Hills Development Agreement.**

MPD Condition 166 for Lawson Hills requires “a process of including lands identified as “Expansion Areas” in the application (application is not defined) shall be defined in the Development Agreement, whereas MPD Condition 134 for the Villages is much more vague and only states that “The Expansion Area process shall be clarified.”

Conditions 134 and 166 are so vague and contradictory they give the Reader, the City Council, and the Courts no clear indications as to what the desired implementing standards would be within the Development Agreements.

- Neither condition states empirically, or even through inference, that *any* development may happen on the expansion parcels;
- The Lawson Condition 166 “...references lands identified as “Expansion Areas” in the application...,” but nowhere does it define what application it is referring to;
- The Villages Condition 134 does not reference any specific lands identified in any application;
- Neither Condition 166 or 134 gives a timeline as to when the Expansion Area process could take place (did City Council want it immediately; gradually; or at end of build-out)
- Neither Condition 166 nor 134 empirically states that the Expansion Parcels shall be given the same vesting rights and standards as the current MPDs:

The Expansion Parcel Process defined in the Development Agreement Section 10.5, and 10.5.1, creates the illusion of a thorough process and environmental review, but Section 10.5.2 guts the EIS process by allowing the Master Developer to present the Expansion Parcel as just an “addition” not as a “proposal” thus allowing the City Designated Official to follow a different SEPA standard and accept the parcel under a SEPA addendum under the existing EIS.

The City uses the Development Agreement to incorrectly imply that a project EIS has already been done on the Expansion Parcels and that they would be substantially similar. This is a false statement. The City and the Applicant argued heavily throughout the EIS hearings that the EIS was a programmatic EIS and not project specific, thus they were not required to provide or address impacts from school sites outside the MPD; Expansion Parcels; and the South Connector. Simply making this statement within Section 10.5.2 of the Development Agreement does not make it true.

Furthermore there would be no reasonable basis for adding the expansion parcel through an “addition” if the sole intent is to develop the land which is the argument made in Section 4.6 and 10.5.1. In addition to the Additionally, *the movement of any of the approved dwelling units* into the expansion area would create a violation under the Comprehensive Plan minimum density requirement of 4 dwelling units per gross acre. The expansion parcels identified in the Development Agreement all exceed 4 acres and therefore a major modification to the MPD would be required for any expansion.

- ***The Development Agreement shall delete Section 10.5.2 in its entirety.***

---

Cindy Proctor 718 Griffin Ave #241 Enumclaw, WA

BDMC 18.66.020 explains that development agreements are intended to establish development standards that will apply and govern large development proposals during the term of any agreement. So it is unclear how Expansion Parcel land that is not currently part of the MPD, will not have the Development Agreement recorded against it or is not zoned MPD overlay i.e. currently zoned forest land; could legally be amended into the current MPD and governed by the current Development Agreement standards.

- The Development Agreement pre-disposes a future council to affirmatively approve a Comprehensive Plan Land Use designation;
  - *Clarification shall be added that Expansion Parcels are not required to be approved by future councils;*
  
- The Development Agreement states in Section 10.5.3 that “the addition of one or more Expansion Parcels to the Project Site shall have no effect on the vested status *of the MPD* Permit Approval” however it is silent to the vesting of the Expansion Parcels; What if an Expansion Parcel Proposals isn’t submitted until 7-15 years from now, what vesting date and standards would apply? There is no justification for vesting land for which there has been no permitting application. Provisions for expansion parcels are an accommodation and the City should not be constrained from applying future improved development standards.
  - *The Development Agreement shall add language to clarify that the vesting standards are at the time of the Parcel Proposals Final Approval*

In conclusion, the MPD Conditions 166 and 134 regarding Expansion Parcels lack clarity and direction for any reasonable implementation under the Development Agreement. The ability to move approved dwelling units into the expansion parcels creates a violation of the Comprehensive Plan and no environmental review regarding the impacts of developing the expansion sites has been completed. Neither the Hearing Examiner nor the City have the Authority to make future decisions to either waive EIS requirements or remove a future public process through the use of this Development Agreement.

**Villages:**

134. The Expansion Area process shall be clarified in the Development Agreement.

**Lawson:**

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

Written Testimony Opposing Black Diamond MPD Development Agreement  
August 1, 2011

As Brian Derdowski has mentioned, several sections of the Black Diamond Development Agreement actually violate Washington state law.

Section # 3.0 says that “the Development Agreement will super cede all previous agreements. This violates state laws that require Development Agreements to be consistent with development regulations, municipal codes and ordinances. Even if the parties to the prior agreements agree, any modifications to these agreements require amendments to city ordinances which adopted them.”

Section # 7.2.1 “eliminates the need for water certificates for implementing projects”... which violates state law.

Section # 7.3.1 “guarantees sewer availability for the entire build-out and eliminates the requirement for a certificate of sewer availability for implementing projects. “ This also violates state law and public health codes.

Section # 8.2 “ ‘freezes’ sensitive area review for the life of the project to that which has already been accomplished. Sensitive areas, especially wetlands, change over time. The level of existing review was not as detailed as a project level review. The constraint maps are too large a scale to depict facts on the ground.” This violates state law.

Section # 10.5 “allows addition of Expansion Parcels to be by Minor Amendment.” This violate state law.

Section # 11.1 “allows all infrastructure and timing of development to be changed without amendment to MPD permit approval or the DA” which violates state law.

Section # 12.9.1 “allows the Applicant to ‘defer any required improvement’ if bonded.” This also violates state law.

Section # 15.7 “allows amendments of exhibits H,J,K,M,N,Q,R by Minor Amendment “. This is in violation of state law.

These are just some of the sections that violate state law, as determined by Brian Derdowski, whom I have quoted here.

My question is this, if state law is violated in these sections, why is it even considered a legal document? If they are not legal, they are not legal.

Respectfully Submitted  
Heidi Russell  
26125 SE 425<sup>th</sup> St  
Enumclaw, WA 98022