Before the City of Black Diamond Hearing Examiner Regarding Calculation of Open Space and Identification Parks in Development Agreements

I will be referring to both agreements unless otherwise stated.

Although many of the conditions in the Lawson and Villages MPDs are exactly the same, in regards to the Parks and Open Space there are some subtle and some substantial differences for implementation that could create inconsistency when the City must deal with two separate Master Developers. Additionally, the conditions themselves create conflict and in some cases violate the conditions of the MPD.

Lawson Hills MPD Ordinance condition 94 requires:

> **The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.**

The City Staff Report compliance matrix shows this requirement being satisfied by Section 9.5.5 of the Development Agreement. Section 9.5.5 purports to include the information required by Condition 94 in Table 9-5. However, Table 9-5 does not include any information on off-site construction. It may be the intent of the developer that every facility designated for optional payment of fee in lieu of construction be constructed off-site. If that is the case then every facility in the table is intended to be constructed off-site and the agreement should so state. The following proposed changes are requested for the Development Agreement:

- **The Development Agreement shall define how faraway off-site placement is; and it shall be consistent with walkable parks as defined in the City's Parks Plan LOS.**
- **The Development Agreement shall define a maximum percentage of offsite placements consistent with LOS guidelines and/or smart growth standards to ensure that the MPDs are adequately served.**

Section 9.2 of the Development Agreements state that all parks, trails, shall be constructed **or** bonded (clarification is needed, is the intent to have these constructed **and** bonded under a 2-yr maintenance bond; or is the intent to have them constructed **or** a bond issued in lieu of construction) with each phase and prior to occupancy;

- However Condition 96 of the Villages only requires trails be constructed or bonded and Lawson Condition 96 only requires Parks to be constructed or bonded prior to occupancy. Furthermore, neither Development Agreement defines when the parks, facilities, or trails will be built if the Developer elects to make a lump-sum payment to the City; thus there is the ability for the parks,

EXHIBIT 73

facilities, and trails to remain un-built for years if the City doesn't get around to building them with the payments received.

- **The Development Agreement should add language that requires an implementing development plan from the City in regards to all lump-sum payments received from developers in lieu of required park, trail or facility.**

Lawson Hills MPD Ordinance condition 92 requires:

The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities.

The City Staff Report does not show compliance with this requirement. The Development Agreement has the following statement in Section 9.9.3:

> Pursuant to Condition of Approval No. 92 of the MPD Permit Approval, public access is authorized to all Parks and trails unless otherwise determined by the Designated Official.

There is no guarantee of public access. In fact, contrary to the MPD condition, this would give the Designated Official the power to deny public access.

Development Agreement Section 9.5.3

In the event the Master Developer makes a lump sum payment, the City shall use the funds for the sole purpose of constructing the Recreational Facility. If the Master Developer provides off site Recreational Facilities and/or Parks, it shall receive credit equivalent to the credit it would have received if that Recreational Facility and/or Park had been provided on the Project Site." (Condition No. 91 and No. 93, Villages and Lawson)

Although I have many, many concerns about the where, when and how of the various parks, trails and recreational facilities, my biggest concerns lies with the fact that the MPD Conditions and Development Agreements appear to have opened the back door for the take-over of the Lake Sawyer Regional Park (LSRP). The LSRP is currently undeveloped and used *passively {excluding the Lake Sawyer Boat Launch, which is active}* and is already owned by the taxpayers. Although the City has considered allowing *active* use to serve those from the MPD sites, there has been no public hearing to date regarding changing how the park can be used and the hundreds of signatures in the petition to remove the reference of the LSRP as a possible Joint-Use-Lands in the Tri-party Agreement is a clear indication of the opposition that the City will face in trying to reclassify this jewel within our community.
The Development Agreement also contemplates giving the Developer open space credit for offsite replacement. If placement is at the LSRP, which is publically owned it would in essence allow the developer substitute publicly funded and owned land, for a portion of

their private property purchase obligation of open space. If this is latter designated Joint-Use-Lands for the High School the developer would receive both open space and school mitigation if replacement. This is well beyond double dipping. Again, there is no large scale open space that isn't already designated sensitive, wetlands, private forest, etc. currently available to place many of the items identified in tab 9.5 other than the MPD sites themselves or the LSRP.

As stated above the Lake Sawyer Regional Park is currently being used as a passive park. Passive parks posses picnic tables, trails, fishing and scenic views with a tranquil vibe. Lake Sawyer is abutted by additional critical habitat of Frog Lake, is fed by Ravensdale Creek and Rock Creek and its water quality and habitat need protection and vigilance. An active park is considered organized sports that need open fields, lights and possible sound systems, large public gatherings. The development of an active park will require those who have no parks to travel shifting the burden of the development on to the park. The EIS did not contemplate the transformation of the Regional Park into a heavily used active park with dogs, cars, and human activities of this scale similar to a Lake Meriden or Lake Sammamish. Nor did the EIS consider the impacts on the water quality, wildlife and habitat of converting the Lake Sawyer Regional Park into an active park.

The City cannot modify its present or future parks designations by simply stating or implying in the Development Agreement that City's designated official has the authority to unilaterally make this decision.

The designation for the Lake Sawyer Regional Park (LSRP) (and other non-public spaces outside the MPDs) to a public use allowing an active park requires a change to the Black Diamond Comprehensive Plan, and in-fact the City has recently raised the idea of converting the LSRP to a public use[1] and immediately received vocal opposition. The Hearing Examiner has already seen the petition to keep any joint-use-agreements out of the LSRP during FEIS/MPD hearings.[2] In addition to the Comprehensive Plan amendment, the change of LSRP and other non-MPD sites to public will require review by the Black Diamond Planning Commission, a public hearing and the *future* approval by the Black Diamond City Council.

I am concerned that if the Development Agreement is approved as written, both the City and Developer will argue that they must follow the Development Agreement standards exactly and approval of the Development Agreement in essence was the public process. I do not want any inference that the Development Agreement now allows for the siting of off-site parks and facilities within the LSRP or any other non-MPD designated space that isn't currently approved for the MPD use identified in table 9.5.

Accordingly, I request that the Hearing Examiner recommend to the City Council that the Development Agreement be revised to clarify and state under the appropriate section of 9.0

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[1] Planning Commission Package July 19, 2011
http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/Planning%20Commission/PC%20Packet%20Material/PCPacket071911.pdf

[2] See Exhibit C #WH-9 Wheeler/Proctor of the MPD Exhibits

- ***That the developer shall not be given open space credit for Lake Sawyer Regional Park now or in the event of any off-site improvements under the Development Agreement.***
    - (It was bought with King County tax payer money-turned over to the city from King County before the MPD's ever existed. The regional park development is the cities responsibility and not for Yarrow Bay to capitalize off while leaving their own development with a lack of facilities and open spaces.)

- ***The Development Agreement shall explicitly state what happens to the property that was designated to be a park/recreation facility if off-site planning is used. Is it left natural, or is it landscaped.***
    - (It should not be allowed to become commercial and/or developable space.)

- ***If the city accepts money from the developer in lieu of parks the money should be held in a dedicated capital Parks Fund for each development; the money should be first used within the development from which it was received to insure that our city receives those parks.***
    - Parks must not be in gated community to insure accessibility by the whole community.

Another thing that can affect the open space is if there is a boundary error and the Developer is the only one holding the detailed map data as it would allow them to count open space that does not exist. I am a Survey Engineer by trade, educated by the only University on this side of the Mississippi that offers this education. I can assure you that boundary errors exist and that in the survey world the existing ground data is held and the only one map data benefits are the developer. If the property is short on acreage the open space will be short but this provision will allow the use of the mapping numbers and if the acreage is larger than the developer can do as he chooses with the excess.

- **The Development Agreement shall have;**
    - **A constraint map that shows all parks, trails, and recreational facilities that they Applicant has current existing site control of and that is properly zoned;**
    - **An initial open space and parks compliance matrix (excel spreadsheet or similar data sheet) that reflects all the MPDs required open space, parks, trails and recreational facilities;**
        - **A requirement that the open space and parks data sheet is updated with each phase;**
        - **That any shortage is accounted for and required to be made up for within the next implementing project**

In conclusion I request that Development Agreement be amended as stated above or be found inadequate and remanded back to the City staff.

PUBLIC SERVICES – PARKS AND RECREATION

88. If a school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

89. 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]

90. The cost of such facilities, including a proportionate share of facilities not fully warranted by the MPD build out, could be provided by payment of fees. [FEIS Mitigation Measure]

91. 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

92. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.

93. Dependant 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.

94. The Development Agreement shall include language authorizing public access to parks and trails facilities.

95. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

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.

97. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

Lawson:

PUBLIC SERVICES – PARKS AND RECREATION

91. If the Lawson Hills school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

92. The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities.

93. 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

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98. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

From: Larry L. Baird 25214 SE 357th St, Auburn, WA 98092 8-3-2011

Land-Use and Project Elements

MPD Approval Ordinances 10-946 & 10-947, Exhibit C--Conditions of Approval, specifically call out for land-use and project elements to be addressed in the Development Agreements (in ***bold italic red***).

Condition 129. *"The project shall provide a mix of housing types in conformance with the MPD Design Guidelines.* ***The Development agreement shall set targets for various types of housing for each phase of development."*** The Villages MPD states that there will be "a maximum of 4,800 residential units (approximately 3,600 single family detached and approximately 1,200 attached dwelling units)". The Villages Development Agreement states in section 4.2 that there will be "3,600 Single Family Units (MPD-L and MPD-M) consisting of Single Family detached, courtyard homes, Single Family attached buildings containing four (4) or fewer units, and Cottages". This is a dramatic departure from 3,600 single family detached units. This does not comply with the requirement to be in conformance with the MPD Design Guidelines.

Section 11.8 of the Development Agreement states that the housing types in each Phase of the MPD shown in Table 4-8-4 are only targets, not requirements. This lack of specificity gives the City no confidence in what is going to be built in each phase of the buildout.

Condition 134. ***"The Expansion Area process shall be clarified in the Development Agreement."*** Section 10.5.3 of the Development Agreement states 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." Land, which may be acquired many years later, should not be allowed to vest to a much earlier set of regulations?

Condition 136. ***"A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement."*** Table 4.8.4 provides a unit count, but not percentages, for single family and multifamily units from which unit split percentages can be calculated. However, there are no unit use split percentages for commercial for the categories of commercial, office and industrial. This requirement needs be incorporated into the Development Agreements.

Condition 142. ***"Detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion."*** This condition does not appear to be addressed in the Development Agreements including Exhibit H. The drawings and footnotes in section 6 are not adequate to show that this requirement is adequately addressed in the Development Agreement.

EXHIBIT 74

Condition 144. ***"Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement."*** Proposed setbacks have been provided in section 5 of the Development Agreements. Front yard setbacks for all residential density categories are only 10 feet from the street yet the Black Diamond zoning code **18.30.040 Development Standards** requires a 20 foot setback for a minor street and 25 feet for a major street.

Condition 148. *"The Applicant's request for reduced parking standards in the Mixed Use Town Center as identified at p. 13-4 of the MPD application is granted. All other requests for deviation in the Chapter 13 of the MPD application are denied except for those deviations, mostly utility and street standards that are identified in the recommendation as amenable to further review in the development agreement process. Any MPD deviations to the Sensitive Areas Ordinance are denied, because* ***BDMC 18.98.155(A) provides that the Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs."*** This requirement is not reflected in the Development Agreements.

Section 4.10 Developer Improvements (the following paragraph appears in both the Villages and Lawson Hills Development Agreements)

Section 4.10 states: "*The Villages MPD design and mitigation measures described in this Agreement, including the MPD Permit Approval and its Conditions of Approval in Exhibit "C", mitigate any probable significant adverse environmental impact directly identified as a consequence of MPD Permit Approval and this Agreement. Additionally, some elements of the MPD Permit Approval and Comprehensive Plan (Exhibit "E"), for which the City might adopt impact fees under RCW 82.02.050 et seq. As designed and with full implementation of all the mitigation measures, The Villages MPD build-out will fully and adequately mitigate the probable significant adverse environmental impacts of The Villages MPD and, that through such mitigation measures, provisions will be made for: (i) the facilities needed to serve new growth as a result of The Villages MPD within the City and (ii) the Master Developer to construct or pay a proportionate share of the cost of completing certain system improvements. Unless otherwise provided elsewhere in this Agreement or in the MPD Permit Approval, the mitigation measures listed this Agreement and in Exhibit "C" are in lieu of the payment of any impact fees that the City has the authority to impose pursuant to RCW 82.02.050 et seq., including any amendments thereto, such that no impact fees shall be imposed on any Implementing Project during the term of this Agreement except for those impact fees explicitly allowed in this Agreement. This section applies to the MPD Permit Approval and to City infrastructure and City fees associated with the Build-Out of the MPD. Nothing in this section applies to preclude subsequent environmental review of Implementing Projects under the State Environmental Policy Act ("SEPA"), and Implementing Projects are expected to undergo additional SEPA review.*"

There is no possible way the City of Black Diamond can know prior to the start of this development that the planned and agreed to mitigations will "adequately mitigate the probable significant adverse environmental impacts of The Villages MPD". Therefore this section should not be approved and should be deleted from the Development Agreement.

Before the City of Black Diamond Hearing Examiner
Regarding Overall Noncompliance of MPD Development Agreements

This testimony is a summary of a significant number of Development Agreement deficiencies where the agreements fail to comply with MPD ordinance conditions, are non-compliant with municipal code, are in conflict with State law, or are incomplete. This summary is drawn in large part from verbal and written testimony submitted by Robert Edelman, Peter Rimbos, Gil Bortleson, Cindy Proctor, Cindy Wheeler, Peggy Sperry, Jack Sperry, Sheila Hoefig, and the Covington Water District. That testimony and testimony submitted by other members of the public, organizations, and other agencies critical of the Development Agreements are hereby adopted by reference.

This compilation is by no means exhaustive. It was written to indicate the extent and seriousness of Development Agreement deficiencies. If the problems are not corrected then the Examiner will not have sufficient information to make a recommendation, notwithstanding addition of conditions for approval – the deficiencies are far too extensive. In short, the Development Agreements are not ready for consideration by the City Council.

It is recommended that the Examiner remand both the Villages and the Lawson Hills Development Agreements to the City Staff for correction and necessary additional information as provided for by Section 2.20 of the City of Black Diamond Hearing Examiner Rules of Practice and Procedure. In the event of such a remand, the procedure provides that "the parties shall have an opportunity to review, comment upon, and submit rebuttal to the information, analysis, or other material submitted". In view of the extent of the corrections and additional information required, it is recommended that the Examiner reopen public hearings afterwards as contemplated by the rules of procedure.

EXHIBIT 75

I. Failure to Comply with MPD Ordinance Conditions

The following is a partial list of non-compliance with MPD Ordinance Conditions:

1. Transportation Credits and Cost Recovery

Condition 10 requires in part:

> The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

This requirement is not met. The mechanisms for specifying which projects are eligible must be spelled out.

Footnotes to tables 11.5-1 and 11.5-2 reference paragraphs 11.3(B) and 11.4(B) for cost recovery mechanisms. When boiled down to their essence, these paragraphs say that the Master Developer will be reimbursed for its proportionate share of the costs (less whatever the City is able to cover through other sources such as grants) based upon who benefits. This is hardly a specification – the particular projects that are eligible must be specified and the precise method for determining proportionate share must be detailed.

2. Pro-Rata Shares of Transportation Mitigation

Condition 18 states:

> The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

The Villages Development Agreement Section 11.5(B) addresses this requirement but does not satisfy it.

> The transportation impacts of the Villages MPD were assessed based on the cumulative impacts of The Villages MPD and the Lawson Hills MPD in the EIS. During any time period in which The Villages MPD proceeds before the Lawson Hills MPD or vice versa, the transportation mitigation obligations shown in Tables 11-5-1 and 11-5-2 and triggered by the Traffic Monitoring Plan shall be borne by the

MPD that is proceeding alone. During any time period in which both MPDs are proceeding, the transportation mitigation obligations outlined in Tables 11-5-1 and 11-5-2 will be shared by The Villages and the Lawson Hills MPDs on a proportionate share basis.

Responsibilities are set by this statement. However, the requirement to establish pro-rata shares as required by the condition is not satisfied. Stating that the obligations will be shared on a proportionate share basis does not establish what the pro-rata share will be nor does it even specify how one would determine pro-rata share.

3. Allocation of Traffic Mitigation Construction Responsibilities

Condition 34.a states:

> The Development Agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.

The Development Agreement does not specify which entity, the developer or the City, will build each project. Further, there is no discrete identification of which projects will qualify for cost recovery. Only very general criteria for determining cost recovery are discussed.

4. Lawson Hills Access to Privately-Owned Parks and Trails Facilities

Lawson Hills MPD Condition 92 requires:

> The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. <u>The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities</u>. [Emphasis added]

The Development Agreement has the following statement in Section 9.9.3:

> Pursuant to Condition of Approval No. 92 of the MPD Permit Approval, public access is authorized to all Parks and trails unless otherwise determined by the Designated Official.

This is not a guarantee of public access as required by the MPD condition. Contrary to the MPD requirement, this section of the Development Agreement would give the Designated Official the power to <u>deny</u> public access.

5. The Villages Access to Parks and Trails

The Villages MPD Ordinance Condition 94 on parks and trails access is similar to that of Lawson Hills. It requires:

> The Development Agreement shall include language authorizing public access to parks and trails facilities.

The Development Agreement paragraph 9.9.3 provides:

> Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails unless otherwise determined by the Designated Official.

Again, this language which is supposed to authorize public access gives the Designated Official authority to deny public access.

6. Lawson Hill Open Space

Lawson Hills Condition 145 requires

> 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.

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 and therefore have not met the requirements of Condition 145.

7. Dedication of Open Space

The Villages Condition 152 and Lawson Hills Condition 156 require:

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

The Development Agreements fail to specifically identify "when open space must be dedicated". The requirement for specificity demands either a time-line or identification of

discrete events that immediately precede approval, completion or termination of the various components of permitting and construction including open space dedication.

8. Detail on Open Space Protection

The Villages Condition 153 and Lawson Hills Condition 157 require:

> Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement. [Emphasis added]

The Development Agreements fail to provide the specific detail required by this condition. The requirement for specificity demands discrete identification of which properties will be dedicated to the City, which will be protected by conservation easements, and which will be protected and maintained by other mechanisms. These cannot be left to future decision.

9. 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 BDMC as of the date of MPD Permit Approval.

The City and Yarrow Bay contend 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.

As a result of improperly identifying vesting, the Development Agreements' Exhibit "E" has the wrong version of the vested BDMC and the agreements do not properly identify the correct rights and entitlements for implementing projects.

10. Revisions to Land Use Map

Lawson Hills MPD Condition 151 requires:

> Prior to approval of the Development Agreement, the legend on Figure 3-1 (Land Use Plan) must be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area.

There has been no revision to Figure 3-1 since MPD Ordinance approval. Instead, Section 4.1 appears to challenge the MPD Condition and substitute conceptual site plans in Exhibit A for Figure 3-1. To do so requires a revision to the MPD Ordinance.

11. Funding Agreement Inclusion in Development Agreement

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. [Emphasis added]

The requirement that the fiscal impacts analysis include a specific "MPD Funding Agreement" is not met. 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. Instead it is structured as a stand-alone agreement complete with an execution date, recitals, contract boilerplate clauses and its own signature block. Its terms are inconsistent with those of the Development Agreements in which it is supposed to be included.

12. Fiscal Analysis Exact Terms and Process

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. [Emphasis added]

The Development Agreements fail 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.

II. Non-compliance or Conflict with the BDMC and/or State Law

The following address where the Development Agreement(s) are non-compliant or conflict with the BDMC and/or State law.

1. Incorporation of MPD Conditions of Approval

BDMC 18.98.090 requires:

> The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals (preliminary plat, design review, building permit, etc.). [Emphasis added]

All of the MPD conditions of approval have not been incorporated into the Development Agreements as required by the ordinance. It is important that this be done, even if by reference, since it is the Development Agreements that are recorded against the properties. This is explained and emphasized in the Staff Report. However, the Staff Report failed to include all conditions of approval in its compliance matrix.

2. Sizes of Recreation Facilities and Trails

BDMC 18.98.150(B) requires

> The MPD permit and development agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance.

The Development agreement fails to identify the sizes of the recreation facilities and trails as required by this requirement. Identification cannot be deferred.

3. Water Service Provider

RCW 70.116.060(3)(a) provides

> (3) Following the approval of a coordinated water system plan by the secretary:
> (a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

The Development Agreement for The Villages fails to recognize that the City is not the legal water service provider for approximately 98 acres along the western boundary and that the service provider is the Covington Water District (CWD). Section 7.2 of the Development Agreement titled *Water System Standards* presumes that water service will be provided to this area by the City consistent with its Water System Plan in Exhibit "E". False assertions were made in response to agency comments included in the Water System Plan that the CWD and the City had reached tentative agreement on transferring the referenced service area.

The Development Agreement cannot proceed until it is revised to correct the conflict with State law.

4. Surcharge Agreement

The potential surcharge agreement in Exhibit "N" violates both the RCW and BDMC. This surcharge agreement is structured to reimburse Yarrow Bay for expenses they incurred under the existing funding agreement to support permitting activity by the City.

BDMC 18.98.040(C) requires that the expenses be paid by the applicant.

> 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.

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.

5. Master Development Review Team

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]

The Funding Agreement in Exhibit "N" would create an organization called the Master Development Review Team (MDRT) and give substantial control of the organization and its functions to Yarrow Bay. The organization would exist up through the term of the Funding Agreement at the option of Yarrow Bay.

The power to organize and regulate City government is a power vested in the legislative body of 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.

6. Contiguity of Non-commercial Property

BDMC 18.98.030(C) requires:

> All properties to be included in an MPD must be contiguous, excepting those areas intended to be used for commercial purposes, other than neighborhood commercial.

The Villages non-contiguous commercial area also known as the "North Property" or Parcel B included a strip of high density residential. This is about 9 acres and would contain approximately 200 dwelling units. This area is non-contiguous to the MPD and is not intended for commercial purposes. Therefore this land use violates the municipal code.

IV. Inadequate or Incomplete Definition

Some of the areas discussed below in this section lack adequate definition because of deferral of decisions to City Staff. In his pre-hearing order, the Examiner invited legal argument regarding this issue. The following is provided in response.

BDMC 18.08.070 requires that the terms of the Development Agreement be decided upon by the City Council. This authority cannot be delegated. If the Council wants to use another system, it needs to first amend the Code. It can't ignore the Code requirements in the middle of this process. Further, even if delegation were allowed, the delegation would have to include specific standards to guide staff and a process that would assure the public that staff did not use the delegation in an arbitrary manner (notice; opportunity to be heard; a right to appeal to the Examiner and\or Council; etc.). If delegation were allowed the City Council would only be allowed to delegate authority when it has provided "(1) appropriate standards to define what is to be done, and what administrative body is to accomplish it, and (2) procedural safeguards to control arbitrary administrative action." *State v. Ermert*, 94 Wash.2d 839, 847, 621 P.2d 121 (1980); *Polygon Corp. v. City of Seattle*, 90 Wash.2d 59, 578 P.2d 1309 (1978). Deferral of conditions of the development agreement to a process that lacks clear standards and procedural safeguards satisfies neither of these requirements.

For example, in *Biermann v. City of Spokane,* 90 Wash.App. 816, 822, 960 P.2d 434 (1998), the court found that the grant of an extension of a building permit pursuant to an "unwritten policy" "is an invalid delegation of power and the hearing examiner's reliance upon it was improper." The court made clear that the Hearing Examiner may only rely upon clearly articulated standards and guidelines.

In summary, the municipal code does not permit delegation of approval of elements of the Development Agreements. If it did, case law requires that such delegation be according to strict guidelines.

The following address areas where the Development Agreement(s) provide inadequate information or incomplete information for the Hearing Examiner to assess compliance with requirements of the MPD ordinances.

1. **Covington Water District Service Issue**

   The jurisdictional and water service issue between the City and the Covington Water District (CWD) described above must be resolved before the Development Agreement can be completed. Section 7.2 of the Development Agreement may have to undergo extensive revision depending upon the outcome. Until the issues are resolved, the Examiner will not have sufficient information to determine if The Villages Water System Conditions of Approval 46 through 54 can be met.

2. **Sewer System Definition**

   Paragraph 7.3.4 of the Villages Development Agreement 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. Approximate facility locations are shown on attached Figure 7.3, final locations are subject to City review and approval.

   Paragraph 7.3.4 of 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.

   These vague paragraphs and conceptual drawings are the only definition in the Development Agreements of how the sewer system will be configured. They are totally inadequate to provide sufficient detail for the Examiner to assess the sufficiency of the systems to handle the projected population growth caused by the developments.

   This lack of information on where the wastewater will be shipped and which direction it will flow is because a new Peak Flow Wastewater Storage Facility is required to handle the increased capacity requirements and the City and County are still debating the design

and location of this peak flow storage facility. Since there are two competing concepts the City and developer should either resolve the conflict or fully develop both concepts and their impact on other aspects of the Development Agreements. Otherwise, there will be no definition of where the wastewater will be discharged, where peak flows will be attenuated, where the pump stations will be located, and even which direction the pumps will send the wastewater. Without this critical information the Examiner will have insufficient information to make a recommendation.

3. **Fiscal Analysis Definition**

Failure of the Development Agreement to meet the MPD ordinance conditions for the "exact terms and process" of the Fiscal Impacts Analysis was discussed above. This is also a case of improper delegation of Council authority to approve elements of the Development Agreements and the resulting lack of information to assess the agreements.

There are at least ten critical areas in the analysis that have been left to be determined by City Staff with the only guidance given is that the decisions must be "reasonable".

The Funding Agreement is included in a manner that indicates it is not actually part of the Development Agreement and that it will (or may) be executed separately. This agreement itself references a potential additional Surcharge Agreement to be executed separately. Unless these agreements are included as part of the Development Agreements and are not to be executed separately then the Development Agreements are not complete.

Without the critical analysis information and without the agreements there is insufficient information in the Development Agreement to make a determination of adequacy.

4. **Access to Parks and Trails**

As discussed above, The Villages MPD Ordinance Condition 94 requires:

> The Development Agreement shall include language authorizing public access to parks and trails facilities.

The Development Agreement paragraph 9.9.3 provides:

> Pursuant to Condition of Approval No. 94 of the MPD Permit Approval, public access is authorized to all Parks and trails unless otherwise determined by the Designated Official.

Deferral of this decision is another example of improper delegation of Council authority and responsibility. The access decisions must be made now and incorporated into the Development Agreement.

5. Characteristics of Open Space

The Villages MPD Ordinance Condition 97 and Lawson Hills MPD Ordinance Condition 98 state:

> The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

The Development Agreement paragraph 9.10 includes an open-ended deferral of permitted activities with the phrase "other similar outdoor sports facilities as allowed by the Designated Official". This is improper delegation of Council responsibility to set permitted activities in the Development Agreements.

6. Conflict with Prior Agreements

Section 3.1 of the Development Agreements includes the provision:

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

The Development Agreements cannot supersede the requirements of prior agreements that involve third parties without their consent. Nor can the Development Agreements repeal or amend a City Ordinance or Resolution. To do so requires legislative action by the City. If this provision is to remain then the Development Agreements are not complete until the consent of all parties to all prior agreements cited in the agreements is obtained and the language is changed to exclude prior City legislative action.

7. Concurrency Plan for Traffic Mitigation

The Growth Management Act sets the requirements for concurrent improvements or strategies to accommodate the transportation impacts of development.

> After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

RCW 36.70A.070(6)(C)(vii)(b)

This requirement is reflected in the City's Comprehensive Plan in Section 7.9.2 which states in part:

> "Local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a transportation facility to decline below standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." (RCW 36.70A.070) The term "concurrent with the development" is defined to mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within 6 years of development. [Quotations and citation in the original]

In the case of the MPDs, improvements will not be in place at the time of development so strategies must be in place. The strategy in the Development Agreement for transportation concurrency is incomplete and lacking the detail necessary. Elements of the strategy have been defined but the overall strategy has not:

A. Mitigation has been defined and locked in for Covington and Maple Valley. The Development Agreement does not allow any modification to these mitigation measures should they prove to be inadequate.

B. MPD Condition 17 has an extensive set of requirements for traffic analysis but use of the model is sketchy and there is no definition of how the results of exercising the model will be used. The model is not validated until 850 construction permits have been issued.
C. A traffic monitoring plan is established in Exhibit "F" which requires monitoring and analysis prior to and at the midpoint of implementing projects. A model of unknown characteristics is used until the regional model from Condition 17 has been created but not necessarily validated. Results derived from an un-validated model are of highly questionable value.
D. MPD Condition 25 requires submittal of a traffic analysis before submitting a land use application but there is no definition of what model will be used for that submittal. In fact, preliminary plat applications have been submitted and approved as complete with analyses using models and techniques of unknown origin. Traffic monitoring was not used so it is uncertain whether the monitoring plan of Exhibit "F" was intended to satisfy Condition 25.

The Development Agreement is incomplete until a cohesive Traffic Mitigation Concurrency Plan is incorporated as required by the Comprehensive Plan. A proper plan will have the following elements:

A. Traffic Analysis Plan – A plan that provides a methodology to determine, analyze, and mitigate future traffic scenarios and includes model assumptions, sensitivity analyses, and assessment of results.
B. Traffic Model Validation Plan – A plan that provides a methodology to validate and re-validate (as necessary) the traffic model against actual data to ensure the model accurately replicates real-world situations for various scenarios. The interim model alluded to in Exhibit "F" must be a validated model if results are to be relied upon. Subsequently, the regional model should be used only after it is validated.
C. Transportation Concurrency Plan – A plan that details how Transportation Concurrency testing will be done and provides a methodology to address when

and how required adjustments in funding, timing, moratoriums, etc. should be made if a particular mitigation improvement fails the Transportation Concurrency test.

D. Transportation Monitoring Plan – A plan to regularly and pro-actively monitor actual traffic to bring mitigation projects into service before the Level of Service is degraded.

E. Financial Plan (Traffic Mitigation Funding Plan) – A finance plan that provides cost-share splits, funding sources, and risks and timing associated with securing needed funds, as well as contingencies.

F. Other Traffic Mitigation Concurrency Plan Elements – The overall plan should include the above elements and be integrated to include needs, tasks, schedules, costs estimates, funding sources, risks, and potential impacts related to each risk factor. The plan should also include the design, construction, maintenance, and operation of the vast transportation infrastructure the MPDs will require.

Unless an overall cohesive plan is incorporated, the Examiner will lack sufficient information to make a recommendation and the Council will lack the information to make an approval decision.

8. Infrastructure Financing

A City Council Work-Study meeting was held on May 12, 2011 on the subject of Community Facilities Districts (CFDs). Yarrow Bay revealed at this meeting that it could not finance the infrastructure obligations under the MPDs without the mechanism of CFDs. According to Yarrow Bay's Attorney, John Hempelmann, it would be too expensive and impossible for his client to complete the infrastructure financing for the MPDs unless they had access to CFDs. For example, there was this exchange at approximately 41.5 minutes into the recording of the meeting (which has been entered as an exhibit and is also available on the City's web site):

> **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 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.

The Villages MPD Condition 157 and Lawson Hills Condition 161 allow the developers to petition for CFDs but approval is at the sole discretion of the City Council.

Based upon the cited statements by Yarrow Bay, the developer has insufficient financing sources to undertake the MPD required infrastructure projects without CFDs. The Development Agreements are therefore not complete until CFDs or some other financing

mechanism is added to the agreements. Approval of CFDs cannot be arbitrarily required by the Development Agreements nor can approval be assumed. The process specified in Chapter 36.145 RCW including petition, public hearings, and legislative approval must be followed..

Respectfully submitted,

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

There are many things about this project that concern me, but I will address only two at this time.

1. In this economy, which does not seem to improve on schedule, I feel it is not a smart move to promise to build six new schools for a development that so far does not exist and possibly never will and not receive any proportional financial support from the company who will make $2 BILLION.

We have had to cut programs and lay off teachers in order to function fiscally, but somehow f ound $304,000 to pay legal fees while our children lack art, music and librarians as we are used to having them. Also these new schools will undoubtedly be the latest and best which is OK if the current schools or their replacements are equal.

Enumclaw has historically passed bond issues, but I doubt if this one passes unless the economy improves steadily and quickly. What do the people of the Enumclaw school District get out of this deal except debt?

2.

EXHIBIT 76

Development Agreement Hearings July 11, 2011

Testimony of:

Robbin Taylor
32110 Botts Dr
Black Diamond, WA 98010

~ *City enforcement of Conditions, Covenants and Restrictions* ~

Lawson Hills MPD Development Agreement 5.4.3 states:

"The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Lawson Hills MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 including the requirement to obtain a sign permit from the City and review and approval by the Design Review Committee. The Master Developer or Home Owner's Association shall provide enforcement for signage on private property. The City shall enforce the standards within public right-of-way and may enforce the standards on private property."

The above section references BDMC 18.82. BDMC 18.82.060(B) and following sets the standards for real estate signs in all zones. Per 18.82.060 no sign permits are required for real estate signs. Should the Design Review Committee formulate standards more strict than 18.82.060 then enforcement of such should be a function of the Home Owner's Association through the Conditions, Covenants and Restrictions, and not a function of City staff.

EXHIBIT 77

~ City enforcement of Conditions, Covenants and Restrictions – Con't ~

Yet the final sentence of 5.4.3 states, that the City shall enforce **the standards** (emphasis mine) within public right-of-way and may enforce **the standards** on private property. City staff has no legal authority to enforce ANY standard outside of the Black Diamond Municipal Code and the Master Developer has no legal authority to grant enforcement powers to the City. If the Master Developer, The Design Review Committee and the Home Owner's Association desire more strict standards than is outlined in the Black Diamond Municipal Code, then this would in fact be a function of the C, C & R's and hence enforcement would fall to the Home Owner's Association.

Likewise, section 5.4.4 states the Master Developer and/or Design Review Committee may require stricter sign standards and limits than those contained in BDMC 18.82. According to 5.4.3 the City would then be responsible to enforce those standards. Anything stricter than the Black Diamond Municipal Code, in any area of the Code, should be enforced by the Master Developer, the Design Review Committee, the C, C & R's and the Home Owner's Association, not City staff.

~ *Change in Parcel Designation* ~

Development Agreement 4.4.3 states that a development parcel designated "school" may revert to MPD-M and this would be considered a "minor" amendment and therefore would only require an administrative decision. Following are reasons why this action should be considered a Major Amendment.

Increase in Dwelling Units

Per Lawson Hills MPD Permit Approval, Conditions of Approval no. 132, the number of dwelling units for Lawson Hills is set at 1250 units. Reverting the 10.3 acres of the L5 "school" site will increase this number by 72 to 124 totaling between 1322 and 1374 dwelling units.

Per BDMC 18.98.100 to be considered a minor amendment the change must meet all the criteria set forth in 18.98.100(A–I). A change in the number of dwelling units fails to meet criteria (A) and therefore cannot be considered a minor amendment, but must go through the process for a major amendment.

Material Modification

Per Development Agreement 10.4.2, the Developer wants ANY change that does not materially modify the intent and policy of the Development Agreement to be considered a "minor" decision. Increasing the number of dwelling units from 1250 to a maximum of 1374 is a material change not only to the Development Agreement, but also to the Lawson Hills MPD Permit Approval Condition no. 132.

4.4.1 references the fact that a parcel can move up or down one density level with just a minor amendment, but in no instance can a development parcel move greater than one level without that becoming a major amendment. Changing a development parcel from one classification to another classification should be considered a major amendment. For example the developer could change an MPD-L to Commercial and it would still be considered a minor amendment, yet this would be a MAJOR change to the intent and policy of the Development Agreement.

Skirting a Rezone

In 4.4.3 the Development Agreement states that any minor amendment to the MPD Permit Approval would be considered to be a Type-2 decision as stated in 12.8.14(A). The developer may decide to revert to MPD-M, yet allow the parcel L5 to remain designated as "school", thereby skirting the requirement of an MPD site specific rezone. Such a rezone is a Type-4 decision which requires a public hearing as stated by BDMC 18.08.070. "MPD-M" is not the same thing as "school" and should a school site revert to MPD-M the developer should be required to rezone the site.

Abutting the Perimeter

4.4.2 states that NO development parcel abutting the perimeter of the Project Site can increase in density without a major amendment to the MPD Approval Permit. "School" site L5 abuts the perimeter and changing a "school" to "MPD-M" would not only be a change in density but also a change in use and should trigger the process for a major amendment.

Request to shift densities

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

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

Summary

Due to MPD Permit Conditions of Approval nos. 132, 137, 167, as well as Black Diamond Municipal Code 18.08.070 and 18.98.100(A) any change of L5 from "school" to "MPD-M" should be considered a Major Amendment.

Due to the fact that Ms. Rogers plainly stated that the applicant had no desire to shift between land use catagories during the MPD Application hearings, then the MPD Development Agreement comes back and states the opposite clearly shows "development creep". This type of Land Use change was not addressed in the Conditions of Approval as it was not requested. Therefore; it should not be allowed into the Development Agreement. If it is allowed to stand, it should only be allowed as a major amendment.

~ *Project Office* ~

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

From the minutes of the Closed Record Hearing dated July 14, 2010 during the closing arguments Councilmember Saas asked how Botts Drive would be addressed. Ms. Rogers reviewed a proposed additional condition and discussed the number of existing trips. On the audio recording of this discussion at mark 1 hour, 52 minutes, 50 seconds Ms Rogers states that Botts Drive would be built out to the appropriate street classification warranted to carry the projected traffic in the City's Engineering Traffic Design Standards. Should development increase traffic by 10% they would be required to build out Botts Drive to the street standards appropriate for that amount of traffic. Standard ITE calculations would be 10 trips per day per home. With 12 homes that would be 120 trips per day.

MPD Permit Approval, Condition no. 31 requires that Botts Drive be built out to Local Access Street Standards should parcel L22 be developed and access Botts Drive.

There are currently 11 occupied residences that access Botts Drive. Botts is a substandard road where oncoming traffic must hug the edge of the pavement in order to pass one another (see attached photos 1 & 2). The building out of Botts Drive is only discussed in light of permanent development accessing Botts. There is no discussion of the impact of a project office and the related project traffic on Botts Drive. Not to mention the fact that a project office can be used for an undetermined amount of time, Botts Drive could be impacted greatly and no improvements would be required. I would submit that a project office would create a situation where mitigations must be made to Botts Drive.

YarrowBay's current office does not sit directly next to Botts Drive, though. It must be accessed via a narrow gravel easement (see attached photos 3 & 4), which has difficulty holding up under the continued use by horse trailers and large pickup trucks. Since this is a private easement it cannot be widened or paved and therefore there is no mitigation possible for this situation other than a separate access for the project office, or simply finding another location for this future office.

~ Project Office - Concluded ~

If the use of this residence is approved for a project office, then mitigations to Botts must be made, and the Developer should have to create an alternate route to access this office which does not impact the narrow gravel easement currently in use.

~ School Mitigation Agreement ~

The MPD Conditions of Approval no. 99 (attached) clearly states that the School Mitigation Agreement must be referenced in the Development Agreement application. A School Mitigation Agreement was entered as Exhibit 6 in the Open Record Hearings, and referenced as Exhibit 6 in the Conditions of Approval no. 99. Conditions of Approval no. 99 states that school mitigation measures may be addressed in the Development Agreement. The School Mitigation Agreement was referenced ***by name*** in the Development Agreement in section 13.3 (attached).

The School Mitigation Agreement was:

- an Exhibit in the Development Application
- supposed to be referenced in the Development Agreement per the Conditions of Approval no. 99
- referenced in the Development Agreement in Section 13.3

There cannot be any part of the Development Agreement that is off limits for testimony, as the Development Agreement Hearings are the only opportunity for the citizens to call out discrepancies between the MPD Ordinances Conditions of Approval and the proposed Development Agreement.

Any testimony on the subject of the School Mitigation Agreement must be allowed.

Development Agreement Sections:

4.4.1

4.4.2

4.4.3

4.7.1

5.4.3

5.4.4

10.4.2

12.8.14(A)

13.3

4.4 MPD SITE PLAN AMENDMENTS

The following future MPD Site Plan amendments are allowed pursuant to the process and standards found in Section 12 of this Agreement. Pursuant to Condition of Approval No. 138 of the MPD Permit Approval, the frequency of MPD Site Plan Amendments is limited to once per calendar year and shall be requested by the Master Developer by June of each year, with the exception of year one, when an amendment may be requested later than June, and except as noted below. MPD Site Plan amendments shall not allow Development of more Dwelling Units or square feet of non-residential Development than the total amounts permitted under Subsections 4.1 and 4.2.

4.4.1 The residential density ranges (i.e. MPD-L, MPD-M, and MPD-H) of any Development Parcel can be adjusted one category up or down pursuant to the MPD Permit Approval Minor Amendment process outlined in Subsection 12.8.14. For example, MPD-L may move up to MPD-M, or MPD-H may move down to MPD-M. In no instance may a Development Parcel move up or down more than one density range from its original designation as depicted on Exhibit "A" unless a Major Amendment to the MPD Permit Approval is approved pursuant to BDMC 18.98.100 (Exhibit "E").

4.4.2 Pursuant to Conditions of Approval Nos. 137 and 167 of the MPD Permit Approval, no Development Parcel abutting the perimeter of the Project Site can increase its density range without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit "E"). Further, no Development Parcel can increase to MPD-H 18-30 du/acre without a Major Amendment to the MPD Permit Approval pursuant to BDMC 18.98.100 (Exhibit "E").

4.4.3 A Development Parcel that is classified as school in Exhibit "A", but is not dedicated to the Enumclaw School District pursuant to the School Agreement, may revert to the MPD-M density range pursuant to a Minor Amendment to MPD Permit Approval per Subsection 12.8.14(A). Or, the Master Developer may elect to keep the Development Parcel designated school and proceed with Development provided the proposed use is authorized in the City's Public (PUB) zoning district per BDMC 18.46 (Exhibit "E") without any amendment to the MPD Permit Approval or this Agreement. The Master Developer shall inform the Designated Official of its election by written notice prior to submitting an application for an Implementing Project on such a Development Parcel.

4.5 INTERFACE WITH ADJOINING DEVELOPMENT

When an Implementing Project application for a Development Parcel along the Project Site perimeter is submitted, and the abutting property outside the MPD to such Development Parcel is already developed on that submittal date, then the Development Parcel is subject to the section of the MPD Framework Design Standards and Guidelines entitled "Interface with Adjoining Development," which provides guidelines to ensure a transition between the Development within the Lawson Hills MPD that abuts Development outside the Project Site but within City limits.

4.6 EXPANSION PARCELS

Pursuant to Conditions of Approval No. 166 of the MPD Permit Approval, any or all of the Expansion Parcels as set forth in Exhibit "S" may be developed during the Build-Out Period subject to the process and standards set forth in Sections 10 and 12 of this Agreement.

4.7 ADDITIONAL USE STANDARDS

4.7.1 Construction/Field Offices

Construction/field offices are allowed to be located within existing buildings or modular structures throughout the Project Site subject to the City's approval. There is no time limit for such uses, provided that until the use is terminated, the use shall count towards the maximum amount of non-residential development within the Lawson Hills MPD.

4.7.2 Neighborhood Commercial Design as Corner Stores

Pursuant to Condition of Approval No. 132 of the MPD Permit Approval, the Neighborhood Commercial uses are the permitted uses authorized in the City's Neighborhood Center (NC) zone as specifically outlined in BDMC 18.36.020 (Exhibit "E"). An Implementing Project application that includes Neighborhood Commercial cannot be approved by the City without a Minor Amendment of the MPD Permit Approval. The following additional criteria shall also apply to Neighborhood Commercial uses:

1. Automobile fueling stations, limited to four pumps, and limited to no more than four thousand square feet for a convenience store.

5.4 SIGNAGE STANDARDS

5.4.1 Sign Standards Applicability

All Implementing Projects within The Lawson Hills MPD shall be subject to the definitions, standards, requirements and processes found within BDMC Chapter 18.82 (Exhibit "E") as well as the standards set forth herein.

5.4.2 Sign Permits Review Process

Sign permits shall be reviewed pursuant to BDMC Chapter 18.82 (Exhibit "E") and Section 12 of this Agreement.

5.4.3 Real Estate and Construction Sign Program

The Design Review Committee will create a Construction and Real Estate Sign Program that includes standards for the size, number, location and removal of construction and real estate signs within The Lawson Hills MPD. This sign program shall at a minimum meet all requirements related to construction and real estate signs within BDMC Chapter 18.82 (Exhibit "E"), including the requirement to obtain a sign permit from the City and review and approval by the Design Review Committee. The Master Developer or Home Owner's Association (HOA) shall provide enforcement for signage on private property. The City shall enforce the standards within public right-of-way and may enforce the standards on private property.

5.4.4 Design Review Committee Review

The Master Developer and/or Design Review Committee may require stricter sign standards and limits than those contained in BDMC Chapter 18.82 (Exhibit "E").

5.4.5 Retail Area Identification Sign(s)

A. Allowed Sign Area

Tenants within a retail area consisting of eight or more tenants may consolidate the total allowed area of ground signs for all tenants within the retail area into one or more retail area identification signs. The allowed sign area per tenant for a ground sign is 50 sq. feet one side, 100 sq. feet both sides. Individual tenants within a retail area for which there is a retail area identification sign shall not be allowed individual ground signs. Regardless of the number of tenants, the maximum sign area for each retail area identification sign shall be 200 sq. feet, 100

10.4 AMENDMENTS

10.4.1 Amendments to the MPD Approval

An Amendment to The Lawson Hills MPD Permit Approval may be requested by the Master Developer or Master Developer Transferee pursuant to the standards adopted in BDMC 18.98.100 (Exhibit "E") and as further described herein. An Amendment to the MPD Permit Approval shall be considered Minor if it meets all of the criteria set forth in BDMC 18.98.100 (Exhibit "E").

The processes for reviewing Major and Minor Amendments to the MPD Permit Approval are outlined in Subsection 12.8.14 of this Agreement.

10.4.2 Amendments to the Development Agreement

An Amendment to this Agreement may be requested by either the Master Developer or the City pursuant to the standards outlined herein. Amendments to this Agreement that materially modify the intent and policy of this Agreement shall be considered "Major" and shall be reviewed by the same procedures applicable to a new development agreement request. Amendments that do not materially modify the intent and policy of this Agreement shall be considered "Minor" and may be approved by the Mayor. The final determination regarding whether an Amendment to this Agreement is Minor or Major shall rest with the Designated Official, subject to appeal to the Hearing Examiner.

10.5 EXPANSION PARCELS

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

10.5.1 Expansion Parcel Review Process

Pursuant to Conditions of Approval Nos. 166 of the MPD Permit Approval, any or all of the Expansion Parcels may be developed during the Build-Out Period subject to the following process and requirements:

power tools and hammering between seven a.m. and eight p.m. on weekdays, between eight a.m. and six p.m. on Saturdays, and between nine a.m. and six p.m. on Sundays shall also be exempt."

Pursuant to Condition of Approval No. 40, Master Developer nonetheless agrees that it shall comply with the following, more restrictive noise standard: any sound made by the construction, excavation, repair, demolition, destruction, or alteration of any building or property or upon any building site anytime shall be prohibited on Sundays and City holidays and outside the hours of 7:00 am and 7:00 pm, Monday through Friday and 9:00 am through 5:00 pm on Saturday, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C (Exhibit "E").

On a case by case basis, work may be permitted on Sundays if acceptable to the Noise Review Committee; however, no work shall occur outside the hours of 9:00 am through 6:00 pm on Sundays.

12.8.14 Amendments to MPD Permit Approval

A. Minor Amendments: Per BDMC 18.98.100(I) (Exhibit "E"), applications for Minor Amendments to the MPD Permit Approval (as defined in 18.98.100) shall be reviewed by the Designated Official as a Type 2 decision as described in BDMC 18.08 (Exhibit "E").

B. Major Amendments: Applications for Major Amendments shall be reviewed pursuant to BDMC 18.98.100 (Exhibit "E").

12.8.15 Consolidation of Major Amendments

Pursuant to BDMC 18.08.130 (Exhibit "E"), if a proposal by the Master Developer requires a Major Amendment to both the MPD Permit Approval and this Agreement, the applications shall be processed concurrently unless the Designated Official determines that separate processing will result in a more efficient or effective review process.

12.9 BONDING FOR IMPROVEMENTS

Financial surety for improvements required within Section 7 shall be subject to the Black Diamond Engineering Design and Construction Standards (Exhibit "E") as referenced in Subsection 7.1.4. All other permits shall provide bonding surety or other financial guarantee as

13.0 MISCELLANEOUS ADDITIONAL STANDARDS AND REQUIREMENTS

13.1 CONSTRUCTION WASTE MANAGEMENT PLAN

Pursuant to Condition of Approval No. 7 of the MPD Permit Approval, the Master Developer shall comply with the Construction Waste Management Plan attached hereto as Exhibit "J".

13.2 FOREST PRACTICES

Pursuant to Conditions of Approval Nos. 88 and 124 of the MPD Permit Approval, clearing and tree removal will be necessary and may only be proposed after an application for an Implementing Project is proposed for a Development Parcel, or when grading is proposed on another Development Parcel in the vicinity of an Implementing Project to assure a balance of cut and fill for the proposed Implementing Project. All tree removal shall be done in accordance with BDMC 19.30 (Exhibit "E"). In some cases, tree removal necessitated by an Implementing Project or the need to balance cut and fill may result in enough timber value, and in those cases a separate Forest Practices Act approval will be required. To the extent that a Development Parcel or portion thereof is logged for timber revenue, the time period for which the parcel may remain cleared and undeveloped shall be set by condition of the Implementing Project or of the Forest Practices Approval, whichever is more strict. Development Parcels being cleared or logged that are easily accessible to the public will be secured with fencing and signage.

13.3 SCHOOLS

Pursuant to Condition of Approval No. 99 of the MPD Permit Approval, school mitigation is accomplished through the Comprehensive School Mitigation Agreement, dated January 24, 2011, between the City of Black Diamond, the Enumclaw School District and the Master Developer, and approved by Black Diamond Resolution No. 11-727 ("School Agreement").

Amendments to the Comprehensive School Mitigation Agreement shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2; provided, such amendments are: (i) executed by the City, the Enumclaw School District, BD Village Partners, L.P., and the Master Developer, and (ii) otherwise satisfies Condition of Approval No. 99 of the MPD Permit Approval.

Black Diamond Municipal Code:

18.08.070

18.82.060

18.98.100(A-I)

Chapter 18.08 - ADMINISTRATION: PROCEDURES, NOTICE AND APPEALS

Sections: 18.08.070 - Quasi-judicial decisions—Type 4.

A.

Type 4 decisions are made by the city council following a closed record hearing based on a recommendation from the hearing examiner. Type 4 decisions proceed in the same way as Type 3 decisions, except that:

1.

The hearing examiner makes a recommendation to the city council rather than makes a decision;

2.

The city council holds a closed record hearing to consider the recommendation from the hearing examiner. Only parties of record who testified at the hearing examiner hearing may speak at the closed record hearing; however, testimony is limited to discussion about the recommendation from the hearing examiner. All argument and discussion must be based on the factual record developed at the hearing examiner open record hearing;

3.

The city council shall decide the application by motion and shall adopt formal findings and conclusions approving, denying, or modifying the proposal; and

4.

Appeal of the city council decision is to the Superior Court.

B.

Type 4 decisions require public notice as set forth in Section 18.08.120

C.

The following decisions, actions and permit applications require a Type 4 decision:

1.

Rezones (site specific);

2.

Development agreements; and

3.

Master planned developments.

(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 9, 10-7-2010)

Chapter 18.82 - SIGNS

18.82.060 - Temporary signs.

No permit is required for. The following standards shall apply to all temporary signs:

B.

Real estate signs are permitted in all zones and shall be located upon the property to which they apply, except as provided for in this subsection.

1.

Residential "For Sale" and "Sold" Signs. On-premise signs shall be limited to one sign per street frontage not to exceed six square feet in sign area per side, placed wholly on the property for sale, and not to exceed a height of six feet. Directional signs, not to exceed two square feet in area per side, may be placed within the public right-of-way no greater than one-half mile from the property available for sale.

2.

Residential Open House Sandwich Board Signs. Such signs shall be limited to sandwich board signs or similar portable signs and shall be limited to a maximum of one sign per street frontage on the premises for sale and three off-premises signs. Such signs are permitted only during daylight hours and when the broker/agent or seller or an agent is in attendance at the property for sale. No such sign shall exceed five square feet in sign area per side. Signs may be placed within the public right-of-way provided they do not interfere with vehicular or pedestrian traffic or the ability of the city to maintain the right-of-way.

3.

Undeveloped Commercial and Industrial Property "For Sale or Rent" Signs. One sign per street frontage advertising undeveloped commercial or industrial property for sale is permitted while the property is for sale. The sign shall not exceed thirty-two square feet in sign area per side and six feet in height.

4.

Developed Commercial and Industrial Property "For Sale or Rent" Signs. One sign per street frontage advertising a commercial or industrial building for rent or sale is permitted while the building is actually for rent or sale. If freestanding, the sign shall not exceed six feet in height; it shall be located more than fifteen feet from any abutting property line and a public right-of-way line; and shall not exceed thirty-two square feet in sign area per side. For rental space in multi-occupancy buildings, one sign, four square feet in area, is allowed per window.

Chapter 18.98 - MASTER PLANNED DEVELOPMENT [17]

18.98.100 - MPD permit—Amendments to an approved MPD permit.

An applicant may request an amendment to any element or provision of an approved MPD. All applications for amendments shall be deemed either "minor" or "major." An amendment application shall be considered minor if it meets all of the following criteria:

A. Would not increase the total number of dwelling units in an MPD above the maximum number set forth in the approved MPD permit or reduce the number by more than ten percent;

B. Would not increase the total floor area of nonresidential uses by more than ten percent;

C. Would not decrease the minimum, or increase the maximum density for residential areas of the MPD beyond density ranges approved in the MPD permit;

D. Would not decrease the approved amount of open space or recreation space;

E. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;

F. Would not adversely impact the project's fiscal projections to the detriment of the city;

G. Would not significantly impact the overall design of the approved MPD; and

H. Would not significantly alter the size or location of any designated open space resulting in a lowered level of service and does not reduce the total amount of required open space.

I. Minor amendments may be approved administratively in accordance with the procedure set forth in the MPD development agreement, where applicable. Any amendment application that is not "minor" shall be deemed to be major. The final determination regarding whether an amendment is "minor" or "major" shall rest with the director, subject to appeal to the hearing examiner. Applications for major modifications shall be reviewed by the same procedures applicable to new MPD permit requests. The city, through the development agreement for the approved MPD, may specify additional criteria for determining whether a proposed modification is "major" or "minor", but the criteria listed in this section cannot be modified or reduced in a development agreement.

(Ord. No. 897, § 1(Exh. A), 4-16-2009)

Lawson Hills MPD Permit Approval

Conditions of Approval:

31

99

132

137

167

27. Prior to the first implementing project of any one phase being approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

28. The applicant shall apply road design speed control and traffic calming measures so that inappropriate speeds are avoided on neighborhood streets.

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

30. A Green Valley Road Review Committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, but only two community members shall have a vote on the committee regarding any matter. The Committee shall meet as needed, and specifically shall meet to review the study required by Condition 28 and attempt to reach agreement on whether any suggested traffic calming devices should be provided. If the community members of the Green Valley Road Review Committee decide against the traffic calming measures, then the Applicant need not construct them. The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road. The Applicant shall be responsible, at its expense, for drafting a report to the City Council regarding the Committee's findings on the traffic calming devices and on Plass Road.

31. If the development of Parcel L22 will provide access to Botts Drive, the Applicant shall be required to build out Botts Drive to Local Access Street standards as defined in the City's Engineering Design and Construction Standards, concurrent with the development of Parcel L22. If the Applicant extends Botts Drive south across Lawson Creek and connects Botts Drive to other roads within the MPD, which extension shall require a Major MPD Amendment per Condition No. 25 above, the Applicant shall build out the entire length of Botts Drive to Neighborhood Collector standards, as defined in the City's Engineering Design and Construction Standards.

NOISE

32. Each implementing development shall include a plan for reducing short term construction noise by employing the best management practices such as minimizing construction noise with properly sized and maintained mufflers, engine intake silencers, engine enclosures, and turning off equipment when not in use. [FEIS Mitigation Measure]

93. 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

94. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.

95. Dependant 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.

96. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

97. 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.

98. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

PUBLIC SERVICES – SCHOOLS

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

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

CLIMATE CHANGE

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

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

LAND USE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

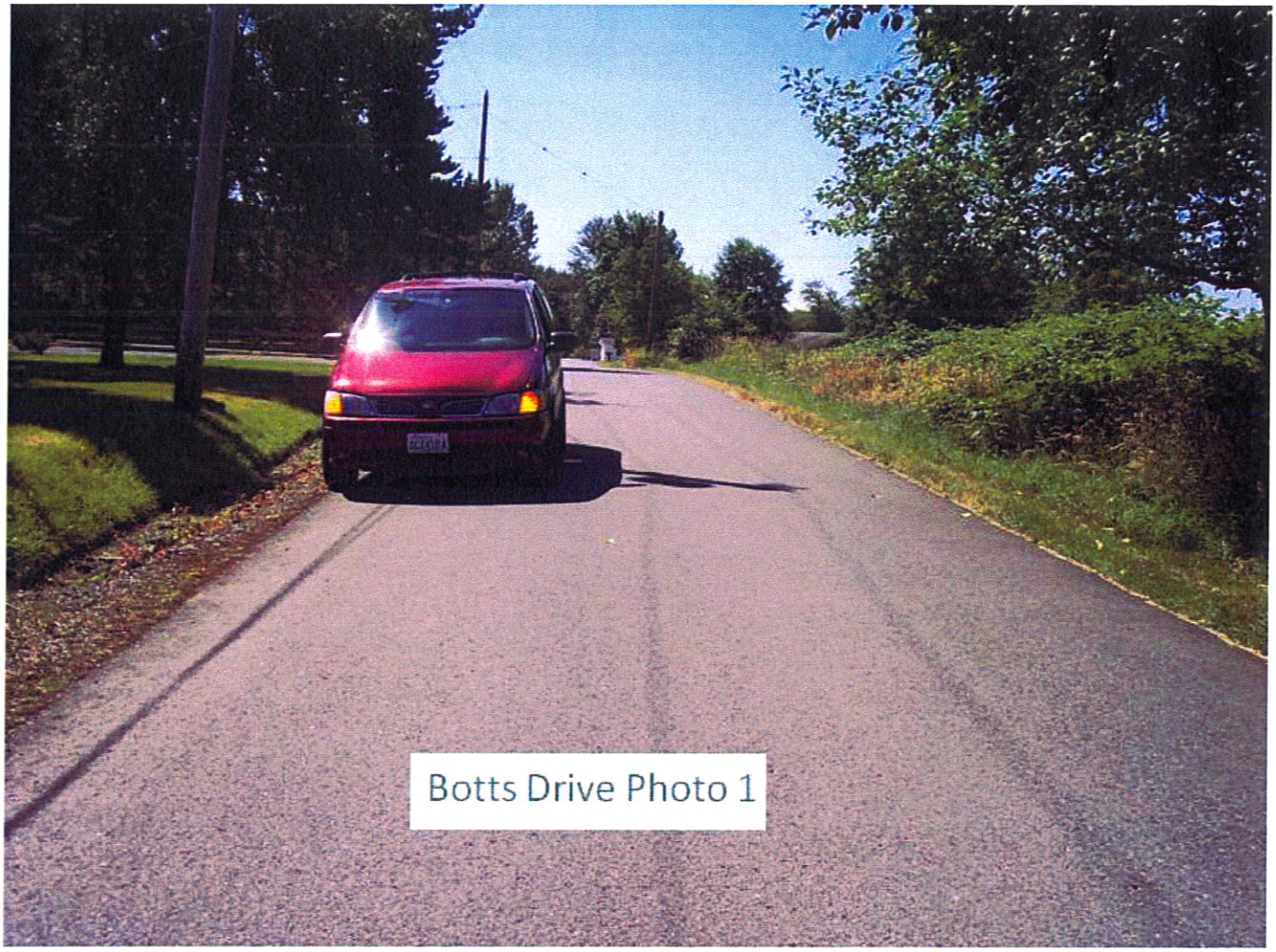
Photographs

Botts Drive Photo 1

Botts Drive Photo 2

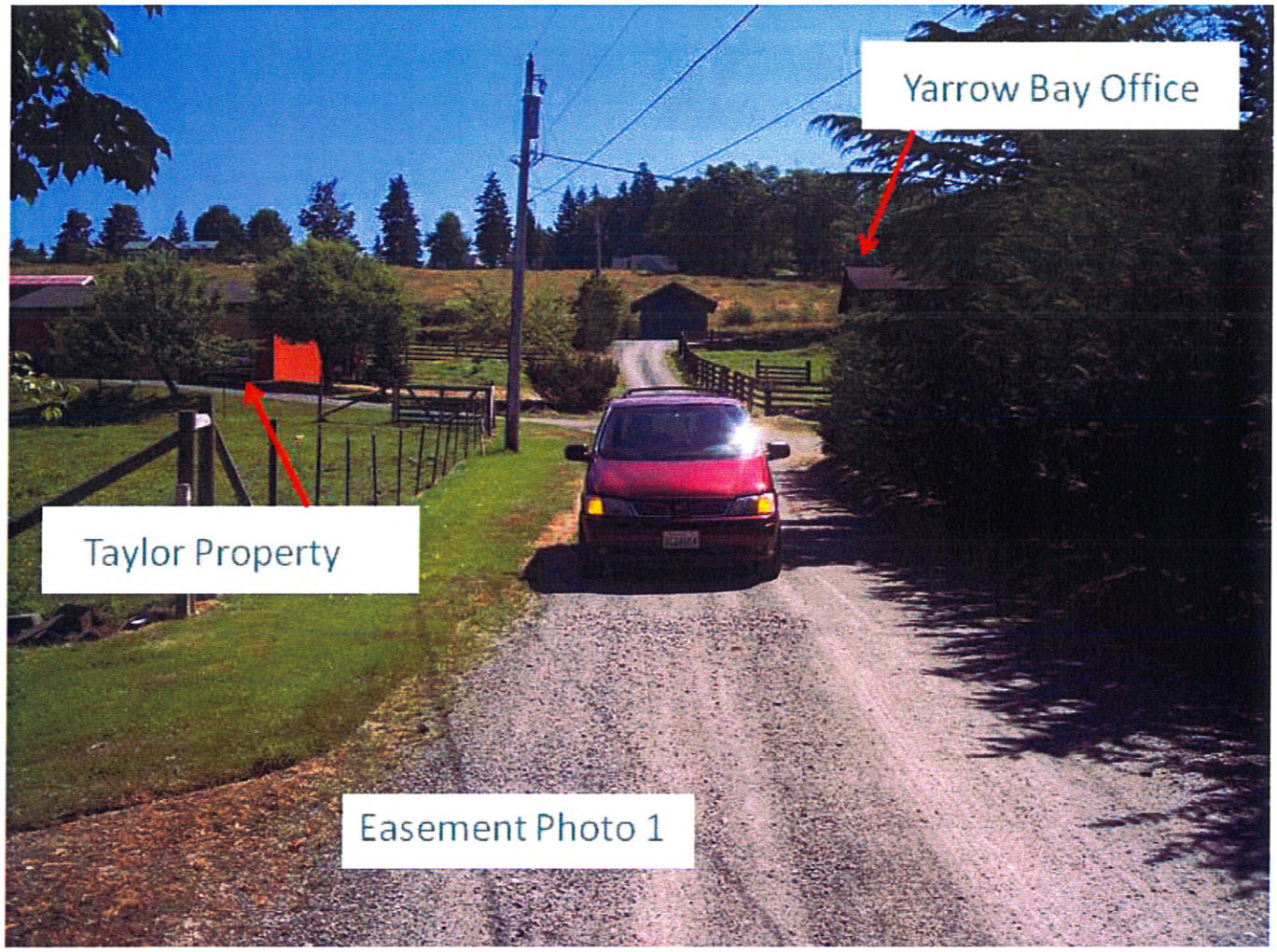
Easement Photo 1

Easement Photo 2



Botts Drive Photo 1

Botts Drive Photo 2


Yarrow Bay Office
Taylor Property
Easement Photo 1

Easement Photo 2

Regarding: MPD Hearings on Yarrow Bay Developments in Black Diamond, Washington

Aug 3, 2011 EXHIBIT 78

From: Max Beers
22134 SE Green Valley Rd., Auburn,Washington 98092
253-833-1760
maxbeers@hotmail.com

While giving oral testimony to the Hearing Examiner, July 13th, I promised a writing describing in more detail my concerns and recommendations. Here is my humble attempt.

In 1996, Plum Creek announced they would be logging above our spring system (Group B, W&S#1 public water system serving 6 families). The King County Health Department worked with us and Plum Creek to ensure the protection of our water quality and flow. Even with KC Health Department imposed restrictions on logging certain areas, immediately after the logging we were required to install a chlorinator to purify the water. Since 1978, when the water system was installed, all water tests had resulted in pure water – no coliforms. Now we must chlorinate.

The Yarrow Bay major development of property on the plateau above our combined properties is a matter of grave concern for the integrity of our water system, and all other like public and private water systems surrounding the development. If a simple logging and replanting can disrupt our system, what is the potential of disruption from a major development? As stated in my oral testimony, I hope and pray that this ends up a non-issue. But, if it is an issue it could be devastating. Increased traffic, earth slides, stream and river contamination, etc., are major concerns for major action and consideration, but **disrupting our life-supporting water systems would be disastrous; it could make our homes un-inhabitable.** Therefore there must be considerable attention to ensure this does not happen. There are many small public and private water systems on the periphery of this monstrous development project.

Washington State RCW 36.70B.170(4) states in part: *A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health or safety.* The Yarrow Bay development project, adding 6,000 homes to rural Black Diamond, is definitely a "serious threat" to our public health and the safety of our drinking water systems.

The remark was made at the oral hearings that the "surrounding residents should not have to worry about their wells and springs". I'm writing this testimony to inform you that at least some of us are worried – seriously worried.

The Growth Management Act (GMA, Chapter 36.70A Revised Code of Washington) requires comprehensive land use planning by counties and cities. The environmental planning goal is to "protect the environment and

enhance the state's high quality of life, including air and water quality, and the availability of water" (RCW 36.70A.020). The GMA requires the designation and protection of "critical areas" to prevent harm to the community from natural hazards and to protect natural resources.

This is an exact quote from Washington State Ecology Dept.'s website addressing Critical Aquifer Recharge Areas (CARAs). It defines Natural Resources as: *wetlands, fish and wildlife habitat conservation areas, and "areas with a critical recharging effect on aquifers used for potable water," which are called Critical Aquifer Recharge Areas (CARAs).* It further states: ***The goal of establishing CARAs is to protect the functions and values of a community's drinking water by preventing pollution and maintaining supply.***

This is my specific area of concern. The MPD conditions do not address sufficiently the potential impact to the surrounding potable water systems. Condition 68 addresses some actions required to avoid contamination of the ground water running into sensitive areas, but does not identify the private and small public water systems directly. Condition 68 actions must be addressed fully to avoid contamination of the ground waters that can run into these sensitive areas, including the surrounding drinking water systems.

The State Ecology Department has issued, available on line, The Critical Aquifer Recharge Areas Guidance Document. This document provides detailed instruction for the 8 steps needed to protect groundwater resources. For example, step 1 (*Identify where groundwater resources are located)* discusses the mapping of existing groundwater systems. I understand that the areas within the MPDs have been mapped for "highly susceptible to ground water contamination" in the Black Diamond Comprehensive Plan. I believe that this should be expanded to mapping the specific public and private water systems which could possibly be affected by these areas of possible contamination. And then **monitoring and working with these water system owners** to ensure no impact to the quality and quantity of their potable water. To go a step further, I believe that the **entire surrounding area of the development project should be mapped showing all small public and private water systems and the monitoring and working with owners, to be absolutely sure that none are forgotten – this is such a critical issue.** We must assure that no home owner's drinking water system is affected by the development project.

The Critical Aquifer Recharge Areas Guidance Document Step 8 (Manage groundwater withdrawals and recharge) addressing maintaining the availability for drinking water sources, and stream-base flows states: *Development has a profound effect on the hydrology of an area. The increase in impervious surfaces and disturbance of natural vegetation result in increasing runoff and decreasing recharge. Local jurisdictions can improve recharge by encouraging methods that increase recharge, such as low impact development and rain gardens.* I'm not an expert in this field, so am not prepared to make specific recommendations for potential methods

to mitigate the disruptions of groundwater flows, like rain gardens, etc. **But experts should be enlisted to do all that is possible to protect these water systems.**

I have been in contact with water specialists in the Washington State Department of Ecology. Answering my specific questions regarding how to ensure protection of our water systems, and supporting my recommendations above, they stated: *"We agree these systems should be monitored for water quantity and quality prior to and during the proposed development. Ecology is not responsible, however, for conducting such monitoring. If developments pose significant risks to local water supplies or water quality,* ***monitoring should be recommended or required as a development condition.***"

They further stated: *"If environmental consequences are observed in association with any construction activity, Ecology's Environmental Report Tracking System (ERTS) should be notified so that Ecology inspectors can respond if appropriate."* If this worst-case scenario does occur, what are our options as home owners? **Is Yarrow Bay and/or Black Diamond ready to step in and provide suitable replacement water systems?** They should be liable. Wouldn't it be appropriate to include a condition to cover this possibility? The alternative is costly lose-lose court processes.

I've attached a scanned copy of the letter from the Department of Ecology.

So in summary, I recommend the addition of one or more MPD conditions (depending on how written) to: 1) map the area surrounding the development project, identifying the specific small public and private water systems (Group B and individual wells and spring systems). 2) Working with these specific water system owners to monitor both quality and quantity of the water systems before, during and immediately after the development project. (3) To enlist the support of experts to determine what systems, such as Low impact Development and Rain Water Gardens, etc., can be installed to mitigate disruption to the ground waters. and 4) To require Yarrow Bay and/or Black Diamond repair or replace water systems which are affected in a worst-case scenario at no cost to the owners.

Thank you for listening, reading and considering.

Your humble neighbor,

Max Beers

Attached: Letter dated July 27, 2011 to Max Beers from Washington State Department of Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 27, 2011

Mr. Max Beers
22134 SE Green Valley Rd
Auburn, WA 98092

RE: Lake Sawyer Watershed Concerns

Dear Mr. Beers:

Thank you for discussing your concerns about the proposed development projects near Black Diamond in the Lake Sawyer Watershed with me and Dave Garland on July 13. We appreciated getting more familiar with your concerns and learning more of the details of the issues surrounding these projects.

Your concerns about the protection of existing private and small public (Class B) water systems surrounding the proposed Yarrow Bay development in Black Diamond are very valid. The following are responses to your specific questions;

1) How does Dept of Ecology ensure the protection of these systems during these large developments? The MPD Condition for Sensitive Areas addressed by Gil Bortleson addresses the protection of ground waters but does not call out directly the application to the drinking water systems.

   We agree these systems should be monitored for water quantity and quality prior to and during the proposed development. Ecology is not responsible, however, for conducting such monitoring. If developments pose significant risks to local water supplies or water quality, monitoring should be recommended or required as a development condition.

2) Is there any monitoring of these water systems during the development process?

   Please see response to #1.

3) What recourse do the home owners have if there is disruption of their water systems?

   If environmental consequences are observed in association with any construction activity, Ecology's Environmental Report Tracking System (ERTS) should be notified so that Ecology inspectors can respond if appropriate. Ecology's ERTS number is (425)649-7229.

4) Have there been any cases in the state where the surrounding water systems have been disrupted?

   Finally, I am not aware of any situation where a water system was disrupted by construction of housing development.

Thank you for your email and your concern for water quality and water supply sources. If you have any questions, please feel free to contact me at 425-649-7288 or email me at tsho461@ecy.wa.gov.

Sincerely,

Tricia Shoblom
Water Quality Specialist

TS:bl

August 1, 2011
To whom it may concern,

This letter comments on the size of the Yarrow Bay land developments and questions whether developments of this magnitude make sense given the recent housing market boom and bust. I think is safe to say that these two periods in time - the peak of the housing bubble in 2006 and the present day "Great Recession" - are important to compare when planning the next 20 years of growth in Black Diamond.

The size of the Yarrow Bay developments - 6,000 new homes and 1.1 million square feet of commercial and business space - is big. In 2006, a completed development would have made a few people a lot of money. But in a post-bubble housing market, the very idea of building and selling thousands of new homes is questionable. With about 20 homes in foreclosure right now in our city, along side short sales and bankruptcies, in addition to normal home sales of an aging population, why? who? what would make these huge developments a good idea?

If the City Council cared about the current homeowners in Black Diamond they would downsize the scale of this growth. Because they can! There is room for negotiation in this deal and we, as citizens of Black Diamond, have legitimate concerns. Current speculation on the future of the housing market, the economy, and employment looks considerably different today than it did only five years ago. We can't ignore the lessons we learned - the American dream became the American scheme. The City Council is putting its trust in an unstable housing industry and we should know better because it is much worse than anyone imagined.

The reality today is that the future is totally unpredictable. To land developers who have the money to spend now this may not be a concern. To the residents and homeowners in Black Diamond, who our City Council members are supposed to represent, this uncertainty could mean debt, or worse, bankruptcy if when selling their homes they are forced to compete with the new houses. The residents of Black Diamond who oppose the development agreements do so because the risk is too great. Unlike rich investors, we can't afford to gamble away our assets.

The development agreements in Black Diamond are a perfect example of the great American disparity of wealth. When so many people in our area are struggling to pay the mortgage, keep a job, and afford gas to get to work, to propose growth seems more like an insult than a economic stimulator. It might be a different story if Yarrow Bay was building a large factory that would employ the whole city. But I don't see that in the development agreement.

This letter is meant to draw attention to the huge contrast between the housing market reality of 2007, and the post-housing-market-crash world we are living in today. The logic behind supporting a massive housing development that would most likely keep the average Black Diamond home value low for over 20 years only makes sense to those who live in a bubble.

Thank you for hearing us out.
Sincerely,

Courtney and Tony Feeney

EXHIBIT 79

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Jim Maurer <kickaha.jim@gmail.com>
Sent: Wednesday, August 03, 2011 7:31 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Jim Maurer
19452 SE 267th St
Covington, WA 98042-5038

EXHIBIT 80

August 1, 2011

To the Council of the City of Black Diamond,

My name is Alison Stern and I have resided at 29739 226th Ave., S.E., Black Diamond since 1977. I have seen many changes to the rural community I chose to live in, some for the better, i.e. the Police Department and some for the worse i.e. the increased traffic and the need for stop lights.

I have been reading and listening to the information regarding Yarrow Bay and their proposed developments. I am supportive of continued, CONTROLLED growth of Black Diamond and feel that your permitting of such a large housing project does not fit with the rural community that Black Diamond represents.

I already have difficulty in pulling out onto 224th/216 when the school traffic for Kentlake school is present, and I am concerned about the increased traffic that is going to occur with the building of more houses. Also, will the traffic from the construction put stress on our already busy streets as there are limited accesses to the development areas?

I have been supportive of the Black Diamond Police Department. My home was robbed when I first moved here and it took many days to get an investigation as we were considered unincorporated Kent. One of the benefits of becoming part of Black Diamond was the police services. Are there plans to increase the number of police officers? Has funding been addressed?

I wonder where the funding will come for the projected 7 new schools. When my area was incorporated into Black Diamond I was still left with paying tax to Valley Medical Center, will the new homes be subject to the same?

Every day I see deer, raccoons, birds of all kinds but if the areas designated for building are stripped of the trees where will they go. We already have had cougars and bears sighted likely due to their loss of habitat.

EXHIBIT 81

Our water quality is important to me and if the land is stripped and covered with asphalt and buildings will this be impacted.
I have seen Lake Sawyer go from a pristine crystal clear lake to one with murky water infested with noxious weeds. Are there provisions to insure the lake stays clean? The banks at the boat ramp are deteriorating, large spikes can be seen in the bulkheads, how will the lake be maintained with the increased use?
The only functioning Black Diamond fire station is close to my home. When will new fire stations be added, how will they be staffed when funds are limited and levies fail?
I remember when you could drive up the hill from now Covington and smell the clean fresh air of Black Diamond but this is gone due to the increasing traffic which will increase again with the new housing developments.
With the clear cutting of the designated Yarrow Bay developments, the trees that afforded wind breaks will be gone, has some measure been addressed to the possibility of increased downed trees during storms?
I am not opposed to growth, but feel that the current plans far exceed that which this wonderful community had envisioned. I realize the project will go ahead, but as a resident I want assurances that the environment, jurisdictional and legal codes will be honored and followed.
Thank you for this time to express my concerns,

Alison Stern

Alison E. Stern
29739 226th Ave., S.E.
Black Diamond, WA., 98010

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Claudia Karll <ckarll@centurytel.net>
Sent: Wednesday, August 03, 2011 8:32 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Claudia Karll
PO Box 2852
Vashon, WA 98070-2852

EXHIBIT 82

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Sue Lindner <lindner100@hotmail.com>
Sent: Wednesday, August 03, 2011 10:02 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Is Black Diamond really prepared to take on more than 12,000 new residents? And that is most likely a very low estimate for the 6,000+ home sYarrow Bay is planning. There is no way the city of Black Diamond is ready for such a project...either with adequate roads, sewer, mitigation or otherwise. Too many project impacts are not
adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Sue Lindner
2620 Perry Ct
Enumclaw, WA 98022-2339
(360) 802-2611

EXHIBIT 83

Brenda Martinez

From:	Sierra Club <information@sierraclub.org> on behalf of John Dunn <jdunn936@yahoo.com>
Sent:	Wednesday, August 03, 2011 7:31 PM
To:	Brenda Martinez
Subject:	Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public. This development is out of scale for its surroundings and will tax existing infrastructure as well as the environment beyond reason

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

John Dunn
PO Box 1024
Vashon, WA 98070-1024

EXHIBIT 84

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Amanda Thomas <athomas_05@yahoo.com>
Sent: Wednesday, August 03, 2011 6:02 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Amanda Thomas
14700 SE Petrovitsky Rd
Renton, WA 98058-8916

EXHIBIT 85

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Elizabeth Borges <borgeselizabeth@yahoo.com>
Sent: Wednesday, August 03, 2011 5:01 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

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* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Elizabeth Borges
PO Box 754
Redmond, WA 98073-0754

EXHIBIT 86

Before the City of Black Diamond Hearing Examiner
In the matter of the Development Agreements

I am a Black Diamond resident. My home is located on Lake Sawyer. While I have difficulties with virtually every major area of these massive Development Agreements (DA's), I will focus on two areas that I am especially concerned with, storm water quality and transportation. In both of these areas the Lawson Hills Development Agreement (LHDA) and The Villages Development Agreement (TVDA) use reactive approaches rather than proactive ones. Doing so will of course make the inevitable deficiencies worse and require more extensive and expensive measures to correct.

Storm water

My concerns with the storm water plan in the DA's are primarily related to phosphorus increases. The DA's contain a commitment made by the applicant, defined in Section 7.4.3A, to "no net increase in phosphorus" in the watershed due to the MPDs. The "net increase..." will be calculated by subtracting the phosphorus loading due to the MPDs from the baseline or current phosphorus loading.

Additional monitoring is required beyond what is described in the DAs during storm events and throughout the year to provide adequate data for calculating the annual phosphorus loading in MPD areas before and after new construction. It is well known that one large storm event can contribute up to 50% of the yearly annual phosphorus loading.

The monitoring must continue until several years after full occupation, since humans will contribute to the pollution. The current DAs only commit to monitoring for about five years after construction starts. The concern is that it may take much more than five years from the beginning of construction to full occupation.

The DAs lack detail on how or what triggers additional actions to correct storm water deficiencies such as when the MPDs are not meeting the "no net increase..." commitment or other requirements. Enforceable provisions are needed.

Transportation

EXHIBIT 87

My concerns as they relate to transportation are that the DA's are substantially deficient in addressing this as a regional issue, their modeling, mitigation and monitoring. Additionally troubling to me is the Black Diamond City Council's actions and omissions in the MPD Approval Ordinances (10-946 & 10-947) as they relate to your (Hearing Examiner) recommendations during those proceedings.

The Development Agreements don't mention when levels of traffic will be even looked at. The MPD Approval Ordinances and Conditions require this to be described in the Development Agreements, so that any needed changes in our roads can be done. The Development Agreements do not even describe how future traffic will be modeled. The Conditions of the MPD Approval Ordinances require this as well.

Black Diamond City Code (BDCC) 18.98.020(G) requires: "Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops...."

Consequently, predicting future traffic volumes along both major and minor arterials is important to any real mitigation plan. Although traffic modeling was discussed in detail during the FEIS Appeals Hearings and the MPD Application Hearings, both before you as the Hearing Examiner, the Black Diamond City Council chose to drastically water down your astute recommendations when passing the MPD Approval Ordinances 10-946 & 10-947. This is very troubling to me. Why would this be watered down like it has?

The DA's have no details on the timing of a revised transportation demand model prior to the issuance of permits for 850 homes (MPD Approval Ordinances 10-946 & 10-947, exhibit B – Conclusions of Law, para. 23B).

The Black Diamond City Council and the Developer do not have a reliable Baseline Traffic Model, as you have inferred and consequently the City of Black Diamond, adjacent cities, King County, WSDOT, and the Developer have no idea what future scenarios will look like, nor what mitigations could even work or cost. The Traffic Demand Model contracted by the City with Parametrix will not produce a Baseline Model that is substantially better than that rejected outright by you, if it doesn't address myriad deficiencies previously identified such as key assumptions, timing, and verification and validation methodology.

How can Transportation Improvement "agreements" with "applicable agencies" be consummated, a few of which are identified in the DA Exhibits, without first developing a "new transportation demand model," then validating it with existing data, and finally analyzing future scenarios to identify potential mitigations to be implemented? This is all required in MPD Approval Ordinances

10-946 & 10-947, Exhibit C--Conditions of Approval, Condition 15. Unfortunately, Condition 15 also states that if "agreement" cannot be reached with the "applicable agency," then it dictates what projects are needed. In effect, the City of Black Diamond dictated "mitigations" to WSDOT, KCDOT, and the citizens of southeast King County cities. That is wrong, cannot be allowed, and must be changed.

You, the Hearing Examiner stated (in the MPD Application Recommendations, Section IV, Findings of Fact, Subsection B Traffic & Parking) "This scale of development justifies the creation of a project specific transportation demand model that accounts for all existing and planned local land uses, is validated for local traffic, contains an appropriately fine grained transportation analysis zone network, considers existing peak hour factors, considers both funded and unfunded transportation improvements that coincide with the build out timeframe for the project, considers safety concerns, attempts to preserve the rural Heritage Corridor, provides a realistic mode split analysis for both transit and non-motorized uses and determines a reasonably accurate internal trip capture rate. Therefore, the project applicant will be required to create a new transportation model that incorporates all the controls identified above and subject that model to peer review and periodic updates.". This "new transportation demand model" required by MPD Approval Ordinances is nowhere to be found in DA's.

Also troubling is that during the EIS stage both SR-18 and the Issaquah-Hobart-Ravensdale-Black Diamond Road were not addressed in the model analyses (FEIS, Transportation Technical Reports, December 2009). The DA's still don't address these two important thoroughfares.

The DA's don't explain how important assumptions will be made, such as how much traffic stays in the City and how much leaves. The Conditions of the MPD Approval Ordinances require this. One of the most sensitive assumptions is that for internal trip capture rates (e.g., how much traffic stays internal to Black Diamond versus commuting outside the City boundaries). Yet the methodology for choosing the final internal trip capture rates or its justification are not even described in the Development Agreements. This is required in MPD Approval Ordinances 10-946 & 10-947, Exhibit C--Conditions of Approval, Condition 14.

How will we know if any estimates of future traffic levels make any sense, if it's not compared to anything and validated? The Development Agreements do not address this and fail to meet several of the Conditions of the MPD Approval Ordinances. The DA's fail to describe any model validation methodology and implementation plan. How the "transportation demand model" will be validated and adjusted must be detailed to assess the adequacy of and, eventual, confidence in the

methodology. They fail to meet the minimal Transportation Conditions imposed upon them as required in MPD Approval Ordinances 10-946 & 10-947, Exhibit C-Conditions of Approval.
Finally with regard to modeling, (Exhibit F-Traffic Monitoring Plan, Section C) it states that all "projects" subject to a "mitigation agreement" reached with an "outside jurisdiction" are exempt from later "modeling" of traffic flows? Why is this? This massive project is one that has truly regional repercussions and should be treated as such.
In regards to mitigation, you as Hearing Examiner rejected the analysis that was used to develop transportation mitigations and, thus, rejected those mitigations. Yet amazingly, the Development Agreements still contain those rejected transportation mitigations. These are mandated under the Black Diamond City Code (BDCC) 18.98.080(A)(4) which requires: "A phasing plan and timeline for the construction of improvements....". You as the Hearing Examiner wrote as Condition 16 in your MPD Application Recommendations, 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.". Amazingly, the City Council eliminated your Condition 16 and did not replace it.

The Maple Valley Mitigation Agreement (Exhibit Q of the Development Agreements) provides for no traffic modeling, no traffic monitoring, and is exempt from all MPD Ordinance Conditions of Approval (Exhibit C). In addition, for a majority of the projects agreed to, the Master Developer will contribute less than 50%. Why such a small amount?
Also required for major developments like MPD's is Transportation Concurrency. The idea being that road system can handle the new levels of traffic as required in the City's Comprehensive Plan and the State's RCW 36.70A.070. The DA's don't even discuss how Transportation Concurrency will be assessed. For any mitigation plan to succeed, at a minimum, Transportation Concurrency must be met. However, the DA's 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, etc. will be made should a particular improvement fail the Concurrency test. Without this critical information, the city and developer do not have a viable and executable Transportation Concurrency plan.
The processes that will be used to show "compliance" with the City's identified "standards and limitations" that would trigger "new permit conditions and mitigations" be "imposed for cumulative impacts" are not described anywhere in the Development Agreements. This is required by MPD

Approval Ordinances 10-946 & 10-947, Exhibit C--Conditions of Approval, Condition 17f i thru v. The burden of proof should be on the Master Developer, not on the City and not the citizens.

King County stated in its EIS comments that there was: "...no mention of Transportation Management; however, it is customary for large-scale developments like these to include Transportation Management Plans (TMP) that address a variety of mitigation measures. In addition to the various roadway and intersection improvements listed in the documents, the TMP should address ... HOV provisions...." The City of Black Diamond responded that "this is not applicable to the EIS process." If so, it certainly should be applicable to the Development Agreement process. However, there is no mention of plans and costs for adequate Transit or HOV coverage in the Development Agreements. The City and the Master Developer cannot have it both ways-either its done in the EIS process or its done in the DA process.

The Development Agreements lack any details on the following items necessary to a successful Traffic Mitigation Plan: (1) Financing (other than the Maple Valley Mitigation Agreement, itself lacking), (2) A schedule to plan, design, finance, build, maintain, and operate the vast Transportation infrastructure required to accommodate an additional 10,000+ vehicles daily and (3) enforcement mechanisms to be used to meet Transportation Concurrency.

King County warned in its comments that since "capacity improvements are expressly prohibited in the Rural Area, a detailed evaluation of existing conditions of the roadways impacted by The Villages & Lawson Hills projects should be made, and mitigation identified to address the "appropriate provisions" requirement in the RCWs.". This has not been addressed, nor is there any plan put forth in the DAs to do so.

Finally, in regards to mitigation, you as Hearing Examiner said, "For both traffic and noise, the Examiner recommends that added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation." (p. 124, MPD Application Recommendations, Section IV - Findings of Fact; May 11, 2010). We are now in the Development Agreement process. What is the added mitigation?

In regards to monitoring, one glaring problem is that in the DA agreements (Exhibit F section B), congestion outside the city limits will be ignored! Even the Maple Valley Mitigation Agreement doesn't require it. This is pure folly. This is a regional issue, given the huge size of the projects. Also, why don't the DAs (Exhibit F-Traffic Monitoring Plan) specify that the improvements will be monitored after construction? Amazingly, in the Development Agreements, Exhibit. F--Traffic

Monitoring Plan, Section D it states that we have to wait until the point "when MPD traffic would increase delay or impact level of service at any intersection on existing roadways to a point at which the new roadway would be warranted." Why wait until we have problems before anything is even considered, let alone planned, financed, and built? This does not meet the Transportation Conditions of the MPD Approval Ordinances. You as Hearing Examiner said the following (Condition 17 MPD Application Recommendations, section VI), "The intersections needing mitigation as identified in the analysis required above shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard." In other words, Transportation Monitoring must be proactive, not reactive.

Also troubling is that in Exhibit F-Traffic Monitoring Plan, Section D it states that for projects "within the State right-of-way" (e.g., SR-169) deadlines only address commencement of "engineering and design of the improvement." This should also apply to construction. By the way, this same language is also used for projects "outside the City of Black Diamond". This does it meet the MPD Approval Ordinances Conditions.

Your recommendations regarding Intersection Level of Service were completely ignored in DAs (Exhibit F, Section D).

Black Diamond City Code (BDCC) 18.98.020(G) requires: "Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops...." The reactive Transportation Monitoring Plan as put forth in the Development Agreements (Exhibit F) does not meet Black Diamond City Code (BDCC) 18.98.020(G).

In Regards to Transportation Monitoring, keep in mind the clear and prudent comments provided by the WA Department of Transportation (WSDOT): "WSDOT supports the staged development plan concept; however, we do not support the monitoring plan concept. Monitoring operations are reactive, and it would not catch problems until they develop. Mitigation for project impacts is proactive, as mitigation needs to be in place ahead of time to anticipate the anticipated impacts....WSDOT will treat each phase of the development separately and will not allow any intersection to degrade below the applicable threshold, LOS D, or pre-development condition." As an example, WSDOT provided: "Impacted segments & intersections on both SR 169 & 516 that operate below LOS D & are considered as having a 'significant adverse impact' per Development

Service Manual Section 4.1.06. These impacted highway segments or intersections would be considered deficient to support the development. Mitigations must be provided to keep the operations above the LOS threshold. Where the LOS is already below the applicable threshold, the pre-development LOS is the condition that must be preserved."

Consequently, a "reactive" Transportation Monitoring Program is patently inadequate at the outset and does not substitute for a "proactive" approach of correctly identifying adequate mitigation up front, nimbly identifying changes early as actual traffic counts are made, and adjusting plans as required before major irreversible traffic problems occur. The DAs are clearly deficient in this area.

The above, in combination of the arguably willful actions of the city council regarding these issues raises red flags in my mind. These MASSIVE projects need to be slowed down now, before we are all forced to pay the price for poor planning and deception for years to come.

Bruce H. Earley
22963 SE 292nd Pl.
Black Diamond, WA 98010
360-886-8286
earlb716@aol.com

Brenda Martinez

From:	Sierra Club <information@sierraclub.org> on behalf of Jennifer Svenson <jensvenson29@gmail.com>
Sent:	Wednesday, August 03, 2011 4:32 PM
To:	Brenda Martinez
Subject:	Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Jennifer Svenson
10515 SW Cowan Rd
Vashon, WA 98070-3055
(206) 567-5201

EXHIBIT 88

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Lynn Johanna-Larsen <ladywillow@earthlink.net>
Sent: Wednesday, August 03, 2011 4:31 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

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Sincerely,

Lynn Johanna-Larsen
21698 98th Ave S
Kent, WA 98031-2010
(253) 856-9489

EXHIBIT 89

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Beth Reiter <bethreiter4@gmail.com>
Sent: Wednesday, August 03, 2011 4:01 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

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* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

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Sincerely,

Beth Reiter
17905 97th Pl SW Apt A4
Vashon, WA 98070-4980
(206) 818-2133

EXHIBIT 90

Brenda Martinez

From:	Sierra Club <information@sierraclub.org> on behalf of James Hesketh <jameswilliamh@comcast.net>
Sent:	Wednesday, August 03, 2011 3:33 PM
To:	Brenda Martinez
Subject:	Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

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* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

James Hesketh
12041SE 31th Pl
Auburn, WA 98092
206-7864

EXHIBIT 91

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Cory And Denise Purkis <dldisanto@comcast.net>
Sent: Wednesday, August 03, 2011 3:33 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

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* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands. This would allow more total suspended sediment to increase dramatically in this watershed.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.Stormwater/urban runoff is cited as an exceptionally high negative impact to the health of our watersheds and the waters of Puget Sound. THis development would have major impacts on water and aquatic health and this needs to be addressed or this development should not be constructed.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Cory And Denise Purkis
14507 SE 78th Way
Newcastle, WA 98059-3248
(425) 226-6102

EXHIBIT 92

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Daniel Christiaens <dchristiaens@wwnorton.com>
Sent: Wednesday, August 03, 2011 3:33 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 3, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

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Sincerely,

Daniel Christiaens
566 Elma Ave NE
Renton, WA 98059-4844

EXHIBIT 93

To: Mayor Rebecca Olness

Black Diamond City Council Members

Mr. Steve Pilcher, Director of Community Development

cc: Mr. Phil Olbrechts, Hearing Examiner

Statement By: Susan Harvey

30308 SE Lake Retreat S. Drive

Ravensdale, WA 98051

susandharvey@hotmail.com

The Development Agreements between BD Village Partners, L. P. (Limited Partnership) and the City of Black Diamond and between BD Lawson Partners, L. P. and the City of Black Diamond are more than documents of plans for Black Diamond and SE King County, they are the means through which business will be conducted for decades to come. Agreements are being made that determine how decisions are made and who will make these decisions; who will be in charge, and who will be without power to make change. Covenants are being made that will be binding on all future homeowners and that attach to the land permanently.

EXHIBIT 94

My comments are not directed to any specific technical issue, but instead, to the framework upon which the Development Agreements will be interpreted and conducted. This framework is located primarily (but not exclusively) in Section 15.0 "General Provisions" of both the Lawson Hills and The Villages agreements. *Throughout my testimony, whenever Lawson Hills or The Villages is referenced, the information applies equally to the unmentioned development.*

General Provisions must contain clauses that are clearly written to avoid misinterpretation by any of the parties involved. The clauses must thoroughly address the issue(s) being considered, as well as address how to deal with potential risks should they occur.

The total dollar value of the two Development Agreements will be great, into the millions or billions, and the term of these two contracts is long--a minimum of 15 years. This extended term makes it highly probable that Black Diamond staff, Master Developer staff and Black Diamond City Council members will experience several turnovers in the years to come. This creates situations in which new or differing interpretations can occur. By making adjustments now, in a timely manner, the contracts will be on stronger footing for success for all involved now and in the future.

I have had many years of experience in contract administration in the procurement of parts, services, and software, so my review of General Provisions is not without some experience. Many of these contracts were valued at a million dollars or more. I am not a lawyer, but worked closely with legal staff throughout my 29 years at Boeing Commercial.

The following are some of the concerns and questions I believe need to be clarified and, more importantly, need to be highlighted and thoroughly explained to those empowered to sign the Development Agreements in behalf of the City of Black Diamond.

Sec. 15.1, "Binding Effect & Vesting" does not clearly define the terms "Vesting" or "Build Out" or their relationship. The discussion in Paragraph 2 of Clause 15.1 seems to indicate that vesting time can change with the subject matter. For example, it states that the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009 and that the MPD Approval in September of 2010 is regulated by these June 28, 2009 codes. No end time was given. The paragraph continues, "Pursuant to BDMC 18.98.195(B) (Exhibit "E"), vesting as to storm water regulations shall be on a Phase by Phase basis as outlined in Section 7 of this Agreement".

I can't claim that I have a good understanding of the concept of vesting as it pertains to land development contracts, so this clause is somewhat confusing to me. I understood that vesting meant that there was a set period of time during which new or additional development standards could not be placed upon the Master Developer. I understood that Yarrow Bay was vested for a set period of time, 15 years from September 20, 2010. I searched for the word vesting in Section 14, "Definitions", but could not find it.

The third paragraph in Section 15.1 uses the term Build-Out Period almost interchangeably with the word vesting by stating that during the Build-Out Period the City shall not impose new or additional development standards except in certain situations. I became further confused when, in Clause 15.16 Term, it states "Build-Out" Period of fifteen (15) years following the date of the MPD Permit Approval is established for all the Development and construction of uses in The Lawson Hill MPD as authorized in BDMC 18.98.195(A) (Exhibit "E") and RCW 36.70B.170(3)(i). The Build-Out Period may be extended up to an additional five years for any Phase of The Lawson Hills MPD pursuant to BDMC 18.98.195 (E) (Exhibit "E"). The Term of this Agreement shall be from the date written in the first paragraph of this Agreement till the expiration of the Build-Out Period, as may be extended."

I did find the term "Build-Out Period" in Section 14.0 "Definitions: "A "Build-Out" Period of fifteen (15) years execution of this Agreement is established for all the Development and Construction of uses in The Villages MPD. The Build-Out Period may be extended up to an additional five years for any Phase of the MPD pursuant to BDMC 18.98.195.E (Exhibit "E")."

An observation to the fact that further clarification is needed on this point occurred at the Monday, July 10, 2011, Open Hearing when a person in the audience asked Yarrow Bay's Counsel to clarify how many periods of five years of extensions there could be for any Phase of the Lawson Hills MPD. Counsel said she was unsure but offered to find out.

It should also be noted that, effectively, the Term (or end date) of the Development Agreements appears to be open-ended because the Build-Out Period can be extended, as needed, by the Master Developer or Master Developer Transferee.

Proposed Revision: Clearly define the terms "vesting" and "build-out", explain how they differ or are similar, clarify the timelines attached to each and close the

loophole on the ability of the developer to unilaterally and indefinitely extend the contract.

Sec. 15.2 Duties of Master Developer-verbiage can be misleading. The first sentence of this single paragraph states: "Pursuant to condition of Approval No. 5 of the MPD Permit Approval, a single Master Developer (or Master Developer Transferee) shall be maintained through the life of this Agreement." Before one has had the chance to read further into Section 15.3 Assignment, one might conclude that there is only one organization in charge of both MPDs forever.

Proposed Revision: The sentence should be rephrased to make it clear that that there is one Master Developer or Master Developer Transferee at a time. In other words, there can be a succession of Master Developer Transferees over time. Also, clarify what is meant by "this Agreement". One could interpret this to mean that Lawson Hills has one Master Developer or Master Developer Transferee while The Villages could have a different one.

15.3 "Assignment" – To whom? Consent by the City "shall not be required".

First a couple of important definitions:

In Section 14.0 "Definitions", Master Developer is defined as "BD Village Partners so long as BD Village Partners, LP, owns the majority of any then-undeveloped Development Parcel in The Villages MPD, or any Master Developer Transferee. Upon a transfer from BD Village Partners to a Master Developer Transferee, all references in this Agreement to BD Village Partners shall be deemed to be references to such Master Developer Transferee, or its successors as the Master Development transferee."

In Section 14.0 "Definitions", Master Developer Transferee is defined as "A person or entity other than BD Village Partners, LP, acquiring an interest or estate (except for security purposes only) in the majority of The Villages Property or The Villages Expansion Parcels then owned by the BD Village Partners, LP, including the then-undeveloped portion thereof, and including transfer of all interests through foreclosure (judicial or non-judicial) or by deed in lieu of foreclosure. "Master Developer Transferee" also means any successive person or entity similarly acquiring such an interest or estate from a previous Master Developer Transferee."

Section 15.3 "Assignment" states that the parties acknowledge that the Development of the MPDs will likely involve sale, conveyance or assignment of portions of the Project Site to Third parties who will own, develop and/or occupy portions of the Project Site

and buildings thereon. BD Lawson Partners, LP shall have the right from time to assign or transfer all of any portion of its respective interests, rights or obligations under this Agreement or in the Lawson Hills MPD to a Master Developer Transferee as long as they give the City 30 days prior written notice of such assignment or transference, provide the city with a copy of the executed assignment or transference document within 10 business days of execution. Then comes the sentence of deep concern to me. The paragraph ends with the sentence; "Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement."

15.3 "Assignment" then states that in any such transfer or assignment, if the transferee or assignee assumes the obligations pertaining to the property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and BD Lawson Partners, LP shall thereupon be deemed released of liability under this Agreement for the portion of the property transferred or assigned--but remains obligated for any outstanding mitigation measures not transferred or assigned. I did not notice any language limiting how much of the property currently under the control of BD Lawson Partners (or BD Villages Partners) could be transferred. Nor did I find anything preventing a 100% transfer.

If I understand this correctly, this means that the current Master Developer, Yarrow Bay, could eventually transfer all the rights and obligations under the development agreements to parties unknown, from countries unknown, and, according to the "Assignment" clause, "Consent by the City shall not be required for any assignment or transfer of right pursuant to this Agreement. Coupled with the fact that in Section 15.2 "Duties of Master Developer", the Master Developer (or Master Developer Transferee) shall function as a single point of contact for City billing purposes, shall function as a single authority for Agreement revisions and modifications, shall provide to the City proof of Master Developer approval of all implementing Project applications (except building permits) filed by other parties prior to or with submittal to the City, and shall be responsible for distributing Development Agreement entitlements and obligations and administer such." In short, this sounds as though the City need have no review or say regarding with whom it must partner in order to run the City and the City's business.

The last sentence of Section 15.3 states: "BD Lawson Partners, LP shall advise prospective transferees or assignees that obligations of this Agreement may apply to the property upon transfer or assignment." This is an inadequate way of ensuring that the City is protected/indemnified against liabilities resulting from subcontracting to third or subsequent parties.

Proposed Revision: Revise the last sentence of the first paragraph in 15.3 "Assignment" from "Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement" to "Consent by the City shall be required for any assignment or transfer of rights pursuant to this Agreement".

Secondly, develop a set of written requirements (a contract) that must be flowed down to all levels of subcontracting. These written requirements must ensure that the City is protected/indemnified and that its rights are protected in all technical and business issues.

15.8 "Time is of the Essence"—Incomplete

While it may be common practice to insert the limited verbiage "Time is of the essence of this Agreement" in this type of contracting, it appears to be rather simplistic and fails to justify its existence.

Proposed Revision: Detail the rationale for this sentence. Why is time of the essence? Why is this a contractual obligation?

Section 15.9 "Interpretation" is practically and philosophically questionable.

In its entirety, the clause reads: "This Agreement has been reached as a result of arm's length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement".

If memory serves me correctly, arm's length negotiations means that people are to stay figuratively at arm's length during a negotiation so that there is no perception of collusion, duress or other unethical behavior and the outcome has not been compromised in any way.

In no way am I suggesting malfeasance or any other type of poor behavior on the part of either Yarrow Bay or City staff. What I am suggesting that when both sides involved in policymaking or in a negotiation are directly or indirectly compensated by the same source, the perception of arm's length is diminished or, more accurately, removed. While I understand that the City of Black Diamond cannot afford the staff required to handle developments of this size, I have not spoken to one person inside or outside Black Diamond that feels this arrangement gives the citizens of Black Diamond equal weight to that of Yarrow Bay.

Proposal: The City of Black Diamond sponsor a liaison team to work with the existing staff. This team would represent the citizens of Black Diamond and would not be a participant in the Funding Agreement with Yarrow Bay.

There may be other suggestions as to how to solve the perception of lack of "arms length" but until an equalizer of some type is put into this development process immediately, the citizens of Black Diamond will continue to feel underrepresented.

I'd like to move from Section 15.0 "General Provisions" to Section 12.0 "Development Review Process". This Section explains how changes will be made to agreements. There are two types of Amendments. If an amendment materially modifies the intent and policy of this Agreement it shall be considered "Major" and shall be reviewed by the same procedure applicable to a new development agreement request, which, I assume, opens the process up to the public.

If an Amendment does not materially modify the intent and policy of this Agreement it will be consider "Minor" and may be approved by the Mayor. The final determination regarding whether an Amendment to the Agreement is "Minor" or "Major" shall rest with the Designated Official, subject to appeal to the Hearing Examiner. The "Designated Official", is defined in Section 14.0 "Definitions" as: "The person, appointed by the City

of Black Diamond Mayor, empowered, authorized and charged with the duty to administer, interpret, process and approve plans as required by this Agreement and the BDMC.

Seven of the Exhibits to the Development Agreement are considered Minor: Exhibit "H"-MPD Project Specific Design Standards and Guidelines, Exhibit "J"-Construction Waste Management Plan, Exhibit "K"-MPD Phasing Plan, Exhibit "M"-Mine Hazard Release Form, Exhibit "N"-Lawson Hills MPD Funding Agreement, Exhibit "Q"-Maple Valley Transportation Mitigation Agreement and Exhibit "R"-Covington Transportation Mitigation Agreement.

I could not find a method or process that allows any public notification or input into the decision making process for Minor Amendments. I saw no inclusion of the City Council in this process unless it is assumed that the Mayor cannot make a decision without their approval so it was unnecessary to state this fact. It appears to me that decision-making has been greatly consolidated into the hands of two officials and these two individuals have the power to make decisions that affect the entire city as well as surrounding rural areas and cities.

Proposed Revision: Clarify Minor Amendment process to include public notification and comment. Also, include whether the Mayor needs to consult with the City Council before making his or her decisions.

IN SUMMARY

The Development Agreements as written are grossly inadequate for administering two Master Planned Developments of this size, dollar value, and period of time. As explained above, I believe they lack the following:

- Concise definitions of key terms and words.
- Clear contract end date or explanation of how this is to be determined.
- Processes that ensure Black Diamond citizens have access to and knowledge of city business at all appropriate levels.
- Safeguards protecting citizens of Black Diamond from the undue influence within City business by Master Developer or Master Developer Transferee(s).
- Checks and balances relating to legal and contractual issues that ensure an "arm's length" relationship between the City of Black Diamond and any Master Developer or Master Developer Transferee(s).
- A set of terms and conditions to which any third-tier subcontractor to the City of Black Diamond must comply. The City of Black Diamond should not be held culpable for lack of due diligence or insufficient indemnity or insurance

clauses on the part of the Master Developer or Master Developer Transferee(s) in their dealings with contractors and builders.

COMMENTS TO THE BLACK DIAMOND MAYOR AND CITY COUNCIL

There are many other aspects of the Development Agreements that require closer scrutiny and analysis, but I selected those I felt most crucial. I urge that the City of Black Diamond have the Development Agreements reviewed by outside resources and, also, compare these contracts with successful contracts existing in other cities in King County.

If you agree to sign either of the Development Agreements "as is", in my opinion, you are agreeing to contracts that can be construed to continue as long as the developers wish. You will be required to introduce unknown and unapproved Master Developer Transferee(s) into the inner workings of the City's business. You will concentrate power into the hands of too few, and will not have provided citizens with open government and the process through which to engage with their own city. In other words, you and your residents will loose control of your city and will not have the controls in place to protect the City from the multitude of risks being taken.

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.

Effect of Prior Annexation Ordinance

Section 3.1 essentially overrides all provisions of an annexation ordinance. It states in part

> If the property identified in Black Diamond Ordinance No. 517 dated December 7, 1994, is included in The Villages MPD as an approved Expansion Parcel, Black Diamond Ordinance 517 shall be included herein as a Prior Agreement *and the terms of this Agreement shall also supersede the land use, infrastructure, development standards and Open Space terms of Black Diamond Ordinance No. 517. To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control.* This Agreement incorporates many of the terms of the Prior Agreements and to the extent any provision or requirement of a Prior Agreement is not included in this Agreement said provision or requirement shall be construed as not applicable to the Development of The Villages MPDs.

There should be no allowance for such a sweeping provision. First it violates BDMC 18.98.080 (7) and (8):

7. **If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.**
8. **If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.**

Second, it is not legal for the City or the Hearing Examiner to waive the rights of the other parties from these prior agreements. The City and Applicant would need to have signed *"Consent Agreements"* from the Signatory's of the previous agreements to make Section 3.1 legally binding. These should be attached as an exhibit to the Development Agreement. The proposed Development Agreement should address each and every provision of the ordinance that the Master Developer wishes to supersede or declare not applicable.

EXHIBIT 95

Brenda Martinez

From: Jamie/Ariana Stenson <jamie.ariana.stenson@gmail.com>
Sent: Wednesday, August 03, 2011 1:04 PM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Black Diamond MPD's

Hello,

I attended the recent hearings regarding the Development Agreement between Yarrow Bay and the City of Black Diamond for the Master Planned Developments. I would just like to go on record as supporting all testimony with concerns about transportation, environment, noise, schools, wildlife, urban run-off, abandoned mine shafts, well water safety, Green Valley Road and Urban Sprawl.

Thank you.

Ariana Stenson
24121 236th Ave SE
Maple Valley, WA 98038

EXHIBIT 96

(1)

Development Agreement Hearing July 13, 2011

With Additional comments added to my oral testimony

Clarissa Metzler Cross

19102 SE Green Valley Road

Auburn, Washington 98092

My family purchased our blueberry farm on SE Green Valley Road (GVR) in 1954 and I have since been at this location continuously except for the years I was away at college. I resided on this road before it was even all paved. My husband and I have operated the farm since 1975 and we are full time farmers. Our road, SE Green Valley Road serves our rural community and runs through the Upper Green River Agriculture Production district (one of 5 such designated districts in King County). Farmland preservation properties border approximately nine miles of GVR.

In the stretch of the road west of Flaming Geyser State Park, many of the sharper turns thread in between very large trees and the asphalt is just inches from a deep ditch or a telephone pole. The section east of Flaming Geyser State Park has fewer curves than the west section, but the curves are much sharper, signed at 15-20 mph generally. The curves are often damp as there is a canopy of evergreen trees there. The road as it climbs the hill is in a slide area. Construction of homes per the MPD's is designated above this slide area.

The Green Valley Road is a twisting rural, two-lane road through the Upper Green River Valley. This old wagon trail winds between fields, stables, and active farms between lush hills and is the longest designated Heritage Corridor in King County. It's 11 mile corridor dates back to 1884 and follows the original wagon trail from those days. The only non contributing features distracting from this historic road are a few rumble strips and broad paved shoulders at spots along the road and temporary jersey barriers at mile 8.4. (1) (2)

As noted GVR road runs adjacent to the MPD properties and it along with the Auburn-Black Diamond Road (and the Lake Holmes Road which is not even

EXHIBIT 98

shown on YB traffic map) provides the east-west routes for the MPD's. The MPD Approval Ordinances, Exhibit C – *Conditions of Approval, Condition 33 a & b do offer some semblance of protection.* However, the Development Agreements fail to provide critically needed direction on how to protect this corridor. Per KCDOT's Matthew Nolan FEIS testimony in March of 2010, King County stated that the MPD's would create a 300 -400% increase in peak hour trips on GVR. If you were to take the KC traffic control counts done at the west end of SE Green Valley Road in 2009 and multiply it conservatively by 350% we would find the volume of traffic expected on our road exceeds the traffic counts done at the similar time on both the Issaquah-Hobart Road at Tiger Mountain and would exceed by around 60% the traffic count taken for the Kent-Kangley road at 216th.

Why ignore travel from the MPD's to the west? The Auburn Boeing plant is a large employer. The westerly route connects directly to the Kent Valley areas and towards the City of Tacoma, where there are ample places of employment. Also, the connection to the Sounder train is just less than 15 miles away in Auburn. In the Master Developer's Transportation Flyer showing the routes for the area, they specifically showed the existing Sounder train (running through Auburn) as a viable source for commuting. There are only 2 direct routes west-east from Black Diamond. The Auburn-Black Diamond Road is a state highway, but a large amount of traffic will veer off of it for the shorter route which is the SE Lake Holmes Road. The other main west-east route is SE Green Valley Road.

Why has the GVR been ignored in the Development Agreement? The applicant did have a study done on our road which was extremely basic and in the study, it failed to identify exactly how traffic from the MPD's would be eliminated on GVR. The applicant had told us they would set up a Green Valley Road Review Committee to study the flow of traffic on GVR back at the beginning of the year, yet when we signed up we were never contacted and then the Development Agreement was published. Participation in the committee which was set up by

the applicant was to consist of 2 individuals from Yarrow Bay, one Black Diamond representative, and only 2 members from our SE Green Valley Road. Those of us living on Green Valley Road were appalled to think such a committee could be established that could be so skewed in favor of the applicant. This study was also to discuss the pros and cons of how traffic calming devices should be evaluated NOT how to limit traffic from the MPD's from using GVR. In the discussion about the formation of this committee – it has turned out that the applicant is stating that the review by the committee,(that still has to materialize), has been minimized in their review by just "taking" the calming devices or "not taking" the calming devices. Note again, there is not an inkling of consideration by the applicant that their traffic should be limited from using GVR. As farmers and residents on Green Valley Road, the ONLY way we can see limiting traffic from our road is to minimize the density of this development and its requested vested build out rate. King County DOT has identified this road as a rural road and in its comments has said that "safety" related improvements are permitted but capacity improvements are not encouraged in the Rural Community. Presently, King County has not even been able to budget for mowing the shoulders of GVR and the bicycles which travel our road are forced off the shoulders since they don't wish to be slapped with the encroaching blackberry vines. Also, the County has not yet fixed a major damaged area of a shoulder on a corner that sloughed off from a large cotton wood tree falling over which took the shoulder with it's roots.* SE Green Valley Road also has been under water a number of times in the last few years due to flood waters from the Green River. Two years ago, this resulted in numerous days of road closures. This fact was not even addressed in the Parametrix study! GVR IS NOT an alternate HIGHWAY 18!

* Note

Note in attached exhibit, a letter from Seth Boettcher dated 12-6-10, it was stated that the completed study by Parametrix was to be used for the Committee for their review and that the recommendations from this would be incorporated into The Villages and Lawson Hills MPD Development Agreements....."but subject to whatever is agreed to by the Green Valley Road Review Committee".

Again as stated, this Review Committee never did materialize, and it is our recommendation that when it does get set up, that we have the following configuration: The review committee should be chaired by an employee of the KC transportation department, 3 representatives that reside on Green Valley Road and a representative from the Master Developer.

Our Preserved Farmland along our road can not be mitigated to allow traffic calming devices to interfere with our farming. Remember this is only 1 of 5 APD areas so designated and protected in the county. The citizens of King County in the passage of the Farmlands Preservation Bond issue in the 1980's were among the first in the nation to purchase development rights from farm/open space property to devote it to agricultural and open space uses. (King County Ordinance No. 4341). The DEED of and Agreement relating to Development Rights permanently restricts the use of the land to solely agricultural and open space use. Under the Official County Deed and Agreement relating to Development Rights under Restrictions on Use of the Land Sec III B. limitations are placed on the land that "no more than 5 % of the land ...shall be covered by structures and/ or non-tillable surfaces. Structures are inclusive of surfaced parking area, driveways and SURFACED ROADS." Mitigating preserved farmland for any reason along GVR whether it be for traffic calming devices, shoulder enhancement or for capacity allotments for the Black Diamond MPD's is not consistent with the purpose of King County Ordinance No. 4341.

The traffic from the MPD's must simply not be allowed to use our APD corridor. As was stated as a recommendation out of the MPD hearings "Green Valley Road should not be impacted by the traffic from the MPD"S"

Traffic traffic traffic. A NEW proposed Town of up to 20,000 residents plus the commercial development has reached the process where it is undergoing these Development Agreement Hearings, yet, it is only linked to the rest of the county with 2 undivided lane roads and few added turn lanes and traffic control signals! Why are we here at this hearing when the Development Agreements presented lack so much substance to cover what I consider a pure nightmare of traffic complications?

On this unaddressed portion in the Development agreement, we as residents and farmers in the valley demand that the Development Agreements be considered void and the build out of the first 850 dwellings and commercial development be denied until a transportation concurrency is reached that can handle the east-west traffic without a spill over onto GVR.

The applicant should also correct their maps to show major roads for the area west of the MPD's. ie the major arterials of 218th (which connects the Auburn-Black Diamond Road to GVR)and SE Lake Holmes Road. A Traffic Mitigation Plan must be established to plan, design, build, maintain and finance an east-west corridor that does not conflict with Green Valley Road. We must be aware that what happens in Black Diamond DOES NOT STAY IN BLACK DIAMOND. It affects the entire surrounding area of South King County. For posterity, one should go to "Google Earth" and view the satellite picture of our corner of King County. Quickly, copy the picture that you see since if these Development Agreements are accepted, it will all soon look like the area you see north of our forested area in Black Diamond. It will look like Covington and the East Hill of Kent.

As a child, I use to play by the river and get lost for the day in the surrounding woods, making camps and trails. Now thanks to the foresight of my beloved deceased parents, Fred and Edith Metzler..... they saw that a major portion of our farmland went to the King County Park System for a wilderness park that has covenants placed on it requiring that it is to remain a wilderness and never be developed so that it can be enjoyed by all. I can still go to the woods. With a Development Agreement that does not fail to address the Ordinances 33 a and b and King County DOT concerns along with the covenants we hold as farmers on the preserved farmland along GVR, (and a limited amount of development) I should be still able to cross GVR safely with my livestock and reach the woods on the south side of our farm.

(1). King County Heritage Road website

(2). Motorcycle Roads Northwest website

attachment – Exhibit – 12/16/10 Seth Boettcher letter.

CITY OF BLACK DIAMOND

Physical Address: 24301 Roberts Drive
Mailing Address: PO Box 599
Black Diamond, WA 98010

Phone: (360) 886-2560
Fax: (360) 886-2592
www.ci.blackdiamond.wa.us

December 16, 2010

To whom it may concern:

Re: Reasons for and the use of the SE Green Valley Road Traffic Calming Study for Lawson Hill and Villages Master Planned Developments

The City has completed the Green Valley Road Traffic Calming study as required by condition No. 33(a) of Ordinance No. 10-946 approving the Master Planned Development ("MPD") for The Villages and Condition of Approval No. 29 of Ordinance No. 10-947 approving the Lawson Hills MPD. This study, completed by Parametrix for the City, includes, as required by these conditions, an assessment of traffic calming devices within the existing improved right-of-way and an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road.

Yarrow Bay, the Master Planned Developments applicant, will be setting up a committee with two representatives of the Green Valley Road Community and one representative of the City to consider the recommendations of the Green Valley Road Traffic Calming Study and determine what measures, if any, might be employed to further discourage MPD traffic from using the Green Valley Road. Copies of this study have now been forwarded to Yarrow Bay for their use with the Committee.

City staff will be incorporating the recommendations of this study into The Villages and Lawson Hills MPD Development Agreements, together with a description of the process and an estimate of the timing required for YarrowBay to seek permits from King County, should King County allow installation of the mitigation improvements, but subject to whatever is agreed to by the Green Valley Road Review Committee.

Sincerely,

Seth Boettcher
Public Works Director
City of Black Diamond

To the City of Black Diamond,

I am concerned about the Development Agreements for both Lawson Hills and The Villages from Yarrow Bay. I support testimony urging the city to be cautious and protect its existing residents, those living nearby, the environment, our tax dollars, our peace and tranquility, and our historical heritage.

I include by reference the testimony by organizations and individuals such as Save Black Diamond, others who testified against the agreements, and the Citizens Technical Action Team. Please consider me a party of record for the Development Agreement Hearings for both the Lawson Hills and The Villages Master Planned Developments.

Sincerely,

Name	Address
Matt Laurnen Matt Laurnen	Enumclaw, WA
Susan Laurnen Susan Laurnen	Enumclaw, WA
Eric Davis	Enumclaw, Wa.
	EXHIBIT 99

Must be received by Black Diamond Community Development office before Aug 4, 2011 at 5:00 PM

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Jacqueline Powers <powers.jacqueline@gmail.com>
Sent: Thursday, August 04, 2011 10:03 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

This project will bankrupt Black Diamond and it's citizens, which might be the plan. The citizens of this area do not deserve to be saddled with the financial burden of this project just so Yarrow Bay Development can make their profit and then walk away and leave the citizens to figure out how they are going to pay for all the city services they had been able to pay for before this giant developer came to town.

I spent 6 years on the citizen Planning Commission for the city of Lynnwood, Wa. and I can tell you, this project will be good for no one but Yarrow Bay Development.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

EXHIBIT 100

Jacqueline Powers
3037 NW Market St Apt C107
Seattle, WA 98107-4238
(425) 771-7715

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Jetta Hurst <jettahurst@aol.com>
Sent: Thursday, August 04, 2011 8:34 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

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* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

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* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Jetta Hurst
34037
Auburn, WA 98001

EXHIBIT 101

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Barry Brown <barryb@repsnw.com>
Sent: Thursday, August 04, 2011 9:34 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

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* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Barry Brown
30128 SE 408th St
Enumclaw, WA 98022-7766
(206) 779-4322

EXHIBIT 102

EXHIBIT 103

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Robin Buxton <robinb411@comcast.net>
Sent: Thursday, August 04, 2011 8:33 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

The quality of life for current residents as well as those outside the community who must commute through the Maple Valley corridor would be severely impacted by this development. This is a suburban/rural area and should be protected as such. Employment opportunities, infrastructure for additional roads, schools, police and fire protection, just to mention a few, are not adequate.

The negative environmental impacts from a project this size are personally frightening to me. There has been a complete lack of transparent and thorough communication regarding this planned development. As a long time resident of unincorporated King County near the Lake Sawyer area, I urge you to please reconsider this behemoth project that is being rammed down our throats. This needs further study and TRANSPARENT AND OPEN COMMUNICATION to the public in this community and beyond.

Sincerely,
Robin Buxton
19825 SE 296th St.
Kent, WA 98042
* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Robin Buxton
19825 SE 296th St
Kent, WA 98042-5912
(253) 630-9839

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Gloria Sting <g.sting@earthlink.net>
Sent: Thursday, August 04, 2011 7:34 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Gloria Sting
16017 21st Ave SW
Burien, WA 98166-2631
(206) 242-5363

EXHIBIT
104

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of david blad <david@isleartisan.com>
Sent: Thursday, August 04, 2011 6:32 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

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The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

david blad
12925 SW Bachelor Rd
Vashon, WA 98070-8836

EXHIBIT
105

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Janis Whitcomb <whitcombj@hughes.net>
Sent: Thursday, August 04, 2011 12:31 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

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You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

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Sincerely,

Janis Whitcomb
35855 207th Pl SE
Auburn, WA 98092-9008

EXHIBIT
106

August 3, 2011

Dear Black Diamond City Council:

I am writing to voice my concerns about the future of the town of Black Diamond. I live right outside Black Diamond and have worked there at the school for ten years. Both my children go to school at Black Diamond Elementary. I have become very close with many families in the town and feel it is of utmost importance to preserve the small town feel and the history of Black Diamond. Contrary to what I have often been told by builders, growth is not inevitable and especially at the large scale and rate planned through Yarrow Bay. If these plans come to fruition, Black Diamond will cease to exist. What a horrible loss to those who have lived there for generations and to those like myself, who moved to this area for the small town feel.

Instead, we will have irrevocable environmental damage, hideous traffic and overcrowded schools. All we have to do is look around us and see the mistakes made by the former small towns around us. We are on the path to repeat their mistakes so we can make Yarrow Bay rich. For example, Maple Valley has huge neighborhoods that were built very fast and now have overcrowded schools and levies are not passing to fund more construction of new schools. Issaquah Highlands is an example of mass housing ruining wetlands. We have wetlands here in imminent danger. The fast growth of Covington and Maple Valley have resulted in traffic congestions seven days a week, all day long. A few "improvements" of traffic lights and turn lanes won't protect us from that same future.

Black Diamond right now has the perfect balance of rural life with all the amenities needed only a short drive away. Most of us who live in this area would not have chosen to live here if we felt the need for more stores, thousands of people, traffic , pollution and commercial business. Let Yarrow Bay make their millions elsewhere and let's take pride in the Black Diamond community we have right now.

I am also concerned about the mines that are in many of the areas targeted for building. Many years ago the property next to mine was sold for housing. Mine issues were brought up and it took the seller many years to bypass the opposition and laws and sell the land for housing. Now Serenity Estates has been created; many of these mansions on acreage sit empty and some are in foreclosure. Not just because of our bad economy, but due to the fact that the word has gotten out about the mine shafts (I have seen them myself) that are all over this 300 acres right outside of Black Diamond. I would like to see many checkpoints added to the process at every step to continually verify mine safety. As teacher in this community, I want to guarantee

EXHIBIT

107

the highest level of child safety as my students will be walking around communities built on mines. I feel that the **city** should put in protections because people count on the builders to do so, they certainly did not do that here where I live. I feel the city needs to find ways of building additional inspections and evaluations in because the life of one child is too precious to allow an undiscovered mine shaft or sinkhole to risk their life.

Finally, as a educator I feel it is very important for the council to consider the possibility of adding checkpoints for schools. If school bonds do not pass, then will be faced with over-crowded classrooms. I can't see the residents of Enumclaw supporting levies to build schools that will raise their property taxes. **Does the city have protection in the agreements that as build-out proceeds, and population growth requires more schools, but if the school bond does not pass, that additional homes building must be halted**? 20 years is a long time. If the city expects more schools and the schools don't get built then they need to add to this 20-year contract the right to halt new home construction until the schools are under a certain threshold.

Thank you very much for taking the time to read about my concerns for our wonderful little town.

Sincerely,

Sara Davis

Before the City of Black Diamond Hearing Examiner

The City, at the direction of Yarrow Bay, has hastily put forth an incomplete Development Agreement and a Development Agreement that lacks the required detail. The Hearing Examiner should therefore deem the Development Agreement incomplete and send it back to the City for the required signed agreements and detail.

The DA lacks signed agreements from Covington Water for water service and from King County for sewer. These alone should deem the DA incomplete.

In order to put this Development Agreement in front of the Hearing Examiner and ultimately the City Council as soon as possible, the City has has left numerous sections of the DA without detail . It merely says 41 times "Designated Official" shall determine .....or 10 times, the Designated Official and The Master Developer shall jointly determine.....To keep things in perspective the "Designated Official" and several other city officials/staff are paid in full,100%, by Yarrow Bay at wages well above wages of officials/staff of other cities that are larger than BD. It might as well say 41 times "The Master Developer may do or change whatever they want"!

One of my least favorite parts of the DA is as follows:

9.5.3 The Master Developer shall have the option to request that the Designated Official accept a lump sum payment in lieu of constructing any of the individual Recreational Facilities in Table 9□5. The request shall be made prior to triggering the need for the next Recreation Facility. Pursuant to Condition of Approval No. 95 of the MPD Permit Approval, the Designated Official retains sole discretion to determine when and if a lump sum payment will be accepted in lieu of the Master Developer constructing a Recreational Facility. The Designated Official's determination shall be based on the following three criteria: (i) availability of land; (ii) adequacy of funds to construct City□approved recreational facilities; and (iii) City's ability to maintain recreational facilities. Pursuant to Condition of Approval No. 93 of the MPD Permit Approval, the amount of the payment that may be provided in lieu of construction shall be set through the following process:

Not the Mayor, not the City Council, the "Designated Official" gets to determine if we take money instead of Parks or Recreation Facilities. This must be changed to " The City Council may vote to accept a lump sum payment instead of Parks or Recreation Facilities **only** after a public hearing".

William Wheeler
30221 234th Ave SE
Black Diamond, WA 98010

EXHIBIT

108

August 1, 2011

Dear Mr. Hearing Examiner,

I purchased my Real Estate Company in Black Diamond in January of this year. When I was looking in the King County area for a Franchise Opportunity, one of the factors that I took into consideration was the potential for future growth. A Master Plan Development in Black Diamond was the positive, deciding factor for me to settle down here, invest and grow my business.

I owned a Real Estate Company prior to this in another small, rural community for several years. At that time, a large developer came into town with a grand plan to spur growth, and bring services to the community. It was met by opposition from some of the local folks. And after several years of deliberation.... The Chehalis Indian Tribal Nation was able to build The Great Wolf Lodge in rural Thurston County. Now, some of the circumstances were different- but the end result was the same. The growth happened, the people came to understand it, and they then embraced the positive changes it brought to the community. Which included, services for youth and the elderly, in the form of Boys and Girls Club of America, YMCA Programs, added emergency services, new schools, job opportunities and a healthier tax base to support the local economy. The free and reduced lunch rate went from a staggering 62% to 41% in a few short years.

I DO understand the concerns of Black Diamond citizens, change is scary, and there is a lot of mistrust in our Country today. Yarrow Bays' Master Plan Development has been well thought out and, I believe, will have a positive effect on South King County for MANY reasons. I've seen it happen....a Master Plan brings order to chaos, controls sprawl, and maintains property values. It can bring jobs and services.

My heart is with the community- and my common sense supports Yarrow Bay and their efforts.

Thank you for your careful and timely consideration in this sensitive matter,

Most Sincerely,

Danielle Bricker

Danielle Bricker
Owner
RE/MAX LEADING EDGE
30741 3rd Avenue Ste 130, Black Diamond, WA 98010
Office (360) 273-3333, Cell (360) 789-3700
daniellebricker@remax.net, www.leadingedgemax.com

EXHIBIT
109

Each Office Independently Owned and Operated

7/27/11

Dear Black Diamond MPO Hearing Examiner,

As a new business owner in the Black Diamond area, I feel the MPD applied for by Yarrow Bay should proceed without further delay. Choosing Black Diamond as the location for my chiropractic office, Dynamic Performance Chiropractic, relied heavily on the future growth plans of Black Diamond. In small business, it is vital to have a strong business plan that can be executed in order to succeed. It is my hope that the city of Black Diamond has equally as strong a plan we can rely on to develop the community, and provide small business owners the opportunity to grow and succeed. My goal was to come back to my hometown and be a part of the growth and expansion of the community that I grew up in. The significance of the Yarrow Bay development is difficult to express in writing, especially since choosing to open my office in Black Diamond was based around the opportunities presented when such a development was first presented as being underway. I appreciate your time and consideration when reading this letter, and would love to answer any questions you may have for me as a small business owner in the Black Diamond Community.

Sincerely,

Dr. Tony Giralmo, DC

EXHIBIT

110

RECEIVED
AUG - 4 2011
BY: BKM

Council Members,

I have been a resident of Maple Valley for 15 years

1. I believe in the council form of government and I believe the current council has done a comprehensive job of protecting the "best" interests of the community while allowing Yarrow Bay to also enjoy their private property rights.

2. The plan for Yarrow Bay didn't start last year or last month. This project has been considered and discussed for at least the last 5 years and it is unfair to impose additional restrictions on them then we would any other landowner in this room.

3. I understand that we have inherited issues with traffic here in the southeast quadrant of the county.

4. There are no simple "fixes" to all of the issues at hand however I have trusted local government all of my life and I appreciate the volunteer service and attention to detail given by all of the members of the council.

5. It is not the responsibility of Yarrow Bay or any other single property owner to correct these issues.

6. If they have complied with the law, their right to move forward should be honored.

7. The MPD's will allow access to open space by all of the citizens, will ensure that there is shopping for our seniors within walking distance of senior housing and will generate income for the city for growth and support for years to come by adding commercial, retail, business development and thriving contiguous community of Maple Valley and Covington.

Thank you,
Jack Emmons

EXHIBIT
111

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Paige Heggie <paigeheggie@hotmail.com>
Sent: Thursday, August 04, 2011 2:33 PM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Paige Heggie
4207 Phinney Ave N Apt 205
Seattle, WA 98103-7133

EXHIBIT

112

BEFORE THE HEARING EXAMINER REGARDING ENVIRONMENTAL TOPICS FOR THE BLACK DIAMOND MASTER PLANNED DEVELOPMENTS –THE VILLAGES AND LAWSON HILLS AUGUST 4, 2011

TABLE OF CONTENTS

(Condition of Approval Numbers correspond to The Villages)

Page

Overview 1

Summary of Conditions of Approval-Ordinance Requirements 2
Public Utilities-Stormwater and Water Quality (Conditions 65, 68, 71).....3
Visual and Aesthetics (Conditions 86, 87) 3
Public Services-Parks and Recreation (Conditions 89, 91, 93, 95, 97).....4
Erosion Hazards (Conditions 104, 105, 110) 5
Landslide Hazards (Condition 112, 113) 5
Mine Hazards (Condition 114).....5
Vegetation and Wetlands (Conditions 117, 118,119,120,121).....6
Fish and Wildlife Habitat (Conditions 123, 124, 125) 6
Sensitive Areas and Open Space (Conditions 151,152, 153).....7

Expanded Comments on Conditions of Approval-Ordinance Requirements.....8
Open Space (Conditions 151,152, 153).....8
Sensitive Areas 11
Geologically Hazardous Areas (Conditions 104, 110, 112, 113, 114).....11
Sensitive Area Aquifer Recharge (Condition 68).....13
Parks, Recreation Facilities,& Trails (Conditions 89, 91,93,95,97 new condition).14
Vegetation/ Wetlands (Conditions 65, 71,105,117,118,119,120(new conditions).18
Fish and Wildlife Habitat (Condition 123, 125, new condition) 21
Visual and Aesthetic Values (Conditions 86, 87, 124, new condition)..... .24

Recommended New Conditions.....26

Summary/Conclusions.....29

Attachments (All illustrations from Black Diamond Comprehensive Plan, June 2009)
Exhibit 1. ...and Areas highly susceptible to ground water contamination, Figure 4-3
" " 2. Primary and secondary [open] space, Figure 2-3
" " 3. Parks and open space map, Figure 5.2
" " 4. Wildlife habitat network, Figure 4-2

EXHIBIT
113

OVERVIEW

The Master Planned Developments (MPD's) include: (1) The Villages: 3,600 single-family and 1,200 multi-family units for a total of 4,800 dwelling units on 750 developable acres, and 775,000 square feet of commercial and office space and (2) Lawson Hills: 930 single-family and 320 multi-family units, for a total of 1,250 dwelling units on 302 developable acres, and 390,000 square feet of commercial and office space.

The massive development in southeast King County continues to alarm citizens in the Black Diamond community and surrounding area. The scale of the project places a "new city" of 20,000 people upon a small town surrounded by a rural setting. Many environmental impacts can not be adequately mitigated because of the size of the development and placement in highly-constrained environment of wetlands, streams, and lakes.

The City of Black Diamond has a reputation for images such as "Rural by Design" and "moderate growth" and "small- town character". The City's vision through 2025 is "*In the year 2025, Black Diamond will be a beautiful, friendly community based on a rich historic heritage and exceptional natural setting, and with a small-town atmosphere. Forested areas and open space remain, while development maintains a healthy balance of moderate growth and economic viability.*" In contrast to the City's moderate growth vision, the Applicant's MPD's are the largest in the history of King County, putting the small town at odds with its own moderate growth vision out to 2025.

The accelerated urbanization in southeast King County has implications that extend beyond the boundaries of the annexation in Black Diamond. The impacts extend to rural areas and neighboring municipalities. Can the historic old town maintain its rich heritage and aesthetic character with affordable housing? How much traffic can be absorbed without gridlock in the absence of an existing freeway? Will the spillover of potential expansion areas and schools into the surrounding rural areas be overwhelming? Will the Upper Green River Agricultural Production District remain viable? Will the land-use changes trigger once again adverse water-quality impacts to the highly vulnerable Lake Sawyer? Will the many wetlands on the landscape remain ecologically functional?

The following environmental subjects are addressed herein concerning the adequacy of the Development Agreement in meeting Conditions of Approval.

Open Space
Sensitive Areas
Parks, Recreational Facilities, and Trails
Vegetation and Wetlands
Fish and Wildlife Habitat
Visual and Aesthetic Values

Summary and expanded comments are provided for Conditions of Approval. The expanded comments include five recommended new conditions. The summary comments are presented by numeric sequence of The Villages Ordinance, and the expanded comments are in a topical order with Conditions discussed as appropriate.

SUMMARY OF CONDITIONS OF APPROVAL –ORDINANCE REQUIREMENTS

PUBLIC UTILITIES-STORM WATER AND WATER QUALITY

Condition 65. *Where point discharges to streams must occur, design the outfall to minimize impacts to stream channel and avoid areas of significant vegetation* [FEIS Mitigation]. **The Development Agreement needs to specify basic design elements to protect stream channels where stormwater outfalls discharge to stream channels.**

Condition 68. *The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that storm water discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. This condition does not constitute approval for direct discharge of roof drainage into wetlands, streams or their buffers; any such direct discharge is authorized only if approved by the Public Works Director as in compliance with Black Diamond Municipal Code Ch. 14.04 and the standards adopted therein. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.* **The Development Agreement needs to detail measures targeted to protect groundwater quality in areas mapped as highly susceptible to groundwater contamination.**

Condition 71. *Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.* Section 7.4.3 of the Development Agreement indicates the master developer will comply with Condition 71 as a stormwater management goal. **The Development Agreement needs to specify protections for wetlands by employing strict sediment -control measures during the construction phase and a detailed emergency response plan to guard against large storms overwhelming temporary erosion-control structures.**

VISUAL AND AESTHETICS

Condition 86. *The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.* **The Development Agreement needs to detail measures to limit removal of hazard trees to small numbers or increase buffer widths to accommodate areas where significant numbers of hazardous trees can remain standing as wildlife habitat.**

Condition 87. *The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.* **The Development Agreement,**

(Section 13.2), needs to specify the only parcels allowed for logging to occur are for the active implementing phase.

PUBLIC SERVICES - PARKS AND RECREATION

Condition 89. *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]* **The Development Agreement is inadequate in defining whether park and recreation facilities may be constructed on- or off site.**

Condition 91. *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 Agreement *(Section 9)* needs to provide a mechanism or formula to determine fair lump-sum payment for park and recreational facilities constructed in the future and how often fees need to be determined as market values change.**

Condition 93. *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.* **The Development Agreement needs to place limits on the lump-sum payment option as all of the recreational facilities described in Section 9, Table 9-5 can qualify for lump-sum payment with approval by the Designated Official.**

Condition 95. "*As proposed in the Master Planned Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connection shall meet the same standard to the extent authorized by law.*" **The Development Agreement does show an on-site trail system, but lacks conceptual plans for providing trail connections to current and future local and regional trails (Development Agreement, Park and Trail Plan, Figure. 9.2).**

Condition 97. *The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.* **The Development Agreement needs to provide complete documentation of recreational facilities and trails by size (in acres), location and type in categories of active and passive open space and whether the facilities are on- or off-site.**

EROSION HAZARDS

Condition 104. *Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]* **The Development Agreement needs to disallow major earth moving and grading in the winter.**

Condition 105. *In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion. [FEIS Mitigation Measure]* **The Development Agreement needs to detail the use of vegetation and other erosion-control measures to protect against stream bank and habitat degradation.**

Condition 110. *Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.* **The Development Agreement is not clear on whether an overall Grading Plan will be submitted for the first implementing plat. The Development Agreement needs to layout elements for an overall Grading Plan that will preserve existing topography and vegetation to meet BDMC 18.98.020 (A).**

LANDSLIDE HAZARDS

Condition 112. *Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides.* **The Development Agreement needs to detail stormwater control mitigations in geologically hazardous areas to lessen the likelihood of uncontrolled stormwater runoff and water-induced landslides.**

Condition 113. *Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.* **The Development Agreement needs to specifically retain geologically hazardous areas as designated open space. Instead the Development Agreement makes allowances to alter or eliminate geological hazards by grading.**

MINE HAZARDS

Condition 114. *Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.* The Constraints Map (Exhibit G) legend indicates, for parts of the Lawson Hills area, additional borings will be necessary to determine the construction methods for development of the area. **If a preponderance of evidence from borings shows increased risks to development defined under BDMC 19.10.430, the Development Agreement in Section 8.2.3 needs to reflect these**

potential risks and allow additional open space or buffer widths in moderate and severe mine hazardous areas.

VEGETATION AND WETLANDS

Condition 117. *Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas. [FEIS Mitigation Measure]* **The Development Agreement needs to lay out be mitigation measures to protect wetlands and their buffers from sediment discharge during the multi-year (decades-long) construction phase (see Condition 71).**

Condition 118. *Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees. [FEIS Mitigation Measure]* **The Development Agreement is silent concerning the use of *"on the ground"* measures to identify and protect significant trees.**

Condition 119. *New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. [FEIS Mitigation Measure]* **The Development Agreement does not address Condition 119. The Development Agreement needs to detail measures to locate new stormwater outfalls to avoid impacts to streams and adjacent wetlands and detail mitigation measures for sensitive areas as described in Condition 119.**

Condition 120. *A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.* **The Development Agreement is silent on Condition 120. Tree inventories need to be done "on the ground" in early planning stages in order to identify and conserve significant trees or stands of trees.**

Condition 121. *The Development Agreement shall include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested.* **The Development Agreement, (Section 13.2), needs to specify the only parcels allowed for logging to occur are for the active implementing phase.**

FISH AND WILDLIFE

Condition 123. *Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]* **The Development Agreement needs to detail plant species selection as wildlife forage preference for enhancement areas. The Compliance Matrix (Staff Report, June 2011) does not indicate Condition 123 has been addressed along with other Conditions throughout.**

Condition 124. *Mass-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.* **The Development Agreement (Section 5.5.2) needs to provide for the review by the Director of Natural Resources and Parks of all submitted landscaping plans prior to approval.**

Condition 125. *Provide a 300-foot-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network. [FEIS Mitigation Measure]* The Development Agreement does comply with an additional 300-ft wildlife corridor extension from the western edge the core stream-wetland Black Diamond Lake complex to the western edge of the property. **The Development Agreement needs to show on the Constraints Map (Exhibit G) a continuous wildlife corridor from the western boundary through the Villages to the northern boundary of the Villages in order to meet the intent of Condition 125.**

SENSITIVE AREAS/OPEN SPACE

Condition 151. *The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.* **The Development Agreement needs to provide complete documentation of the amount of open space (in acres) for on- and off-site by categories of active and passive open space.**

Condition 152. *The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.* **The Development Agreement does not specify timelines for when all passive and active open space must be dedicated and accepted by the City.**

Condition 153. *Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.* **The Development Agreement needs to detail protections for open space that are dedicated to the City.**

EXPANDED COMMENTS ON CONDITIONS OF APPROVAL-ORDINANCE REQUIREMENTS

Open Space

Background

The amount of open space provided is at the heart of a vision for creative and better communities. Fifty percent open space is critical for allowance of certain housing densities and for enhancement of storm water control, wildlife protection, and community aesthetics. *According to BDMC 18.98.140 (F), "If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120 (F).*[1] In the Black Diamond Comprehensive Plan, June 2009, 5-14, the MPD overlay lists as the designation criteria 7: "*at least 50% of the MPD site is devoted to open spaces uses, which may include recreational amenities.*" Promoting and integrating open space into new development is required by BDMC:18.98.010(L): "*Promote and achieve the city's vision of incorporating and/or* as *adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for…; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in book 'Rural by Design' by Randall Arendt and in the City's Design Standards.*"

Condition 151. *The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.* **Complete documentation of active open space is required according to MPD standard 18.98.150 (B)**: "*The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.*" **The Development Agreement needs to provide complete documentation of the amount of open space (in acres) for on- and off-site by categories of active and passive open space.** The Development Agreement (Section 4.4.6) would allow open space amendments to be processed as a minor amendment; the Agreement should not allow site plan amendments to reduce open space as a minor amendment. The amount of open space provided in the MPD is central to planning and design principles and no reduction in total project open space should be allowed as a minor amendment.

Condition 152. *The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.* **The Development Agreement does not specify timelines for when all passive and active open space must be dedicated and accepted by the City.** The Development Agreement does describe when active open space for recreational facilities are to be provided without specifics on location (Table 9-5). **Development Agreement needs to detail timelines**

for all on-site active and passive open space to be completed. Uncertainty exists on likelihood of all open space being dedicated to the City, if permanent public access or easement is provided to the open space (Development Agreement, Section 9.9.1, June, 2011).

Condition 153. "*Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.*" **The Development Agreement fails to provide specific details for the protection of open space to be dedicated to the City as required by this condition.** The Development Agreement needs to specify restrictions and non-allowed activities in passive open space and define the circumstances non-temporary use of passive open space would be allowed. A stated goal of no net loss of open space in sensitive areas/passive open space should be provided in the Development Agreement. One purpose of the SAO is "*to limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values.*" (*SAO, 19.10.010, Purpose B, 2009, p.5*). Mitigation measures need to be provided in the Development Agreement to maintain a no net loss of sensitive areas / passive open space. If non-temporary use of open space occurs, mitigation measures need to provide for replacement passive open space within the project area. Specific mitigation measures for loss of passive open space in sensitive needs to be provided in the Development Agreement.

Open Space Requirements

The Development Agreement falls short of the 50% open space required for the total MPD project area. The Development Agreement provides for less than 50 percent of the required open space for the total project area and considerably smaller percentages for developable land or non-sensitive areas.[2,3] The Development Agreement shows total open space is comprised of the land-use categories: (a) open space, trails and parks, (b) buffers, and (c) wetlands which is 42.2% of the total Villages project area (Exhibit L, Figure 3.1). These same open space categories make up 38.8% of the total Lawson Hills project area. The importance of a least 50% open space was stressed by Randall Arendt author of "Rural by Design" and "Envisioning Better Communities" (Work Session, Black Diamond City Council, April 14, 2011). According to Arendt, in order to attain an unconventional community design with open space integration—such greenways, neighborhood parks, close-in play areas, neighborhood cut-through trails--requires a good deal of land on the developed portion of the project for creativity.

Arendt noted that by coordinating and integrating ample open space and creativity into developed parcels, economic and social benefits are derived for businesses, homeowners, and developers. BDMC 18.98.020 (A): "*A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but not limited to: A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas) of the site.*" Setting aside primary conservation areas such as wetlands and associated buffers, stream corridors, floodplains, and steep slopes is normal for conventional development. Even though

promoting and integrating open space into new development is required by BDMC:18.98.010(L), what makes unconventional development special is to integrate development with ample open space on the buildable portions of the property. Arendt in his book "Envisioning Better Communities" provides example developments, depending on underlying housing densities, where 30 % or higher amount of land outside sensitive areas could remain permanently undeveloped. These creative open space lands would be in addition to unbuildable areas consisting of wetlands, floodplains, and steep terrain.

The Applicant has argued open space requirements have been met thorough past agreements. The Hearing Examiner left the door open for the City to satisfy a 50% requirement for the total project area: *"The agreements presumably do not place a cap on the amount of open space that the Applicant can dedicate and the Applicant could also satisfy a 50% requirement for the entire Villages MPD by dedicating additional open space in areas that are not subject to agreement."* (Villages, Findings, Conclusion of Law, and Decision, p. 239).

Conclusions

The Development Agreement falls short of 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. According to the MPD Framework and Design Standards & Guidelines (June 18, 2009): "....*The MPD chapter of the BDMC requires fifty percent (50%) of the total land area of an MPD be maintained as open space"*. The Applicant has provided a relatively small percentage of open space for developable land or non-sensitivity areas for The Villages. Complete documentation of active open space is required according to MPD standard 18.98.150(B). The Development Agreement needs to provide complete documentation of the amount of open space (in acres) for on- and off-site by categories of active and passive open space. The Development Agreement needs to specify restrictions and non-allowed activities in passive open space. Mitigation measures need to be provided in the Development Agreement to maintain a no net loss of sensitive areas / passive open space. If non-temporary use of open space occurs, mitigation measures need to provide for replacement passive open space within the project area. A stated goal of no net loss of open space in sensitive areas/passive open space should be provided in the Development Agreement.

[1]*BDMC 18.98.140(A) defines Open Space in part as "wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, play-fields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and storm water detention/retention ponds that have been developed as a public amenity and incorporated into the public park system....."*

[2] *The amount of open space, trails, and parks for The Villages is 77 ac (Exhibit L, Figure 3.1). The amount of developable land for The Villages is 750 ac (Constraint Map, Exhibit G). Open space, trails, and parks on buildable land is 77 ac / 750 ac = 10.2%.*

[3] *The amount of open space, trails, and parks for Lawson Hills is 99 ac (Exhibit L, Figure 3.1). The amount of developable land for Lawson Hills is 302 ac (Constraint Map, Exhibit G). Open space, trails, and parks on buildable land is 99 ac / 302 ac = 32.8%.*

Sensitive Areas

Background

The State's Growth Management Act requires local governments to adopt policies and regulations to protect critical areas (referred to here as sensitive areas). The City's Sensitive Area Ordinance (SAO) regulates wetlands, fish and wildlife conservation areas, geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas. Geologically hazardous areas may be due to potential for erosion, landslide, seismic activity, mine collapse or other geological condition (*SAO, p.100*). One purpose of the City's SAO is to protect members of the public on health or safety matters, including loss of life and property damage due to events such as landslides, erosion, and mine hazards (*SAO, 19.10.010 C, p. 5*).

Geologically hazardous areas have been mapped in both MPD's. Erosion-hazard areas are common in both MPD's with largest areas on Lawson Hills and near Black Diamond Lake in the Villages *(Exhibit 4-4, FEIS)*. Landslide hazardous areas exist on Lawson Hills, the North Triangle *(Exhibit 4-6, FEIS)*, and near Black Diamond Lake *(Exhibits 4-5, 4-6, FEIS)*. Off-site landslide hazards exist in close proximity to MPD boundaries on the steep hillsides above Green Valley Road in the southwestern part of The Villages project and the steep hillside south of the Lawson Hills project. Mine hazardous zones are known and mapped throughout the City due to past coal mining activity. Mine hazardous areas (low, moderate, and severe) are shown for most of the main Lawson Hills project area. Other mine hazardous areas near old-town Black Diamond *(Exhibit 4-7, FEIS)* are rated as low hazard.

Areas within the MPD's have been mapped "highly susceptible to ground water contamination" in the *Black Diamond Comprehensive Plan (Figure 4-3),* and the map is shown in Exhibit 1. The largest areas mapped (Figure 4-3) that are highly susceptible to groundwater contamination are in northwestern/southwestern part of the Villages flowing toward the Green River and the western part of the North Triangle flowing to Ravensdale Creek. The City's SAO classifies aquifer sensitivity by soil type into three categories of slight, moderate, and severe *(SAO, p. 92-94).*

Geologically Hazardous Areas

Condition 104. *Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05.* **The Development Agreement needs to disallow major earth moving and grading in the winter.** The City of Black Diamond is in a constrained environment of numerous lakes, streams, and wetlands. In this constrained environment, it is prudent, and perhaps economical, to restrict major earth moving and grading from October through March. Major earth moving needs to be defined in the Development Agreement.

Condition 110. *"Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%."* **The Development Agreement is not clear on whether an overall Grading Plan will be submitted for the first implementing plat. The Development Agreement needs to layout elements for an overall Grading Plan that will preserve existing topography and vegetation to meet BDMC 18.98.020 (A).** The Development Agreement needs to indicate in the overall Grading Plan to provide design options to leave geologically hazardous areas in place. The City's development standards for erosion hazard areas include measures such as: *"grading shall minimize alterations to the natural contour of the slope", and "retaining walls shall be preferred over cut and fill for roads, parking lots and structures" (SAO, p. 80).* The Development Agreement needs to specify what steps are to be taken to minimize cut and fill operations in order to retain natural topography. Retaining topography is a key element of unconventional design as specified in BDMC 18.98.020 (A).

Condition 112. *Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides.* **The Development Agreement needs to detail stormwater control mitigations in geologically hazardous areas to lessen the likelihood of uncontrolled stormwater runoff and water-induced landslides. The Development Agreement is not clear as to whether Condition 112 is addressed (for example not shown in the Villages Compliance Matrix, Staff Report, June 8, 2011).** Some hazardous area mitigation practices may include:

- Where development is occurring on slopes, maximize use of source control practices to reduce erosion risks before they occur,
- Maximize use of small-scale or local stormwater infiltration techniques to control erosion near its source,
- Staff an erosion-control inspector on-site during construction for the duration of the buildout, and
- Provide maximum width setbacks to buffer development from hazardous areas.

Condition 113: *Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.* **The Development Agreement needs to specifically retain geologically hazardous areas as designated open space. Instead the Development Agreement makes allowances to alter or eliminate geological hazards by grading.** While the intent of Condition 113 is to designate geological hazard areas as open space, that is eroded by Section 8.3 of the Villages Development Agreement: *"The Designated Official may allow alteration and/or elimination geologic hazard and landslide hazard areas through the clearing and grading permit process provided that the standards of BDMC 19.10.410(C)(1)(b)(i) through (v)-(Exhibit "E") are met. This provision does not apply to alteration of geologically hazardous or landslide areas within wetlands or fish and wildlife*

conservation areas or their associated buffers." **The Development Agreement must be clear in section 8.3, that the Designated Official does not undermine the intent of Condition 113--that is, geologically hazardous areas shall be designated as open space.** The Development Agreement needs to indicate the overall Grading Plan shall provide design options to leave geological hazardous slopes in place. Depending on the characteristic of the hazard, avoidance of a hazardous zone may be the most economic and viable mitigation alternative.

Condition 114. *Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.* The Constraints Map (Exhibit G) legend indicates, for parts of the Lawson Hills area, additional borings will be necessary to determine the construction methods for development of the area. **If a preponderance of evidence from additional borings shows increased risks to development defined under BDMC 19.10.430, the Development Agreement in Section 8.2.3 needs to reflect these potential risks and allow additional open space or buffer widths to moderate and severe mine hazardous areas.**

Sensitive Aquifer Recharge Area

Condition 68. *The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that storm water discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. This condition does not constitute approval for direct discharge of roof drainage into wetlands, streams or their buffers; any such direct discharge is authorized only if approved by the Public Works Director as in compliance with Black Diamond Municipal Code Ch. 14.04 and the standards adopted therein. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.* Areas within the MPD's have been mapped "highly susceptible to ground water contamination" in the Black Diamond Comprehensive Plan (Figure 4-3, Exhibit 1). **The Development Agreement needs to provide detailed measures targeted to protect groundwater quality in areas mapped as highly susceptible to groundwater contamination.** For example, the Development Agreement needs to incorporate targeted Best Management Practices (BMPs) to protect ground-water quality in highly susceptible areas such as landscape management guidelines for the quantity, timing, and type of fertilizers and pesticides applied in common and privately-owned areas. The *Black Diamond Water Quality Policy NE 5* states: "*Within areas highly susceptible to ground water (aquifer) contamination, adopt special protection measures. The special protection measures require businesses that use hazardous chemicals to have containment facilities to capture potential chemical spills, and require the use of best management practices for applying pesticides and fertilizers for business residential, and recreational uses.*" *(Black Diamond Comprehensive Plan, Chapter 4-25, June, 2009).* The Black Diamond Comprehensive Plan lends strong support to protect the quality of ground-water resources.

- *"Protect and where appropriate, enhance ground and surface water quality to meet or exceed state water quality standards within the drainage basins that may be affected by development in the UGA" (Black Diamond Comprehensive Plan, Chapter 2-14, June, 2009).*
- *"The impact of development practices should not contaminate the natural hydrologic system in a way that may be long lasting and relatively irreversible. The City strives to ensure the long term protection of groundwater resources within its planning area." (Black Diamond Comprehensive Plan, Chapter 4-24, June, 2009).*

Rural residents who depend on wells and springs for water supply and who live downgradient to groundwater flows of the Villages project have testified about their concerns. The Development Agreement needs to provide assurances to off-site rural residents that their domestic water supplies will not be degraded. Domestic users of ground water need to know probable risks to well and spring supplies and protections the Applicant intends to provide. As a precedent off-site Horeshoe Lake has been incorporated in the Development Agreement to protect existing water levels.

Conclusions

The Development Agreement must provide more source control practices to reduce geological hazard risks before they occur and provide maximum width setbacks to buffer development from potential hazardous areas. One of the greatest risks for erosion and landslides is during the construction phase. The Development Agreement must not allow major earthmoving and grading in the rainy winter months. The Development Agreement is not clear that an overall Grading Plan will be submitted for the first implementing plat with the intention to maximize the retention of natural landforms. Depending on the characteristic of the hazard, avoidance of a hazardous zone may be the most economic and viable mitigation alternative. The Development Agreement needs to retain geologically hazardous areas as designated open space. Instead it makes allowances to alter or eliminate geological hazards by grading. The Development Agreement needs to detail measures targeted to protect ground-water quality in areas highly susceptible to groundwater contamination. The Development Agreement needs to provide risk assessment reporting for off-site rural residents who are on domestic water supplies and who live downgradient of areas highly susceptible to groundwater contamination.

Parks, Recreational Facilities, and Trails

Background

Parks and trails provide not only recreational opportunities, but they provide greenways, buffers, and visual separators to help mitigate urbanization impacts. Most of the open space consists of sensitive areas and their buffers. 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 indicates it currently, and in the future, will need, "*...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".

Parks and Recreational Facilities

Condition 89. *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].* **The Development Agreement is inadequate in defining whether park and recreation facilities may be constructed on- or off site** (Development Agreement, Section 9, table 9.5, June, 2011). A lump-sum payment option for construction of all off-site recreational facilities is shown table 9.5. Overweighing off-site construction of recreational facilities puts the City at risk of not meeting level of service (LOS) requirements for distance of recreational facilities to residential neighborhoods. On-site recreational facilities are required according to BDMC 18.98.150(A): *"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."* .[Emphasis added] By definition, recreational facilities such as baseball, soccer, and tennis fields and courts require substantial reserves of land on buildable areas to meet LOS requirements. For example, the LOS requirements for the population 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).

Condition 91. *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 Agreement *(Section 9)* needs to provide a mechanism or formula to determine fair lump-sum payment for park and recreational facilities constructed in the future and how often fees need to be determined as market values change.** All recreational facilities by virtue of the Development Agreement (Section 9, Table 9.5) qualify, if requested by the Applicant and authorized by the Designated Official, for lump-sum payment to the City in lieu of construction of new recreational facilities. Furthermore, many recreational facilities would need to be placed on-site close to the population to meet LOS standards.

Condition 93. *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.* **The Development Agreement needs to place limits on the lump-sum payment option**

as all of the recreational facilities described in Section 9, Table 9-5 can qualify for lump-sum payment with approval of the Designated Official. The lump-sum payment in lieu of construction option avoids up-front commitments of availability of land and timing of construction and, thus, it places burdens of uncertainty on the City. A balance is needed by placing limits on lump-sum payment option for construction of recreational facilities and the amount of off-site construction of recreational facilities. The Development Agreement should be modified so that the City Council instead of "Designated Official" be given decision authority to accept Applicant requests for lump-sum payment for recreational facilities shown in Table 9-5 (Development Agreement, Section 9.5.3, June, 2011).

Condition 97. *The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.* **Complete documentation of recreational facilities and trails is required according to MPD standard 18.98.150 (B)**: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance." **The Development Agreement needs to provide complete documentation of recreational facilities and trails by size (in acres), location and type in categories of active and passive open space and whether the facilities are located on- or off-site.**

Trails

Condition 95. *As proposed in the Master Planned Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connection shall meet the same standard to the extent authorized by law.* **The Development Agreement does show an on-site trail system, but lacks conceptual plans for providing trail connections to current and future local and regional trails (Development Agreement, Park and Trail Plan, Figure. 9.2).**

King County has criticized trail connection plans to County Open Space and planned regional trails. These comments were made by King County to the Draft EIS's (9/30/09) and resubmitted as comments to the Final EIS's (2/9/10). The North Triangle does not have any trails shown on Figure 9.2. The County notes that a popular trail known as the *"Lake Sawyer Trail"* is located on King County park land and traverses around Lake Sawyer and along Ravensdale Creek. The County proposes a new soft trail on an open-space strip along the northwestern edge of the Triangle to connect to the regional trail system. The County, in the same FEIS comment, also is concerned the proposed large regional stormwater pond located in unincorporated King County may directly affect plans for the regional Cedar-to-Green River Trail corridor.

The Development Agreement falls short of conceptualizing the connection of on-site trails to local trail system envisioned by the City's Comprehensive Plan. Although the Applicant may not be required to provide for off-site trails, the Development Agreement needs to conceptually lay out plans to connect to the City's envisioned local trail system. The City's Comprehensive Plan policy CF-6 expresses a

vision of trails connecting to historic district and Morganville: "*Encourage development of a trail system which will connect the City's historic district, neighborhoods, Jones Lake, and Morganville with an integrated King County regional trail system, the new park site at Lake Sawyer, and a state trail system along the Green River.*" Conceptual plans for local trails connecting to regional trails is shown in shown in Figure 2-3 and Figure 5-2 of the Black Diamond Comprehensive Plan (June, 2009) and shown in Exhibit 2 and 3, respectively.

NEW CONDITION. *The Development Agreement shall provide specific details for the timing, uses, and acreages of park, trails, recreation facilities and whether facilities are to be constructed on- and off-site.*

GOAL. To provide specific details of timing, uses, and acreages of park, trails, recreation facilities to be constructed on- and off-site for each phase of development.

RATIONALE. The Development Agreement is inadequate in providing up-front commitments of costs, available space, timing, and whether construction of recreational facilities is on-or off- site. The City's Comprehensive Plan indicates it currently and in the future will need, "*...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.*" Currently, the City rates itself poor in existing facilities (*Black Diamond Comprehensive Plan, Parks, Recreation, and Open Space, Chapter 8, June, 2009).*

CODE. Complete documentation of active open space is required according to MPD standard 18.98.150(B): "*The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.*"

BDMC 18.98.150(A): "*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.*"

Conclusions

Parks and trails in active and passive open space help mitigate urbanization impacts and provide higher livability standards for urban dwellers. The Development Agreement does not specify whether recreational facilities will be on- or off-site. On-site recreational facilities are required according to BDMC 18.98.150(A) to meet the needs of MPD residents. All the recreational facilities required of new development can qualify, if approved by the "Designated Official," to receive lump-sum payment. The public benefit to risk is low in postponing potentially all recreational facilities required to meet level of service requirements. Limits need to be placed on the usage of lump-sum payment in lieu of constructing recreational facilities. Overweighing off-site construction of recreational facilities puts the City at risk of not meeting LOS requirements for the distance of recreational facilities to the resident population. The Development Agreement falls short of conceptualizing the connection of on-site trails to off-site local and regional trails as envisioned by the City's Comprehensive Plan. A new condition of approval is recommended for incorporation into the Development Agreement that

provides specific details for the timing, uses, and acreages of park, trails, recreation facilities and whether facilities are to be constructed on- and off-site.

Vegetation and Wetlands

Background

Wetlands are a dominant part of the City landscape including a large interconnecting Core stream-wetland-lake complex of Jones Lake - Rock Creek and Black Diamond Lake - Black Diamond Lake Creek (FEIS, Villages, Exhibit 4-10, 2009). Wetlands and their associated buffers are regulated by the Sensitive Area Ordinance (SAO). Present land cover for both the Villages and Lawson Hills is mostly forest land and wetlands (FEIS, Exhibit 4-13 and Exhibits 4-13, 4-14, 4-15 Villages and Lawson Hills, respectively, 2009).

Wetlands

Condition 71. *Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.* Section 7.4.3 of the Development Agreement indicates the Applicant will comply with Condition 71 as a stormwater management goal. **The Development Agreement needs to specify protections for wetlands by employing strict sediment -control measures during the construction phase and a detailed emergency response plan to guard against large storms overwhelming temporary erosion-control structures.** For example, The Development Agreement needs to provide mitigation measures preventing stormwater volumes and flow rates that would cause sediment deposition to wetlands and natural drainage systems during the construction phase. The Black Diamond Lake –Black Diamond Creek part of the wetland complex may be the most vulnerable to sediment discharge because of the erosion hazard on the eastern side of Black Diamond Lake (FEIS, Exhibit 4-4, Potential Erosion Hazard Area, December, 2009).

Condition 105. *In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion.* [FEIS Mitigation Measure]. **The Development Agreement does not address measures to control stream bank erosion and bank/slope failures along stream corridors. The Development Agreement needs to provide details for the use of vegetation and other erosion-control measures to protect against stream bank degradation.**

Condition 117. *Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas.* [FEIS Mitigation Measure]. **The Development Agreement needs to lay out mitigation measures to protect wetlands and their buffers from sediment discharge during the multi-year (decades-long) construction phase (see Condition 71).**

Condition 119. *New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary.* [FEIS Mitigation Measure]. **The Development Agreement does not address Condition 119. The Development Agreement needs to detail measures to locate new stormwater outfalls to avoid impacts to streams and adjacent wetlands and detail mitigation measures for sensitive areas as described in Condition 119.**

Protection of Wetlands

The Development Agreement is silent on plans for the preservation and enhancement of wetlands and on mitigation measures to be implemented for the loss or alterations to wetlands caused by utility and road crossings and other encroachments. One purpose of the Sensitive Area Ordinance *is "To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values." (City of Black Diamond, SAO no. 08-875, p.5*). Avoidance of adverse impacts is the action of preference according to BDMC 19.10.050 in order to achieve no net loss wetlands or their functions and values. **A Wetland Preservation Plan is recommended for incorporation into the Development Agreement. The objective of Wetland Preservation Plan is to provide goals and guidelines to protect all wetlands, especially the large category I core stream-lake-wetland complex.** Goals for core stream-lake-wetland preservation may include:

- Protect hydrology with no net long-term loss or gain of water,
- Prevent water-quality degradation by contaminants from urban activities and road surfaces to the Core wetland complex and other streams, wetlands, and lakes,
- Prevent sediment discharge to wetlands during the construction phase, and
- Protect plant and animal species and biological habitat of the Core stream- lake-wetland complex and other streams, wetlands, and lakes.

NEW CONDITION. Water-levels for the core stream-wetland-lake complex of Black Diamond Lake shall be monitored pre- and post- development through a Wetland Preservation Plan.

GOAL. To protect against net long-term loss or gain of water to the Category I Core stream-lake-wetland complex. The Wetland Preservation Plan shall assess the performance of storm-water infiltration techniques and facilities and adapt management plans to maintain pre- development water-levels for the Core Category I stream-lake-wetland complex.

RATIONALE. Stormwater management is not an exact science and challenges exist as stormwater is distributed post development to wetlands, lakes, streams, and ground water. Monitoring and correcting for stormwater management deficiencies is needed to ensure pre- development flows to Black Diamond Lake, wetlands, and ground water are maintained.

CODE. BDMC 19.10.320(A): "*The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as Core Stream and Wetland Complex…..*"

Protection of wetlands and other sensitive areas and their associated buffers depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance. *The City of Black Diamond Comprehensive Plan Policy NE-9 states, "Protect sensitive areas from inappropriate land uses, activities, or development through continued application of periodic updates to the CAO* [Critical Area Ordinance referred to by the City as the Sensitive Area Ordinance] *and development regulations. The City [of the City] will monitor the effectiveness of its CAO and will modify this ordinance as necessary, based upon the information gathered during monitoring."* (City of Black Diamond Comprehensive Plan, Chapter 4-26, June, 2009). **A new condition of approval is recommended for the Development Agreement to make provisions to monitor the effectiveness of the SAO during buildout.** The SAO should not be diluted by variances and changes in standards that would result in adverse impacts to wetlands and sensitive areas (see Section Recommended New Conditions).

Vegetation

Condition 65. *Where point discharges to streams must occur, design the outfall to minimize impacts to stream channel and avoid areas of significant vegetation.* [FEIS Mitigation]. **The Development Agreement is silent on Condition 65. The Development Agreement needs to specify basic design elements to protect stream channels where stormwater discharges to stream channels**.

Condition 118. *Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees.* [FEIS Mitigation Measure] **The Development Agreement is silent concerning the use of *"on the ground"* measures to identify and protect significant trees.** Randall Arendt stressed the importance of field visits ("on the ground") to identify and conserve significant trees or stands of trees to incorporate in creative open space prior to permitting land-clearing operations (see Condition 120).

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Condition 120. *A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.* **The Development Agreement is silent on Condition 120. Tree inventories need to be done "on the ground" in early planning stages at a project level in order to identify and conserve significant trees or stands of trees.** Tree inventories are consistent with rural- by-design principles and need to be done in the early planning design in order conserve significant trees for city landscaping (Randall Arendt, Black Diamond City Council work session, April 14, 2011). Promoting rural-by-design principles into new development is required by BDMC:18.98.010(L). Data from the tree inventory must be used for creative open space and landscape design opportunities. Clearing cutting the site is probable according to the Hearing Examiner's discussion: "*Given the proposed densities, it is anticipated that the development areas shown on*

Figure 3-1 Land Use Plan will be cleared of all vegetation and graded to facilitate development" (*The Villages, Findings, Conclusions and Decision, 2010, p. 214*). Without tree inventories conducted early in the planning process, opportunities to save significant trees and provide "on the ground " protection measures would be foregone once a implementing site is cleared of vegetation.

Conclusions

Development for the Villages and Lawson Hills MPD's will be challenged by the unique and fragile environment containing a numerous wetlands on- and off-site. Road and utility crossings through wetlands are inevitable according Applicant constraint maps and conceptual site plans, yet the Development Agreement is silent on plans for the preservation and enhancement of wetlands and on mitigation measures to be implemented for no net loss of wetlands and sensitive areas due to alterations caused by utility and road crossings and other encroachments. It is recommended a Wetland Preservation Plan be incorporated in the Development Agreement to provide goals, guidelines, and oversight to protect wetlands on-and off site. A new condition of approval is recommended to protect against a no net long-term loss or gain of water to the core stream-lake-wetland complex of Black Diamond Lake through a Wetland Preservation Plan.

Tree inventories and "on-the-ground" measures need to be addressed in the Development Agreement to identify and preserve significant trees before permitting and land clearing. Such "on-the-ground" measures are consistent with Rural-by-Design principles and need to be done in the early planning stages in order conserve significant trees for creative open space and city landscaping. Protection of wetlands and other sensitive areas and their associated buffers depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance. As a new condition of approval it is recommended the Development Agreement make provisions to monitor the effectiveness of the SAO during buildout.

Fish and Wildlife Habitat

Background

High-value fish and wildlife habitats exist in the City watersheds of Rock and Ravensdale Creeks. These creeks are the main tributaries to Lake Sawyer and they are known to support coho salmon and cutthroat trout (City of Black Diamond Comprehensive Plan (Chapter 4-10, 4-11, June, 2009). The Black Diamond Municipal Codes lend strong support for preservation of wildlife and habitat in a coordinated plan.

Wetlands, streams, and lakes and their riparian habitats meeting certain criteria are listed as "priority habitats" and are regulated under the City's Sensitive Area Ordinance (SAO). The SAO contains requirements for mapping and designating *"Fish and Wildlife Habitat Conservation Areas (FWHCA)"* and sets buffer requirements and performance standards for activities allowed in the FWHCA and their buffers.

Habitat Loss and Mitigation Measures

Condition 123. *Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]* **The Development Agreement needs to detail plant species selection as wildlife forage**

preference for enhancement areas. The Compliance Matrix does not indicate Condition 123 has been addressed.

Condition 125. *"Provide a 300-ft-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network."* The Development Agreement does comply with an additional 300-ft wildlife corridor extension from the western edge the core stream-wetland Black Diamond Lake complex to the western edge of the property. **The Development Agreement needs to show on Constraints Map (Exhibit G) a continuous wildlife corridor from the western boundary through the Villages to the northern boundary of the Villages in order to meet the intent of Condition 125.** The Development Agreement makes no direct mention of wildlife corridors in section 8.2.2, yet states the Fish and Wildlife Habitat Conservation Areas are deemed final and complete through the term of the Agreement. The King County wildlife habitat network shows a north-south corridor traversing the Villages MPD and connecting to the Green River to the south and and connecting to King County Open Space to the north (Black Diamond Comprehensive Plan, Figure 4-2, June 2009). The King County wildlife habitat network map (Figure 4-2) is shown as Exhibit 4.

Even though the western extension is shown on the Constraint Maps (Exhibit G) as designated wildlife corridor, **no wildlife corridor is shown as an overlay with the 225-foot buffer for the wetland-stream-lake complex of Black Diamond Lake.** It is not clear in the Development Agreement that a wildlife corridor apparently must overlay the core Black Diamond Lake-wetland buffer. **If so, a width extension of the core wetland complex of at least 300 feet is recommended east of Black Diamond Lake to function as a viable wildlife corridor and to fully meet the intent of Condition 125 and to meet BDMC 18.98.140(C)** *"The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified."* The area around Black Diamond Lake has been considered in the Black Diamond Comprehensive Plan (Figures 2-3, 5-2, and 4-2) as open space and would serve as additional wildlife corridor (see Exhibits 2,3, and 4, respectively).

Additional open space/wildlife corridor dedication would reduce impacts to the Lawson Hills Triangle area according to comments made by King County Department of Natural Resources and Parks. The Triangle provides no buffer between development and King County's Black Diamond Natural Area to the north. The Natural Area has been given a unique and outstanding wetland rating by King County (Black Diamond Comprehensive Plan, Figure 4-1). Comments concerning the lack of a buffer to the Natural Area were made by King County to the Draft EIS's (9/30/09) and resubmitted as comments to the the Final EIS's (2/9/10). King County noted that by providing additional buffers in Triangle area, the following benefits would be derived:

- Preserve existing forest and uphold the ecological health of lands dedicated under the Black Diamond Open Space Agreement,
- Offer wildlife corridor opportunity,
- Reduce light impacts, and
- Lower impacts to Ravensdale Creek and provide more habitat integrity.

The County further noted additional buffer/wildlife corridors are supported by BDMC 18.98.140.B: "*Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD*".

The County in the same review document made the following comment: "*The proposed development layout would render many of the open space lands within City "islands" of habitat with minimal potential for connectivity with nearby open space, and a high potential to degrade as adjacent lands are developed. With some minor design adjustments, coupled with clustering, density modifications, and buffering averaging to maintain economic potential for the developer, open space within the City can be made more ecologically viable. King County could provide a map showing areas that could be considered for development modification.*"

The Development Agreement needs to provide plans for a high degree of compatibility for wildlife affected by the MPD projects. **A Wildlife and Habitat Preservation Plan is recommended to be incorporated in the Development Agreement to provide guidelines for wildlife and habitat protection.** Guidelines for the size, placement, and connections of on- and off-site habitats should be done in consultation with King County and other agencies with region-wide wildlife networks. It is recommended the adequacies of buffer/wildlife corridors within the MPDs be reviewed by King County and other fish and wildlife experts before approval of the Development Agreement.

NEW CONDITION. *A Wildlife and Habitat Preservation Plan shall provide guidance for the size, placement, and connections of on- and off-site habitats in consultation with outside experts and agencies.*

GOAL. To provide wildlife habitat and corridor linkages with a high degree of compatibility between wildlife and the MPD's.

RATIONALE. To provide a high degree of compatibility for wildlife habitat and the human population within the MPD and the City of Black Diamond. Coordinate the use of high-value wildlife habitats that exist around streams and wetlands in the City of Black Diamond with upland habitat to minimize the adverse impacts on wildlife resources. Study the area around Black Diamond Lake is already suggested in the City's Comprehensive Plan *(June, 2009)* as an additional Fish and Wildlife Conservation Area (Figure 4.2, Exhibit 4)

CODE. BDMC 18.98.155 (B)--"*All development, including road layout and construction, shall be designed, located and constructed to minimize impact to wildlife habitat and migration corridors. This shall include minimizing the use of culverts in preference to open space crossing*";

BDMC 18.98.010(C)--"*Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for enjoyment of the city's residents.*"; and

BDMC 18.98.140(C)--"*The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.*"

Delineation of Fish and Wildlife Habitat Conservation Areas (FWHCA)

The Development Agreement deems the delineation of the FWHCA's as final and complete (Villages, Development Agreement, Section 8.2.2, June, 2011) and the FWHCA's are shown on the Constraints Map (Villages, Development Agreement, Exhibit G, June, 2011). The Development Agreement does not show the FWHCA's on the Constraint Maps even though the Development Agreement indicates the FWHCA are complete. The City's Comprehensive Plan (June, 2009) shows rather large areas around Black Diamond Lake and the North Triangle as a study area for potential Fish and Wildlife Conservation Area (Figure 4.2, Exhibit 4). The FWHCA's need to field identified, reviewed, and delineated on the project Constraints Maps and field marked.

Conclusion

The Development Agreement needs to provide plans for a high degree of connectivity and compatibility for wildlife on- and off-site. The wildlife corridor, although not designated as such on the Constraint Maps, is apparently through the core wetland-stream-Black Diamond Lake complex with no coordinated use of non-wetland habitat. King County has criticized the open space/habitat plan as not providing sufficient connectivity and has offered to provide a map that would show more open space connectivity for wildlife. It is recommended the adequacies of buffer/wildlife corridors within the MPDs be reviewed by King County and other fish and wildlife experts before approval of the Development Agreement.

It is recommended a Wildlife and Habitat Preservation Plan be incorporated in the Development Agreement to provide guidelines for wildlife and habitat protection. Placement of open space/habitat lands around Black Diamond Lake is already proposed in the City's Comprehensive Plan as an additional Fish and Wildlife Conservation Area, needs to be part of a Wildlife and Habitat Preservation Plan that reflects the City's vision of a high degree of compatibility for wildlife with new development. The Lawson Hills Triangle provides no buffer between development and King County's Black Diamond Natural Area to the north. The new condition asks for a Wildlife and Habitat Preservation Plan be incorporated in the Development Agreement to provide guidance for the size, placement, and connections of on- and off-site habitats in consultation with outside experts and agencies.

Visual and Aesthetic Values

Background

The economic base of City of Black Diamond for the first 100 years was the extraction of natural resources, mainly coal. In the next 100 years, as envisioned in the City's Comprehensive Plan, the City will be characterized by "...*the preservation of the quality of its natural setting, its scenery and views, and the preservation of its historic treasures.*" (Chapter 4.1, June, 2009). A project of the size and lot density proposed by Master Developer will challenge efforts to preserve the quality of the City's natural setting. The Development Agreement needs to be structured so the City's natural

beauty is preserved as envisioned for the next 100 years. The City of Black Diamond's Comprehensive Plan emphasizes maintaining its existing small- town character: "*The small-town atmosphere will be maintained by controlling the scale and character of new development*" (City of Black Diamond Comprehensive Plan, Chapter 5-8, June, 2009).

Condition 86. "*The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest*".. **The Development Agreement needs to detail measures to limit removal of hazard trees to small numbers or increase buffer widths to accommodate areas where significant numbers of hazardous trees can remain standing as wildlife habitat.** Tree fall in sensitive areas is part of the natural functioning of sensitive areas, and removing swaths of trees on developed parcels encourages wind- caused tree fall to adjoining sensitive area buffers. Since human intrusions into these areas is discouraged, no trees should be deemed "hazardous" unless public safety is an issue.

Condition 87. *The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.* **The Development Agreement, (Section 13.2), needs to specify that the only parcels allowed for logging to occur are for the active implementing phase.**

Condition 124. *"Mast-producing species (such as hazelnut) and such other native, preferred native vegetation shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein."* **It is recommended the Director of Natural Resources and Parks review and approve all landscaping plans prior to permit approval to ensure compliance with BDMC18.98.140 (B)**: "*Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.*"

NEW CONDITION. *Provide a Visual, Aesthetic and Buffer Plan that addresses visual and aesthetic values and adapts design standards that incorporates continuous greenbelt areas, retains natural landforms and vegetation, provides buffers, setbacks, and conservation easements to transition incompatible land uses of the MPD's and perimeter and adjoining properties.*

GOAL. To preserve the quality of City's natural setting and visual and aesthetic values by incorporating appropriate unconventional planning and design principles identified in the books 'Rural by Design' and "Envisioning Better Communities" by Randall Arendt

RATIONALE. Maximize preservation of the City's natural setting by retaining existing topography, vegetation, and landforms. Minimize adverse urbanization impacts to visual and aesthetic values by use of continuous greenways and buffers.
CODE. BDMC18.98.140 (B) : "*Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.*"
BDMC 18.72.030 (E): "*A portion of the required percentage of landscape areas may be met by leaving land in its natural state including not disturbing grade and native vegetation, providing that the provisions of this chapter are otherwise satisfied.*"
COMPREHENSIVE PLAN. "*The small-town atmosphere will be maintained by controlling the scale and character of new development*" (City of Black Diamond Comprehensive Plan, Chapter 5-8, June, 2009).

Conclusions

The City has provided a vision in its Comprehensive Plan and Municipal Codes to retain natural open space and provide for continuous greenways and buffers within the MPD. Projects of the size and lot density proposed by Master Developer will challenge efforts to preserve the quality of the City's natural setting. Most of the open space provided by the Applicant consists of primary conservation areas such as wetlands and streams and their buffers that are not developable by conventional development. The challenge facing the Applicant will be retaining natural landforms and preserving natural vegetation on the buildable land as envisioned in Rural-by-Design principles.

Unconventional development requires preserving significant natural features and demands upfront community planning to save natural features and significant stands of trees. To move towards achieving the City's goal of preserving the quality of the City's natural setting, Conditions of Approval need to be strengthened or amended. For example, the City's Comprehensive Plan calls for a new direction by maintaining small-town character by controlling the scale and character of new development, yet provisions in the Development Agreement to retain natural beauty and the small-town character are lacking. It is recommended a Visual, Aesthetic and Buffer Plan be incorporated in the Development Agreement to provide oversight and guidelines to assist in the preservation of the quality of the City's natural setting as envisioned.

RECOMMENDED NEW CONDITIONS

NEW CONDITION. *The Development Agreement shall provide specific details for the timing, uses, and acreages of all park, trails, recreation facilities and whether facilities are to be constructed on- and off-site.*
GOAL. To provide specific details of timing, uses, and acreages of park, trails, recreation facilities to be constructed on- and off-site for each phase of development.
RATIONALE. The Development Agreement is inadequate in providing up-front commitments of costs, available space, timing, and whether construction of recreational facilities is on-or off- site. The City's Comprehensive Plan indicates it currently and in the future will need, "...*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." Currently, the City rates itself poor in existing facilities (*Black Diamond Comprehensive Plan, Parks, Recreation, and Open Space, Chapter 8, June, 2009).*

CODE. Complete documentation of active open space is required according to MPD standard 18.98.150(B): "*The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance.*"

BDMC 18.98.150(A): "*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.*"

NEW CONDITION. Water-levels for the core stream-wetland-lake complex of Black Diamond Lake shall be monitored pre- and post- development through a Wetland Preservation Plan.

GOAL. To protect against net long-term loss or gain of water to the Category I Core stream-lake-wetland complex of Black Diamond Lake. The Wetland Preservation Plan shall assess the performance of storm-water infiltration techniques and facilities and adapt management plans to maintain pre- development water-levels for the Core Category I stream-lake-wetland complex.

RATIONALE. Stormwater management is not an exact science and challenges exist as stormwater is distributed post development to wetlands, lakes, streams, and ground water. Monitoring and correcting for stormwater management deficiencies is needed to ensure pre- development flows to Black Diamond Lake, wetlands, and ground water are maintained.

CODE. BDMC 19.10.320(A): "*The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as Core Stream and Wetland Complex…..*"

NEW CONDITION. To monitor and determine the effectiveness of the Sensitive Area ordinance (SAO) during the MPD buildout.

GOAL. Protection of wetlands and other sensitive areas and their associated buffers depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance.

RATIONALE. Changes will occur on-the-ground during the decades long buildout of MPD. Sensitive area protections over long periods are critical to intented outcomes.

COMPREHENSIVE PLAN. *The City of Black Diamond Comprehensive Plan Policy NE-9 states, "Protect sensitive areas from inappropriate land uses, activities, or development through continued application of periodic updates to the CAO* [Critical Area Ordinance referred to by the City as the Sensitive Area Ordinance] *and development regulations. The City [of the City] will monitor the effectiveness of its CAO and will modify this ordinance as necessary, based upon the information gathered during monitoring.*" (City of Black Diamond Comprehensive Plan, Chapter 4-26, June, 2009). \

A new condition of approval is recommended for the Development Agreement to make provisions to monitor the effectiveness of the SAO during buildout. The SAO should not be diluted by variances and changes in standards that would result in adverse impacts to wetlands and sensitive areas.

NEW CONDITION. *A Wildlife and Habitat Preservation Plan shall provide guidance for the size, placement, and connections of on- and off-site habitats in consultation with outside experts and agencies.*
GOAL. To provide wildlife habitat and corridor linkages with a high degree of compatibility between wildlife and the MPD's.
RATIONALE. To provide a high degree of compatibility for wildlife habitat and the human population within the MPD and the City of Black Diamond. Coordinate the use of high-value wildlife habitats that exist around streams and wetlands in the City of Black Diamond with upland habitat to minimize the adverse impacts on wildlife resources. Study the area around Black Diamond Lake is already suggested in the City's Comprehensive Plan *(June, 2009)* as an additional Fish and Wildlife Conservation Area (Figure 4.2, Exhibit 4)
CODE. BDMC 18.98.155 (B)--"*All development, including road layout and construction, shall be designed, located and constructed to minimize impact to wildlife habitat and migration corridors. This shall include minimizing the use of culverts in preference to open space crossing*";
BDMC 18.98.010(C)--"*Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for enjoyment of the city's residents.*"; and
BDMC 18.98.140(C)--"*The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.*"

NEW CONDITION. *Provide a Visual, Aesthetic and Buffer Plan that addresses visual and aesthetic values and adapts design standards that incorporates continuous greenbelt areas, retains natural landforms and vegetation, provides buffers, setbacks, and conservation easements to transition incompatible land uses of the MPD's and perimeter and adjoining properties.*
GOAL. To preserve the quality of City's natural setting and visual and aesthetic values by incorporating appropriate unconventional planning and design principles identified in the books 'Rural by Design' and "Envisioning Better Communities" by Randall Arendt
RATIONALE. Maximize preservation of the City's natural setting by retaining all practical existing topography, vegetation, and landforms. Minimize adverse urbanization impacts to visual and aesthetic values by use of continuous greenways and buffers.
CODE. BDMC18.98.140 (B) : "*Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.*"

BDMC 18.72.030 (E): "*A portion of the required percentage of landscape areas may be met by leaving land in its natural state including not disturbing grade and native vegetation, providing that the provisions of this chapter are otherwise satisfied.*"
COMPREHENSIVE PLAN. "*The small-town atmosphere will be maintained by controlling the scale and character of new development*" (City of Black Diamond Comprehensive Plan, Chapter 5-8, June, 2009).

SUMMARY/CONCLUSIONS

The Black Diamond Comprehensive Plan and many of its own Codes support a vision of Rural by Design and retaining the natural beauty of the small town out to the next 100 years. The Comprehensive Plan calls for controlled development --"*The small-town atmosphere will be maintained by controlling the scale and character of new development*". A key objective of the City is provided in BDMC 18.98.020 (A) calling for unconventional development: "*A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but not limited to: A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas) of the site.*" The City's vision through 2025 is "*In the year 2025, Black Diamond will be a beautiful, friendly community based on a rich historic heritage and exceptional natural setting, and with a small-town atmosphere. Forested areas and open space remain, while development maintains a healthy balance of moderate growth and economic viability.*" The Applicant's MPD's are the largest in the history of King County and will be challenged to meet the City's own stated visions out to 2025 and beyond.

The Development Agreement falls short of 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. The Applicant has provided a relatively small percentage of open space for developable land or non-sensitivity areas for The Villages. Complete documentation of active open space is required according to MPD standard 18.98.150(B). The Development Agreement needs to provide complete documentation of the amount of open space (in acres) for on- and off-site by categories of active and passive open space. The Development Agreement needs to specify restrictions and non-allowed activities in passive open space. Mitigation measures need to be provided in the Development Agreement to maintain a no net loss of sensitive areas / passive open space. If non-temporary use of open space occurs, mitigation measures need to provide for replacement passive open space within the project area. A stated goal of no net loss of open space in sensitive areas/passive open space needs to be provided in the Development Agreement.

The Development Agreement must provide more source control practices to reduce geological hazard risks before they occur and provide maximum width setbacks to buffer development from potential hazardous areas. Depending on the characteristic of the hazard, avoidance of a hazardous zone may be the most economic and viable mitigation alternative. One of the greatest risks for erosion and landslides to occur is during the construction phase. The Development Agreement must not allow major

earthmoving and grading in the rainy winter months, in part because of the highly constrained environment of wetlands, streams, and lakes. The Development Agreement needs to specifically retain geologically hazardous areas as designated open space. Instead the Development Agreement makes allowances to alter or eliminate geological hazards by grading. The Development Agreement must detail measures targeted to protect ground-water quality in areas highly susceptible to groundwater contamination. Residents have had long-held concerns their domestic water supplies may be adversely affected by the project and they have expressed their concerns by testifying to that subject. The Development Agreement needs to provide risk assessments for off-site rural residents living down gradient of areas highly susceptible to groundwater contamination.

The Development Agreement does not specify whether recreational facilities will be on- or off-site. On-site recreational facilities are required according to BDMC 18.98.150(A) to meet the needs of MPD residents. All the recreational facilities required of new development can qualify, if approved by the "Designated Official," to receive lump-sum payment. The public benefit to risk is low in postponing potentially all recreational facilities required to meet level of service requirements. Limits need to be placed on the usage of lump-sum payment in lieu of constructing recreational facilities. Overweighing off-site construction of recreational facilities puts the City at risk of not meeting level of service requirements for the distance of recreational facilities to the resident population. The Development Agreement falls short of conceptualizing the connection of on-site trails to off-site local and regional trails as envisioned by the City's Comprehensive Plan. A new condition of approval is recommended for incorporation into the Development Agreement that provides specific details for the timing, uses, and acreages of park, trails, recreation facilities and whether facilities are to be constructed on- or off-site.

The Development Agreement is silent on plans for the preservation and enhancement of wetlands and on mitigation measures to be implemented to meet no net loss of wetlands and sensitive areas due to alterations caused by utility and road crossings and other encroachments. It is recommended a Wetland Preservation Plan be incorporated in the Development Agreement to provide goals, guidelines, and oversight to protect wetlands on-and off site. A new condition of approval is recommended to protect against a no net long-term loss or gain of water to the core stream-lake-wetland complex of Black Diamond Lake through a Wetland Preservation Plan.

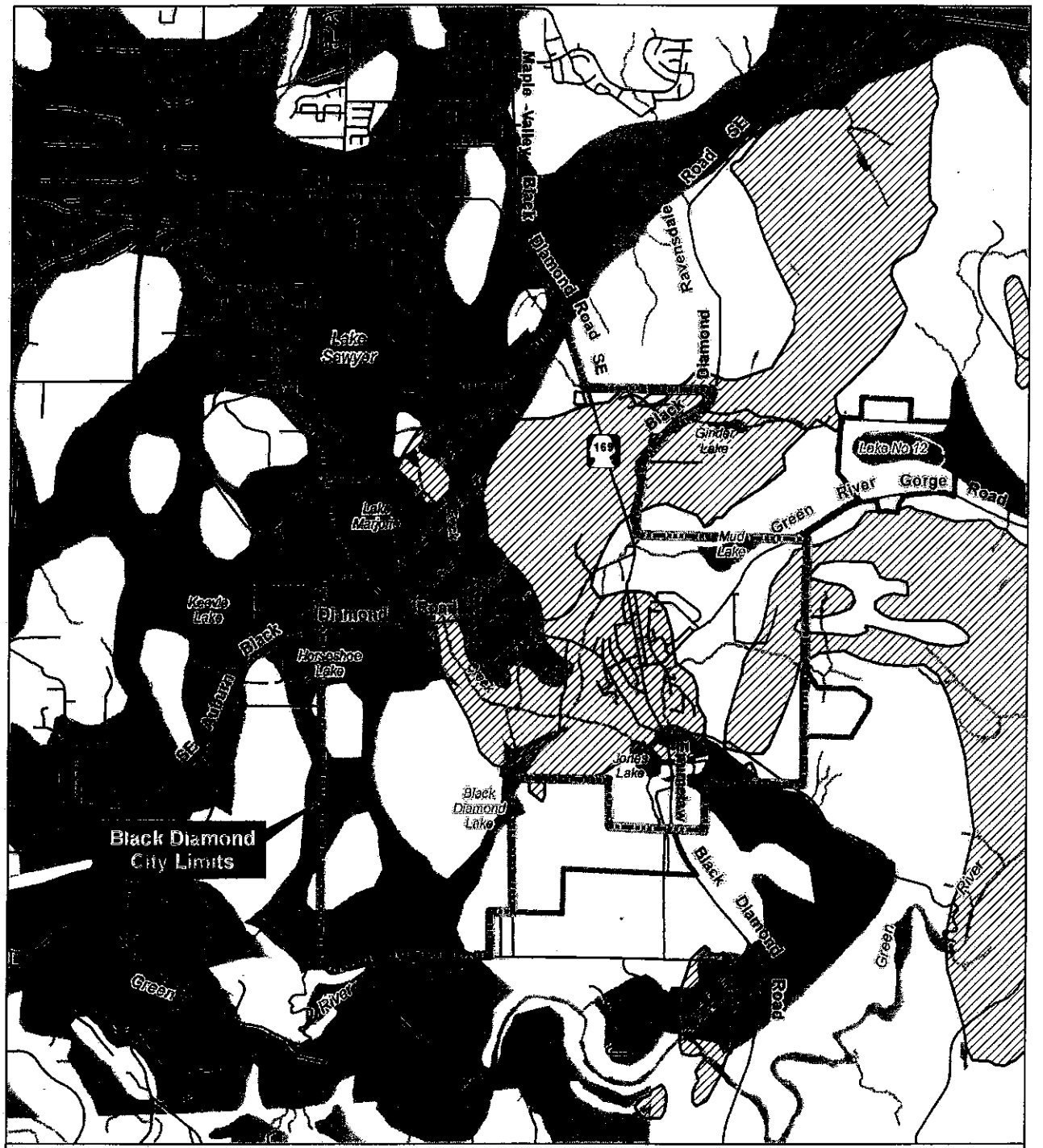
The Development Agreement needs to specify tree inventories and "on-the-ground" measures to identify and preserve significant trees or stands of trees must occur before permitting of land clearing and grading. Such "on-the-ground measures are consistent with Rural-by-Design principles and need to be done in the early planning stages in order conserve significant trees for creative open space and city landscaping. The Development Agreement needs to specify logging of parcels can occur for the active phase of the development only. The Black Diamond Comprehensive and Black Diamond City Code lend strong support for preservation of trees and landforms. A new condition of approval is recommended to monitor the effectiveness of the Sensitive Area

Ordinance (SAO) during buildout. Protection of wetlands and other sensitive areas and their associated buffers depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance.

The Development Agreement needs to provide plans for a high degree of connectivity and compatibility for wildlife on- and off-site. The wildlife corridor, although not designated as such on the Constraint Maps, is apparently through the core wetland-stream-Black Diamond Lake complex with no coordinated use of non-wetland habitat. King County has criticized the open space/habitat plan as not providing sufficient connectivity. It is recommended the adequacies of buffer/wildlife corridors within the MPDs be reviewed by King County and other fish and wildlife experts before approval of the Development Agreement. Placement of open space/habitat lands around Black Diamond Lake has already been proposed in the City's Comprehensive Plans. A new condition of approval is recommended that asks for a Wildlife and Habitat Preservation Plan to be incorporated in the Development Agreement to provide oversight and guidance for the size, placement, and connections of on- and off-site habitats in consultation with outside experts and agencies. A Wildlife and Habitat Preservation Plan in the Development Agreement would assist in achieving the City's Comprehensive Plan vision of a high degree of compatibility for wildlife with new development.

Unconventional development requires preserving significant natural features and demands upfront community planning to save natural features and significant stands of trees. To move towards achieving the City's goal of preserving the quality of the City's natural setting, Conditions of Approval need to be strengthened or amended. For example, the City's Comprehensive Plan calls for a new direction by maintaining small-town character by controlling the scale and character of new development, yet provisions in the Development Agreement to retain natural beauty and the small-town character are lacking. It is recommended a Visual, Aesthetic and Buffer Plan be incorporated in the Development Agreement to provide oversight and guidelines to assist in the preservation of the quality of the City's natural setting as envisioned.

Respectably submitted,
Gil Bortleson
23831 SE Green Valley Road
Auburn, WA 98092



Sources: City of Black Diamond (2006); King County (2007)

- City Limits
- Potential Annexation Area
- Road
- Water Feature
- Potential Coal Mine Hazard Area
- Area Highly Susceptible to Groundwater Contamination

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Miles

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an ICF International Company

Figure 4-3. Potential Coal Mine Hazard Areas & Areas Highly Susceptible to Groundwater Contamination
Black Diamond Comprehensive Plan
May 2009

Exhibit 1. - Bortleson

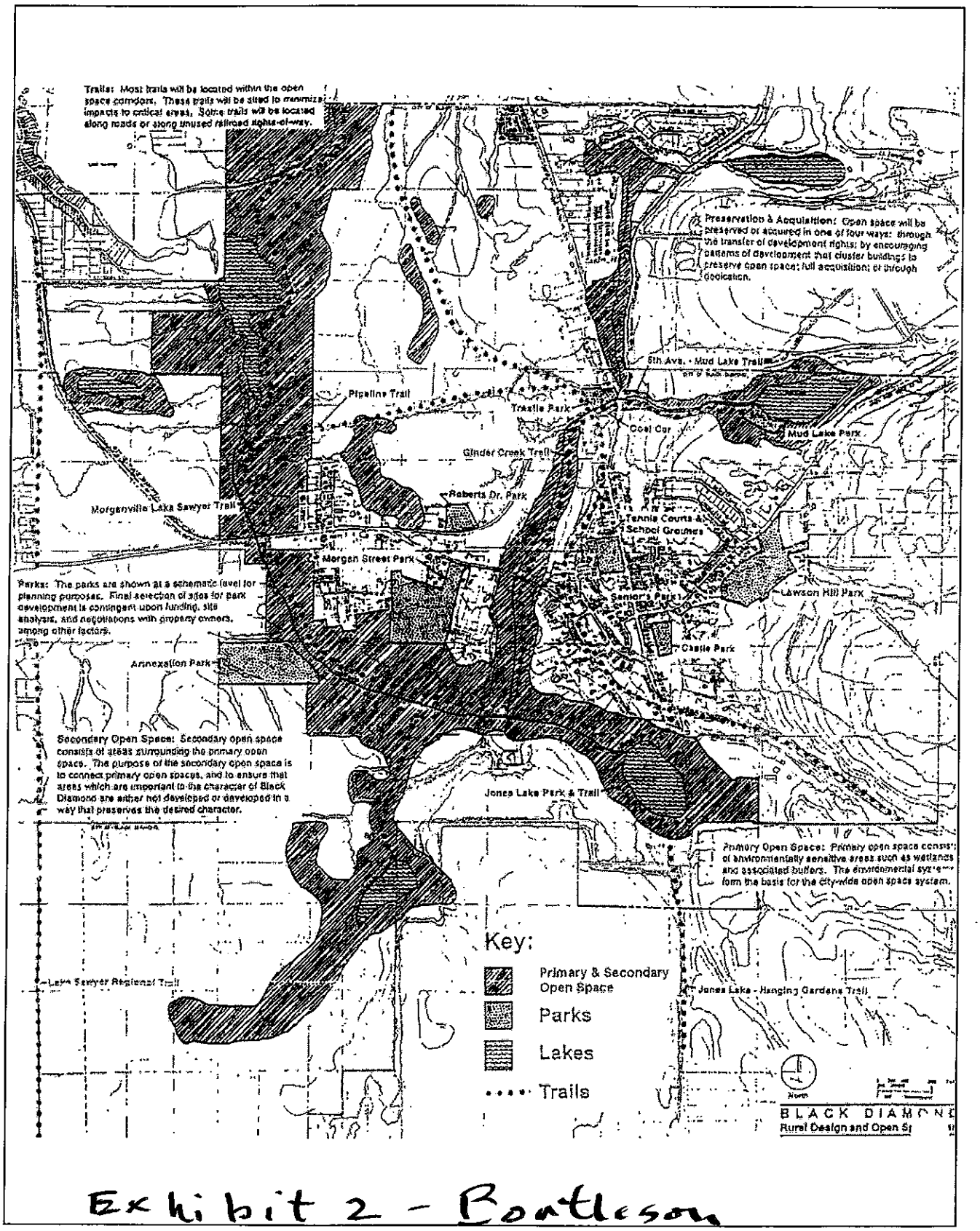
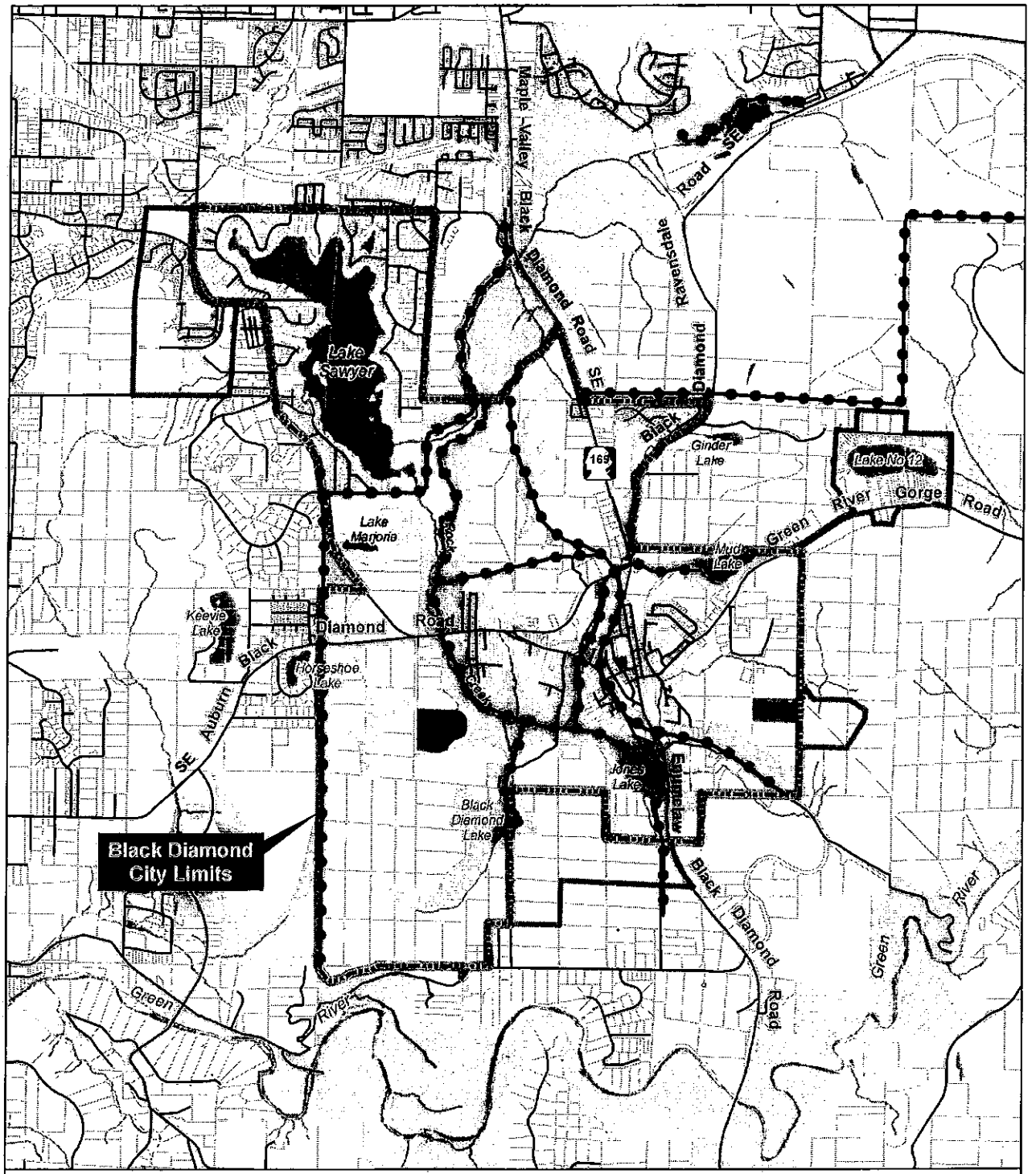


Exhibit 2 - Bontleson

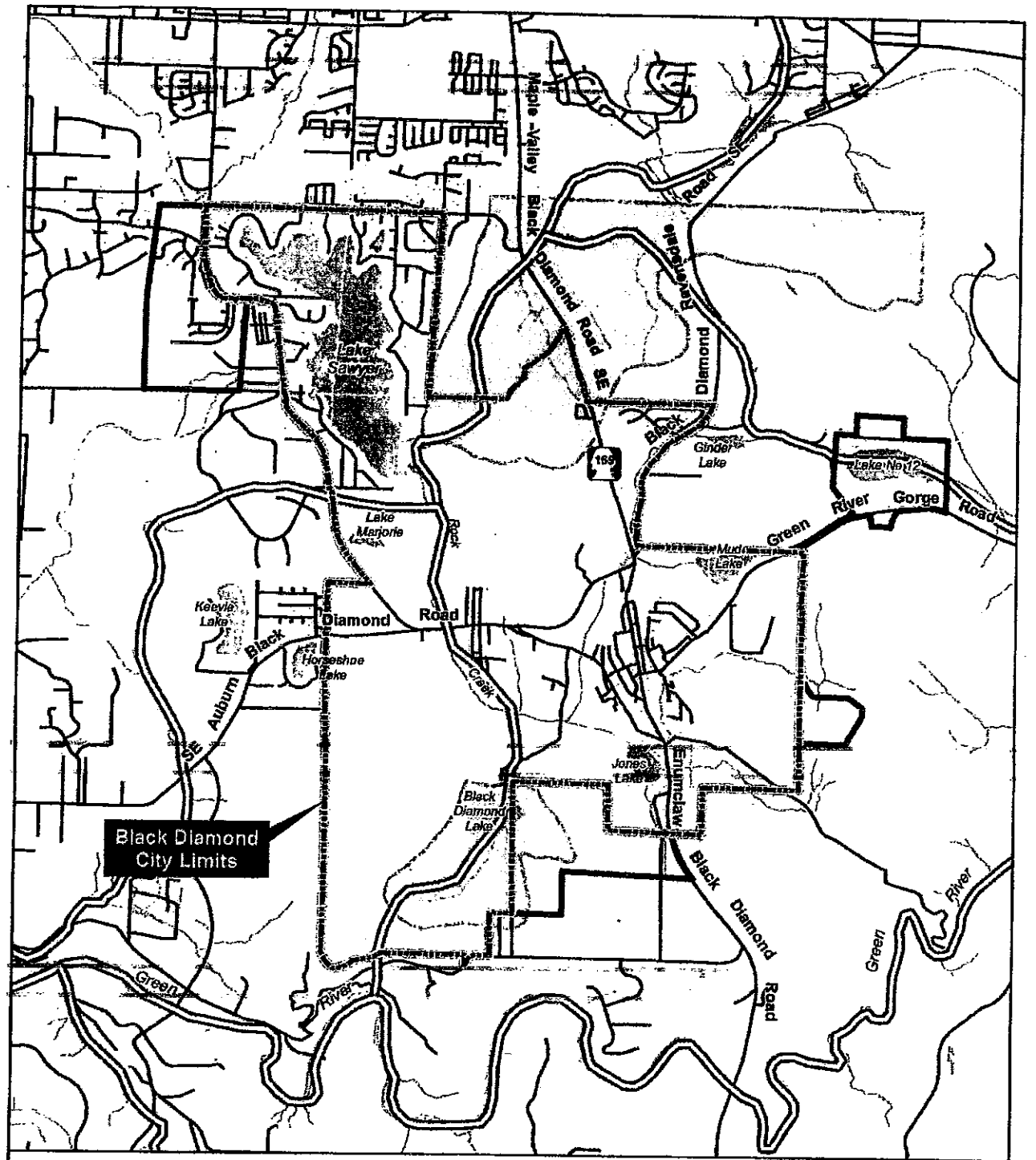
Figure 2-3
Black Diamond Primary and Secondary Space



ICF Jones & Stokes

Exhibit 3 - Bontleson

Figure 5-2. Parks and Open Space Map
Black Diamond Comprehensive Plan
May 2009



Sources: City of Black Diamond (2006); King County (2007)

- Road
- City Limits
- Potential Annexation Area
- Parcel Boundary
- King County Wildlife Habitat Network
- Study Area for Potential Fish and Wildlife Habitat Conservation Area

N

0 0.5 1

Miles

ICF Jones & Stokes

Exhibit 4 - Bortleson

Figure 4-2. Wildlife Habitat Network
Black Diamond Comprehensive Plan
May 2009

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Karen Hedwig Backman <madmaker13@msn.com>
Sent: Thursday, August 04, 2011 10:33 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

Too many project impacts are not adequately mitigated to meet the Conditions of Approval established by Black Diamond. For example:

* Traffic mitigation is grossly inadequate; many major southeast King County roads will be clogged with traffic. An estimated 10,000+ vehicles per day on already constrained two-lane roads will exacerbate greenhouse gas emissions as many people face much longer and time-consuming commutes.

* The developments will cause 750 acres of pristine forest to be clear-cut and wildlife habitat lost. Proposed wildlife corridors do not even connect some of the wetlands.

* Water and air quality will be adversely affected. All residents will bear these impacts and will have the long-term responsibility of dealing with these problems.

* Potential impacts to Lake Sawyer are significant: flooding and decreased water quality both in the lake and in streams throughout the Green River Watershed due to increased phosphorus loading.

You lack sufficient information to determine whether the Conditions of Approval have been met for many of the separate discipline reports. The Development Agreements must be rewritten to include sufficient information for decision makers and the Public.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Karen Hedwig Backman
31010 18th Ave S Apt 4
Federal Way, WA 98003-4934

EXHIBIT
114

4 August 2011

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

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

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

We're writing to express deep concerns regarding the adverse impacts of two Master Planned Developments (MPDs) proposed by Yarrow Bay in and around the City of Black Diamond. Their proximity to King County's urban/rural boundary makes these MPDs of common interest to the three UACs whose service areas span the urban/rural fringe area of King County.

For 46-years collective, these UACs have served over 96,000 unincorporated area residents and 160 square miles of unincorporated King County (97% rural or resource, 3% is urban unincorporated).

Sharing boundaries with the Urban Growth Area (UGA) along with 9 cities, from Woodinville to Black Diamond and Covington, the UACs have gained unique, long-term experience with urban/rural challenges.

The Greater Maple Valley Area Council (GMVAC) has taken the local lead on the Black Diamond MPDs. The Four Creeks and Upper Bear Creek UACs have reviewed their work on the MPDs and strongly support their actions and conclusions.

Conclusions

The size, population, and location of the MPDs drive special concerns:

- School concurrency insufficiently describes the location of all the schools. It is inappropriate to locate any urban-serving schools outside the UGA. While reducing rural or resource lands, schools are epicenters of community transformation and infrastructural demand. Intending to connect them via tight-line sewers would inappropriately extend urban services into the rural area inevitably creating pressure to urbanize.

  The UACs are on record as opposing schools built to serve primarily urban students from locating in the rural area.
- Locating an urban-serving stormwater retention/detention facility outside the UGA is certainly inappropriate because of the loss of rural or resource lands. However, the biggest concern is that building a private stormwater retention facility to serve urban development on rural land is a back-door way to expand the UGA. Such a facility may need to be maintained by the city and, once that authority is established, annexation usually follows.
- The response to the Integrated Transportation Program (KCC 14.65) needs to include analysis of impacts throughout King County Travel Sheds 13, 18, and 19. Risks of non-compliance to Service Levels or Intersection Standards need to be understood and, if necessary, mitigated.
- The MPDs use of Transfer Development Rights (TDR) significantly increases the actual density over current zoning. Although authorized, it can be very confusing to residents when they see,

EXHIBIT
115

for example, a R-4 urban zone expected to authorize 4 dwelling units per acre built out at much higher density.

- As with schools and the stormwater site, it is of great concern to the UACs if land owners and/or Black Diamond have any intention of using the proximity of the urban density and supporting urban services to the UGB as leverage and justification for future expansions of the UGA.
- Covington, Maple Valley, and Black Diamond comprise a relatively narrow band of urban land stretching to the east from Kent, separating two large rural areas (map attached)

  Placing high-density urban development along this corridor increases pressure to urbanize surrounding areas. Of particular concern is placing this urban density in the eastern end of the band in Black Diamond.

The UACs share concerns over large developments or land use changes, particularly those near the UGB, because of the intensity and radius of impacts from these epicenters of community and infrastructural change. Current overall understanding of short- and longer-term impacts to the areas and residents around the MPD appears to be insufficient.

In the rush to realize the benefits promised by MPDs, it would be inappropriate to ignore these larger questions. The ramifications may be devastating.

We urge all involved in the Black Diamond MPDs specifically, or in the larger issue of community and regional impacts from development and land use changes, to fully address these issues and continue to ask more impact questions.

Thank you.

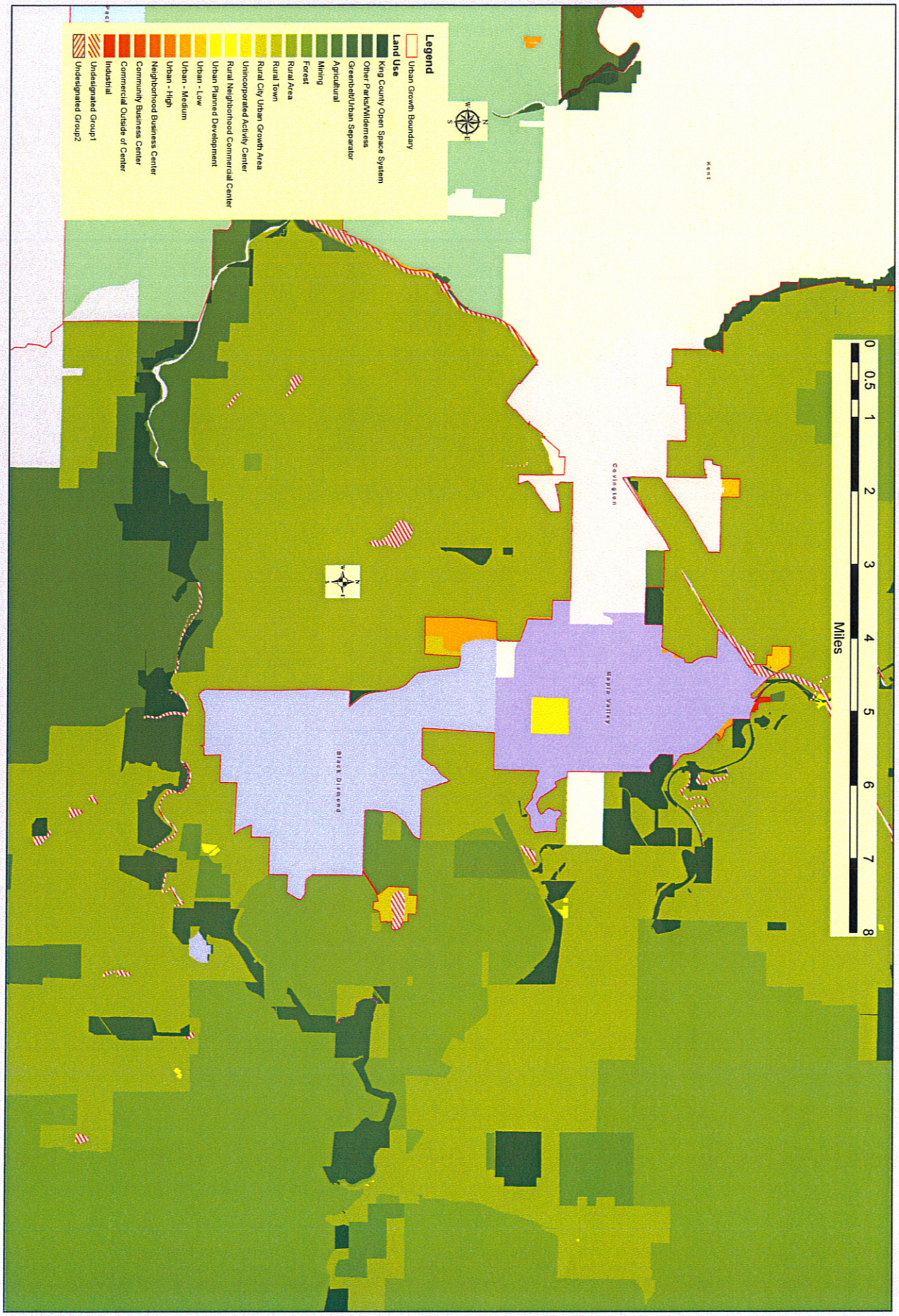
Steve Heister, Chair Greater Maple Valley Unincorporated Area Council
Pete Eberle, President, Four Creeks Unincorporated Area Council
Nancy Stafford, Chair, Upper Bear Creek Unincorporated Area Council

attachment

UAC Mission

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

Improve access to the information and services provided by King County



Four Creeks
Unincorporated Area Council

Green River
COMMUNITY COLLEGE

Land Use - Black Diamond Area

Projection: NAD_1983_HARN_StatePlane_Washington_North_FIPS_4601_Feet

GMVAC_LandUse_BlackDiamond_area 3 August 2011

July 28, 2011

Dear Honorable Examiner Olbrechts,

I am deeply grateful that you are "one this case." I attended the first round of public hearings and found you to be an attentive, respectful and fair-minded individual. You are experienced and knowledgeable and it is my hope that you will once again adequately address the crucial issues regarding the Lawson Hills and Villages master planned developments.

The areas of primary concern to me are traffic, water quality of Lake Sawyer, and funding. I know many dedicated and educated citizens have already submitted detailed, quality information on these and other important subjects. I am deeply grateful to the people have devoted countless hours and considerable expense to preserve the "rural by design" character of Black Diamond as well as the overall quality of life for all those in the surrounding area.

I attended a recent Black Diamond City Council meeting in which our state Senator, Pam Roach, spoke regarding the MPD's. I will not forget one comment she made referring to the gross traffic deficiencies of the MPD's and the traffic nightmare that will result from them – she said, let me tell you, there is no state money to build the roads that are required to sufficiently take care of the traffic needs resulting from the MPD's.

I submit this letter to you to plead with you to carefully consider the wise, thorough, well-prepared and thoughtful information submitted to you by the many citizens of Black Diamond and surrounding communities who are against, not development, but irresponsible development. I also submit this in order to preserve my right to address the Black Diamond Mayor and City Council at a later date.

Thank you.

Julie Earley

EXHIBIT

116

WRITTEN TESTIMONY PERTAINING TO THE VILLAGES DEVELOPMENT AGREEMENT

Contents

General comments.....1

Compliance and consistency of DAs with Conditions of Approval for Villages MPD, with Black Diamond Municipal Code and Comprehensive Plan, and with State and County laws. Other considerations for City Council, when applicable, are included at the end of each paragraph. Sections have been organized according to DA Section numbers.

1. Response to Parties, Date, Recitals, and Mutual Consideration.....2
2. Project Description.....3
4. Land Use.....5
5. 5.0 Additional Bulk, Landscape and Signs Standards.....7
6. Internal Street Standards.....8
7. Water, Sewer, and Stormwater Facilities Standards.....8
   - Water Quantity.....9
   - Water Quality.....12
   - Stormwater.....14
8. Sensitive Areas Standards.....21
9. Parks, Open Space, and Trail Standards.....21
11. Project Phasing.....23
12. Development Review Process Bonding.....23
13. Miscellaneous Additional Standards and Requirements.....23
15. Additional Provisions.....26

Additional considerations for City Council.....26

Notes:

1. All testimony contained herein applies to the June 2011 version of the Development Agreement proposed by the Master Developer for The Villages.

2. For ease of reading, I have attempted to underline requested provisions and main points.

EXHIBIT

117

General

As a property owner, the YarrowBay Group is entitled to use of its property without undue hardship. Its representatives have presented themselves as though friendly, accommodating, and concerned with the well-being of Black Diamond and the surrounding community, for which many citizens have been grateful. However, when reviewing the facts, several probable negative impacts to general well-being clearly exist. It is crucial to the health and welfare of the surrounding larger community that diligence, caution, and thoroughness be executed by both The Developer and the City of Black Diamond in showing adherence to the bare minimum legal standards of compliance they are attempting to attain. The planning of a development of such unprecedented proportions would ideally exceed the expectations of these standards of minimum compliance. Nonetheless, even these minimum standards have not been met in the current Development Agreement proposal. Many elements indicate overlooked issues, lack of specificity, and other means of avoidance. Others indicate a seeming disregard for the environment and the laws and expectations of surrounding governments. Such difficulties create a probable result of dire consequences to both the City of Black Diamond as a government and to its citizens, as well as to those of the wider community.

Black Diamond Municipal Code 18.98.090 states, "The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW 36.70B.170."

Also, the General portion of Conditions for Approval of the MPD states, "Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of subsequent implementing permits or approvals."

A number of MPD Conditions of Approval have not been met by the current Development Agreement proposal. Additionally, it lacks the specificity necessary to evaluate the degree to which it fails to provide a balance between hardship endured by the Applicant and impacts imposed upon the public. The DAs also do not prove compliance and consistency with Black Diamond Municipal Codes, applicable State and County laws and expectations, nor its own FEIS. The new proposal has fundamentally changed from that passed by the FEIS. The DA avoids defining the planned action by stating they will comply with Black Diamond Ordinances, which allows for a variety of possible actions, each having different, sometimes critically different, consequences, some of which might be appropriate for small-scale projects, but not appropriate to the largest development King County has ever seen. This does not require changing the Ordinances, but it does require their interpretation in each unique circumstance. Many elements of the DAs are per code, but not in line with the implication of the MPD. For instance, concerning compliance with the tree ordinance, the MPD finds that public concern will be alleviated through retention of 40% of trees, and the DA agrees to "comply with City ordinance." The reader has the impression trees will be left, yet we know by reading the ordinance that all of them could be cut down and not replaced, by way of payment of a fee of $50 per tree. Also, "native trees and vegetation" is inferred to mean that currently in existence, when it can mean the removal of what's there and replacement with small indigenous varieties that do not maintain the character of a rural area.

The focus of attention for this testimony centers around water supply and stormwater management. Partly because the FEIS was completed for a different set of circumstances, along with the concerns it raised regarding Crisp Creek, I am desperately worried about Crisp Creek and Diamond Springs. Concerns are also expressed in a number of areas pertaining to the DA. This is a lengthy letter, but I've tried to be as concise as possible and to bring up points other than those I've recently heard or read. Much of its length is the result of my quoting ordinances, laws, or the DA – so that nothing will need to be referenced outside the document – in the hopes of making this easier to read. I've also tried not to bring up former environmental issues, except as they directly pertain to current issues concerning the DA. It is possible, though, for something in its general concept, as in an MPD, for example, to align with the restrictions of an FEIS, yet its specifications in the DAs to fail in that alignment.

Please take the time to consider the issues herein that I've worked hard to understand and that mean so much to me and to the quality of the lives of those who make their home and haven in the Black Diamond area. I do thank you profusely for all your time and attention needed to read this.

1. Response to Parties, Date, Recitals, and Mutual Consideration

A. Recital "B" subsection "(b)" states the DA should include, "The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;". Yet, even in the Exhibits, the actual amounts are missing for many of these fees.

B. Recital "H" subsection (iii) states that this Agreement and its standards will be in effect for 15 years with the possibility of further extension. We assume the 5-year extention is referred to, but the duration of any possible extension in not given here, nor under what circumstances that extension would occur. This needs to be outlined.

C. Recital "H" statement "iv" (page 4 of the DA) asserts that "…mitigation measures for the Implementing Projects, including protections to the natural environment and improvements to the built environment necessary to appropriately mitigate probable, significant adverse impacts and accommodate the build out of The Villages MPD, are fully described in this Agreement…" It is not only reasonable that events may arise during build-out that require additional mitigation. The FEIS, itself, states, "The preliminary mitigation measures for Alternative 2 (the Applicant's proposal) are outlined in this chapter, and organized by Built Environment and by Natural Environment. This should be considered a preliminary list, as the Master Planned Development will go through future approval processes, at which time additional impacts may be identified, and which could require mitigation not included in this list." So, the Developer is not vested under SEPA now, nor does he continue to be. The future approval processes includes permits for future Implementing Proposals, not just DAs, which often lack the necessary specificity. By law,

each Implementing Project is subject to SEPA review. This Agreement should not supersede the law. Item "iv" of Recital "H" should be excluded.

2. Project Description

The Development as proposed is inconsistent with The Puget Sound Regional Council's growth target for Black Diamond at 1500-1900 homes through 2025. On the basis of road usage, alone, acceptance of this project precludes any further development in the area.

2.2 – Site will include "....at least 481.4 acres of Open Space." Exact numbers are needed concerning how many acres will be utilized for Open Space. The FEIS was done with the information that 507 acres would be designated Open Space. Then the MPD was approved with 505 acres of Open Space. This is one of many items that keeps changing.

The following information concerns Open Space, but is included here because of its possibilities concerning the overall site. While the preservation of 50% Open Space land as outlined in Arendt's book, *Rural by Design*, may seem to impart undue hardship on property owners desiring development of their land, it is City code. Since B.D. Municipal Codes do not specify whether or not required Open Space be included among critical areas, many problems concerning this Development would be alleviated by the City's simple interpretation of required Open Space to be that taken from the developable area apart from all critical areas and their buffers. If Sensitive Areas are excluded before the calculation of 50% Open Space, the Developer can still fit a huge number of homes on their land. With their rezoning and definition of single-family homes to include 4-plexes, they may even be able to fit the originally-approved number of dwellings onto their land. Even if this calculation of Open Space applied only to those parcels which include Sensitive Areas, many of the citizens' concerns and the Developer's areas of non-compliances could be alleviated. This is a healthy approach – Exclude Critical Areas and their buffers from the calculation of Open Space, even if allowing continuance with their current 42% designation of Open Space.

Not only is this a healthy approach, but it also has legal backing: In the Black Diamond Comprehensive Plan, June 2009, 5-14, the MPD overlay lists as the designation criteria 7: "at least 50% of the MPD site is devoted to open spaces uses, which may include recreational amenities." If it can include recreational amenities, open space clearly does not refer to wetlands, themselves, so the interpretation of this needs to assert that these critical areas are extracted from the gross acreage before number of dwelling units is calculated per zoning. Open Space needs to be differentiated from critical areas, since they do not provide the some usages. While some buffers may be considered open space because they provide the option of natural foot or bike paths per B.D. Code, the wetlands, streams, steep terrain, and high-risk mine areas, themselves, do not. These areas, themselves, then, should NOT legally be calculated as "Open Space."

Also concerning the determination of the site plan, the amount of land available for housing needs to be calculated after exclusion of streets and parking lots. Impervious ground cover needs to be calculated according to the following Black Diamond Ordinance: 14.02.070 - Calculation of impervious ground cover—ERUs. A. "The city shall calculate the impervious ground cover

of each parcel of developed real property, except single-family residential, duplex, triplex, and fourplex, to determine the number of equivalent residential units contained therein; three thousand square feet of impervious ground cover shall equal one equivalent residential unit (ERU)." But there are no exact figures of impervious ground cover in the DA. Variances to road widths, lengths of roadways, and parking lot standards continue to be requested, so there's not enough information to calculate the total number of ERUs.

Because the feasibility of the proposed development within City limits depends upon that of development outside the City, studies for all dependent activity on unincorporated King County land should be approved before the DA can be finally approved. The DA cites many development activities on unincorporated King County land as possibly necessary, such as school sites and stormwater infiltration ponds, but these are not firm. In their failure to confirm locations of major facilities and amenities, the DA is in conflict with the MPD, which anticipated details forthcoming in the DA. DAs that are vague to this degree should not be approved. Neither should assumptions be approved, because an unwitting approval of otherwise illegal development may thereby be granted, which would be nearly impossible to reverse, as would the damage done.

I cannot determine how 4-plexes came to be considered a single-family residence, because B.D. Code 14.02.070 B states, "All duplexes, triplexes and fourplexes, when each is used only as a residence, are deemed to contain one equivalent residential unit for each unit within the complex." According to City code, a 4-plex should be considered 4 residential units.

2.3.1 states, "The MPD Site Plan, attached hereto as Exhibit "A" and Figure 3□1 in Exhibit "L" are derived from a scaled survey, but are at too small a scale to depict surveyed boundaries on the ground. Accordingly, the Development Parcel boundaries and their associated acreages shown on Exhibit "A" and/or Figure 3□1 in Exhibit "L" are approximate. A large version of the MPD Site Plan, with surveyed exterior boundaries and sensitive areas, shall be kept on file with the City." Perhaps a relatively minor issue, but it begs the question of which is being approved – This DA, or a map that reportedly exists on file with the City.

Also under **2.3.1** – "The Development Parcel boundaries shown on the MPD Site Plan may be adjusted and/or consolidated pursuant to the processes set forth in Sections 4.4, 10.4.1, 12.8.3, and/or 12.8.14 of this Agreement, so long as the general character, Open Space and Density of the MPD Site Plan is implemented and all open space minimum requirements are met." This provision is asking for a degree of freedom that could negate mitigations and change the impact of the plan, even with the limitations listed. For instance, YarrowBay owns much more land than is included in the MPD Site Plan, so assurance is needed that they won't extend parcel boundaries outside the current MPD Site Plan boundaries or place various amenities in areas where they currently would not receive approval. There is no definition of "general character."

2.3.2 – "The boundaries and categories of sensitive areas, as shown on the scaled Constraints Map contained in the section entitled "Existing Conditions" of the MPD Permit Application and attached hereto as Exhibit "G," are based on actual field data presented in The Villages Final Environmental Impact Statement ("EIS") dated December 2009. The City and Master Developer

both agree to the boundaries, categories, and information set forth in the Constraints Map, attached hereto as Exhibit "G"." It's not enough for these parties to agree. Boundaries and constraints must agree with FEIS, and not simply be "based on" it.

"Sensitive areas and their buffers may be modified from those shown on Exhibit "G" only as allowed by and in compliance with the City's Sensitive Areas Ordinance (SAO)." The City cannot be asked to make a determination of this Agreement based on such huge unknowns. Keeping within the parameters of a city ordinance may not be equal to fulfilling it in all its unique circumstances, including ways in which it may differ from the approved FEIS. Regardless, a definite plan needs to be presented so the City knows what it's deciding on.

4. Land use

Development rights should be transferred from developable portions of land. The City Ordinance concerning TDRs only stipulates that the sending parcel have one of the listed critical areas, not that those critical areas are to be figured into the sending credits. It defies logic to do so, as the right to build on top of a lake, stream, or other critical area didn't exist in the first place, so it can't be transferred.

Additionally, sending parcels need to be recorded to assure accuracy of receiving credits and that no development be allowed on those sites in the future. B.D. Municipal Code 18.98.020 - MPD permit—Public benefit objectives, also requires this documentation. It needs to be available to the public. B.D. Municipal Code 19.24.155 states that sending parcels cannot be receiving parcels. There is no public information concerning the identity of Developer sending sites. In order to comply with MPD Conditions of Approval, these need to be carefully documented, recorded, and made public.

MPD Condition of approval 124 – "Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1); description of categories (beginning on page 3-18); a maximum of 4,800 total residential units and 775,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Commercial uses within residential land use categories shall only be allowed through amendment of the MPD. All other specifics shall be resolved through the Development Agreement process." This condition is not met, because all other specifics are not resolved in DA. Additionally, requests are made to reserve the right to make changes to this plan.

4.1 – "The lot layouts, building footprints, parking and circulation areas shown on Exhibit "A" are only conceptual and may be modified pursuant to Implementing Projects (e.g., subdivisions and binding site plans) without an amendment to this Agreement." This renders too many items subject to change. At the DA stage, this information should be specific up to the Project Implementation level, recognizing that even greater specificity will be required for the permits. This information should be accurate to the level of detail provided – not merely "conceptual." If any plans need to be changed because of unforeseen circumstances, then the Agreement should

be amended to allow that action, and only if such change is acceptable to the City and FEIS Official.
Also in **4.1** – More specificity is required. All possible uses have simply been charted, rather than proposed actual uses delineated.

4.2 – 4-family homes and additional cottages are listed as single-family homes. The term "single-family" was interpreted by the FEIS to mean detached homes housing one family, as shown by calculation of the projected population used by the FEIS, 11,940 new residents. (That's 3600 homes x 2.7 inhabitants + 1200 x 1.85). FEIS, 3-8 states, "Alternative 2 provides a total of 3,600 single-family and 1,200 multi-family dwelling units on 535 acres. At the existing average family size of 2.7 people in single-family housing, and 1.85 in multi-family housing, this alternative would increase the city population by 11,940 persons." The FEIS was not approved for the DA's interpretation of "single-family" and for the resultant huge addition to population expectations. Either housing needs to be redefined, or an updated FEIS needs to be performed.

4.4.1 – Density changes cannot be a minor amendment, because they effect changes in mitigations, available resources, and the approved FEIS. Changes to population have huge environmental impacts, as well as implications in such areas of concern as water supply, which is spoken to in depth in section 7.

4.4.5 – The elimination of schools and the conversion of property presently designated as schools aligns with neither the MPD nor the FEIS. Such conversions have dramatic impacts, not the least of which is population. Not only that, such a conversion should never be a minor amendment. In the second half of this section, the Applicant reserves the right to retract their providence of schools. This does not conform to prior agreements.

4.4.6 – "MPD Site Plan amendments to Open Space areas as shown on Exhibit "A" shall be allowed with a Minor Amendment to the MPD Permit Approval, which may only be processed concurrently with the submittal to the City of an Implementing Project application and shall not modify the overall Open Space requirement set forth in Section 9.1. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4 above and may include converting entire Development Parcels to Open Space." Amendments to Open Space should be major amendments because of the set mitigations they influence. The reconfiguration suggested at the beginning of the section on Project Description should be implemented and committed to by both parties. Only if the Applicant requests conversion of an entire parcel to Open Space should the City exempt the amendment from any one-per-year limit that might materialize.

4.4.8 – "Although the Design Concept and Land Use Plan shown in Exhibit "L" was not a specifically surveyed map, approximate acreages were assigned to each Development Parcel to aid in understanding the Design Concept and Land Use Plan. The stated acreage of any Development Parcel may be increased or decreased concurrent with the City's processing of an Implementing Project application without an amendment to the MPD Permit Approval or this Agreement." This needs to include a limit to the possible inaccuracies mapped in order to remain in compliance with the MPD.

4.4.9 – "The road way alignments shown on the MPD Site Plan (Exhibit "A") may be modified pursuant to and concurrent with an Implementing Project application (e.g., subdivision or binding site plan) without an amendment to the MPD Permit Approval or this Agreement. Such amendments are exempt from the annual docketing requirement set forth in Section 4.4 above." Again, there needs to be a limit imposed on the degree of acceptable modification, because of the possible changes to necessary mitigation.

4.4.10 – "Any other MPD Site Plan amendment (not listed above) may be processed as a Minor Amendment to the MPD Permit Approval provided the criteria outlined in BDMC 18.98.100(A)□ (H) (Exhibit "E") are met; otherwise, a MPD Site Plan amendment constitutes a Major
Amendment to the MPD Permit Approval." Because it is impossible to envision all possible amendments not listed, any other amendment should only be made by special request to the City, who will determine whether or not it is to be considered a major or minor amendment.

4.6 -- MPD COA 130 – "The Expansion Area process shall be clarified in the Development Agreement." This Expansion Area process in the DA is vague, not clarified.
MPD DOA 160 – "A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement." I don't see this particular information in the DA, either, except to say, "Pursuant to MPD Conditions of Approval Nos. 134 and 162, any or all of the Expansion Parcels as set forth in Exhibit "S" may be developed during the Build□Out Period subject to the process and standards set forth in Sections 10 and 12 of this Agreement." This isn't much of a plan. Also, In the MPD, the expansion parcels were not yet approved by the City as part of the project. Here, the DA is assuming authorization for that expansion. This should include a phrase to the effect, "may be developed, pursuant to the City's acceptance of said parcels…"

DA Table 4□8□4 Target Unit Count by Phase:
"Total (Units)
1A 436 334 200,000 770
1B 110 205 320,000 315"
This is inconsistent with the MPD, which cited only 880 DUs for Phase 1. This lists 1085.

4.9 – "…If the proposed Density for an Implementing Project application does not result in the utilization of more than 60% of the land area for the particular Phase in which the Implementing Project is proposed, TDRs are not required to be purchased." Clarification needs to be stated that the Applicant refers to 60% of land that is developable land.

4.10 is a prediction based on a set of extremely variable options, and as such cannot be agreed to. City code and the MPD allow the City to impose additional mitigation if additional adverse impacts occur, not just on individual Implementing Projects. This statement is at odds with the MPD.

5.1 -- "DRC shall review and approve each Implementing Project application, except for Utility Permits and permits for Schools as set forth in the School Agreement, for compliance with the MPD Project Specific Design Standards and Guidelines prior to submittal to the City for review and approval." There should be even greater responsibility for the approval of Utility Permit applications. Utilities are some of the areas where the City will need to confirm compliance carefully, in order to help avoid future devastating repercussions.

6.4.2 – "The Villages MPD shall stub streets to the boundaries of abutting off□site property as generally shown on the Bike Route and Future Connection Plan (Figure 6.3). The connection points on the Bike Route and Future Connection Plan are approximate. The actual design and location of connection points will be determined at the preliminary implementing plat or final engineering stage of Implementing Projects by the Master Developer and Designated Official using a collaborative process." This information should not be approximate. The City is being asked to approve or disapprove something that they need information for. This allows the whole plan to be agreed to by two people. That's less a collaborative process than what is offered in the DA proposals. The Developer should have to commit to something here.

Concerning sewers, FEIS exhibit 3-20 shows use of Palmer Coking Coal land for sewer lines and a pump station, yet no mention is made in the DA as to whether permission has been granted to do so. This would seem an important legal matter in proving the capability of providing the planned sewer system.

7.1.3 – "The location and type of Regional Facilities shown on the Conceptual Water, Sewer, Stormwater and Phasing Plans (attached hereto as Exhibit "K") are approximate and may change during the design phase provided that the intent of the plans is met as reasonably determined by the Designated Official. Alternate means of achieving utility service to and within the Project Site on a temporary or permanent basis will be considered by the Designated Official through a Utility Permit application." The wording of this leaves even the type of facilities subject to permanent change. This allows a fundamental necessity such as the plans for infiltration-type stormwater facilities to be replaced. None of the items listed should be approximate. By no means should alternate facilities be allowed. There were no concessions for alternate facilities approved on the MPD, and such allowances were not considered in the FEIS.

7.1.4 – "The Master Developer may defer improvements so long as the completion of the work is guaranteed by a performance/payment bond or other financial guarantee and is not required by permit conditions or necessary for utility service or safety conditions of the public." Approval of this should never be considered. All facilities that might encounter any difficulties are hereby allowed to be dropped by the simple payment of fees to the City, who would not be able to use that fee to construct the promised projects because of the same limitations encountered by the Developer. Also, there should be a timeframe, and the Developer should be expected to commit to it.

7.1.5 – "The City shall make a reasonable effort to inspect improvements within one (1) business day of the inspection request, as long as the improvements are complete. The inspector shall

determine whether the improvements are substantially complete, and provide a written list of any corrections or additional work necessary for physical completion of the improvements within 7 Days of the date of the inspection. The City shall make reasonable effort to provide one comprehensive written list upon which all subsequent inspections shall be based. The improvements shall be accepted by the City Council." This is a stringent timeframe demand on the City, where there is none for the Developer. Timeframes may be necessary to impose upon the Developer, especially in terms of time allowed for corrections to be made, and particularly if the situations in need of correction are resulting in deleterious effects.

7.1.8 – "Deviations from standards are allowed consistent with the process and standards for Deviations found in the Black Diamond Engineering Design and Construction Standards (Exhibit "E")." The City should take into account the enormity of this project and allow no deviations from standards where one deviation repeated thousands of times has a different result from the same deviation allowed once. The FEIS did not make this concession, and the deviation in consequences could be enormous.

7.2 Water System Standards

General comment concerning Water Availability:

This is one of two sections in this testimony where I've included much relevant detail, because the issue is of such great importance.

In spite of calculations performed as part of the FEIS which was based on a different set of circumstances than what is now being proposed, it does seem as though sufficient water supply is lacking to serve the project as now proposed. If new sufficient viable resources are not obtained, the risk of depletion of wells and springs is very real, as is the inability to serve the Development. The GMA is required by WA State to be adopted by the City as well as the County governments. GMA R-201 requires that developments "...do not create pressure for urban facilities and services" This would include pressure to those whose wells have run dry or been contaminated to purchase water from the City's as-of-yet-unknown source needed to augment what Tacoma has agreed to offer. While this may seem as though it's an old issue, it is a concern with respect to the DAs:

7.2.1 Water Availability states: "The Master Developer controls property with the rights to approximately 1,080,310 gallons of water per day ("GPD"). This is determined through the "Three Party Agreement" between Plum Creek Land Company, Black Diamond Associates, Ltd., and Palmer Coking Coal Company dated August 8, 2003. Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement. Improvements necessary to provide water service to each Implementing Project must be provided by the Master Developer consistent with this Agreement. Connections are allowed up to the point of existing capacity as arranged for in the Water Supply and Facilities Funding Agreement dated August 11, 2003, as amended by the First Addendum dated July 22, 2004 ("WSFFA"). If there are insufficient facilities or capacity to serve some or all of a proposed

Implementing Project, then the Designated Official may require the Master Developer to obtain such additional water supply capacity and/or design and construct new water mains, upgrades to existing mains, a reservoir, pressure reducing valves or such other facilities necessary to serve the Implementing Project."

The above paragraph relates some alarming issues, along with inconsistencies with the FEIS and the MPD:

1. The approximately 1,080,310 gallons of water per day is not sufficient to provide the 230gpd per single-family household and the (accordingly reduced) volumes for lower expected occupancies of cottages, duplexes and 4-plexes as predicted in the MPD. No break-down of "single-family" dwelling units is provided. (It needs to be for many reasons.) If we assume, in the interest of "mixed housing," an equal number each of single-family detached homes, duplexes, cottages, and 4-plexes, 900 detached single-family homes would use 207,000gpd. If each duplex, cottage, and 4-plex unit each used only *half* the expected amount of a single-family home, then the total average usage would still be 966,000gpd – nearly the limit – before the addition of water needs of schools, businesses, and industry. There is not enough for less conservative estimates (such as that found in the FEIS) at this population, and certainly not enough for peak usage periods.

The B.D. Water Supply Comprehensive Plan states, "Black Diamond currently uses two of these spring sources to meet daily water supply needs. Collection Area No. 2 is currently not in use because it has been designated as under the influence of surface water, which requires it to have more stringent treatment standards before its water can be used for domestic drinking water purposes." If this is to be a viable water source, proof is needed that treatment will raise this water quality to health standards.

2. The City is aware of its limitations as concerns water supply. The B.D. Water System Comprehensive Plan further states, "Future land use, variations in use, and changing population densities can significantly impact the City's ability to provide adequate water services." Thus a demonstrable need to look outside the City… But, how can permission be granted to build such a huge development without water certificates, nor proof that the water from these outside sources are, indeed, available to serve the project? Water certificates and proof of real availability needs to be required.

3. The Plan also says, "Collection Area No. 4 is under consideration as a potential future supply source." If the Applicant relies on an additional water supply, such as "Source 4" as listed in the FEIS, (Section 3, page 35 of the FEIS, Water Supply Collection Area No. 4 – Palmer Spring Area) that source is most likely not viable. The B.D. Water System Comprehensive Plan states, "Potential water resource found on SW portion of area, on Blk. Diamond Associates property. Preliminary studies indicate potential to supplement City's system, subject to securing water rights." This area is the general location where Black Diamond Associates were denied water rights from the State Dept. of Ecology in 1995 when they applied for water rights to serve 400 homes and a golf course (SE 1/4 of SE 1/4 of Section 22, Township 21, Range 6E). The denial is on record at the State Dept. of Ecology, along with records verifying that every application for

water rights on the parcels currently owned by the Developer has been denied back to the 1960's. This renders the likelihood of obtaining water rights for an additional source on the property very small.

Missing from the DA is specification of the exact location of the "new reservoir on Parcel BDA or Parcel F" and whether that area is expected to be a water source or simply a storage facility for Tacoma water. Under the Regional Water Facilities portion of the MPD, the Applicant proposes water serve the site using this and the City's 850 reservoir. But they don't yet own Parcel BDA -- It is still owned by Palmer Coking Coal. More specificity is needed here in the DA, and it should also be made clear whether the Applicant means that a new reservoir is only intended to store water from Tacoma on Parcel F, or if they refer to storage for Source 4 in the FEIS, water from their own land, the rights for which seem, as stated above, likely to be denied by the State Dept. of Ecology. Also concerning the BDA Parcel, the FEIS Exhibit 3-18 shows off-site water mains tunneling under Palmer Coking Coal property, but no mention is made of rights having been obtained to do so.

4. The ending of the above reference to the DAs states that, basically, if there isn't enough water, the Designated Official may require the Master Developer to find additional sources or to somehow reduce the flow of what they have. There are no alternate sources listed, nor agreements made to receive those alternate sources, no calculations of reduced usage through the flow alterations mentioned, and certainly no concession that at the time water becomes unavailable, construction may need to cease. There's just nothing in the DAs to suggest there will ever be enough water.

If the proposed additional water source on the SW portion of Black Diamond Partners property refers to springs on their adjacent land in Unincorporated King County, that area is situated within a Category 1 Critical Aquifer Recharge Area for the Diamond Springs Water Assn. (which with 43 hook-ups is currently very near its limit for capacity), and provides direct flow to Crisp Creek, a Class A salmon stream housing the Muckleshoot Fish Hatchery and its salmon and trout rearing ponds. Please see Exhibit A for the County map delineating area wells and springs along with Critical Aquifer Recharge Areas. The following link may be consulted for more information, such as elevations and depths:
http://www5.kingcounty.gov/iMAP/viewer.htm?mapset=GroundWater.

Relying on water conservation for the predicted 10% savings in water supply is undependable, indeed, especially since the conservation plan quotes no breakdown of specific savings. Condition 53 of the MPD approval requires that "The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings…" No breakdown of measurement is detailed in the DA, only general goals, such as using Energy Star appliances, etc. Additionally, the 10% reduction that was approved was based on the housing factored into the MPD, but not the 4-plexes or future rezoning, as they request the right to create.

7.2.6 – "The Master Developer may seek alternate means of achieving water service to and within The Villages MPD through the Utility Permit application and approval process set forth in

the BDMC (Exhibit "E") and Black Diamond Engineering Design and Construction Standards (Exhibit "E")." This increases concern that the water situation is not well-determined for the current proposal, and it leaves open to change yet another "plan" that is absolutely critical. There should be a surplus of water shown to be in actual existence before anything is approved.

The DA states, "Water balance calculations will need to be performed based on actual developed conditions to ensure water balance goals are met." This is good, and is in accordance with MPD COA 54. These calculations should occur after the first 500 units are built, but after a period necessary to allow for groundwater percolation to nearby wells and springs, the timeframe for which varies depending on distance to source and the soil type. Otherwise, a true representation of current groundwater conditions may not be obtained. Also, there is no guiding strategy in the DAs to calculate exact needs for the Development and to provide adequate water before any further plans or permitting begins. Because of the delicate groundwater situation in the Black Diamond area, it is critical that this information be determined and presented in the DAs at the outset of the process.

The B.D. Water System Comprehensive Plan also states, "Groundwater recharge to the shallow aquifer is primarily from precipitation or infiltration of surface water runoff from adjacent areas." Recharge of the shallow aquifer in that area needs to be addressed. The huge infiltration pond discussed further in the Stormwater section reportedly recharges the pre-Olympia aquifer via Horseshoe Lake.

Water Quality

With regard to Crisp Creek and Diamond Springs, many reasons for concern about water quantity also raise concerns about water quality. Section 4-70 of the FEIS states, "Off-site surface waters receiving flow from The Villages include Jones Lake, Black Diamond Creek, Horseshoe Lake, Ravensdale Creek, Lake Sawyer, Crisp Creek, and the Green River Spring." Black Diamond's Water Systems Comprehensive Plan states, "Horizontal flow in the shallow aquifer discharges to surface water features Rock Creek, Ravensdale Creek, and Crisp Creek." So, even though Crisp Creek is located outside the UGA, its discussion in relation to development within the City limits is relevant.

Crisp Creek is a pristine, beautiful, and unique place. The FEIS, section 4-71 says, "Crisp Creek, also known as Keta Creek or Keta Springs, is generally regarded as one of the most important small streams draining into the Green River within this area of the Green River Watershed. Crisp Creek is located approximately three-quarters of a mile west of The Villages and does not receive any surface water runoff from the site. However, groundwater that infiltrates on portions of the site travels south and west to feed springs that discharge to Crisp Creek. The Keta Creek Hatchery operated by the Muckleshoot Indian Tribe is located near Crisp Creek river mile 1.1. Crisp Creek is the primary water supply for the hatchery, and is dominated by ground water recharge that enters the creek as springs approximately one-half mile upstream of the hatchery. Crisp Creek supports runs of coho, Chinook, and chum salmon and winter steelhead. Resident and anadromous cutthroat have also been observed."

Crisp Creek's Water Quality Index rating of 95% stands in sharp contrast to that of nearby streams in more populated areas of the Green-Duwamish Watershed (none of which pass the EPA criteria in the average of their study results). P. 154 of the 2003 King County Water Quality Data Report states that "Crisp Creek is the only site identified as being a low concern for water quality impairment. The high WQI score for the site is likely a result of the relatively undisturbed, forested condition in its associated drainage basin...and the dominating influence of spring water in Crisp Creek."

The huge infiltration pond for Subbasins 1, 2, and 3 sits just above Keta Springs, the 20-acre wetland that originates the tributary forming the largest portion of Crisp Creek. Many stormwater ponds built according to the 2005 Stormwater Manual do not function properly (such as that at the new library in Black Diamond). Many of them leak, even with the use of the correct soil type (such as the Vashon till available on the site). If a wall of this gigantic infiltration pond fails, major devastation to Crisp Creek is certain. Nowhere in the DAs is there any commitment to respond to such a disaster, nor plans to do so. MPD Condition of Approval 71 at least requires a response plan for stormwater runoff disasters during construction. The only "plan" provided is a statement of intent to use sediment control barriers. This is not a response plan. A response plan is needed.

For the same reasons water quality of Crisp Creek is of concern, that of wells and springs is also of great concern. Exhibit A shows that the Developer owns nearly half the critical recharge area for Diamond Springs. The map shows the elevation of the more western spring to be 335ft., and the other to be 366ft. Both are well below the elevation of some of the proposed development, which begins at an elevation of around 525ft. with a southwesterly flow (toward the Springs), some of which would cross the upper portions of the Crisp Creek ravine into the Critical Aquifer Recharge Area for the Springs. YarrowBay-owned land in Unincorporated King County is related to the planned development because of the discussion of possibly locating certain things outside the Urban Growth Area. That land sits just above the Springs, and Crisp Creek runs right through that parcel (parcel no. 2121069001). Exhibit A shows numerous wells and springs situated to the south and west of the development. Both pollution of locations to the south and west of the project, as well as the depletion of water resources throughout the area is of concern with both current and future development plans.

In the DAs, I see no overlay of the City's wellhead protection map. Because their direct influence is stated in the B.D. Water Comprehensive Plan, the developer needs to show proof that these wells will receive no adverse impacts from this development now or in the future.

An anecdotal, yet related event: When I was a kid, I rode my bike up to the intersection of 218th and Auburn-Black Diamond Road, where extensive drilling activities were taking place. When I asked one of the workers what they were finding, he said this whole area is underlain by one big underground lake.

This may not be Best Available Science, but Parametrix did utilize Best Available Science when they described in the B.D. Water Comprehensive Plan the link between the Villages area and

Crisp Creek and related wells and springs, as well as when they stated, "Urban land use (namely the addition of impervious surfaces and clearing of native vegetation) has the greatest potential to alter watershed hydrology. Therefore increasing urbanized areas, construction activities, road networks, and land clearing within the City and UGA would negatively alter watershed hydrology and directly impact usage of study area streams by aquatic species, including anadromous fish." In Section 4-79 goes on to say, "Under all Alternatives it will be essential to ensure infiltration functions and capacities are not negatively affected at the cost of fish and aquatic habitat downstream." --

MPD COA 79 – "The City shall determine whether the Applicant's reasonable proportionate share participation in any watershed-wide implementation measures identified in Exhibit H-9 would be of significant benefit in protecting Lake Sawyer water quality. If so, those measures shall be incorporated into the Development Agreement."

-- I applaud the measures the Applicant has taken to protect Lake Sawyer from phosphorus. A provision needs to be added to the Agreement that states that the Developer will take measures to protect Crisp Creek, Diamond Springs, and privately-owned wells from contamination, because of their probable influence by the Development as described by the Best Available Science used to create the B.D. Water Supply Comprehensive Plan. There simply must be some protection for citizens whose water supply could become depleted or contaminated by the Development.

Condition 9 of MPD Approval states that homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings and prohibit washing of cars on roadways or in driveways… These items are important measure to help protect water quality, and they should be discussed in the DA.

B.D. Code 19.08.030 says, "4.Subdivisions shall be designed so as to adequately protect the water and shoreline aesthetic characteristics." The DAs need to include measures that will be taken to protect shoreline aesthetic characteristics. The same code states, "5. Techniques shall be employed that minimize silt and sediment runoff during the construction of any residential development." More techniques than silt retention screens should be used. Then, "7. Adequate water supplies shall be available so that groundwater quality will not be endangered by overpumping." Adequate water supplies have not been shown. Also, "8. Residential developers shall be required to indicate how they plan to preserve shore vegetation and control erosion during construction." The DAs include no commitments for preservation of vegetation during construction.

Stormwater

In this whole section, not one mention is made of monitoring for flow to Crisp Creek. This is crucial for a Class A salmon stream. The huge west infiltration pond sits right at the head of the large wetland of Keta Springs that is the main source of water for Crisp Creek.

Regional stormwater facilities are currently proposed outside UGA. All stormwater facilities should be kept inside the UGA. Furthermore, the infiltration pond on the west drains a vast area into one huge pond, which does not distribute water to the Qvr aquifer on that side. If more large trees and native vegetation were to be left undisturbed, the Qvr would be replenished, to some degree, in a dispersed manner, and the west infiltration pond could be much smaller.

The B.D. Comprehensive Plan states, "An important feature of all the streams in the area is that they either originate in large wetland complexes or have substantial wetlands along the watercourse. These wetland complexes are an essential element of the hydrology, particularly for low flow periods. The local sources of recharge to these wetlands is fundamental in maintaining their functions and warrants both Sensitive Area regulations and stormwater controls, including Low Impact Development."

In October of 2009, members of Associated Earth Sciences presented a paper to a Portland GSA Meeting regarding Horseshoe Lake. In it, Horseshoe Lake is said to be underlain by a "window" in the impermeable Vashon Lodgement Till, with direct connection to the underlying per-Olympia aquifer. It also states that this is a fundamentally different finding from all previous studies. It also agrees with other findings that ground water flow in the pre-Olympia aquifer interval is primarily toward the southwest, and flows to springs within Crisp Creek and along the northern wall of the Green River Valley, alluding to Crisp Creek's recharge dependence on surface water from the upper aquifer (contained or uncontained).

So, because of the impermeability of the surrounding till (as evidenced by AESI), recharge to Crisp Creek is hinging on one recent study of water levels of Horseshoe Lake – a study that is at odds with every study that's been done before. Because of the importance of recharge to the pre-Olympia aquifer, a second opinion is needed to assure these new findings are correct. If Horseshoe Lake doesn't recharge the aquifer, then we're relying on infiltration of an inch or two per month. But pre-Olympia aquifer is below Vashon till and must have these recharge windows. Almost the entire Crisp Creek drainage area is dependent upon the flow of a huge pond, sitting on impermeable till, to drain into the Qpog by way of Horseshoe Lake before it evaporates in the pond or en route, and all this is on the word of one study with different findings than all previous studies. Is it Best Available Science to accept only this one study? Mr. Koger, in his testimony during the FEIS appeal, after his long introduction to the mechanics of groundwater of the area, ran out of time before offering any substantiation to his simple response, "No", to the question about whether wells and springs could run dry. Had he time to continue, he likely would have cited Horseshoe Lake as the main recharge area for the Qpog through the northern till of the Villages area. But it's based on only one study.

MPD COA 62 requires assurance of sufficient quality and quantity of stormwater recharge, yet, regardless of the statements in the FEIS about Crisp Creek's succeptibility to contamination and to its dependence upon groundwater recharge emanating from the groundwater in Subbasins 1,2, and 3, the only monitoring areas defined by the DA are those within the actual project boundaries. There is no assurance of the effectiveness of stormwater infiltration facilities in their ability to recharge the aquifer effectively for quality and quantity of water.

7.1.1 D – The Applicant is asking to be granted the right to ask the City to build "community facilities districts" in order to raise funds to reimburse them for building the water and stormwater facilities necessary for their development, but those "community facilities districts" are not defined, nor is the percentage of their earnings due the Applicant. In the same section, the phrase, "including, but not limited to" is used, but no further explanation is provided to elucidate its meaning. The City needs to know what else it might be asked to do to raise money to reimburse the Applicant for the expense of constructing his utilities.

7.1.3 – "The location and type of Regional Facilities shown on the Conceptual Water, Sewer, Stormwater and Phasing Plans (attached hereto as Exhibit "K") are approximate and may change during the design phase provided that the intent of the plans is met as reasonably determined by the Designated Official. Alternate means of achieving utility service to and within the Project Site on a temporary or permanent basis will be considered by the Designated Official through a Utility Permit application." The City must know where all the utilities are slated to be located. A change of location involves a great number of changes to the nature and degree of impact and necessary mitigations. The City needs something more solid to which to agree.

7.4.3 Stormwater Management Goals

Since this whole section should be about commitment, rather than goals, its title should be "Stormwater Management Commitments."

C. "Recharge groundwater with stormwater infiltrated using Low Impact Development techniques and infiltration facilities." The techniques chosen for this from the FEIS menu still are not identified, and should have been identified in the DA. We simply know they intend to use infiltration methods, which is an important component to maintaining groundwater.

E. "Provide a menu of stormwater treatment options ranging from ponds to rain gardens." An exact order is needed, rather than a menu. Also needed is a list of monitoring and mitigation measures committed to performing in order to ensure the maintenance of current quality and quantity of groundwater. Lake Sawyer isn't the only body of water at risk. Water quality of Horseshoe Lake must be maintained, especially if it is directly feeding the pre-Olympia aquifer, which flows directly into Crisp Creek, community drinking water springs, and wells.

What are the plans for when water doesn't pass drinking quality tests, or when it becomes unhealthy for salmon or other wildlife?

F. "Minimize impacts to Horseshoe Lake water levels by ensuring that the volume of stormwater infiltrated into the shallow outwash upgradient of Horseshoe Lake is approximately the same as that which infiltrates under predeveloped conditions." The problem with this is that all the stormwater for Subbasins 1, 2, and 3 are now all supposed to recharge the pre-Olympia aquifer via Horseshoe Lake. How can this possibly be achieved without flooding Horseshoe Lake, which floods even when infiltration is dispersed over all 3 basins?

J. "Pursuant to Condition of Approval No. 71 of the MPD Permit Approval, provide a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction Phase." Now is the time for a comprehensive plan, rather than at permitting, since it is a condition to the MPD being approved, yet I don't see this plan.

L. "Pursuant to Condition of Approval No. 74 of the MPD Permit Approval, 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." There's no plan for this system. There should be maps with redirection routes, calculations of flow caps in each direction, and accountings for evaporation.

"Developable area, areas of impervious and pervious surface, area of rooftops, the amount of stormwater that can be infiltrated into the shallow outwash (Qvr) and the amount of recharge required for wetlands and Black Diamond Lake must be determined for ultimate stormwater balance calculations. Water balance calculations will need to be performed based on actual developed conditions to ensure water balance goals are met. Alternative Stormwater Management Design Standards may be approved by the Designated Official through the deviation process set forth in the Black Diamond Engineering Design and Construction Standards (Exhibit "E")." This is not enough, though. Recharge required for wetlands, Blk Diamond Lake, Horseshoe Lake, Lake Sawyer, Crisp Creek, Diamond Springs, and private wells needs to be calculated. They need to calculate the current needs of the entire pre-Olympian Aquifer, as well as the Qvr, because that's what's reliant upon groundwater infiltration. This should be done before the DA is signed, not after construction has begun, as is requested. Also, it should read, "In addition to calculating current needs and levels of both aquifers, water balance calculations will also need to be performed at multiple periods during actual construction to ensure water balance remains constant." Requests for deviations should not be allowed in this critical area. B.D. could end up with a non-filtration system.

"Each Implementing Project shall provide calculations of the amount of stormwater discharged. The Master Developer shall maintain a running tally and will manage the water balance requirements for each stormwater zone to ensure that the water balance goals are met." It's important that this be done, but discharged amounts are not the only tally that will need to be kept. Proper actual *RE*charge amounts will also need to be calculated using a running tally, because much will be lost to evaporation before infiltration.

Condition 63 of the MPD requires mitigation to be confined to project boundaries or expansion parcels, or to provide agreement with King County. They have provided no agreement with King County for use, City maintenance, or any other County requirements for the infiltration pond outside project boundaries.

Condition 65 of MPD Approval requires stormwater outfall to streams to be designed with minimum impacts to stream channel and avoid areas of significant vegetation. I don't see this

here at all. The DA needs to include outfall specifications, alternate outfall specifications, stream gradients and underlying soil type, etc.

MPD Condition of Approval 67 requires indentification of Low Impact Design mechanisms in the DAs, but they are not described to any greater specificity than to say they'll be used.

MPD COA 68 requires that a process be implemented that can be enforced by Homeowners Associations for enforcement of stormwater chemical requirements (such as roofing types and lawn chemicals). The DAs do not include a recitation of this process. Because it is included in a paragraph requiring related expectations to be included in the DAs, it seems reasonable to interpret the expectation that this process appear in the DAs, as well, and yet no such process appears in the DA.

The Quality Assurance Project Plans should be implemented (not just intended, as is the effect of the word, "Plans").

The Applicant is taking responsibility for only phosphorus in its presently identified sampling locations, because that's the minimum required by law. Although temperature, pH, conductivity, and dissolved oxygen will also be tested at Rock Creek and Lawson Creek, it is only being monitored as indications of phosphorus balance, and phosphorus is the only data analyzed for quality, and is the only data for which they claim any responsibility. Metals, turbidity, temperature, and biologic toxins tests are standard in assuring water quality in Class A salmon streams and **need to be monitored and mitigated for at all locations of effect, including the headwaters of Crisp Creek.** This is of utmost importance. Even with roof runoff and lawn chemical assurances, degradation by the other pollutants listed in the FEIS is probable, not just possible, especially over time, as filtering gravel has less and less ability to remove pollutants.

Stormwater monitoring should continue beyond the life of the project. The DA only offers monitoring for the first five years.

Nothing is said of the exactly method used to collect rooftop runoff for wetlands and groundwater recharge. This runoff system, to the home/complex level, should be included in the DA to ensure wetland and groundwater recharge from rooftop runoff.

FEIS, section 3, page 59 – "Impacts from increased amounts of impervious surface cover include less infiltration of stormwater to groundwater, higher rates of runoff resulting in scouring and erosion in receiving water bodies, and an increase in temperature in stormwater runoff resulting in increased receiving water temperatures. Additionally, because the project site has soil types of both very high permeability, infiltration of surface water flow as groundwater recharge in uncontrolled volumes has the potential to impact slope stability, increased groundwater flooding, increase stream baseflow and affect channel stability" Thus, MPD COA 103 – "Utilize stormwater detention facilities that avoid increases in peak stream flows." [FEIS Mitigation Measure]" The DA describes the general type of facility, but not how these increases will be avoided. Slope stability, increased groundwater flooding, increases to stream baseflow, and

channel stability need to be thoroughly addressed in the DA, with methods of, and agreements to, mitigation in all areas.

The large west infiltration pond is located in an area outside the project, where determination of soil type is not provided. No diagram of pond type and structure, including important information as to location of emergency spillway is provided. The stormwater plan should include proximity to neighboring sensitive areas, elevation of ponds and their depth in relation to existing groundwater, soil type, current soil saturation, discharge point, and alternate discharge point. What are measures for further mitigation to contaminated water, besides rules for roof run-off (i.e. what measures will be take in addition to those that are proactive)?

FEIS, Chapter 4, page 9 – "Erosion potential is highest during construction activity, when the vegetative and topsoil layers have been removed, exposing soils directly to precipitation and wind. Alternative 2 includes the construction of stormwater facilities on both the Main Property and the North Property. A very large, off-site stormwater facility is proposed west of the Main Property. Stormwater facilities involving discharge on even moderate slopes can result in severe overland erosion and rilling. Development under any of the alternatives could result in changes to the stormwater flow regime (timing, volume, peak flows, and duration) that could increase erosion in Rock Creek and other onsite streams." The DA should include more than simple silt barriers for protection of moderate slopes and streams.

MPD COA 74 – "Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations." These details need to be included in the DA.

MPD COA 75 – "The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent." The DA includes no calculations or redirection options.

MPD COA 76 – "The size of storm ponds for hydraulic purposes shall vest on a phase by phase basis to the extent allowed by the City's DOE discharge permit and state law." Because of this, only that portion of the development served by the first approved storm ponds should be approved. There should be a commitment to no concurrent phasing.

The Developer currently does not have access to the huge pond on unincorporated K.C. land. They own the land, but not the access to it. There is no mention in the DA of right of way being obtained to the west infiltration pond.

FEIS 6-12 – "When siting new stormwater outfalls to any stream, first consider the potential disturbance to adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. New stormwater outfalls should be located to avoid these impacts, and where all practical and feasible measures have been employed, provide mitigation in the form of outfall

energy dissipaters and/or vegetation restoration and slope stabilization as necessary." Information concerning impacts of stormwater outfalls on vegetative and wildlife impacts, as well as slope gradients and reactions, should be detailed in the DA.

"Storm ponds should only be considered as open space if they are developed as an amenity for safe recreational use." Plans for activities on stormwater pond locations should be included in the DA in order for that acreage to be included among their Open Space total.

8.3 – Landslide hazards

While the FEIS stated that landslide hazard areas would need to be avoided, neither landslide buffer boundaries cited in the DAs, nor calculations for determining those boundaries are considered with specific respect the enormity of physical load expected. This is important because of the unusual circumstances pertaining to groundwater in the region and the unique landslide probabilities if those boundaries are disturbed.

Mines – The DA does not address mine hazard set-backs. It only provides the required Mine Hazard Release Form. B.D. Water System Comp. Plan states under Mining Activities, "applicants for building permits are required to demonstrate the safety of the proposed project." It provides for a 500-ft. set-back from vertical mine projections and states that coal mine areas are geologically hazardous areas, and that all critical areas require geotechnical report by licensed professional engineer to develop. I don't see any mine set-back amounts on the DA. Surely a release form isn't all that is required to build on top of mines.

9.1 Overall Open Space Requirement

Pursuant to BDMC 18.98.140 (Exhibit "E") and the MPD Permit Approval, The Villages MPD is required to provide at least 481.4 acres of Open Space. (The FEIS was done on a figure of 507 acres of open space, and the MPD's on a figure of 505 acres of open space.) The DA needs to state the exact figures for open space of various types.

Additional information concerning Open Space is located in Section 2 of this document.

9.3 Sensitive Areas and Their Buffers

B.D. Municipal Code 18.98.010 - Master planned development (MPD) permit—Purpose. C. – "Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents;" The City Codes emphasize usable space for trails, etc. as if separate from open space that is usable for residents. That means the intention of the Codes is to provide open space that is simply unused.

B.D. Municipal Code 18.98.020 - MPD permit—Public benefit objectives. A. speaks of "Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;". The DA does not provide for enhancement of vegetation or environmentally sensitive areas. Its preservation of these things is to the minimum allowed by laws that continually change to suit their desires. Yet the Developer requests more deviations. Preservation and enhancement of the natural environment should be required.

Under the same Code, F. – "Identify significant environmental impacts, and ensure appropriate mitigation; and H. – Provide environmentally sustainable development;" The DA does not delineate individual impacts with their mitigation. This should be required.

DA requests for the possibility of deviations to the Sensitive Areas Ordinance should be denied since BDMC 18.98.155(A) provides that the "Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs." In the DA, they ask for yet more deviations. This should not be agreed to. Far too much has been accepted in the MPD.

MPD COA 115 – "A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized." The DA needs to include a tree inventory if those other opportunities will have time to be realized before any permitting process were to begin.

MPD COA 121 – "Provide a 300-foot-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network. [FEIS Mitigation Measure]" I don't see the 300' wide corridor discussed in the DA. It isn't enough to have it on a map somewhere, since the maps are stated to be changeable to that degree.

The updated MPD stated: "The project as submitted and future actions and proposals within the project will be designed in general conformance with the adopted City of Black Diamond Sensitive Areas Ordinance. Future implementing proposals may require deviations from the adopted Sensitive Areas Ordinance which will be evaluated at the time of application." The time to review acceptability of environmental repercussions is now, and plans for additional deviations need to be rejected. In the MPD, deviations are requested with the promise, "The critical area delineations contained within this application are complete and final." But the DA is requesting further allowances for change. These should not be allowed. Buffers are already far beneath County standards. K.C. Comprehensive Plan also protects groundwater recharge areas and maintenance of tree cover.

WAC 197-11-055 2a (i) requires that sufficient specificity be provided to allow evaluation of impacts: "The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts." The State hereby also recognizes that future environmental consideration may be necessary, whereas the Developer wishes to consider being vested in terms of SEPA.

WAC 197-11-060: (b) "In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also)." Off-site water quality needs to be considered.

Also under the same Code: (c) "Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer." Water bodies should be monitored for at least the full 15-20 years.

B.D. Environmental Ordinance: E. "The city may decide to complete all or part of the environmental checklist for a private proposal, if any of the following occurs: 1. The city has technical information on a question or questions that is unavailable to the private applicant; or 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration." The information in the DA is inaccurate when compared to that reviewed by the FEIS. The Developer should be approved for an updated FEIS. If they are not by law, then by B.D. Code, the Developer should complete an environmental checklist.

B.D. Water Systems Comp. Plan – "Fish and wildlife conservation areas within the city include Rock Creek and Ginder Creek corridors, open water ponds, lakes, and riparian forests." The DA does not discuss the conservation of riparian forests.

FEIS, Section 4-56: "With regard to wetland buffers, there is a system of wetlands extending west from the Core Wetland Complex southwest of Black Diamond Lake across the Main Property. The MPD application submitted in support of Alternative 2 does not characterize all of these wetlands as Core Complex wetlands. City maps and codes indicate they are Core Complex wetlands. As designated Core Complex wetlands, under City codes these wetlands require 225 – foot-wide buffers. There are exceptions for Category III and IV wetlands that fall in the outer 50 percent of the buffer of a wetland designated as part of the Core Complex. The application materials assign smaller buffers than City codes require to some of the wetlands in this system. The Applicant will be required to provide justification in accordance with City codes and Best Available Science to support any request for reducing buffers on these wetlands. If a buffer averaging proposal is submitted for Alternative 2, the five acre impact area cited above may change, and such plan would need to be evaluated in accordance with City codes prior to approval. At this time, the City does not recommend buffer reductions, as there is ample developable acreage outside of sensitive areas and their buffers." I've never seen any justification for buffer deviations and reductions. They are not included in the DA. Justification for buffer reductions and deviations need to be provided, along with the support of Best Available Science.

FEIS, Section 4-60: "Under Alternative 2 unavoidable direct impacts will also be mitigated through the creation of new wetlands. Approximately 2 acres of new wetland will be created and 3 acres of existing wetland will be enhanced in and adjacent to wetlands M, J, and O on the Main Property. Approximately 4 acres of new wetland buffer area will be created to mitigate for unavoidable direct impacts to existing buffers. Approximately 1.7 acres of new wetland and 20

acres of new wetland buffer area will be created to mitigate for unavoidable direct impacts to existing wetlands and buffers." I cannot find in the DA the exact location of these created new wetlands and buffers. The creation of these wetlands and buffers need to be functionally equivalent to their natural counterparts, and their creation needs to be enforced.

FEIS 5- "Impacts to wetland buffers total nearly 10 acres. In addition, the application materials assign smaller buffers than City codes require to some of the wetlands in this system. If the Applicant intends to pursue smaller buffers, justification will be required in accordance with City codes and Best Available Science. At this time, no buffer reductions are deemed appropriate, given the vast amount of non-sensitive areas land available for development." Best Available Science for these alterations was not included in the MPD, so I would expect to see it in the DA, yet I don't. I've only read Best Available Science in direct conflict with these alterations.

MPD COA 147 – "The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided." Lists are provided as menus, not commitments. Because of vague language, it's left uncertain as to what exact activities will occur at what exact locations. Activities need to be specified for the different uses.

MPD COA 149 – "Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement." Acreage minimum is included, but not specific details.

MPD COA 150 – "Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement." While phasing is provided, exact acreages are not finalized, only approximations are given, including the amount of land dedicated to Open Space, and exact acreages should be provided in order to comply with this condition.

Diagrams should be provided as to the location of the small wetlands that are definitely being displaced. Without this information, it is not possible to know if proper mitigation is being provided. Also, a limit should be established to the total displacement area allowed for combined wetland and buffer displacement.

11. Phasing

Because some monitoring commitments in the DAs exist within a timeframe based on phases, all phases would need to be defined as consecutive in order for a timeline to be developed. The MPD has stated "Phases may be started concurrently." It also states that phasing is subject to change. If a change is enforced by the City that does not allow concurrent phasing, then the inter-phase monitoring proposed in the DAs make sense. Otherwise, they do not. The DA should state the use of only consecutive phasing.

13.6 Fiscal Impacts

Perhaps a reminder is in order of the fiscal analysis provided by the FEIS, section 3, page 95: "The model indicates that the revenues generated by such development will not be sufficient to balance the costs to provide services after 2020. In fact, the model indicates a roughly $1,000,000 annual deficit by 2030 (5 years after completion of the MPD). *Therefore, this alternative would have an adverse financial impact on the City.* It should be noted that the Applicant provided an independent fiscal analysis, which is included for reference in Appendix J. This analysis utilized a different methodology and set of assumptions, and therefore yielded different results than the City's independent analysis." It seems as though, if Best Available Science is to be used, **there should be some averaging in the DA of studies provided by outside sources.**

13.8 Traffic

GMA III sets the "rural area standard average/capacity ratio of .69 during afternoon peak period." The DA should state the average/capacity ratio for every road of ingress/egress, including the Green Valley Road, since mitigations have not yet been established.

The DA states, "Based on the Institute of Traffic Engineers ("ITE") Trip Generation Manual (8th Edition), the Villages MPD will generate 6,019 total new PM peak hour vehicle trips, as shown in tables in Appendix A to the TTR." This number is then revised to arrive at a total number that is even fewer. But logic tells us that 4800 homes, some of those 4-plexes, must generate much more than 5100 cars that would leave the Black Diamond area. Because of the enormity of this development and the severity of its potential impacts, more than one outside source of studies should be cited. The Redmond Ridge FEIS stated that no roads would need to be widened to accommodate the development, yet the widening of Novelty Hill Road has already begun, and its need is stated to be a direct result of that development.

A process identical to the Mid-point Traffic Review Analysis required in the MPD COA for use after the build-out of 3,000 dwelling units should be required after Phase 1 (after the approved 850 dwelling units quoted in the MPD), and again after each subsequent phase of the MPD.

Traffic calming measures are identified for the stretch of Green Valley Road east of 218th. Traffic calming measures or other mitigations need to be implemented on 218th in order to discourage use of Green Valley Road. Otherwise, only one small section is discouraged. Traffic calming measures are not needed west of 218th (and are most likely not desired by residents of the road) as long as 218th is provided with the appropriate mitigation or calming measures. Those who use the Green Valley Road as a route of travel between Auburn and Black Diamond generally use 218th, rather than the stretch of the Green Valley Road east of 218th. It makes no

sense that 218th will not be equipped with some sort of mitigation, such as the traffic calming measures discussed for use on the portion of the Green Valley Road to its east.

Exhibit Q states that traffic calming devices will not be implemented if residents do not want them. Yet no other measures are provided to assure traffic stay off the Green Valley Road. If measures without unwanted effects by residents cannot be offered and the only mitigation is a reduction in anticipated population, then that should be considered.

15.5 Severability and Waiver

This section states, "If any portion of this Agreement is determined by a court of law to be unenforceable or invalid, then the remaining portions of this Agreement shall remain in effect." It is requested the DA be reviewed as though the whole application cannot be rejected because certain sections don't meet approval. This very statement should be rejected, because the Hearing Examiner and the City of Black Diamond should reserve the right to not approve or remand the Agreement in part or in whole.

Throughout, much authority is granted the "Designated Official." It may be implied, but that is not definitive enough to ensure that the Designated Official is, indeed, a "Designated Official of, for, and chosen by, the City of Black Diamond".

15.8 – "Time is of the essence of this Agreement." This should be removed so the City Council feels empowered to take the time necessary to thoroughly examine the huge, long-term and permanent implications of each area of this Agreement before arriving at a conclusion.

Additional General Provisions

Community input should be allowed concerning "minor" changes. Because even a "minor" change in a development of this magnitude can create a major impact, although not required by City Code for average construction, public information, and opportunities for input, should be allowed for this Development.

Intergovernmental coordination with neighboring and affected governmental bodies is vital. B.D. should work in concert with all governments with interest.

The City Director should exercise his right to enforce strict standards where applicable, because of the huge ramifications of this Development Agreement. BDMC 14.04.330 – "Director may modify minimum requirements. A. This chapter presents minimum standards for achieving the city's goals. The Director has the authority to increase requirements to protect the public interest on the basis of reports pertaining to threatened water quality, erosion, habitat destruction, protection of uninterruptible services and endangerment to property." I urge the City to seriously consider the threat to each one of these items under the current DA and take the opportunity to

exercise the right to modify minimum requirements now and in the future, in order to ensure a beautiful city and a peaceful democracy void of continued and future litigation from groups and governments who have voiced their concerns.

The City needs to reserve the right to end the development process at any point. This may be the City's last opportunity to impose restrictions on overall development. Specific rules should be imposed for ongoing environmental monitoring, along with specific consequences, including the permanent discontinuance of projects for which mitigation measures are unsuccessful.

Black Diamond Ordinances that contain provisions for alternatives to following the main body of the law, including language such as, "to the fullest extent possible" and "where possible" and "unless necessary" and "unless unavoidable" should be construed to mean that if reduction of scope of project or number of dwelling units would be necessary in order to comply with the Ordinance, then that is the requirement. Language clarifying this needs to be included in the DA so the City can feel assured that the Developer is planning to comply with the actual intent of the many ordinances which have in-lieu fees and alternatives to the main body of the requirement. Ordinances should protect the City and make it a safe and nurturing haven for all its residents. Exceptions are meant to be granted under special and warranted circumstances, not as a general rule. The Developer should be required to state the understanding of this interpretation in the DA.

The Developer consistently quotes the minimum requirements, rather than the most appropriate action or mitigation for each unique situation. Why should the City only consider the minimum legal requirements, instead of what's best for the future of Black Diamond and South King County?

Agreement to a DA is not required, even if legal overall. This is an opportunity for the City to ask for protection, as well. It is an agreement to protect Black Diamond and its people, too, and isn't something required to be agreed to just because it's legal.

This wouldn't necessarily happen, but under the current DA, the Developer could conceivably clear-cut all phases, sell the timber, fail to obtain enough water, pay a fee to the City to be tied up in their water account, then sell to out-of-area builders who fail to realize the circumstances of Black Diamond's physical situation. They could even build a few houses first without providing any of the expected amenities, all because of the lack of specific commitments in the DA.

Amidst the seeming quagmire of law, common sense should prevail. Current City ordinance allows for tailoring to each development in a common sense way. This development is inconsistent with the spirit of those ordinances, especially in light of the goals and ideals advertised with pride on the City website.

The City Council is urged to look more closely at what is painted between the lines, rather than what is represented in all the pretty pictures provided, and to take back control of the positions that represent the citizens of Black Diamond. The citizens are entrusting to the City the very center of their being as rural residents, and they are trusting the City to do the right thing.

Exhibit B is a prose poem that expresses my concern for the water of the Diamond Springs and Crisp Creek area.

I thank you deeply for enduring this long, but sincere letter.

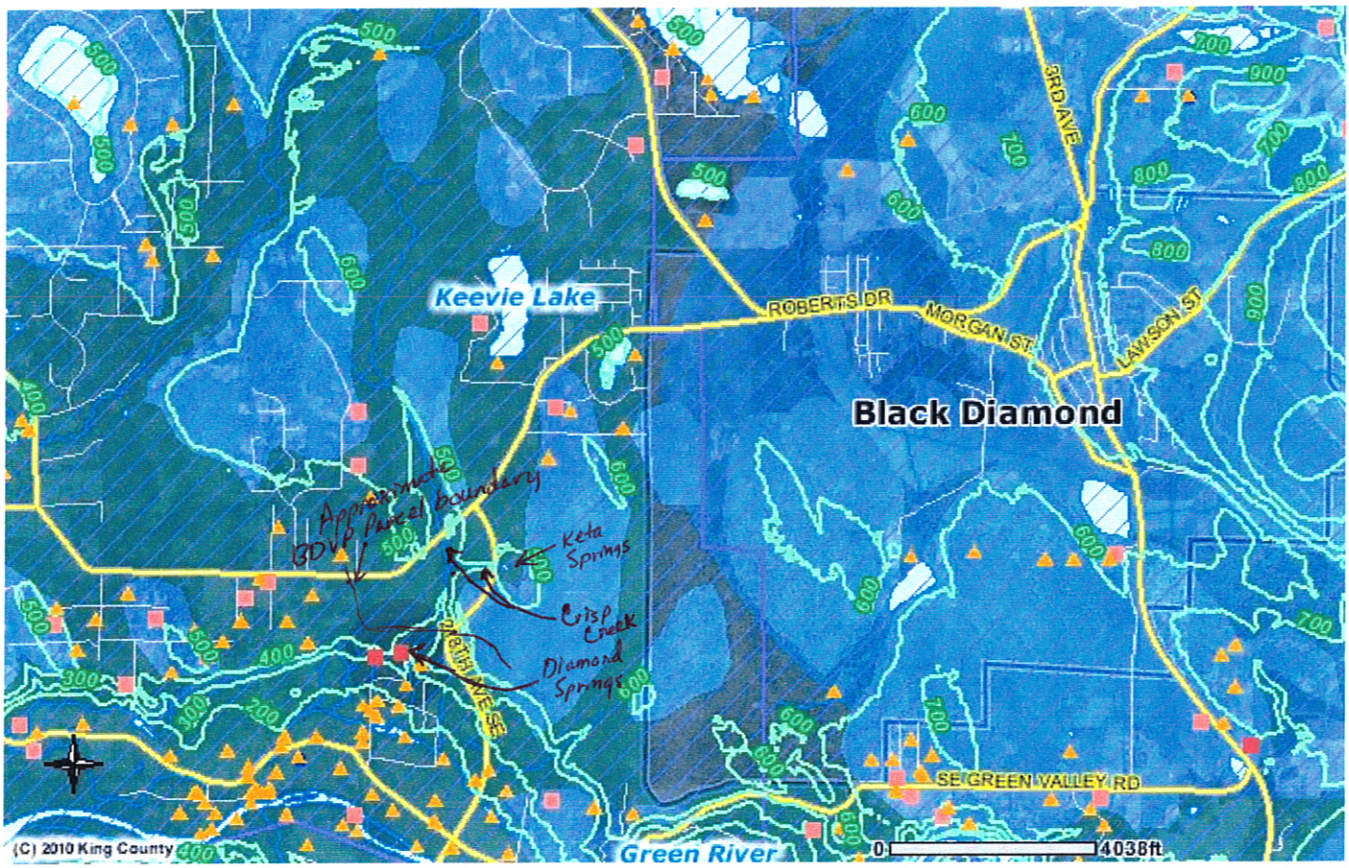
Respectfully,

Lisa D. Schmidt

Exhibits:

A. iMAP groundwater recharge map
B. Diamond Springs prose poem

ATTACHMENT
EXHIBIT A



△ = PRIVATELY-OWNED WELLS

□ = WELL OR SPRINGS WATER ASSOCIATIONS

EXHIBIT B
ATTACHMENT

Diamond Springs

While growing up, I drank from the earth. That is, our neighborhood spring welled up from the ground just an acre, or so, above our own land and the home we built ourselves. In the depths of the ravine beside this spring, cold seeps brought to its rocky surface Crisp Creek, which defined the very center of our property, before reaching out around the bend and feeding the salmon hatchery. Untapped water flowed from springs on both sides of the creek's ravine, and on the flats below, a soda spring once sourced a business of glass-bottled soda water sold for its medicinal properties. Our neighborhood was named Diamond Springs in honor of the water that has for centuries so purely and abundantly flowed from its twin hills.

Now those who push to improve the land will pave over the great earthen bowl where, 40 years later, I still find my sustenance. They look toward a future of their own emerald empire, just beyond some empty horizon, but they cannot see the crystal water that recharges beneath their feet, beneath their ideal of productive businesses and thousands of houses, all made in the likeness of each other.

Even science tells us that humanity is more than half water. Along with what flows beneath the surface, the households of Diamond Springs will wither and evaporate as the soda spring business did upon the advent of plastic-leaching bottles and the scientific proof that the spring water held no medicinal properties. All that will remain are snapshots of forgotten picnics in the grass beside the creek, drinking lemonade made from cold springs and the warmth of the abundant sun.

~Lisa D. Schmidt

Black Diamond
Master Planned Developments

DEVELOPMENT AGREEMENT
OPEN-RECORD HEARINGS

July/August 2011

Transportation

Written Statement

by

Peter Rimbos

Presented to

Hearing Examiner Phil Obrechts

EXHIBIT

118

Transportation Written Statement

TABLE OF CONTENTS

AN OPENING THOUGHT	**2**
GLOSSARY	**2**
I. INTRODUCTION	**2**
II. OVERVIEW/SUMMARY	**2**
"Stop-Light" Assessment	2
A. MPD Ordinances	2
B. Black Diamond Municipal Code	2
C. Black Diamond Comprehensive Plan	2
D. King County Code	2
III. TECHNICAL DEFICIENCIES	**2**
IV. NON-COMPLIANCE WITH MPD ORDINANCES	**2**
Exhibit B--Conclusions of Law	2
Exhibit C--Conditions of Approval	2
V. DEVELOPMENT AGREEMENTS	**2**
4.0 LAND USE AND PROJECT ELEMENTS	2
11.0 PROJECT PHASING	2
12.0 DEVELOPMENT REVIEW PROCESS	2
EXHIBIT F – TRAFFIC MONITORING PLAN	2
EXHIBIT P – GREEN VALLEY ROAD MEASURES	2
EXHIBITS Q and R – TRANSPORTATION MITIGATION AGREEMENTS	2
VI. PROPOSED "NEW" CONDITIONS	**2**
"New" Condition 12 a.	2
"New" Condition 14 a.	2
"New" Condition 14 b.	2
"New" Condition 29 a.	2
"New" Condition 33 c.	2
VII. CHRONOLOGY AND REMAINING CONCERNS	**2**
VIII. CONCLUSIONS	**2**

Transportation Written Statement

IX. RECOMMENDATIONS 3

X. FOR THE CITY COUNCIL 3

Transportation Written Statement

AN OPENING THOUGHT

***Issaquah Highlands MPD**:*

~3,000 residences and ~900,000 sq ft of commercial/retail space
situated near an 8-lane divided interstate superhighway, I-90,
served by 3-lane (one-way) dedicated ingress/egress ramps
~10 miles from one of the world's greatest high-tech employment centers.

***Snoqualmie Ridge MPD**:*

~2,000 residences and ~800,000 sq ft of commercial/retail space
situated near an 8-lane divided interstate superhighway, I-90,
served by dedicated ingress/egress ramps
~15 miles from one of the world's greatest high-tech employment centers.

***Black Diamond Villages and Lawson Hills MPDs**:*

~6,000 residences and ~1,200,000 sq ft of commercial/retail space
situated near a 2-lane undivided state road, SR-169,
served by many non-signaled intersections
~30 miles from major employment centers.

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

Transportation Written Statement

GLOSSARY

This Glossary contains phrases used within this Written Statement. It is presented as a reference to provide clear definitions of Traffic Analyses or Transportation Plans identified. For example, while the Development Agreements discuss cost-share splits, they do not provide the details of a credible and executable finance plan as listed below under Financial Plan and required by the MPD Ordinance Conditions of Approval.

--C--

Cost-Benefit-Risk Analysis -- An assessment of costs, benefits, and risks associated with potential traffic mitigations to inform major decision points and identify problems before they become insurmountable.

--F--

Financial Plan (Traffic Mitigation Funding Plan) -- A finance plan that provides cost-share splits, funding sources, and risks and timing associated with securing needed funds, as well as contingencies.

--T--

Traffic Analysis Plan -- A plan that provides a methodology to determine, analyze, and mitigate future traffic scenarios and includes model assumptions, sensitivity analyses, and assessment of results.

Traffic Model Validation Plan -- A plan that provides a methodology to validate and re-validate (as necessary) the traffic model against actual data to ensure the model accurately replicates real-world situations for various scenarios.

Transportation Concurrency Plan -- A plan that details how Transportation Concurrency testing will be done and provides a methodology to address when and how required adjustments in funding, timing, moratoriums, etc. should be made if a particular mitigation improvement fail the Transportation Concurrency test.

Transportation Monitoring Plan -- A plan to regularly and pro-actively monitor actual traffic to bring mitigation projects into service before the Level of Service is degraded.

Transportation Plan-- An overarching plan that contains and integrates the Financial Plan, Traffic Analysis Plan, Transportation Concurrency Plan, and Transportation Monitoring Plan and includes Needs, Tasks, Schedules, Costs Estimates, Funding Sources, Risks, and potential Impacts related to each Risk Factor. Such a plan must include the design, construction, maintenance, and operation of the vast transportation infrastructure the MPDs will require.

--V--

Vehicle-Trip Reduction Plan -- A plan that provides potential strategies to reduce vehicle trips generated into and out of the MPDs, details how the most promising concepts will be implemented, periodically monitors their performance over time, and recommends adjustments. Part and parcel of such a plan is to establish a baseline and targets to achieve over time.

Transportation Written Statement

I. INTRODUCTION

Your Honor. My name is Peter Rimbos. I reside at 19711 241st Ave SE, Maple Valley , WA 98038. As a resident of the Unincorporated Rural Area, I have been following these MPDs in depth for nearly two years because I have major concerns with the impacts on southeast King County's fragile and already inadequate Transportation Infrastructure. These proposed MPDs are a regional issue of the first order.

Herein I discuss the gross deficiencies of the Development Agreements in meeting the Transportation Conditions in the *MPD Application Ordinances (10-946 & 10-947), Exhibit C--Conditions of Approval*; the Transportation requirements in the *Black Diamond Municipal Code*; the Transportation policies in the *Black Diamond Comprehensive Plan*; and the Transportation requirements in the *King County Code*.

With regards to the Development Agreements before you, my argument is structured as follows: Overview/Summary; Technical Deficiencies; Non-Compliance with MPD Approval Ordinance Conditions; Detailed Comments by Development Agreement Chapter, Section, and Exhibit; Proposed "New" Conditions to be forwarded to the Black Diamond City Council; Chronology and Remaining Concerns; Conclusions; Recommendations; and Discussion to be forwarded to the Black Diamond City Council.

Although your Honor cannot take this into account in rendering his Recommendations, for context, it must be pointed out the MPD Application Ordinance Conditions of Approval do not cover some of the most critical aspects of your Honor's FEIS Appeals Decision and specific MPD Application Recommendations.

The MPD Application Ordinances Transportation Conditions (#10 - #34 for The Villages) are relatively weak. They directly contradict your Honor's recommended Conditions on timing of Traffic Model Validation, Required Traffic Analyses, and Development and Assessment of New Traffic Mitigations. Although these Conditions make my argument more difficult to present, I believe this Written Statement provides an in-depth review of all Transportation aspects related to the MPDs and an assessment against all requirements. It presents the case to reject and rewritethe Development Agreements.

Transportation Written Statement

There are several aspects to consider. Incredibly, Traffic Model Validation is pushed out to ~2016, a time when the threshold of 850 building permits may be issued. Required Traffic Analyses will not be accomplished upfront to ascertain the severity of future traffic distribution and volumes based on the new Traffic Demand Model. Development and Assessment of "new" Traffic Mitigations is pushed far into the future resulting in a completely *"re-active"* strategy, rather than a *"pro-active"* evaluation mandated by the Growth Management Act's Transportation Concurrency rules. The Development Agreements don't specify what steps will be taken to implement *additional* mitigation should analyses show planned mitigation is inadequate--a potential Fatal Flaw.

Unfortunately, with respect to the new Traffic Model, your Honor's recommended Conditions #16 & #17 were eliminated. This should to be rectified either through the subsequent Closed-Record Hearings before the Black Diamond City Council or Amendments to the Ordinances. By eliminating these two conditions there will be no evaluation of impacts and mitigations prior to entering into the Development Agreements and no Transportation Monitoring Plan to bring mitigation projects online before the Level of Service is degraded. This is very risky and does not protect the City, its businesses, and its citizens. Why would this even be contemplated?

Each of these aspects are covered in "*new"* Conditions detailed in Section VI. *Proposed "New" Conditions* of this Written Statement.

Please note that throughout this Written Statement The Villages Conditions numbering scheme is followed. The transportation issues are global and shared, consequently there really is no distinction between the two MPDs--Lawson Hills and The Villages is this regard.

Transportation Written Statement

II. OVERVIEW/SUMMARY

There are many issues being addressed during these Hearings. We have before us two 15 - 20 year plans. They are called **Development Agreements**, which could constitute long-term contracts between the City of Black Diamond and YarrowBay or it successors. Consequently, this is a major decision. One which will directly or indirectly affect most everyone who lives or owns a business in southeast King County.

The groundrules are clear. These Development Agreements must meet all *MPD Ordinance Conditions of Approval* and all applicable *State, County, and City laws and codes*. They also must fall within the local framework of the *Black Diamond Comprehensive Plan*, as well as the global policy framework of the *King County Comprehensive Plan* and the Growth Management Planning Council's overarching *County-Wide Planning Policies*. Finally, they must provide benefits to the City and it's citizens and businesses, while not burdening them with adverse impacts. This extends to the greater region where Southeast King County citizens and businesses also should not be burdened with adverse impacts.

Throughout these proceedings your Honor has heard a very clear message from the citizens. That message is one of horror at what is being considered here:

1. Quintupling the population of a small town on the Rural/Suburban fringe of the King County Urban Growth Boundary.

2. Adding over 10,000 additional commuters on windy, narrow 2-lane roads creating nightmare commutes and multiple consecutive queued intersections.

3. Clearcutting over 750 acres of prime forest habitat displacing native fish and wildlife.

4. Massive cutting and grading of natural land contours creating an untold number of Stormwater runoff and erosion issues.

5. Fiscal impacts (largely unknown) and far too dependent on whose assumptions one uses and future agreements. The contractual issues alone boggle the mind.

6. Blatant exploitation of the adjacent Unincorporated Rural Areas by placing urban infrastructure such as needed Schools and Stormwater Detention Facilities outside the Urban Growth Area on cheaper land to save money without regard to the adverse impacts on rural residents of which I am one of many.

"Stop-Light" Assessment

The Development Agreements do not meet the minimum requirements of the MPD Application Ordinances' *Exhibit C--Conditions of Approval*. The Development Agreements are supposed to be the mechanism by which the "Master Developer" shows in detail how it plans to meet the MPD Application Approval Ordinances, which are the *"law of the land."*

Specifically, the following *minimum* transportation requirements have not been met in the Development Agreements (please note: The basic elements of all "Plans" discussed herein are described in the **GLOSSARY**):

(1) A **Traffic Analysis Plan** that provides sufficient detail to determine, analyze, and mitigate future traffic scenarios.
(2) Any specificity on needed **Transportation Mitigation** costs, schedules, risks, and funding mechanisms.
(3) No real **Transportation Plan** to address future traffic loads, develop and finance needed mitigations, and provide contingencies.

A **"Stop-Light Assessment Table"** on the next several pages summarizes all Transportation Requirements; provides an Assessment of compliance or non-compliance of the Development Agreements against those requirements; and lists Grades for the Development Agreements. The Grades are based on the following:

Transportation Written Statement

RED: Failure to meet requirements of MPD Ordinances' *Exhibit C--Conditions of Approval* or Black Diamond Municipal Code.

YELLOW: Partial compliance of a Ordinance Condition or Municipal Code; insufficient information provided; or non-compliance with a provision of either Black Diamond Comprehensive Plan policies or King County Code (primarily permitting provisions).

WHITE: MPD Condition *itself* is deemed inadequate. Although there are many Transportation Conditions that possess inadequate portions, there is one, Condition 15--Outside Black Diamond Mitigation, graded in the table as "White." It completely fails the needs of the region in that it *"supersedes"* all aspects of the MPD Ordinance Conditions of Approval and does not provide for ANY changes should mitigations prove inadequate. Details are provided in Section VI. *Proposed "New" Conditions*.

There are no GREENs (i.e., full compliance), since the Development Agreements possess some deficiency against every measure evaluated.

Transportation Written Statement

Stop-Light Assessment Table

Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
MPD Ordinance	# 10	Transportation Planning	...construct any new roadway alignment or intersection improvement....specify for which projects...eligible for either credits or cost recovery and by what mechanisms....	□ No ***Transportation Plan*** detailing tasks and schedule. □ No details on Credit or Cost Recovery mechanisms.	●
Exhibit C--Conditions of Approval	# 11	Traffic Demand Model	The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation.	□ No ***Model Validation Plan*** to validate and re-validate the model leading to identification and evaluation of additional mitigation.	●
	# 12	Model Assumptions & Analyses	The model must be run with currently funded transportation projects...shown in the applicable 6-yr & (unfunded) 20-yr TIPs.	□ No ***Traffic Analysis Plan*** □ No details on assumptions.	●
	# 14	Model Internal Capture Rate (ICR)	The new model must include a reasonable ICR assumption. The assumed ICR must be based upon and justified by an analysis....	□ No ***Traffic Analysis Plan*** □ No details on assumptions.	●
	# 15	Outside BD Mitigation	Any agreement so incorporated supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or DAs.	***[White, because the Condition isn't violated. Poorly worded Condition allows Outside Mitigation Agreements that cannot be changed.]***	○
	# 17a. thru j.	Transportation Analysis ***[most critical Transp. Condition]***	[Three pages long.] 17f.: Proposed conditions & mitigations ...shall be revised if...the conditions or mitigation measures...have resulted in an unsatisfactory level of mitigation....	□ No ***Traffic Analysis Plan*** describing what will be done with results and how they will be used to inform needed mitigations. No [post-850-building-permit] ***Traffic Analysis Plan***.	●

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Transportation Written Statement

Stop-Light Assessment Table

Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
	# 18	Funding Responsi-bility & Pro-Rata Shares	The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established...which must cover the complete mitigation list.	□ No ***Financial Plan*** that provides assurance obligations can be met, nor provides a process to evaluate pro-rata shares amongst jurisdictions.	🔴
	# 20	Trans-portation Monitor-ing Plan	The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service....	□ Transportation Monitoring Plan is re-active, not pro-active; does not identify proper "trigger mechanisms" that can be measured and assessed.	🟡
	# 25	Pre-Phase Modeling	...model...traffic impacts of a...phase before submitting land use applications...to determine at what point a ...(facility)...is likely to drop below...adopted LOS....	□ No ***Traffic Analysis Plan*** [Also, Condition conflicts with provisions of Conditions 11 and 17 on timing.]	🔴
	# 29	Regional Infra-structure Implemen-tation Schedule	Prior to the first implementing project...being approved, a more detailed implementation schedule of the regional infrastructure projects...shall be submitted for approval.	□ No ***Transportation Plan*** that includes a detailed implementation schedule (i.e., What information will inform such a Schedule and How will it be vetted?).	🔴
	# 33a	Limiting Green Valley Rd Traffic	...a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the (calming) improvements....	□ The "process" simply states the Master Developer will submit permit applications. No description of a process whereby the Master Developer, GVR residents & KCDOT develop mutually agreeable solutions. ***[Traffic Calming Study was simplistic.]***	🟡

Transportation Written Statement

Stop-Light Assessment Table

Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
	# 33b	Green Valley Rd Review Com-mittee	A Green Valley Rd Review Committee shall be formed....The Committee...specifically shall meet to review the study required by Condition 33(a) and attempt to reach agreement on whether any suggested traffic calming devices should be provided....	☐ No Committee has been formed. ***[MPD Ordinance constrained Committee to only 2 residents (of 5 members), didn't include KCDOT, and mandated a "take-it-or-leave-it" approach.]***	
	# 34a	Project Responsi-biltity Split	...address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.	☐ No ***Financial Plan*** that provides cost estimates, timing, funding sources, contingencies, or risks. ☐ No ***Cost-Benefit-Risk Plan***.	
BD Munici-pal	18/98.010 (H); [COL 11]	---	Provide environmentally sustainable dvmt. (COL 11 implies this includes Vehicle Trip Reduction)	☐ No ***Vehicle Trip Reduction Plan***.	
Code	18.98.010 (I); [COL 12]	---	Provide needed...facilities in an orderly, fiscally responsible manner.	☐ No ***Transportation Plan*** ☐ Insufficient detail	
	18.98.020 (G); [COL 23]	---	Timely provision of all necessary facilities, infrastructure....	☐ No ***Transportation Plan*** detailing tasks & schedule.	
	18.98.080 (A)(4a); [COL 30]	---	...Prior to or concurrent with final plat approval...improve-ments have been constructed ...to have concurrency at full build-out...for...transportation improvements to serve the project....	☐ No ***Transportation Plan*** including process whereby mitigations may change to as issues develop. ☐ No ***Transportation Concurrency Plan***. ☐ No enfrcm'nt mechn'sms	

Transportation Written Statement

Stop-Light Assessment Table

Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
BD Comp. Plan	7.2.2	LOS & Concur-rency	...To ensure...future dvmt. will not cause City's transp. system performance to fall below the adopted LOS, the jurisdiction must do one or a combination of...: modifying...land use element, limiting or "phasing" dvmt., req'g appr. mitigation, or changing...adopted std.	□ No ***Transportation Concurrency Plan***.	🔴
	7.6	Travel Forecasts	A 1.0% annual growth rate...along SR 516, and a 1.5% annual growth rate...for all other intersections within the study area.	□ The MPDs, as described, will vastly exceed these forecasts.	🟡
	7.6.1	Future Land Uses/Transp. Concepts	The City intends for the...Transportation and Land Use Elements work together to maintain the City's "small town" character....	□ The MPDs, as described, will not meet this policy.	🟡
	7.7.2 Road	Table 7-8 Inter-sections	[Much detail on Intersection LOS and Time Delays including potential mitigations]	□ With mitigations planned it's improbable times cited in this policy can be met.	🟡
	Condi-tions--2016	Table 7-9: Improve-ments	SR 169---Widen to 4 lanes from SE 288th St to Roberts Dr---Provides add'l capacity....	□ No ***Transportation Plan*** or ***Financial Plan*** to make this happen.	🟡
	7.8 Funding Strategy	Table 7-11: Sources	Impact Fees...Developer Contributions....the potential for immediate concurrency....	□ No ***Financial Plan*** showing details to meet.	🟡
	7.9.2	Concur-rency	...imprvmnts...are in place at... dvmt., or a financial commitmnt is in place...to complete... improvements...within 6 yrs....	□ No ***Transportation Concurrency Plan***.	🟡
	7.11.1 Transp.	T-13--Concur-rency	...transp. improvements...are constructed or financed concurrent with development.	□ No ***Transportation Concurrency Plan***.	🟡
	Goals/Policy	T-14--Sources	Secure adequate long-term funding sources...through all feasible...methods.	□ No ***Financial Plan***. □ Encourages City seek Grants & lobby for CFDs!	🟡

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

Transportation Written Statement

Stop-Light Assessment Table

Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
		T-15--Mitigation	Require developers to contribute (to) transp. imprvmts ...to meet the LOS stds.	□ No ***Financial Plan***. □ No ***Vehicle Trip-Reduction Plan***.	
King County Code	TITLE 14--ROADS	14.46 Public & Private Utilities	[This pertains to siting and permitting Utilities on King County real property]	□ Stormwater Detention Facility outside UGA does not meet guidelines.	
	AND BRIDGES	14.65 Integr'd Tranps. Program	Transportation Concurrency Management, Mitigation Payment System, & Intersection Standards.	□ The Development Agreements do not meet permitting guidelines.	
		14.70 Transp. Conc. Mgmt.	Permitting "...based on adequate transportation improvements needed to maintain LOS."	□ Schools sited outside UGA do not meet permitting guidelines.	
		14.75 Mitigation Payment System	"...applies transportation impact fees to new development for ...improvement(s)... needed...."	□ The Development Agreements do not meet permitting guidelines.	
		14.80 Intersec-tion Stds.	"...to assure...improvements to mitigate...impacts...are completed...."	□ The Development Agreements do not meet permitting guidelines.	
Overall Grade: Meeting Ordinance Conditions or BC Municipal Code					

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

Transportation Written Statement

			Stop-Light Assessment Table		
Docum.	Sect./No.	Subsect.	Citation	Assessment of DAs	Gr.
Overall Grade: Meeting Provisions of BD Comprehensive Plan or KC Code					

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Transportation Written Statement

Against the *MPD Ordinance Conditions* and *Black Diamond Municipal Code* the Development Agreements receive an <u>overall</u> Grade of RED because they fail to meet several requirements or supply insufficient information, as enumerated in the "Stop-Light Assessment Table."

Against provisions of either *Black Diamond Comprehensive Plan* policies or *King County Code* provisions the Development Agreements receive an <u>overall</u> Grade of YELLOW because they only partially comply with these provisions or supply insufficient information, as enumerated in the "Stop-Light Assessment Table."

The following subsections expand upon this and describe specific problems with the Development Agreements in terms of: **A. MPD Ordinances**; **B. Black Diamond Municipal Code**; **C. Black Diamond Comprehensive Plan**; and **D. King County Code**.

Please note a similar assessment against the *King County Comprehensive Plan* also was done, but is not included. Although it could be informative, it was felt that the Black Diamond City Council would ignore it.

Also, not included is an assessment against the Growth Management Planning Council's *County-Wide Planning Policies (C-WPPs)*. These are a series of policies that address growth management issues in King County. They provide *"direction at the county and jurisdiction level with appropriate specificity and detail needed to guide consistent and useable local comprehensive plans and regulations."* Those comprehensive plans must be consistent with the future vision of King County.

It is troubling the City of Black Diamond appears to be ignoring several tenets of the C-WPPs, as well as rejecting the Puget Sound Regional Council's *VISION 2040* growth targets for "*Net New Units between 2006□2031*" for the City of 1,900 residences. In fact, the Regional Growth Strategy contained in *VISION 2040* calls for <u>decreasing</u> the amount of growth targeted to <u>Small Cities</u>--a list which includes Black Diamond.

Transportation Written Statement

A. MPD Ordinances

Among many critical omissions in the Development Agreements with respect to the stipulations of the MPD Ordinances, the following are most glaring:

1. There is no **Transportation Concurrency Plan**. For any mitigation plan to succeed, at a minimum, Transportation Concurrency must be met. The MPD Ordinances' *Exhibit B--Conclusions of Law, para. 30* mentions ensuring *"concurrency at full build-out."* Transportation Concurrency testing also is called out in the *Black Diamond Comprehensive Plan* in sections 7.2.2, 7.9.2, and 7.11.1. There is no mention of how Transportation Concurrency testing will be done or if it will be done. Further, there is no **Transportation Concurrency Plan** to be put in place should concurrency not be met. Such a plan, when added, should detail needed adjustments--such as funding, timing, moratoriums, etc.--to be made should a particular improvement fail the Transportation Concurrency Test. A viable and executable **Transportation Concurrency Plan** must be provided in the Development Agreements.

2. There is no Traffic Demand **Model Validation Plan**. This is required by *MPD Ordinance* **Condition 17**. How will the model results be verified? How will the model be validated to show it provides reproducible results in a variety of a situations? What analyses will be performed on key input parameters (in fact, what are they?) to understand the sensitivity of variations in results? **Model Validation Plans** that address these concerns and provide a clear methodology to be used must be required in the Development Agreements.

3. There is no **Transportation Plan** to *"maintain the City's...LOS."* This is required by *MPD Ordinance* **Condition 10**. The proposed Transportation Monitoring Plan, as mentioned earlier, is re-active and, thus, cannot by definition *"maintain the City's...LOS."* So, where is the **Transportation Plan** to ensure Level of Service (LOS) standards and timing are met? **Transportation Plans** that address, at a

minimum, the transportation needs, routes, schedule, estimates, funding sources, risks, cost-benefit-risk analyses (continually revisited throughout the life of the projects), and potential impacts related to each risk factor must be included in the Development Agreements.

4. There is no **Transportation Plan once 850 building permits are issued**. This is required by *MPD Ordinance* **Condition 17**. Once the model is "validated" after 850 building permits are issued, what is the plan that will be put in place to repeatedly run and adjust the model to determine the level and timing of needed mitigation? [Alarmingly, MPD Ordinance **Condition 15** states the Maple Valley and Covington Transportation Mitigation Agreements *"supersede"* the MPD Conditions of Approval and, thus, are not subject to any new traffic modeling based on the new Traffic Demand Model. This inexplicable blunder is addressed, herein, in Section VI. *Proposed New Conditions*.]

5. There is no **Traffic Mitigation Plan that addresses inadequate or failed mitigations**. This is required by *MPD Ordinance Exhibit B, Conclusions of Law, para. 30F* and *Black Diamond Municipal Code (BDMC) 18.98.080(A)(4)*. Invariably, some traffic mitigations planned years ahead of time will be deficient in some aspects. Where is the plan to address such deficiencies and outright failures? How will this affect the Phasing schedule? Who pays for augmented mitigation? When does it go in? All of these critical issues must be addressed in the Development Agreements.

6. There is no **Traffic Mitigation Funding Plan (Financial Plan)**. This is required by *MPD Ordinance* **Condition 10** and implied in **Condition 17**. Although both the *MPD Ordinance Conditions* and the Development Agreements list some projects and some cost-share splits, there is a scarcity of credible information on funding sources, the risks of those sources materializing, and the timing associated with

securing needed funds. Such a Traffic Mitigation Funding Plan should be part of the overall Transportation Plan mentioned earlier under 3.

7. There is no **Vehicle-Trip Reduction Plan**. This is called out in *MPD Ordinance* Exhibit B, para. 11C and implied in *BDMC 18.98.010(H)*. There is insufficient information to provide any confidence in the success of any **Vehicle Trip Reduction Plan** to be put in place, nor its timing.

8. Although there is a **Transportation Monitoring Plan**, it is insufficient for the task at hand. Transportation Monitoring must be pro-active**,** not re-active, as testified to by WSDOT in last year's FEIS Appeals Hearings. "Monitoring" can be used to assess the *adequacy* of built mitigations, but it cannot be the foundation of a mitigation identification process, as those mitigations would never be built in time to address the failure in traffic flow rates they are supposed to address.

B. Black Diamond Municipal Code

1. **Code Section 18.98.010** states the purposes for an MPD and includes under *Paragraph H: "Provide environmentally sustainable development."*

   This, among many things, implies a **Vehicle Trip Reduction Plan**, as is discussed in *MPD Ordinances' Exhibit B--Conclusions of Law, para.* 11. There is no Vehicle Trip Reduction Plan in the Development Agreements. This code provision is not met in the Development Agreements.

2. **Code Section 18.98.010** states the purposes for an MPD and includes under *Paragraph I: "Provide needed services and facilities in an orderly, fiscally responsible manner."*

   This means that all transportation-related improvements must be provided "*in an orderly, fiscally responsible manner."* There is no **Transportation Plan** or sufficient detail provided. This code provision is not met in the Development Agreements.

3. **Code Section 18.98.020** states, in part, the Public Benefits to be derived and includes under *Paragraph G: "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."*

   This means all transportation-related infrastructure must be provided in a "timely" matter. There is no **Transportation Plan** detailing tasks & schedule. This code provision is not met in the Development Agreements.

4. **Code Section 18.98.080** states, in part, as conditions of approval of any future MPD permits under *Paragraph A.4.a* that there be a: *"...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...."* So, looking ahead, the required transportation improvements must be in place, at least, at final plat approval. However, the City's current *Six-Year Transportation Improvement Plan (TIP)* contains projects that clearly will not mitigate the immense impacts of the MPDs and do not have real funding sources or risks identified with financing, securing Right-of-Ways, nor construction. This effectively lets the Master Developer's responsibility wane for funding such expensive and time-critical mitigations and places the burden directly on current and future taxpayers.

   There is no **Transportation Plan** providing detailed tasks and schedules or process whereby traffic mitigations may change to address issues as they develop over time. There is no **Transportation Concurrency Plan** defining the timing and conduct of Transportation Concurrency Testing. [Further, it appears the City has no enforcement mechanisms in place.]

   This code provision is not met in the Development Agreements.

5. **Code Section 18.98.090** states, in part: *"The MPD conditions of approval shall be incorporated into a development agreement as authorized by RCW*

36.70B.170." This means that all *MPD Ordinance, Exhibit C--Conditions of Approval*, are to be addressed in the Development Agreements This general overarching concern is not listed in the "Stop-Light Assessment Table," but is addressed throughout this Written Statement where specific examples are cited to show where the Development Agreements have not met this code provision.

C. Black Diamond Comprehensive Plan

1. **Plan Section 7.6 Travel Forecasts** states: "*A 1.0% annual growth rate was assumed for the Covington area along SR 516, and a 1.5% annual growth rate was assumed for all other intersections within the study area."* The MPDs described in the Development Agreements vastly will exceed these forecasts. The Black Diamond Comprehensive Plan Travel Forecasts are in urgent need of updating.

2. **Plan Section 7.6.1 Future Land Uses & Transportation Concepts** states: "*The City intends for the Black Diamond Comprehensive Plan Transportation and Land Use Elements work together to maintain the City's "small town" character in the face of increasing regional traffic-related impacts.*" The MPDs described in the Development Agreements do not make it possible to meet this policy in tghe near or short term.

3. **Plan Section 7.7.2 Roadway Conditions – 2016** [plus **Table 7-8: Future Intersection LOS Summary (2016)**] states: "*Black Diamond Ravensdale Road/SR 169---Signal---LOS=D---Delay=54.5 sec and Roberts Drive/SR 169---Signal---LOS=F---Delay=200 sec: This intersection could be mitigated to acceptable conditions by constructing three additional turn lanes; however, these channelization improvements are not included in the long-term list of projects identified for the 2017 to 2025 timeframe and would not be necessary with construction of the 2025 improvements. Alternatively, full construction of the 2025 improvements by 2016, which includes additional through lanes on SR 169,*

would improve operations to acceptable conditions." It is very difficult to read such a policy that includes *"three additional turn lanes"* at today's single-lane intersections and describe what it means in the real world, except to call it what it is: "less than realistic." Even with mitigations planned during buildout of the MPDs, it will be impossible, both time-wise, and fiscally--to even approach meeting this policy.

Table 7-9: Transportation Improvements (2017 to 2025) includes the following line item: **"***SR 169 Improvements---Widen to 4 lanes from SE 288th St to Roberts Dr---Provides additional capacity/improves operations. Note: New development, which necessitates the new roads, will contribute to the new roads."* Although Table 11-5-2 in the Development Agreements mentions this as part of Phase 3, it provides no Transportation Plan to accomplish this, nor an accompanying Financial Plan to make it happen.

4. **Plan Section 7.8 Funding Strategies** states: "*Historically, the City has relied on general fund monies and contributions from land developers to construct roadway improvements. Strategies: To provide a more consistent strategy for funding roadway improvements, the City should consider a more proactive strategy for transportation funding. I**mpact Fees**---The most popular way determines the traffic generated by the proposed development and applies a per-trip fee. The City directly receives the funds, marked for specific transportation improvements, directly from the source of traffic generation—the developer. **Developer Contributions**---The use of developer contributions requires careful review of traffic studies and proposed mitigation measures by City staff. The primary benefit is the potential for immediate concurrency of the traffic impacts created by the development."*

   Table 7-11. Summary of Possible Local Funding Sources for Transportation Improvements provides a rather bleak assessment of *"realistic acceptance"* of potential sources of funding.

Transportation Written Statement

The Development Agreements do not describe a plan which is consistent with both the intent and letter of these policies.

5. **Plan Section 7.9.2. Concurrency** states: *"The GMA requires that each city and county incorporate a Concurrency Management System (CMS) into their CP transportation element. A CMS is a policy to determine whether adequate public facilities are available to serve new developments. ... The term "concurrent with the development is defined to mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within 6 years of development...."*

The Development Agreements do not describe a Transportation Concurrency Plan that provides for Transportation Concurrency testing that meets this policy.

6. Plan Section 7.11.1 Transportation Goals and Policies--

Policy T-13 Concurrency Policy states: *"Ensure that transportation improvements or strategies are constructed or financed concurrent with development. This also includes concurrency with plans of other transportation agencies. The City requires either a construction or financial commitment for necessary transportation improvements from the private or public sector within 6 years of development. To monitor these commitments, the City's Concurrency Management System includes the following: 21. Adopting a traffic impact fee program; 22. Assessing level of service; 23. Determining compliance with the adopted level of service standards; 24. Identifying facility deficiencies; and, 25. Making appropriate revisions to the Six-Year TIP."*

The Development Agreements do not describe a Transportation Concurrency Plan to meet this policy and show measurable results as described in Comprehensive Plan Section 7.9.2 Concurrency.

Transportation Written Statement

Policy T-14 Funding Sources Policy states: *"Secure adequate long-term funding sources for transportation through all feasible and available methods. These methods may include: 26. Taking advantage of state funds, such as the Transportation Improvement Account, and the Public Works Trust Fund; 27. Encouraging WSDOT improvements on the state highway system; 28. Encouraging the use of Local Improvement Districts by property owners to upgrade roads to meet City road standards; 29. Requiring impact mitigation for projects as guided by this Plan. Impact mitigation payments and/or seeking voluntary contributions from developers ... ; and 30. Seeking funding from federal and other available grant sources. 31. Traffic impact fees may also be pursued for selected projects."*

The Development Agreements provide no Financial Plan to make this happen except to *encourage* the City to apply for Grants and *lobby* the State to allow Community Facility Districts (CFDs) to be established.

Policy T-15 Financial Impact Mitigation Policy states: *"Require developers to contribute their fair share towards the transportation improvements required to meet the LOS standards.* Impact mitigation efforts may include: 32. *Requiring developers to assist in providing additional transportation facilities and services in proportion to the impacts and needs generated by developmen*t; and 33. *Encouraging developers to design projects that generate less vehicular traffic."*

In reading the Development Agreements it is questionable, at best, that the Master Developer is providing needed improvements *"in proportion to"* the massive impacts the MPDs will generate. The Development Agreements provide no Vehicle-Trip Reduction Plan to meet Item 33.

D. King County Code

The Development Agreements do not address the following permitting guidelines of King County Code TITLE 14 -- ROADS & BRIDGES:

Transportation Written Statement

1. **Chapter 14.46--Public and Private Utilities on King County Real Property: 14.46.020 Permit--Required - Exceptions.** This pertains to the siting and permitting of the large Stormwater Detention Facility in the Rural Area outside the Black Diamond Urban Growth Area. The Development Agreements contain conflicting maps and text on the location of the large Stormwater Detention Facility.

2. **Chapter 14.65--Integrated Transportation Program: 14.65.010 Components of the integrated transportation program.** This pertains to all affected King County road infrastructure and includes three components: Transportation Concurrency Management to regulate new development based on adequate transportation improvements needed to maintain level of service standards; Mitigation Payment System to apply transportation impact fees to new development for collecting a fair and equitable share of transportation improvement costs; and Intersection Standards to evaluate intersections affected by new development to assure safe and efficient operation and that improvements to mitigate the adverse impacts of such developments are completed. Meeting the provisions of this Code Chapter is not discussed in the Development Agreements.

3. **Chapter 14.70 -- Transportation Concurrency Management: 14.70.230 Concurrency analysis and test; 14.70.240 Requirement for concurrency; 14.70.285 Minor developments and certain public and educational facilities; 14.70.290 Intergovernmental coordination.** This pertains to Transportation Concurrency Testing for each identified Travel Shed containing King County road infrastructure affected by siting of any Schools in the Rural Area outside the Black Diamond Urban Growth Area. King County regulates new development based on adequate transportation improvements needed to maintain level of service standards, in accordance with *RCW 36.70A.070(6)* and the *King County Comprehensive Plan*. King County will accept applications for a development

approval only for development in areas that pass the Transportation Concurrency Test. Meeting the provisions of this Code Chapter is not discussed in the Development Agreements.

4. **Chapter 14.75 -- Mitigation Payment System: 14.75.010 Authority and purpose.** This pertains to all affected King County road infrastructure. King County applies transportation impact fees to new development for collecting a fair and equitable share of transportation improvement costs that are needed in accordance with *RCW chapter 82.02* and the *King County Comprehensive Plan*. The purpose here is to ensure financial commitments are in place so that adequate transportation facilities are available to serve new growth and development. Meeting the provisions of this Code Chapter is not discussed in the Development Agreements.

5. **Chapter 14.80 -- Intersection Standards: 14.80.010 Authority and purpose; 14.80.030 Significant adverse impacts; 14.80.040 Mitigation and payment of costs; 14.80.050 Inter-jurisdictional agreements; 14.80.060 Relation to other permit authority.** This pertains to all affected King County road infrastructure. King County evaluates intersections affected by new development to assure safe and efficient operation and that improvements to mitigate the adverse impacts of such developments are completed, in accordance with the State Environmental Policy Act (SEPA), K.C.C. 20.44.080 and the King County Comprehensive Plan. King County can deny or to approve with conditions any zone reclassification request, based on its expected traffic impacts or any proposed development or zone reclassification if it determines that a hazard to safety would result from its direct traffic impacts without roadway or intersection improvements, regardless of level of service standards. Meeting the provisions of this Code Chapter is not discussed in the Development Agreements

Transportation Written Statement

III. TECHNICAL DEFICIENCIES

___In 2010 the Public participated in FEIS Appeals Hearings and two MPD Application Hearings. During the conduct of those Hearings we were repeatedly told by the City and YarrowBay that these were simply "Programmatic-Level" Hearings. We were told the details would come later. That "later" has come, as the Public has now been able to review the **Development Agreements**, which are supposed to contain all those missing details. Unfortunately, they are very sorely lacking in many pertinent details related to the MPDs and the mitigations required by the MPD Ordinance Conditions of Approval. In general, a review of the the **Development Agreements** finds the following:

1. In some areas they simply parrot back the MPD Ordinance Conditions: *"Establish a Committee...." "We will establish a Committee...."* That is unacceptable! To meet the Conditions, for example, on establishing Committees, at a minimum, a plan for timing, scope, decision points, and sunset provisions must be provided to be credible and useful going forward.

2. Many implementation plans provide minimal information without answering many of the seven "W's" of Who? What? Where? Why? When? How? Which? This is especially true on traffic analyses and mitigation following the issuance of 850 building permits--a major Trigger Point in the MPD Ordinance *Exhibit C--Conditions of Approval.* Some plans are simply not there and, thus, to be determined at some later date. That is unacceptable! Without detailed plans providing key information to allow decision-makers and the Public to track what is to be done, when it is to be executed, and how results will be assessed, the Conditions are not met.

3. Some accompanying Agreements are either incomplete or just open-ended. The Tri-Party School Agreement is an excellent example. In addition, the Maple Valley and Covington Transportation Mitigation Agreements are based on Traffic Demand Models, traffic flow analyses, and conceptual mitigations rejected by you your Honor. That is unacceptable! Most *egregious* is that the Maple Valley and Covington

Transportation Written Statement

Transportation Mitigation Agreements are *final* even though none were ever subject to a Public process and *"supersede"* the *MPD Ordinances*!

4. The Development Agreements are completely devoid of any plans to conduct the necessary **Cost-Benefit-Risk Analyses** to inform major decision points and identify problems before they start to become insurmountable--technically or fiscally. That is unacceptable! Projects one tenth this size need such detailed analyses. Folly is not strong enough a word to describe this omission. A "contract" of this size, cost, and risk must be subject to such analyses to head off technical, schedule, and/or fiscal disaster. This should go without saying.

These flaws were enumerated in Oral Testimonies and, most likely, are addressed in many Public Written Statements. Expert Testimony, though somewhat, but understandably, constrained, supported and augmented some of these arguments further. Your Honor, you astutely and fairly handled two major Hearings on these MPDs in 2010. You provided an excellent set of comprehensive Conditions to be imposed on the MPD Applications, though the City Council chose not to adopt some of the most critical ones, especially on Transportation. That notwithstanding, I believe the Public has confidence you will again do a thorough review of all the evidence before you during these Hearings. I thank you in advance.

Below are specific deficiencies in the Development Agreements in the area of Transportation--clearly a major tent-pole for the success or failure of these MPDs:

A. Model

There is no validated **Baseline Traffic Model** to provide predictions, reduce risk, and lend some certainty to understanding impacts on the City's and Region's Transportation infrastructure. Consequently, there is a complete lack of reliable forecasts of what future traffic scenarios could look like and what road and intersection mitigations might even work.

B. Validation

Since there is no validated model, what model will be used until validation is accomplished? How will it be validated? None of this is addressed in the Development Agreements. The easiest and most prudent solution is that the new Traffic Model must be validated now using existing traffic data, not a point at which 850 building permits have been issued (a ~50% increase in Black Diamond's population!). Putting the new Traffic Model on the shelf and not validating it now provides no value to anyone and, in fact, will preclude the conduct of any **Transportation Analyses** until possibly 2016 or beyond.

C. Analyses

Transportation Analyses must address specific assumptions and parameters such as Internal Capture Rates (ICRs), Peak-Hour Factors (PHFs), and Intersection Queueing. Sensitivity analyses should be performed to understand how much and how fast key assumptions and parameters change under various traffic scenarios. Further, a new set of **Traffic Analyses** must be done before the Development Agreement to better inform the City and the region of potential mitigations required.

D. Mitigation

Mitigation Agreements with outside jurisdictions include Transportation mitigations your Honor believed were not technically defensible, let alone adequate. Consequently, those now-completed negotiations had no common database with which to work and, thus, the mitigations listed therein are suspect, at best, and inadequate, at worst. Such Mitigation Agreements also are cast in stone and *"supersede"* the MPD Ordinances, regardless of what is learned when the new "regional" Traffic Demand Model, currently under development, is finally used.

E. Vesting

Transportation Written Statement

The Developer is effectively vested on all transportation-related standards and requirements through full build-out! In contrast, Noise and Stormwater are not vested (nor should they be), and neither should a critical and far-reaching aspect of the MPDs such as Transportation be vested. Such standards and requirements protect the Developer, not the City, its citizens, and the region. They will unduly handcuff future City Councils by putting the burden of proof on the City to substantiate that the MPDs are causing future traffic problems--a recipe for future lawsuits and further gridlock.

F. Feasibility

The mitigations needed to be made to the region's **Transportation Infrastructure** due to total size of the MPDs--over 6,000 homes and over 1.1 million sq ft commercial footprint--are not likely to be feasibly or economically possible. The region's Transportation infrastructure could suffer gridlock for several decades.

G. Funding

The Developer proposes **Funding Sources** that rely primarily on other people's money to build needed infrastructure, as well as monies that do not exist on any City, County, State, or Federal budget. The State and King County have precious little funds to allocate in southeast King County. Here is a quote from the City of Maple Valley Mayor Noel Gherkin which appeared in the May 30, 2011 edition of the *Voice of the Valley* (p. 5): *"With 18,000 new residents planned in Black Diamond and no money for state highway improvements or increased transit, we think it makes sense to put jobs in SE King County and not just more houses."* [underlining added]

The Alaskan Way Viaduct Replacement and 520 Bridge Replacement projects will drain State funding coffers for a very, very long time. State-elected officials, WSDOT, KCDOT, and the Puget Sound Regional Council (e.g., PSRC's *Transportation 2040*) have repeatedly made these points abundantly clear, including during Expert testimony in the 2010 Hearings.

Funding--levels, lack thereof, and timing--is possibly where risks could be the greatest!

Transportation Written Statement

H. Cost-Benefit-Risk Analyses

Cost-Benefit-Risk Analyses need to be conducted to identify critical trade-offs and inform the City's decision-making process. Analyses must also provide assessments of acceptable levels of **Cost Risk, Schedule Risk, and Technical Risk** associated with various levels of Traffic Mitigations. This affects not only the City of Black Diamond, but adjoining jurisdictions of Maple Valley, Covington, Enumclaw, Auburn, and Unincorporated King County.

Transportation Written Statement

IV. NON-COMPLIANCE WITH MPD ORDINANCES

In the *Staff Report* (ref.: *Joint Staff Report--Development Agreements for The Villages MPD and Lawson Hills MPD)* accompanying the Development Agreements under **Section III. WHAT IS A DEVELOPMENT AGREEMENT?** it states:

> *"A development agreement is a contract between a local jurisdiction and a person who has ownership or control of property within that jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. Development agreements should also benefit the local jurisdiction. The city or county may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure."*

Unfortunately, the Development Agreements clearly do not *"benefit"* the City, its citizens and businesses, nor the greater region, of which I am a part. They do not *"assure"* that the MPDs will *"not have unacceptable impacts on neighboring properties or community infrastructure."* Given the path we've taken to reach this point, it is still surprising to see the Development Agreements do not meet so many of the requirements:

1. Although we've gone through an extensive **Public process**, it was declared flawed by the Growth Management Hearings Board, because the Public was not allowed to talk with their elected representatives.
2. The **FEISs** were appealed and subsequently found *"adequate."* The **MPD Applications** also were subjected to Hearings and over 160 Conditions were recommended to be placed on them--thanks to your Honor.
3. **The Black Diamond City Council** went through a months-long process before passing **Ordinances** approving the MPD Applications. Unfortunately, during that process, it inexplicably removed your Honor's most critical Transportation Conditions. Though only *"recommendations,"* they were carefully thought-out, well-

researched, technically sound, and clearly written. The Black Diamond City Council severely erred then.

4. Now, during these **Development Agreement Hearings**, the citizens once again have done painstaking research to ensure the Black Diamond City Council has <u>all</u> the facts before them. We hope all these efforts will ensure the City Council doesn't severely err again.

I preface this discussion with the following:

> *"Black Diamond and Maple Valley each made very compelling arguments that the traffic model of the other was deficient. The record is clear that neither model is optimally suited to predict traffic impacts for the Black Diamond community. The MPD, when completed, will have the effect of introducing the traffic of a new, small city to south King County. This scale of development justifies the creation of a project specific transportation demand model that accounts for all existing and planned local land uses, is validated for local traffic, contains an appropriately fine grained transportation analysis zone network, considers existing peak hour factors, considers both funded and unfunded transportation improvements that coincide with the build out timeframe for the project, considers safety concerns, attempts to preserve the rural Heritage Corridor, provides a realistic mode split analysis for both transit and non-motorized uses and determines a reasonably accurate internal trip capture rate. Therefore, the project applicant will be required to create a new transportation model that incorporates all the controls identified above and subject that model to peer review and periodic updates. For both traffic and noise, the Examiner recommends that added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation."*

Those words eloquently elucidate the key issues very well and were written by your Honor (ref.: p. 124, *Hearing Examiner MPD Application Recommendations*). They were

the backbone of your recommendations on the MPD Applications and provide the foundation for some of the *new* Conditions proposed in Section VI. *Proposed "New" Conditions*. Although your recommendations on the Development Agreement cannot be based on these proposed *"new"* Conditions, these recommendations would have served the City and the greater region well, if followed by the Black Diamond City Council.

In reviewing the *Staff Report*, it is troubling to see the Compliance Matrix (ref.: *"The Villages MPD Conditions Affecting the Development Agreement - Based on City of Black Diamond Ordinance No. 10-946"*) does not list the following twelve Transportation Conditions of Approval: 11, 12, 13, 14, 16, 17, 19, 24, 26, 27, 29, and 30. All Conditions of Approval must be addressed in the Development Agreements.

In the two subsections that follow discussion in **purple** addresses which parts of the *MPD Ordinances Exhibits B and C* are not met by the Development Agreements.

Exhibit B--Conclusions of Law

11. BDMC 18.98.010(H): *Provide environmentally sustainable development*
C. Vehicle Trip Reduction.

There is no **Vehicle Trip Reduction Plan** in the Development Agreements. Such a plan, when developed, must include, at a minimum, specific mechanisms to further *"vehicle trip reduction."* Simply providing some laudable design features such as trails and bike lanes that will facilitate non-motorized travel does not constitute a credible a **Vehicle Trip Reduction Plan** that can be implemented to see measurable results. Although there will be some mixed areas with housing and shopping, the vast majority of trips will be outside the MPDs to work, shop, worship, and recreate.

Transportation Written Statement

12. BDMC 18.98.010(I): *Provide needed services and facilities in an orderly, fiscally responsible manner.*

The Development Agreements lack sufficient detail to satisfy *BDMC 18.98.010(1)* to provide *"needed services and facilities in an orderly, fiscally responsible manner."* This is specifically true as it relates to transportation-related infrastructure.

The Development Agreements discuss a **Transportation Monitoring Plan** which is re-active and by definition not *"timely;"* lack a comprehensive Transportation Plan that addresses how mitigations will be altered as new information is garnered from the new **Traffic Demand Model** and traffic monitoring; and contain "locked-in" mitigations (Maple Valley) or monies (Covington) in the *Exhibit Q and R Transportation Mitigation Agreements*, respectively.

23. BDMC 18.98.020(G): *Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops.*

The Development Agreements do not *"satisfy" BDMC 18.98.020(G)* to provide *"all necessary facilities, infrastructure and public services"* in a *"timely"* manner?

Although a new **Transportation Demand Model** is under development (under a City contract with Parametrix), there is no detailed **Traffic Analysis Plan** provided in the Development Agreements to use that model at specified points in the future to periodically predict and assess traffic impacts of the MPDs as they develop and identify additional mitigation, as necessary, to meet levels of service for successive phases of development.

The Development Agreements do not describe when the *"transportation demand model"* will be adjusted, how model input assumptions will be improved based on increased knowledge up the learning curve, and new traffic analyses conducted (using the newly adjusted model and assumptions) to evaluate future scenarios. Incredibly, there are no **Sensitivity Analyses** of key parameters that would help inform such tasks.

Transportation Written Statement

There also is no overarching **Transportation Plan** that provides the major tasks and schedule to plan, design, build, maintain, and operate the vast Transportation infrastructure required to accommodate an additional 10,000+ vehicles daily.

30. BDMC 18.98.080(A)(4): *An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met: A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:*

a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build-out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest.

The Development Agreements do not describe how **Transportation Concurrency Testing** will be accomplished to ensure *"concurrency at full build-out"* and how adjustments (i.e., funding, timing, moratoriums, etc.) will be made should a particular improvement fail the Concurrent test.

The Development Agreements do not describe the enforcement mechanisms for provisions for *BDMC 18.98.080(A)(4)a.*

The Development Agreements do not describe the process whereby traffic mitigation projects may (and most likely will) change and additional projects required to be added to address the traffic issues as they develop.

The Development Agreements do not describe a pro-active approach to traffic mitigation to ensure that *"prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed"*. Rather the Development Agreements

describe a reactive approach to traffic mitigation, which is the *antithesis* of the goals of Transportation Concurrency policies.

As traffic impacts are analyzed for a pending phase of development to determine when a road or intersection is likely to drop below level-of-service (LOS) requirements, planned traffic mitigations will have to be adjusted and new mitigation concepts designed, planned, funded, and executed. The Development Agreements do not describe how and when this will be done to ensure timely implementation of mitigation projects to prevent LOS failure.

Exhibit C--Conditions of Approval

Below is a detailed discussion of each of the MPD Ordinance Conditions of Approval on Transportation and how the Development Agreements either meet, partially meet, or completely ignore stipulations of each Condition. Please note that quoted language from the Conditions shown in ***bold italic*** calls out specifics to be included in the Development Agreements.

Condition 10

"Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to

provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 25 and 20 below. ***The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.*** *Any "functionally equivalent" realignment that results in a connection of MPD roads to Green Valley Road shall be processed as a major amendment to the MPD."*

The requirement to plan and construct Black Diamond Comprehensive Plan (BDCP) 2025 Transportation Element improvements is not detailed in the Development Agreements. There is no overarching **Transportation Plan** detailing tasks and schedule. Such a plan should include the following: **Financial Plan** (costs estimates, funding sources, funding risks); **Traffic Analysis Plan**; **Transportation Concurrency Plan**; **Transportation Monitoring Plan** (a credible one); and a clear definition of Construction needs, tasks, schedules, risks, and potential impacts.

There are no details on Credit or Cost Recovery mechanisms in the Development Agreements, except for a brief listing of potential mechanisms in *Exhibit K--MPD Phasing Plan*. The Condition calls for each eligible project to be identified and specific cost recovery mechanisms be associated with it. The Development Agreements do not provide this information as required.

Condition 11

"The City shall create, at the expense of the Applicant, a new transportation demand model for this project for use in validating the distribution of project traffic at the intervals specified in Condition No. 17.... The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation."

Although the **Traffic Demand Model** will be validated, it will not be validated until 850 building permits have been issued (per **Condition 17 a.**), possibly as late as 2016 (ref.: Parametrix' Traffic expert John Perlic, 4/18/11 Meeting with Steve Pilcher, Andy Williamson, Mike Irrgang, and Peter Rimbos). In addition, such validation will

only be on a model of the existing Transportation Infrastructure, not what will be needed to service the partial or full buildout of the MPDs. From an engineering perspective, to be useful and provide confidence, the *"new transportation demand model"* must be validated, used to conduct various road and intersection analyses, and subsequently re-validated. Finally, since this will constitute a new traffic "baseline," how will this be used to address additional mitigation? None of this is specifically addressed in the Development Agreements.

Confidence in the model and the results it generates is important. Lack of confidence in the proposed mitigations should give the Black Diamond City Council (BDCC) pause. During the FEIS Appeals Hearings your Honor ruled there was no current valid Traffic Demand Model with which to analyze the distribution of traffic locally or regionally, nor one from which mitigations could be analyzed and optimized for selection. That ruling was correct then and nothing has changed now.

Evaluation of those future scenarios would essentially require an expanded and detailed model that in itself would require validation. So, in order to evaluate *"the distribution of project traffic at the intervals specified in* ***Condition No. 17****"* called for in **Condition 11**, the "new" expanded and detailed model (that addresses future scenarios) would in itself require validation. None of this is addressed in the Development Agreements and, thus **Condition 17**, as written and intended, cannot be accomplished!

Transportation Written Statement

It must be specified as to when and how often the model shall be used to provide detailed traffic flows and determine project-specific levels of service. Required time periods must be identified as to when the new traffic mitigations based on the *"new transportation demand model"* will be developed.

Finally, the proposed off-site Schools must be included in any Traffic Analyses. John Perlic of Parametrix testified that this had not been done as they were *"...not aware of those (school) sites."* (ref.: Parametrix' Traffic expert John Perlic, 4/18/11 Meeting with Steve Pilcher, Andy Williamson, Mike Irrgang, and Peter Rimbos). This is a deficiency that could have a profound effect on the AM commute. None of this is specifically addressed in the Development Agreements.

Condition 12

"The new demand model must take into account recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, and existing speed limits on all roadway links included in the model's roadway network. The model must be run with currently funded transportation projects for each affected jurisdiction as shown in the applicable 6-year Transportation Improvement Plans and with transportation projects shown in the applicable 20-year Transportation Improvement Plans which projects are not funded but are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction."

How will these determinations be made? Will there be **Cost-Benefit-Risk Analyses** performed? If so, will they be used in a timely manner to inform the decision process? The costs, along with cost estimation and schedule risks, potentially are enormous; as are the uncertainties in any projections associated with each. This represents a tremendous long-term commitment that could possibly "bet the city's future." Cost Risks must be addressed as desired funding levels may be unattainable and adequate funding sources unavailable. As of now such level and funding sources are not identified, nor apparently *available* out several decades.

Transportation Written Statement

Schedule Risks also are high, as is the case with any major transportation project. None of this is specifically addressed in the Development Agreements.

Where is the **Traffic Analysis Plan**? How will the *"new demand model"* results be used to inform the needed mitigation project lists? Without a continuous cycle of validation and re-validation, model results might not be credible in forecasting future traffic scenarios. None of this is specifically addressed in the Development Agreements.

Peak-Hour Factors (PHFs) should be addressed in the Traffic Analyses. This omission must be rectified. Also, PHF sensitivity analyses should be performed to understand the validity of the assumed rates, impacts on the road grid and intersections, and needed mitigation. PHFs are used to evaluate capacity as they represent the highest traffic volume flow in any hour. Level of Service (LOS), the typical "measuring stick" to evaluate roads and intersections, often is based on peak rates of traffic flow. Using high PHFs (e.g., >0.95) *understates* the intersection LOS and yields the most *optimistic* results. Please note that approaching a PHF=1.0, while showing *uniform* flow, also indicates congestion. In fact, it shows there is adequate capacity on the roads to handle these projects when actually there is *inadequate* capacity. None of this is addressed in the Development Agreements.

As testified by WSDOT (2010, FEIS Appeals Hearings, Ramin Pazooki), Volume/Capacity (v/c) Ratios reveal problems with certain "legs" (e.g., lanes) of an intersection with v/c ratios of less than or equal to 1.0 a necessity. Once a certain intersection reaches capacity (v/c > 1.0) the LOS value is no longer effective, especially for major corridors. SYNCHRO analyses could be conducted for specific intersection legs to inform the overall Traffic Model. SYNCHRO is an LOS analysis software tool, which provides additional insight as to how well an intersection is functioning and how much *extra* capacity is available to handle future growth, traffic fluctuation, and incidents. The City will need to have the correct information to make decisions. None of this is specifically addressed in the Development Agreements.

Traffic Queueing Analyses was not addressed in the FEIS and MPD Application analyses and still is not addressed! One might ask, "If not now, when?" Many

intersections in the project-affected areas are relatively close to each other and, thus, Queueing will be a critical factor in maintaining adequate traffic flows. For example, some existing intersections already reflect Queueing problems during the AM and PM commutes (e.g, SR-169 and SE 231st near SR-18 in Maple Valley--no Traffic Monitoring necessary, I personally experience that one everyday!). None of this is specifically addressed in the Development Agreements.

There is no description of Level of Service (LOS) Analyses for roads and intersections. Such analyses are critical for evaluating existing conditions and predicting future traffic flows and impacts. LOS analyses should look at each individual lane. None of this is specifically addressed in the Development Agreements.

There is no description of Travel Time Analyses, which are important to a decision-maker for very large projects with long transportation corridors which would be affected--exactly the type of dilemma these MPDs present here.

Where are the discussions of Environmental Assessments, Permit Issues, Funding Problems, and Private Property Conflicts. All these directly affect the suite of Traffic Mitigations to be proposed and analyzed. None of this is addressed in the Development Agreements.

Condition 14

"The new model must include a reasonable internal trip capture rate assumption. The assumed internal trip capture rate must be based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in W. Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available."

How will the methodology for choosing the final Internal Capture Rates (ICRs) be justified? At what intervals will ICRs be recomputed/reassessed and fed into the model? How will the expected differences between Institute of Transportation

Transportation Written Statement

Engineers (ITE) ICR categories (e.g., *"residential"*) and *actual* ICR data from other MPDs in *"W. Washington"* be weighed and subsequently resolved?

ICRs are extremely important assumptions used in the traffic models. The Developer can mask the impact of their MPDs outside Black Diamond by assuming an unjustifiably high ICR [your Honor recognized this during the 2010 Hearings and made recommendations accordingly]. This would be equivalent to assuming a large number of "new" Black Diamond residents will be working at many "new" large Black Diamond-based destination employers.

Reference to the *ITE Trip Generation Handbook* may not be appropriate, as there are several ITE scenarios from which to choose, none of which may be applicable in this case. The Master Developer chose ICRs for *"residential development."* This is a composite of urban and suburban communities throughout the country. However, Black Diamond and parts of southeast King County are not typical of many urban and suburban settings, but rather sit on the rural/suburban fringe where ICRs would be expected to be much lower and, thus, AM and PM commuting traffic in and out of Black Diamond much worse than predicted.

KCDOT's Matthew Nolan testified during the 2010 Hearings that Trip Generation Rates from other MPDs in Western WA may be more applicable than the ITE Handbook methodology provides and that *"...such methodology is not necessarily used for large projects of this kind."* This is not addressed, let alone acknowledged, in the Development Agreements.

In the supporting **Traffic Analyses** the ICRs used (based on the ITE Handbook Codes 210--Residential and 220--Apartment for average US urban areas, which Black Diamond is not) are too low! For example, John Perlic of Parametrix stated The Villages MPD will generate 6,019 total new PM peak-hour vehicle trips, then after applying reductions based on pass-by and diverted-link trips, estimated 5,152 net new PM peak-hour trips. This is for an MPD with 4,800 dwellings and 775,000 sq ft of Commercial and Business space. That defies logic! This undoubtedly was one of the reasons your Honor recommended *"reasonable ICRs"* be used.

Transportation Written Statement

Any methodology for choosing the final ICRs must be justified and validated. ICR assumptions must be vetted through a comprehensive validation of the model. Such validation must show that the ICR assumptions are realistic and results are reproducible and compare to those experienced with other MPDs with similar land use mixes in W. Washington. ICRs should be recomputed/reassessed and fed into the model at periodic intervals, possibly before, midway, and at the end of each phase. ICR Sensitivity Analyses must be performed to determine how small changes in assumed ICRs affect overall traffic flows and key intersection LOSs. None of this is specifically addressed in the Development Agreements.

There are no **Sensitivity Analyses** discussed. Sensitivity Analyses are needed to gage the adequacy of the ICR assumptions. Such sensitivity analyses must assess the risks associated with assuming different ICRs. Without such analyses it will be impossible to ascertain what and by how much key parameters affect overall traffic distribution and flow. Consequently, adequate traffic mitigations cannot be crafted and properly implemented. None of this is addressed in the Development Agreements.

The resulting project impacts and mitigations from the **Traffic Analyses** must be integrated into the Development Agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects. Transportation Concurrency testing must be periodically conducted (preferably at the beginning, midpoint, and end of each Phase) to ensure concurrency at full build-out. None of this is specifically addressed in the Development Agreements.

The intersections needing mitigation as identified in the **Traffic Analyses** must be monitored under the **Transportation Monitoring Plan** included in the Development Agreements. The Monitoring Plan must provide real-time data, coupled with Traffic Analyses, to inform decision-makers of what problems exist now so that improvements can be designed and constructed with development to bring mitigation projects into service before the Level of Service is degraded below the City's standard. None of this is specifically addressed in the Development Agreements.

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Transportation Written Statement

Condition 15

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

How could such *"agreements"* with *"applicable agencies"* be reached before the Development Agreement without first developing a *"new transportation demand model,"* then validating it with existing data, and finally using it to analyze future scenarios to identify potential mitigations to be implemented? What happens after the 850-building permit "trigger" is reached and a new traffic assessment finds the Mitigation Agreements to be inadequate? Will the Mitigation Agreements be re-opened and re-negotiated? What process will be followed? None of this is specifically addressed in the Development Agreements.

Although Maple Valley and the Master Developer have reached an agreement, great risks remain, including possible litigation in the future. Maple Valley possibly compromised and took what they could get, since they have existing traffic problems that need fixing now. Maple Valley has a tremendous stake in all of this and will not

go away, as it is the conduit for the majority of the traffic to be generated by the MPDs.

Condition 17

This Condition (comprised of sections a. through j.) is possibly the most critical (and certainly the most detailed) Transportation Condition of the MPD Ordinances. Although I vehemently disagree with the 850 building-permit threshold for validation of the **Traffic Demand Model** (rather I subscribe and agree with your Honor's *MPD Application Recommendation* of a threshold of zero permits to validate the new regional Traffic Demand Model), this Condition has many valuable aspects. Unfortunately, the Development Agreements do not respond to many of its details, as discussed below. [Also see previous comments under related **Condition 11**.]

Condition 17. a. thru c.

(Not reprinted below due to length, but all deal with model and analysis efforts)

These Condition subsections contain many requirements related to **Traffic Modeling** and **Traffic Analyses** Yet, the Development Agreements barely address how any of this will be done. For example **Condition 17 a.** states, in part: *"...validate and calibrate the new transportation demand model.... run the model to estimate the trip distribution percentages that will result from the next upcoming phase or interval of MPD development...."* In addition, **Condition 17 b.** states, in part: *"If the findings and conclusions determine that failure to meet adopted transportation LOS will not be adequately mitigated, they shall also recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects' failure to meet the adopted LOS."* Finally, **Condition 17 c**. states, in part, *"The review identified in subsections (a) and (b) above, may be performed concurrent with a preliminary plat application held on either the Villages or Lawson Hills implementing plat, and the City review may incorporate relevant portions of any*

Transportation Written Statement

SEPA documents prepared for the implementing plat which analyze cumulative MPD impacts."

However, for each of these areas in **Conditions 17 a., b., and c.** the Development Agreements present no process for how and when any of this will be done, what will be done with the results, nor how those results will inform the formulation of *"additional measures necessary to adequately mitigate the impacts."* And there is insufficient information provided on what will inform Preliminary Plat Application decisions (*ref.:* **Condition 17 c.**). Once again, there is no Traffic Analysis Plan presented in the Development Agreements.

Also, timing is the key factor that threads through all the **Traffic Analyses** tasks. The proposed MPDs will have a profound impact on the transportation infrastructure of southeast King County for decades to come. Consequently, a process must be developed to evaluate major problems identified by outside jurisdictions and agencies. Remedies need to be identified and evaluated. A process must be put in place to ascertain the level of funding in the cost-share splits among jurisdictions for such remedies. The impacted agencies, such as WSDOT and KCDOT, and cities--Auburn, Covington, Enumclaw, and Maple Valley--all must agree with any overarching decision, scheduling, and implementation process. Yet there is no overarching **Transportation Plan** described in the Development Agreements.

There is insufficient detail in the Development Agreements to ascertain what these processes are and how and when they will be implemented. As detailed in these Condition sections, the City will be funding a lot of work, but the Development Agreements fail to explain what will be done with the information generated and how it will inform needed Transportation mitigations.

A major concern is that the provisions of **Condition 17 b.** on Peak-Hour Factors (PHFs) and PHF Sensitivity Analyses (as discussed earlier in detailed comments on **Condition 12**), which discuss **Condition 15** projects, are negated by the the **Maple Valley Transportation Mitigation Agreement**, which having been negotiated and signed, *"supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development*

Agreement" (*ref.:* **Condition 15**) anything in the MPD Ordinance Conditions of Approval and is now frozen in time (as discussed earlier in detailed comments on **Condition 15**).

Condition 17. d.

"When the review thresholds identified in subparagraph a. above have been reached, the City shall issue written notice to the Master Developer(s) to each submit within 90 days review documentation summarizing their respective project impacts and compliance with mitigations and conditions to date...."

This appears to imply this will be done once the 850-building-permit-issued threshold is reached, so it can be used in the **Traffic Model Validation** process. However, the Development Agreement does not explain what information will be provided and the level of accuracy and confidence associated with that information. For example, will *"project impacts"* and *"compliance with mitigations and conditions"* information be described using travel times, intersection LOSs, failed turning movements, etc? This must be described in the Development Agreements to ascertain the validity of the process.

Condition 17. e.

"Not later than 90 days following the City's completion of the validation/calibration/operations analysis, the City Director of Community Development shall consult with other affected jurisdictions...." "... the City shall meet with the Master Developer(s) to review the proposed findings, conclusions and recommendation and identify what improvements the Master Developer(s) plans to construct."

How can such *"consultation with other affected jurisdictions"* wait until possibly 2016 when "*validation/calibration/operations analysis*" is to commence? What process to rectify issues will be used when a major problem is identified in *"affected jurisdictions"*? Who *"identifies"* what must be done--the City, Master Developer,

affected Jurisdiction, some combination thereof? How will remedies be identified and evaluated? What process will be used to determine cost-share splits for such remedies? What is the overarching decision process that will be used and how will it be negotiated with *"affected jurisdictions"*? What say will the grossly impacted agencies of WSDOT and KCDOT, as well as the cities of Auburn, Covington, Enumclaw, and Maple Valley have in any of this? How will such *"consultation with other affected jurisdictions"* address already signed **Transportation Mitigation Agreements** with Covington and Maple Valley? None of this is specifically addressed in the Development Agreements.

Condition 17. f.

"The City's demand model validation and calibration ... shall result in written findings and conclusions plus a recommendation for new future permit conditions and mitigations for the Villages and/or Lawson Hills, as required. ***Proposed conditions and mitigations applicable to future permits and associated mitigation within either or both projects shall be revised if the City finds that the conditions or mitigation measures imposed pursuant to the City's standards in effect at the time of MPD approval have resulted in an unsatisfactory level of mitigation, either because the degree of mitigation is inadequate or the quantity of impact demonstrated to be attributable to MPD development exceeds levels predicted."***

Who defines what *"an unsatisfactory level of mitigation"* is? What process will be used to *"revise" "an unsatisfactory level of mitigation"* once identified? This is not specifically addressed in the Development Agreements.

What analysis methodology (i.e., technical, cost, and risk) will be used to develop "*new"* mitigation measures to *"revise" "an unsatisfactory level of mitigation"*? None of this is addressed in the Development Agreements.

Where is the Schedule and what are the key decision points that addresses *"future permits and associated mitigation"*? This is not provided in the Development Agreements.

Transportation Written Statement

"New permit conditions and mitigations imposed for cumulative impacts through the periodic review process shall comply with the following standards and limitations:..." (enumerated under Condition 17.f. subparagraphs--i thru v.)

What process will be used to show *"compliance"* with these *"standards and limitations"?* Why is the burden of proof on the City and not the Master Developer? None of this is specifically addressed in the Development Agreements.

Condition 18

"The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another." (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

The Master Developer states in subsection 11.5 B that it may recover costs in excess of its proportionate share including grant funding and mitigation payments received by the City. While this may be legal, how does it ensure the City, the region, and the taxpayers that all obligations can and will be met? None of this is specifically addressed in the Development Agreements.

What process will be used to determine, let alone, evaluate pro-rata traffic shares amongst various sources (e.g., jurisdictions, developments, etc.)? None of this is specifically addressed in the Development Agreements.

Condition 20

"A transportation monitoring plan shall be established as part of the Development Agreement....The monitoring plan shall ensure that construction of

improvements commences before the impacted street or intersection falls below the applicable level of service....”

How can a **Transportation Monitoring Plan** which collect real-time traffic data *“ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service....”* ? Such data must be used in conjunction with **Traffic Analyses** to identify problems. None of this is specifically addressed in the Development Agreements.

There are no details on how improvements (and timing) will be identified using a clear set of trigger mechanisms that can be routinely measured and assessed. In addition, all major arterials in the **Traffic Demand Model** both inside and outside the City must be assessed in the **Transportation Monitoring Plan**.

[See specific comments on *Exhibit F--Transportation Monitoring Plan*.]

Condition 25

“The monitoring plan required by these conditions shall require the applicant to model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the City's adopted level of service....”

Notwithstanding that MPD Ordinance **Condition 25** conflicts with **Conditions 11 and 17** on timing of validation of the **Traffic Demand Model**, how and when will this be done? In fact, the wording of **Condition 25** implies such modeling, analyses, and mitigation identification be completed before entering into the Development Agreement or, at least, prior to *“submitting land-use applications”* for any particular phase. None of this is specifically addressed in the Development Agreements. [See specific comments on *Exhibit F--Transportation Monitoring Plan*.]

Condition 29

Transportation Written Statement

"Prior to the first implementing project of any one phase being approved, ***a more detailed implementation schedule of the regional infrastructure projects*** *supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects."*

There is no plan detailing how such an "implementation schedule" will be developed and vetted.

How will the Master Developer comply with **BD Municipal Code 18.98.010** to *"Provide needed services and facilities in an orderly, fiscally responsible manner.";* **18.98.020** *"Timely provision of all necessary ... infrastructure ...";* and **18.98.080** *"...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...."*?

A complete set of **Transportation Plans** must be provided that include, at a minimum, project descriptions, project impacts, mitigations proposed, estimated costs, cost shares, identified funding mechanisms, and risks of potential revenue sources for both route and intersection improvements to fully mitigate all transportation-related impacts on all geographic areas studied before each Phase begins.

Cost-Benefit-Risk Analyses must be included for each mitigation proposed that provide specific details for decision-makers and assess potential impacts associated with slips in schedule, not securing adequate funding, and traffic pattern changes. Such Plans should be continually updated, as required, and submitted to the City for review and approval an adequate time (possibly 180 days) before a Phase is scheduled to begin. None of this is specifically addressed in the Development Agreements.

Condition 33 a.

"The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic

calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. ***All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review committee."***

There is no "*description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements."*

This is inadequately addressed in the Development Agreements. At best, a simplistic *Traffic Calming Study* was done. "Basic" traffic calming measures were identified. However, none of these measures will truly "calm" the massive traffic volumes anticipated to be generated by the MPDs along Green Valley Road.

The use of *"traffic calming devices"* would impose a serious negative impact on the life and livelihood of the residents of the area. These could damage resident's vehicles and impede their normal lifestyle. The residents should not have to pay such a price in the Rural Area on an Historic Corridor in an Agricultural Production District for an improperly planned massive urban development adjacent to them in another jurisdiction. Further, the use of *"traffic calming devices"* is predicated on the assumption these would provide meaningful mitigation. That is questionable at best.

A Public Hearing should be held to provide the residents of Green Valley Road the opportunity to voice their opinions on the results of the study. King County must agree to any proposed changes to Green Valley Road. Traffic volumes on Green Valley Road should be re-assessed in conjunction with King County on at least a semi-annual basis to determine what changes need to be considered and implemented to minimize MPD traffic. None of this is addressed in the Development Agreements.

Transportation Written Statement

Condition 33 b.

"A Green Valley Road Review Committee shall be formed. *The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, but only two community members shall have a vote on the committee regarding any matter.* ***The Committee shall meet as needed, and specifically shall meet to review the study required by Condition 33(a) and attempt to reach agreement on whether any suggested traffic calming devices should be provided...."***

This has not been done. No Committee has been formed. That notwithstanding, this represents a *take-it-or-leave-it* approach. Either the residents and businesses along Green Valley Road accept some of the rudimentary and wholly inadequate *"traffic calming measures,"* or nothing will be done to alleviate the massive increases in future traffic loads caused by an adjacent City in Rural Unincorporated King County. If the *"traffic calming devices"* study is rejected, then all other means must be explored to ensure King County's prediction of a *"300 - 400% increase"* (as testified to by KCDOT's Mattherw Nolan during the FEIS Appeals Hearings) in traffic on Green Valley Road does not occur.

King County has stated in their multiple comment submittals (both for the DEISs and FEISs) that:

> *"SE Green Valley Road will be significantly impacted, even without a proposed direct connection from the project, by project trips - between SR 169 and the SR-164 intersection near SR 18. This roadway has limited/no roadway shoulders, has fixed objects (trees, fences, etc.) in proximity to the roadway travelled-way, & a very curvilinear alignment. These existing conditions are tolerable given the relatively low (50+/-) peak hour volumes noted in the reports, however, the projected increase attributable to the proposed projects (on the order of magnitude of 400%) over existing, and still significant over 2025 baseline conditions, suggests that motorist safety will be*

adversely impacted without improvements....Black Diamond-Ravensdale Road, between the City and the Kent-Kangley Road/Landsburg Road/SE Ravensdale Way intersection, will be impacted by nearly identical (as compared to SE Green Valley Road) levels of traffic from the projects under the proposed access/network configuration. Since there are no meaningful trip destinations for these two projects between the Kent-Kangley Rd intersection and SR 18, the same impacts would occur northerly up to the State Route – and, most likely, into Issaquah along the Issaquah-Hobart Road."

None of this has ever been addressed, nor is it addressed in the Development Agreements. In fact, King County has warned in their comments (both for the DEISs and FEISs) that:

"Since 'safety'-related improvements are permitted, and 'capacity' improvements are expressly prohibited in the Rural Area, a detailed evaluation of existing conditions of the roadways impacted by The Villages & Lawson Hills projects should be made, and mitigation identified to address the "appropriate provisions" requirement in the RCWs."

None of this has ever been addressed, nor is it addressed in the Development Agreements.

Since the makeup of the Green Valley Road Review Committee is weighted, at best, 3-2 against the residents of the community to be impacted, it is not representative. A King County representative should replace the City's representative as a voting member. The City still could attend the meetings, but not as a voting member. King County as the owner, operator, and maintainer of Green Valley Road must have a direct say in the Committee's decisions. This is discussed as proposed "New" Condition 33 c. in Section VI. *Proposed "New" Conditions*.

Condition 34 a.

Transportation Written Statement

"The Development Agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery."

There is insufficient information in the Development Agreements to address this. Although there are Tables in subsections 11.3 and 11.5 that list potential Transportation projects and responsible parties, there are no cost estimates, no obligations, no timing, and no risk assessments. Discussion on *"cost recovery"* is vague at best, as discussed in the critique under **Condition 10**. How will such an assessment be accomplished and on what will it be based?

Cost-Benefit-Risk Analyses of each traffic project must be conducted. These analyses, at a minimum, must address project impacts, estimated costs, cost risks, detailed schedule, schedule risks, and contingency plans. Yet, such parameters and analyses are never mentioned in the Development Agreements. This is discussed in more detail under "new" **Condition 29 a.** in Section VI. *Proposed "New" Conditions.*

Transportation Written Statement

V. DEVELOPMENT AGREEMENTS

In this section each Development Agreement Section/Subsection and Exhibit--directly or indirectly dealing with Transportation--is assessed. Specific comments in **purple** discuss whether the Development Agreements either meet, partially meet, or completely ignore stipulations of each MPD Ordinance Condition of Approval.

4.0 LAND USE AND PROJECT ELEMENTS

4.10 DEVELOPER IMPROVEMENTS

The parties agree that the MPD design and mitigation measures described in this Agreement, including the MPD Approval and conditions in Exhibit "C", result in the mitigation of any probable significant adverse environmental impact directly identified as a consequence of The Villages MPD. Additionally, the parties acknowledge that some elements of the MPD and mitigation measures include provisions relating to system improvements identified in the City's Comprehensive Plan dated June 2009, for which the City might adopt impact fees under RCW 82.02.050 et seq. The parties agree that as designed and with full implementation of all the mitigation measures, The Villages MPD build□out will fully and adequately mitigate the probable significant adverse environmental impacts of The Villages MPD and, that through such mitigation measures, provisions will be made for: (i) the facilities needed to serve new growth as a result of the MPD within the City; and (ii) to construct or pay a proportionate share of the cost of completing certain system improvements. Unless otherwise provided elsewhere in this Agreement, the parties agree that the mitigation measures listed in this Agreement and in Exhibit "C" are in lieu of the payment of any impact fees that the City has the authority to impose pursuant to RCW 82.02.050 et seq., including any amendments thereto, such that no impact fees shall be imposed on any MPD Implementing Project during the term of this Agreement except for those fees explicitly set forth in this Agreement.

Transportation Written Statement

This effectively means that regardless of any future traffic modeling and analysis, all necessary mitigations have already been accounted for. It also states that no additional cost can be levied on the Master Developer. This is a fiscally irresponsible "clause" in the Development Agreement "contract." This ties the hands of future City Councils and ensures critical decisions on mitigations needed or unfinished will be settled in Court. It is doubtful this was the intent of the City Council for this Condition when approving the MPD Ordinances.

For projects of this massive size in an area with poor infrastructure to begin with, there will be major Change Orders over a 15- to 20-year build-out. This is especially true when it comes to traffic mitigation projects, which historically are fraught with long lead times, technical risks, schedule slips, surprise costs, and ever-changing traffic demand circumstances.

11.0 PROJECT PHASING

11.2 PHASING OF IMPROVEMENTS

Phases may ultimately be built simultaneously. Accordingly, infrastructure and timing of Development different from the MPD Phasing Plan (Exhibit "K") may be proposed by the Master Developer, without an amendment to the MPD Permit Approval or this Agreement, based on the needs and timing of specific Implementing Projects and technological advancements.

Transportation *"infrastructure and timing"* are the cornerstones determining viability of these MPDs. As such, any changes to the definition of either must be put forth as Amendments to either the MPD Permit Approval or the Development Agreements. Such language, as espoused in section 11.2 above, is not contained in the MPD Ordinances' *Exhibit C--Conditions of Approval*.

11.3 PHASING AND CONSTRUCTION OF ON□SITE REGIONAL FACILITIES

Transportation Written Statement

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....

If the Master Developer elects to construct Regional Facilities or projects from the City's Capital Improvements Plan ("CIP"), it may seek reimbursement for costs incurred to Construct any or all of the necessary on□site Regional Facilities in excess of the Master Developer's proportionate share (except from "Exempt Properties," as defined below). The Master Developer may recover costs in excess of its proportionate share (except from "Exempt Properties," as defined below) using methods approved and allowed by City Code, state law, and existing agreements (e.g., WSFFA), including grant funding and mitigation payments received by the City for growth-related impacts, including impacts occurring outside the City's boundaries. The following parameters shall govern any Master Developer request for reimbursement:...

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 on□site Regional Facilities construction costs it incurs in excess of its proportionate share.

The Master Developer primarily is relying on other people's money to build identified traffic mitigations. In addition, the phrase *"or cause to be constructed."* is troubling--what does it mean? It seems to imply unknown-sourced outside funding. If so, that does not constitute an element of a credible **Financial Plan**.

The phrase *"proportionate share"* often is mentioned, but such cost splits are not provided, except in Tables 11.3.1 - 11.3.4, which show the Master Developer as being *"responsible"* for the infrastructure, thus implying a 100% share. [Note: the first

three Tables list Transportation infrastructure, while the fourth Table, while not listing specific Transportation infrastructure, it is implied, because there will have to ingress and egress to the Wastewater and Stormwater facilities listed.] Yet, the overall transportation infrastructure needs must be in excess of several $100,000,000 (hard to tell with no cost estimates of any kind are provided!).

Where will the Master Developer get such sums of money? One could assume the Master Developer is planning on borrowing against their land value at municipal bond rates through the mechanism of Community Facility Districts (CFDs). Then passing the CFD charge onto homebuyers, commercial/business owners; etc. through a special assessment. Those special assessments most likely will be used to pay back the bondholders. But this is all speculation on my part because nowhere in the Development Agreements is a **Financial Plan** detailed. What happens if CFDs are not available to the Master Developer? What is the Back-up Plan? These are all potential Fatal Flaws! Plus, where are the risks identified? Finally, and possibly most important, on whom are those risks imposed and for how long?

Although MPD Ordinance **Condition 10** (and, similarly, **Condition 34 a.**) stipulates: "*The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur,*" the Master Developer simply states that it *"may recover costs...using methods approved and allowed..."* This does not constitute identifying *"cost recovery mechanisms."*

The Bottom Line: There is no detailed Transportation **Financial Plan**. No one knows how much they are signing up for in the future. No one knows who the risks will fall upon and when. Without this type of critical information, how can a long-term commitment be made on the part of the City, its current citizens, its future citizens, and the region in the form of 15-20-year "contracts"--the Development Agreements?

11.4 PHASING AND CONSTRUCTION OF OFF□SITE REGIONAL INFRASTRUCTURE IMPROVEMENTS

Transportation Written Statement

A. Phasing.

Occupancy of an Implementing Project that exceeds the construction threshold is allowed after the necessary Regional Facility has been permitted. This ensures that necessary off□site Regional Facilities are provided to serve Implementing Projects as they occur.

This does not ensure *"that necessary off□site Regional Facilities are provided to serve Implementing Projects as they occur."* Allowing "occupancy" to exceed "thresholds" simply based on issuance of permits for necessary infrastructure doesn't make sense and harms the City and its new residents.

Comments on this subsection only are provided because, while no specific Transportation infrastructure is listed, it is implied, as there will have to ingress and egress to any off-site regional Wastewater and Stormwater facilities listed as *"Regional Facilities."* Actually, no Stormwater facilities are listed, but the off-site major Stormwater Detention Facility is shown in *Exhibit K--MPD Phasing Plan* (*Phase 3: fig. 9-5, Project III-13*), so there appears to be yet another conflict within the Development Agreements.

B. Construction and Funding.

[This section 11.4.B has similar language to that quoted above for 11.3.B, so it is not repeated here.]

[Note: Applicable discussion of deficiencies are given above under 11.4.A.]

11.5 TRANSPORTATION REGIONAL FACILITIES

A. Timing

Pursuant to Conditions of Approval Nos. 10, 18, and 34 of the MPD Permit Approval, the timing associated with the construction of the transportation improvements outlined

in Tables 11□5□1 and 11□5□2 is subject to the Traffic Monitoring Plan set forth in Exhibit "F". While some of these transportation improvements are shown on the figures associated with Phases contained in Exhibit "K," the timing shown is only approximate. Pursuant to Condition of Approval No. 20 of the MPD Permit Approval, the actual timing of construction of the transportation improvements outlined in Tables 11□5□1 and 11□5□2 shall be governed by the Traffic Monitoring Plan.

It can't be emphasized enough that the whole premise of just "monitoring" is reactive, not pro-active. "Re-activity" identifies a traffic problem through "monitoring" and then a process (undefined in the Development Agreements) is put into place to design, finance, and build a particular transportation improvement to mitigate what the "monitoring" identified as a problem. This is not a credible plan for success!

The "Funding Responsibility" column in Tables 11.5.1 and 11.5.2 refers back to verbiage of subsections 11.3 B and 11.4 B, which simply discuss *"reimbursement for on-site (off□site, respectively) Regional Facility construction costs in excess of its proportionate share...."* This does not meet the requirement in **Condition 10** that each eligible project and associated specific *"cost recovery mechanisms"* be identified.

B. Construction and Funding

The transportation impacts of the Villages MPD were assessed based on the cumulative impacts of The Villages MPD and the Lawson Hills MPD in the EIS. During any time period in which The Villages MPD proceeds before the Lawson Hills MPD or vice versa, the transportation mitigation obligations shown in Tables 11□5□1 and 11□5□2 and triggered by the Traffic Monitoring Plan shall be borne by the MPD that is proceeding alone. During any time period in which both MPDs are proceeding, the transportation mitigation obligations outlined in Tables 11□5□1 and 11□5□2 will be shared by The Villages and the Lawson Hills MPDs on a proportionate share basis. Pursuant to Condition of Approval No. 19 of the MPD Permit Approval, for each potential signal listed below, the Master Developer shall first consider and present a

conceptual design for a roundabout as the City's preferred method of intersection control.

It is not clear where all the monies will come from to fund the list of "Transportation Regional Facilities" listed in Tables 11-5-1 thru 11.5-2. The tables list *"Master Developer,"* but do not specify what funding sources and/or mechanisms the *"Master Developer"* will employ. Also, there is no identification of *"cost recovery mechanisms"* as required by **Conditions 10** and **34 a**. Once again, there is only minimal listing of potential *"cost recovery mechanisms"* in *Exhibit K--MPD Phasing Plan*. [Note: The discussion of deficiencies related to 11.3 provided earlier, also is applicable here.]

C. *Pursuant to Condition of Approval No. 15 of the MPD Permit Approval, transportation facilities to be constructed within the Cities of Maple Valley and Covington will be provided pursuant to the terms of Exhibits "Q" and "R".*

The **Maple Valley Transportation Mitigation Agreement** and the **Covington Transportation Mitigation Agreement** were based on the questionable results, as determined by your Honor, of an inadequate, insufficiently detailed, non-regional Traffic Demand Model and subsequent traffic analyses employing several suspect input variables. Consequently, there is a total lack of confidence in the output of the *existing* model (i.e., currently defined traffic mitigations). Therefore, the mitigations proposed to Black Diamond and Maple Valley by the Master Developer may be, and most probably are, wholly inadequate. In Section VI. *Proposed "New" Conditions*, two "new" conditions are offered: **"New" Conditions 14 a.** and **14 b.** to try to rectify this potentially Fatal Flaw in the process.

These Transportation Mitigation Agreements appear to be static. If so, what happens after 850 building permits have been issued and the Traffic Demand Model is validated and then used to conduct traffic flow and volume analyses? If additional mitigation is identified at that time and required, will the Mitigation Agreements be re-opened and amended? Who pays for additional mitigation? How does additional mitigation affect the build-out costs, schedule, and phasing of the MPDs?

Transportation Written Statement

Further, only responsibility splits are shown in the **Maple Valley Transportation Mitigation Agreement**. As stated earlier in comments concerning Development Agreement sect. 11.3, the sums of money involved in building such transportation infrastructure could be enormous.

Finally, the schedule for mitigations in the **Maple Valley Transportation Mitigation Agreement** is all predicated on Phasing and Trigger Points (i.e., # of homes), so a jurisdiction will be unable to do any real capital planning for such infrastructure [see discussion under *Exhibits Q and R*].

12.0 DEVELOPMENT REVIEW PROCESS

12.10 MAPLE VALLEY TRANSPORTATION MITIGATION AGREEMENT

12.10.1 Maple Valley Transportation Mitigation Agreement Effect

...Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the Villages MPD, Ordinance No. 10□946, are superseded by the Maple Valley Transportation Mitigation Agreement in regards to any potential transportation improvements within the City of Maple Valley.

The Maple Valley Transportation Mitigation Agreement has never been subjected to a Public process, so how can it *"supersede" MPD Ordinance Conditions*? [also see discussion concerning Development Agreement sect. 11.5, para. C. above]

12.11 COVINGTON TRANSPORTATION MITIGATION AGREEMENT

...Conditions of Approval 10 through 14, and 16 through 34 within Exhibit C of the Villages MPD, Ordinance No. 10□946, are superseded by the Covington Transportation Mitigation Agreement in regards to any potential transportation improvements within the City of Covington.

Transportation Written Statement

The Covington Transportation Mitigation Agreement has never been subjected to a Public process, so how can it *"supersede"* MPD Ordinance Conditions? [also see discussion concerning Development Agreement sect. 11.5, para. C. above]

EXHIBIT F – TRAFFIC MONITORING PLAN

A. Required Timing for Modeling and Monitoring

Before submitting land use applications for each Phase of the combined MPDs, and in the middle of each Phase, the Master Developer shall model and monitor traffic to identify the expected traffic impacts of that Phase.

What *"model"* is going to be used *"before submitting land use applications for each Phase"* and in the *"middle of each Phase"* and how will that *"model"* be validated? This is especially of a concern prior to 850 building permits being issued as called for in MPD Ordinance **Condition 17a.** It should without saying that the confidence level associated with results generated using an un-validated model is unknown. There is no clarity at all in the Development Agreements on what will happen prior to the 850 threshold.

I preface this discussion with some background. Although I do not purport to be a Traffic Modeling expert, I do have over 24 years of experience at Boeing in modeling and analyzing complex aerospace and aircraft structure under disparate conditions to meet a variety of life, structural, environmental, and thermal requirements. As such, I believe I can discuss the potential concerns associated with complex modeling, validation and re-validation, critical analyses, and prudent evaluation of results. Such *"Modeling"* is a tool that helps to predict future traffic loads and distribution patterns over certain time periods.

"Monitoring" is a tool to gage current traffic loads and distribution patterns in real time. Consequently, *"monitoring"* cannot supplant good predictive modeling techniques, but can be used to aid invalidating a "model" to determine how close

and repetitively it predicts current conditions. As more *"monitoring"* is done over time, the *"model"* will become more accurate in its predictions--that is good; however, it must be understood that *"monitoring"* in itself is reactive at best and one will never "catch up" until after full build-out of the MPDs is reached. *"Monitoring"* will always be "chasing" the next needed mitigation improvement, such that the transportation infrastructure--intersections and intervening road spans--always will be on the precipice of failure or outright in failure. This is not a credible plan.

When the City has completed its regional transportation model, all subsequent modeling and monitoring shall be done with that regional model.

The *"model"* cannot be static, rather it must be ever evolving so its predictive capabilities are improving through periodic *"monitoring"* and subsequent validation cycles. Yes, "re-validation" of such a model often is required, especially if the original conditions under which it was validated change substantially, such as much higher traffic loads, major changes in traffic distribution, new intersections, road widening, employment center growth or movement, etc.

Should the model not undergo such re-validation, it might not be sensitive enough to capture significant traffic distribution changes with time. Consequently, there is insufficient information here to determine whether or not this meets MPD Ordinance **Conditions 11** and **17** [see previous comments under **Conditions 11** and **17**].

B. Report Requirements

The results of the traffic modeling and monitoring shall be presented to the City in a written report. The traffic monitoring report shall be prepared by a registered professional engineer chosen by the Master Developer and licensed to practice in the State of Washington with experience in traffic engineering and transportation planning. The written report shall document the findings including an evaluation of the existing

conditions, and a forecast of future traffic volumes based on the next Phase's (or the remaining portion of the Phase's) projected level of development.

Details are needed on how will such *"forecasts"* be made and used to adjust the model and/or the speed and breadth of needed mitigations and further build-out of the MPDs. There is insufficient detail in the Development Agreements to determine whether this satisfies the stipulations of **Conditions 11** and **17**, which call for such methodology to be used.

The existing conditions section of each traffic monitoring report shall include a summary of updated peak hour turning movement counts for intersections or two□direction roadway counts for roadway segments for all of the transportation mitigation projects included in the traffic monitoring plan (refer to Section C below). Existing level of service shall also be calculated for each transportation mitigation project included in the traffic monitoring plan. Traffic counts shall be conducted on representative weekdays (Tuesday, Wednesday, or Thursday during weeks not affected by holidays, bad weather such as snow, or other days with unusually high or low traffic volumes) and when school is in session. To enable comparisons back to prior monitoring reports, traffic counts shall be conducted during the same month to the extent feasible—alternatively, seasonal adjustment factors shall be applied to counts conducted during different months.

This is good, but the frequency of such traffic counts and level-of-service (LOS) computations must be provided to determine whether and when these counts will be of practical use.

Evaluation of potential future traffic volumes from other Black Diamond development shall not be required because the City will independently require other projects to evaluate and mitigate their own impacts. However, infill traffic growth (exempt from SEPA) and background traffic growth from outside of Black Diamond (also exempt from SEPA) shall be included in modeling.

Transportation Written Statement

What validity will be associated with these *"forecasts"* of *"future traffic volumes"*? The **Traffic Demand Model** must include all traffic regardless of how it is generated, otherwise true traffic distribution patterns and throughput timing will not be fully understood. Everyone uses the same transportation infrastructure. These MPDs will dominate the traffic generation throughout the region. How can one discern what non-MPD-generated traffic is in order to parcel it out of the traffic volume and intersection timing numbers? Once again, this does not satisfy the stipulations of **Conditions 11 and 17**.

For intersection improvements, the report shall compare the results with the LOS threshold for each existing facility to determine whether and at what time any improvement to an existing facility is required.

Does this refer to *"results"* from the *"modeling"* or the *"monitoring"*? If the latter, then this is reactive and not pro-active. Consequently, it constitutes a risky approach that must be rectified. Results from a validated model could be used here, but those model runs must be done frequently, as conditions will change markedly throughout buildout of the MPDs.

*The report shall also evaluate the extent to which MPD traffic would cause or contribute to any level of service fail*ure on an existing facility in Black Diamond or need for access to or circulation within the MPD.

What about *"level of service failure"* on roads/intersection outside of Black Diamond? Just because the Master Developer has signed **Transportation Mitigation Agreements** with outside jurisdictions, doesn't mean the City of Black Diamond is "off the hook" for problems caused outside its city limits. Those "outside" problems also will adversely affect Black Diamond residents, commuters, and shoppers. This does not satisfy the stipulations of **Condition 15**.

The City, in its reasonable discretion, may use the report to determine whether to request that the Master Developer ["alter"? Your Honor, a verb--an important one--is

missing here.] its proposed timing for construction of any new roadway alignments or intersection improvements described in MPD Condition of Approval No. 10 of the MPD Permit Approval.

The City may only *"request"* the Master Developer "alter" [a guess as to the missing verb] its timing for construction. This means that the City and its residents have no control over their own transportation infrastructure--it's all at the discretion of the Master Developer. The City and its Citizens are at risk and have no control over how to mitigate that risk. This is irresponsible and does not meet the intent of numerous *MPD Ordinance Conditions*.

C. Transportation Projects to be Monitored and Modeled

How does this subsection satisfy **Condition 10** (maintain Level of Service), **Condition 15** (mitigation outside Black Diamond), and **Condition 18** (funding and pro-rata shares)?

The following projects shall be monitored and/or included in the model of the Phase's future traffic impacts: all projects listed in Table 11-3 of the Development Agreement, (and any modifications to that list following the periodic review process of MPD Approval Condition 17 of the MPD Permit Approval), together with existing facilities in the City of Black Diamond where the level of service impacts of the MPD may be addressed by construction of a new roadway alignment or intersection improvements inside Black Diamond as described in MPD Approval Condition 10 of the MPD Permit Approval. However, if the Master Developer has entered into a mitigation agreement with an outside jurisdiction that either sets the timing for payment towards or construction of the mitigation projects, or exempts that jurisdiction's projects from later monitoring, modeling or other review, that mitigation agreement is deemed to satisfy all mitigation and no further monitoring or modeling of facilities within that jurisdiction are required.

This is both technically irresponsible and unacceptable! All *"projects"* must be *"included in the model."* [Rationale was provided above in earlier sections of *Exhibit*

Transportation Written Statement

F.] Why are all *"projects"* subject to a *"mitigation agreement"* reached *" with an outside jurisdiction"* exempt from later *"modeling"* and *"monitoring"* of traffic flows? The traffic impacts of the proposed MPDs will reach far, far beyond the borders of the City of Black Diamond directly and indirectly affecting a large portion of southeast King County. Your Honor acknowledged that very clearly in his *FEIS Appeals Decisions* and *MPD Application Recommendations*, especially in your call for "regional" traffic model."

Notwithstanding any *"Mitigation Agreements"* with the Cities of Maple Valley and Covington, there is no consideration given to WSDOT; KCDOT; the cities of Auburn, Enumclaw, Issaquah, and Kent; and residents of Unincorporated King County. This is a recipe for disaster down the road. There is no mechanism in place to adjust to ever-changing circumstances. Projects that could be designed and built as late as 2031 could be based on 2009 Traffic analyses using 2000 Census data! We could be 30 years off between mitigation identification and mitigation implementation? This is not a credible plan!

The monitoring plan and model need not analyze a specific improvement after that improvement has been constructed.

This is both irresponsible and technically indefensible and represents a "head-in-the-sand" approach. There is no technical or experiential justification to assume the *"improvement"* will work as modeled/designed and no changes will be necessary. The improvement must be monitored continuously for a period of time to ascertain whether the improvement works as designed and that the original 2009 Traffic analysis still adequately addresses real conditions in place at the time of completion of the improvement. The improvement also could alter traffic flow patterns such that other areas within the model grid could be affected. Transportation infrastructure is not static, it evolves over time to meet the needs of its users. If not, both quality of life and economic vitality will be needlessly detrimentally affected for all.

D. Triggers and Timing for Construction of Transportation Projects

Transportation Written Statement

For intersection improvements, the threshold trigger is when the intersection level of service (LOS) (as defined in the Highway Capacity Manual, TRB, 2000) for the entire PM peak hour would (1) no longer meet the adopted LOS (as defined in the City of Black Diamond's Comprehensive Plan, 2009, or other jurisdiction's standard applicable to the MPD Approval) or (2) in the event that the LOS is already below the applicable threshold, the trigger shall be when traffic volumes from the new MPD Phase begin to increase delay at the intersection causing an additional impact.

Once again, this is all reactive, not pro-active and, thus, unnecessarily risky. This does not meet either **Black Diamond Municipal Code Section 18.98.020 or 18.98.80** to provide infrastructure when needed (as described earlier). This is particularly the case with **18.98.80**: *"Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...."*

It appears the improvements will not even be identified until after LOS has been compromised! This uses the wrong *"trigger"* to mis-*"time"* construction of needed projects to alleviate congestion. In addition, Peak-Hour Factors (PHFs) must be addressed, as evaluating LOS for the *"entire PM peak hour"* is insufficient. Your Honor specified that in his *FEIS Appeals Decision* and *MPD Application Recommendations*. The evaluation of Peak-Hour Factors also was stated by WSDOT in their Expert testimony during the FEIS Appeals Hearings.

How are the vague phrases: *"additional impact"* and *"delay"* defined? Who defines them? How large will the time lag be between *"delay"* or *"impact,"* intersection improvement design, securing funds, and construction?

This approach is reactive *after-the-fact* thinking that will result in a continual guaranteed lag in meeting ever-changing traffic needs and, in the end, essentially never catching up. This approach does not meet MPD Ordinance **Condition 20**: *"The Monitoring Plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service."*

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Transportation Written Statement

For new roadway improvements inside Black Diamond, the MPD Phasing Plan anticipates that the projects will be constructed to service the new MPD development of each Phase, including for access to and circulation within the MPD. For purposes of the modeling and monitoring plan, the threshold trigger to construct the improvement is when MPD traffic would increase delay or impact LOS at any intersection on existing roadways to a point at which the new roadway would be warranted.

Again, this is all reactive, not pro-active. It appears the improvements will not even be identified until after LOS has been compromised! This approach does not meet MPD Ordinance Condition 20.

The Master Developer shall only be required to perform an improvement if the applicable threshold is triggered.

Once again, this is all reactive, not pro-active. These so-called *"thresholds"* really mean *"failure"* of an intersection or intervening road segments. Successful engineering projects do not plan for *"failure"* and then react, they seek to thoroughly analyze and design their projects ahead of time with adequate margins so as to avoid failure.

The specific construction timing shall be set in each report, based on the results of the required monitoring and modeling. For City of Black Diamond projects, by execution of the Development Agreement, the City commits to prompt permit review, such that the Master Developer's prompt construction of transportation improvements shall commence before the impacted street or intersection falls below the applicable level of service.

The timing described is inadequate and unacceptable. How can permits be reviewed and issued and *"construction of transportation improvements" "commence before the impacted street or intersection falls below the applicable level of service"* when the entire Monitoring Plan is predicated on *"failure"* as a trigger mechanism? This is, at best, "double-speak."

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Transportation Written Statement

Plus, why should construction timing pressure be a lever on the City to rush through permit review and approval. That puts the onus on the City for "delaying" the construction of a transportation mitigation improvement that the Master Developer should have had in place earlier, save for a "re-active" "monitoring" plan.

For projects within Black Diamond that are also within the State right-of-way, the report shall set a deadline for commencement of only engineering and design of the improvement but not a deadline for commencement of construction.

This parrots back provisions of poorly written **Condition 20**. While it is understandable that WSDOT will have some say on improvements along State Routes (e.g., SR-169 straight through the heart of the City), timely mitigations still are necessary to be put in place before level of service is compromised. There is no plan in the Development Agreements that explains how this "lag time" will be overcome or what will happen when planned mitigations are not put in place when needed.

Projects of this size, cost, risk, and impact require detailed schedules with major milestones and decision points identified, risks associated with each enumerated, and risk mitigation plans spelled out. None of this appears to be even contemplated in the Development Agreements!

For projects outside the City of Black Diamond where additional permitting from another jurisdiction is required, the report shall set the time at which the Master Developer must commence the permitting and/or engineering and design process, but shall not set a deadline for commencement of construction.

Why for projects *"outside the City of Black Diamond"* are the deadlines only for commencement of *"permitting and/or engineering and design process"* of the improvement"? This provides no assurance or protection for the customers/users: commuters, shoppers, businesses, emergency services, etc.--including those from Black Diamond. Since the vast majority of proposed mitigations are *"outside the City of Black Diamond,"* this in effect unnecessarily delays timely construction of those

improvements. Many of the proposed projects are major undertakings and the Master Developer won't even commit to a process whereby the commencement of construction of needed improvements is identified. This does not meet the MPD Ordinance Conditions, especially in dealing with King County, and must be rewritten in the Development Agreements.

Within the City of Black Diamond, if additional public right□of□way should be needed for the design of a particular improvement, the Master Developer shall first demonstrate a good faith effort to acquire the right□of□way needed. If, after making an offer equal to the fair market value, the Master Developer is unable to purchase the needed right of way, the City shall be responsible for acquiring the needed right□of□way.

This is vague and non-committal. The improvements necessary to ensure that even the initial phases of these MPDs are viable from a transportation point of view will require much right-of-way acquisition, especially along the narrow SR-169 corridor winding through the heart of Black Diamond.

The Master Developer cannot be allowed to "punt" this political football to the City and its taxpayers. This is a plan to use Eminent Domain in its worse form to benefit a private developer to help it "mitigate" problems that its development is causing. The City must protect itself and its existing residents and business and property owners from such an ill-conceived plan that has no basis in the MPD Ordinance Conditions.

EXHIBIT P – GREEN VALLEY ROAD MEASURES

1. Traffic Calming Measures

Any potential traffic calming strategies will need to be evaluated with respect to maintaining historical and cultural character of SE Green Valley Road since this roadway is identified as one of nine Heritage Corridors in King County.

Transportation Written Statement

How will the *"potential traffic calming strategies ... be evaluated"*? The Master Developer is planning to place up to 20,000 new residents just north of rural and historic Green Valley Road, add a few speed bumps, and expect them to divert or slow down a *"300 - 400% increase in traffic"* (ref.: KCDOT testimony previously cited). This is not a credible plan !

2. Permit Process and Timing

A. *Upon commencement of Phase 1A, or earlier at the discretion of the Master Developer, the Committee shall meet to consider the Traffic Calming Measures identified in 1(A) above. The intent of the Committee is to attempt to reach an agreement on whether any suggested Traffic Calming Measures should be provided. If the community members decide against the Traffic Calming Measures, then the Master Developer need not construct any of them.*

This meets MPD Ordinance **Condition 33 b.** However, since it unduly puts Green Valley Road citizens in a permanent minority on the so-called "Green Valley Road Review Committee" and presents them with a "take-it-or-leave-it decision on so-called *"traffic-calming"* measures to try to protect their road and quality of life, a "new" **Condition 33 c.** is provided in Section VI. *Proposed "New" Conditions*.

C. *Prior to the conclusion of construction in Phase 1A, the Master Developer shall submit to King County permit applications for any Traffic Calming Measures chosen by the Committee on Green Valley Road.*

This is meant to satisfy MPD Ordinance **Condition 33 a.**: *"...a description of the process and timing required for the Applicant to seek permits from King County...."* However, it simply states the Master Developer will submit permit applications. There is no description of a process whereby the Master Developer, the residents along Green Valley Road, and King County Department of Transportation will develop solutions that are mutually agreeable.

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Transportation Written Statement

EXHIBITS Q and R – TRANSPORTATION MITIGATION AGREEMENTS

How can such "agreements" with "applicable agencies" be reached before the Development Agreements are subject to any Public process and vetted through your Honor and the Black Diamond City Council without first developing a new **Traffic Demand Model**, then validating it with existing data, and finally using it to analyze future scenarios to identify potential mitigations to be implemented?

The Development Agreements state the **Transportation Mitigation Agreements** *"supersede"* the **Conditions 11-34, except 15** (which mentions the Agreements). Therefore, after the new **Traffic Demand Model** is first validated and used to look at various road and intersection volumes (after 850 building permits are issued), there will be no adjustments to the Agreements. This completely ignores your Honor's rationale for a new **Traffic Demand Model**--to address regional deficiencies in the original model because it tied to the Puget Sound Regional Council's higher level model. Consequently, a new **Traffic Demand Model** is being developed, it will be validated after 850 building permits have been issued, and then it will not be used to assess traffic volumes and needs outside of Black Diamond! This isn't simply a "deficiency," it's another recipe for failure and a Fatal Flaw !

The vast majority of the road mitigation (e.g., widening/adding lanes between intersections) occurs after many of the intersection improvements. This raises the concern that should the Master Developer cease development after Phase "X" is complete and only "Y,YYY: Units have been built, certain "Trigger Points" in the Maple Valley Transportation Mitigation Agreement will not be reached. Thus, some key mitigations will never be undertaken. This would result in a hodgepodge of mitigation along SR-169 between SR-18 and the City of Black Diamond whereby intervening road segments will remain "choke" points even after some intersections have been improved, thus rendering those improvements moot. Having lived in the Maple Valley area for over 30 years and driven most of the major intersections

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Transportation Written Statement

everyday, I know first hand what adverse impacts this will have on my community and the surrounding region.

Notwithstanding the discussion above, the largest deficiency in the **Maple Valley Transportation Mitigation Agreement** is the complete lack of mitigation to eliminate "choke points" along SR-169 north of the SR-18 intersection. The commute doesn't suddenly stop there, rather it continues on to Renton, I-405 and I-5 to Seattle. SR-169 from this point north will continue to be a 2-lane undivided road for ~ 5 miles until it passes the 196th Ave SE intersection and becomes a 4-lane undivided road to Renton. Not only is this ~5-mi 2-lane portion a "choke point," but so is the narrow Cedar River Bridge less than a mile north of the SR-18 intersection.

Because of these flaws, the already inadequate mitigations proposed in the **Maple Valley Transportation Mitigation Agreement** are rendered essentially moot as traffic will balloon as it approaches these "choke points" from either direction during the morning and evening commutes.

Transportation Written Statement

VI. PROPOSED "NEW" CONDITIONS

I, and many, would say your Honor's most critical MPD Application recommended **Transportation Conditions** were:

> **Condition 16**: *"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."*
>
> and
>
> **Condition 17**, which stated in part: *"The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard."*

Unfortunately, these removed from further consideration by the Black Diamond City Council at the behest of YarrowBay *(ref.: 6/21/10, 10:20 AM e-mail letter from YarrowBay Attorney Nancy Rogers to City Attorneys Mike Kenyon and Bob Sterbanks; I submitted this document as an Exhibit during my Oral Testimony on July 13, 2011; Ms. Rogers e-mail was later expanded into a memorandum to the City Council dated June 22, 2010 and entered into the Closed-Record MPD Application Hearing as Exhibit C-8. [I wish to set the record straight: During my Oral Testimony I incorrectly stated this was not entered into the record in the Closed-Record MPD Application Hearing. I apologize for that incorrect assertion. I personally apologized to Ms. Rogers just before the Expert Witness testimony started on July 21, 2011])*.

In fact the letter recommended your Honor's **Conditions 11-17** be deleted in their entirety and replaced in full and that your Honor's **Conditions 18, 21, 24, and 34** be revised. These represent nearly half of the your Honor's Transportation Conditions and possibly the most important ones.

Unfortunately, these YarrowBay-suggested Transportation Conditions formed the basis for those finally approved by the City Council in the MPD Ordinance *Exhibit C--Conditions of Approval*. The major thrust of YarrowBay's recommendations were to move the development and use of the new Traffic Demand Model from prior to (and,

thus, informing) the Development Agreement to a distant (~8 to 10 years?) "Mid-Point Review" (e.g., ~3,000 homes) The City Council in their deliberations changed this in their final approved MPD Ordinances to the issuance of 850 building permits. Better, but still wholly inadequate. Your Honor had rightly recommended doing this essentially at 0 homes.

[ASIDE: My big concern here is one of process. Your Honor conducted a thorough FEIS Appeals Hearing with many Transportation Expert witnesses testifying (State, County, Maple Valley, and Consultants from both sides). That FEIS Appeals Hearing formed the basis for your Honor's recommended Transportation Conditions of Approval for the MPD Application Hearings. Then YarrowBay submitted their 6/21/10 letter to the City Staff and introduced their recommended Transportation Conditions as an Exhibit in the Closed-Record Hearings. At the end of those Hearings the City Council *miraculously* adopted the YarrowBay-suggested Transportation Conditions almost *verbatim*, thus completely ignoring all the Transportation Expert Witness testimonies from the FEIS Appeals Hearings and your Honor's careful study and prudent judgement. This all might be legal, but it gives the Public the strong feeling that the process stacks the deck against them, the science, and the experts.]

Your Honor's clear response to the Expert Testimony and that of the Public during last year's Hearings was as follows:

> *"For both traffic and noise, the Examiner recommends that added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation."*

All this was flippantly ignored by YarrowBay, the City's Attorneys, and, worst of all, by the elected representatives of the people, the Black Diamond City Council !

The current set of Transportation Conditions contained in the MPD Ordinances' *Exhibit C--Conditions of Approval* were modified by the Black Diamond City Council

from those discussed in your Honor's *FEIS Appeals Hearing Decision* and those enumerated in detail in your Honor's *MPD Application Hearing Recommendations*. As discussed earlier, some were eliminated outright! The e-mail letter referenced above and submitted as an Exhibit in the current Hearings, possibly and, I would content, most probably, resulted in such wholesale changes to your recommended Transportation Conditions. Unfortunately many of those changes and eliminations benefit the Master Developer while increasing the risk, uncertainty, and future costs to the City and the Region and its citizens.

So now you and the Public have before us a set of voluminous, yet relatively empty, Development Agreements that describe no new Traffic Demand Model (though one is in development for some far future use), no new Traffic Analyses, and no new Traffic Mitigations. Consequently, we effectively are where we were 17 months ago on Saturday, March 6, 2010, the first day of the FEIS Appeals Hearings! No one, neither YarrowBay, the City, Maple Valley, King County, Parametrix, or the Public have a clear understanding of what it will take to mitigate the massive traffic volumes that will be added by these outsized MPDs to the existing southeast King County road network and infrastructure! Let's look at each one of these:

1. A new **Traffic Demand Model** is under development. That is good. But when will it be ready? When will it be validated? When will it be used? As a long-time Boeing Principal Engineer and Project Manager, these are the critical questions I ask my people repeatedly. I ask no less of the City and YarrowBay!

2. The model must be verified and validated now. Assumptions must be reassessed, such as the wildly unsubstantiated Internal Capture Rates used in the past analysis (and now cemented in stone in the **Maple Valley Transportation Mitigation Agreement**), as well as others your Honor recommended be revisited. Then rigorous **Traffic Analyses** must be conducted to assess future traffic scenarios.

3. A complete set of comprehensive **Traffic Mitigations** then must be developed with **Mitigation Plans** that include design concepts, cost estimates, funding requirements, cost-share splits, tentative schedules, and cost/benefit/risk analyses.

All this must be done now. It must be done prior to the approval of any Development Agreements, so that these 15- to 20-year contractual documents can be informed by the results. Then the Public, adjacent jurisdictions, the County, and the State must be given the opportunity to thoroughly critique these plans in open Public Hearings.

This is the most glaring flaw in the entire process! And the most glaring weakness in the proposed Development Agreements before your Honor and the Public. It is unconscionable that the City of Black Diamond would blithely ignore these flaws and impose unnecessary adverse impacts on its own citizens and on citizens like me who live in Southeast King County! Again, this must and will be rectified.

Consequently, I propose five "new" Conditions. The first four are intended to reduce risk and cost to the City and the Region and its citizens, as well as ensure *"Growth Pays for Growth"* by holding the Master Developer accountable. The fifth "new" Condition is proposed to address impacts on King County road and Public involvement.

"New" Condition 12 a.

Because MPD Ordinance **Condition 12** deals with **Traffic Analyses**, I recommend a **new Condition 12 a.** to deal with **Sensitivity Analyses**. Below please find supporting rationale followed by the proposed "new" Condition language.

Although MPD Ordinance Condition 17 b. does call for **Sensitivity Analyses** on Peak-Hour Factors (PHFs), it does so only after the **Traffic Demand Model** has been validated following the issuance of 850 building permits. That is inadequate, since, as stated earlier, 850 building permits represents a ~50% increase in the City of Black Diamond's population and is estimated to not occur for 5 years until 2016!

Recommendation for a *"New" Condition 12 a.*

Transportation Written Statement

Condition 12 a. The new Traffic Demand Model shall be used to conduct **Sensitivity Analyses** to understand the effects of changes in projected Peak-Hour factor (PHF), intersection spacing, signal timing, and Queue length assumptions. The varying consequences to travel times, overall project impacts, and mitigation measures shall be presented to the City and all affected jurisdictions for full evaluation of performance. In addition, a rigorous **Cost-Benefit-Risk Analysis** shall be performed, at a minimum, for three scenarios: 6-year Transportation Improvement Plans (TIPs) are funded on time; 20-year TIPs are not fully funded; and 20-year TIPs are funded on time.

"New" Condition 14 a.

Because MPD Ordinance **Condition 14** deals with **Traffic Demand Model** assumptions and revisions, I recommend two **new Conditions 14 a** and **14 b.** Below please find supporting rationale followed by the proposed "new" Condition language.

Unfortunately, with respect to the new **Traffic Demand Model**, your Honor's recommended Conditions 16 & 17 were eliminated. This must be rectified. By eliminating these two conditions there will be no evaluation of impacts and mitigations and no transportation monitoring plan prior to entering into a Development Agreement. This is very risky and does not protect the City, its businesses, and its citizens.

For any mitigation plan to succeed, at a minimum, **Transportation Concurrency** must be met. The MPD Ordinances' *Exhibit B--Conclusions of Law, para. 30* mentions ensuring *"concurrency at full build-out."* Unfortunately the *MPD Ordinance Exhibit C--Conditions* fail to stipulate Transportation Concurrency testing, nor require adjustments--such as funding, timing, moratoriums, etc.--to be made should a particular improvement fail the Concurrency test. A viable and executable **Transportation Concurrency Plan** must be required.

Lastly, **Transportation Monitoring** must be pro-active, not re-active, as testified to by WSDOT and many other Expert witnesses during the FEIS Appeals Hearings held in 2010.

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Transportation Written Statement

Recommendation for a *"New" Condition 14 a.* (same as your Honor's Villages Condition 16, but with additions: underlined sentences are new).

Condition 14 a. *Once a new Traffic Demand Model is developed, validated, and run, 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. Transportation Concurrency testing shall be periodically conducted at the beginning, midpoint, and end of each Phase to ensure concurrency at full build-out. Subsequent model revisions also shall be validated to ensure results are real and reproducible. Sensitivity analyses shall be conducted to gage the adequacy of key assumptions such as the internal trip capture rates. These sensitivity analyses must assess the risks associated with assuming different sets of assumptions. All results, assessments, conclusions, and recommendations shall be fully documented.*

"New" Condition 14 b.

Please see supporting rationale above under **Condition 14 a** discussion. This also should fix the "timing" conflicts between MPD Ordinance **Condition 25** and that of **Conditions 11 and 17 "***to bring mitigation projects into service before the Level of Service is degraded below the City's standard*."

Recommendation for a *"New" Condition 14 b.* (same as your Honor's Villages Condition 17).

Condition 14 b. *The intersections needing mitigation as identified in the analysis required above shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. The Monitoring Plan shall require that improvements be constructed with*

Transportation Written Statement

development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard."

"New" Condition 29 a.

A "new" Condition is sorely needed on Transportation Planning. Below I discuss specific *Black Diamond Municipal Code (BDMC)* sections that require such planning be done and when it should be done. Because MPD Ordinance **Condition 29** deals with Implementation Plans, I recommend a **new Condition 29 a.** Below please find supporting rationale followed by the proposed "new" Condition language.

BDMC 18.98.010 states the purposes for an MPD and includes under *Paragraph I: "Provide needed services and facilities in an orderly, fiscally responsible manner."* This includes all transportation-related improvements.

BDMC 18.98.020 states, in part, the Public Benefits to be derived and includes under *Paragraph G: "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."* This means that all transportation-related infrastructure, must be provided in a "timely" matter. This is a must as it is common sense to avoid even worse gridlock than we already experience each and every day of the work week. Plus, it is the law!

BDMC 18.98.080 states, in part, as conditions of approval of any future MPD permits under *Paragraph A.4.a* that there be a: *"...phasing plan and timeline for the construction of improvements ... so that: Prior to or concurrent with final plat approval ... the improvements have been constructed and accepted ...."* So, looking ahead, the required transportation improvements must be in place, at least, at final plat approval. However, the City's current *Six-Year Transportation Improvement Plan* contains projects that clearly will not mitigate the immense impacts of the MPDs and do not have real funding sources or risks identified with financing, securing Right-of-Ways, nor construction. This effectively lets the Master Developer largely off the hook for funding such mitigations. Once again, where is *"growth paying for growth"*?

Transportation Written Statement

In addition, the mitigations proposed for the Cities of Maple Valley and Covington also must be addressed in an overall **Transportation Plan**. Those proposed mitigations (out to at least 2026!) must not be "frozen in time" based on the 2009 flawed traffic analyses.

As described earlier, **Transportation Plans** must, at a *minimum*, define the needs, routes, concepts, schedule, estimates, funding sources, risks, cost-benefit-risk analyses, and potential impacts related to each risk factor.

Recommendation for a *"New" Condition 29 a.*

Condition 29 a. *A complete set of Transportation Plans shall be developed that include, at a minimum, project descriptions, project impacts, mitigations proposed, estimated costs, cost shares, identified funding mechanisms, and risks of potential revenue sources for both route and intersection improvements to fully mitigate all transportation-related impacts on all geographic areas (including the Cities of Maple Valley and Covington and the surrounding unincorporated areas of King County) studied before each Phase begins. Cost-Benefit-Risk Analyses shall be conducted for each mitigation proposed that provide specific details for decision-makers and assess potential impacts associated with slips in schedule, not securing adequate funding, and traffic pattern changes. Such Plans shall be submitted to the City for review and approval 180 days before a Phase is scheduled to begin.*

"New" Condition 33 c.

Because MPD Ordinance **Condition 33** deals with Green Valley Road--a King County road--and affected residents outside the city limits, a **new Condition 33 c.** is proposed that deals with all King County roads that will be affected by the massive traffic to be generated by the MPDs on these 2-lane windy country roads.

Recommendation for a *"New" Condition 33 c.*

Transportation Written Statement

Condition 33 c. *Separate Citizen Review Committees will be established for Issaquah-Hobart-Ravensdale-Black Diamond Rd., Auburn-Black Diamond Rd., Kent-Black Diamond Rd., Lake Holm Rd., Thomas Rd., Covington-Sawyer Rd., and Green Valley Rd. Some may be combined should the citizens agree. Each of these Committees will be comprised of five members. The Chair shall be an employee designated by the King County Department of Transportation. The same person can chair multiple committees. The other members will include three citizens along the road in question and one representative of the Master Developer. The City of Black Diamond can send a non-voting representative to participate in Committee meetings. The Committees will be responsible for setting their goals and agendas. The express intent of the Committees is to provide the Public a direct voice on potential impacts that could affect them, their property, and their quality of life.*

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Transportation Written Statement

VII. CHRONOLOGY AND REMAINING CONCERNS

We all followed a very interesting path to get to where we are now:

1. A **Local-Regional Traffic Demand Model** was created and used to analyze traffic impacts to support the MPD **DEIS** and **FEIS** documents. [late 2009]

2. During the **FEIS Appeals Hearings** (local citizens appealed the adequacy of the FEISs) following Expert Witness testimony from Traffic experts, KCDOT, WSDOT, and Maple Valley's expert your Honor found the **Traffic Demand Model** flawed in its regional geographic coverage and several of its assumptions. Consequently, your Honor ruled the resulting analyses and traffic mitigations generated were flawed. However, your Honor ruled the FEISs adequate and said specific Conditions would be imposed on the MPD Applications during subsequent hearings. Your Honor did so. [Spring 2010]

3. Following the **MPD Application Open-Record Hearings** your Honor recommended a set of over 160 Conditions which included 25 Transportation-specific Conditions that were meant to address the Traffic Demand Model, Traffic Analyses, and Road and Intersection Mitigation shortcomings found during the FEIS Appeals Hearings. [Spring 2010]

4. Following the **MPD Application Closed-Record Hearings** the Black Diamond City Council passed two MPD Approval Ordinances each with a set of over 160 Conditions which included 25 Transportation-specific Conditions. However, the City Council proceeded to eviscerate (i.e., Merriam-Webster's Dictionary: *"deprive of vital content"*) many of your Honor's major Transportation Conditions. [September 2010]

5. The Applicant submitted its **first draft** of the Development Agreements. [September 2010]

Transportation Written Statement

6. The Applicant submitted its **"final" version** of the Development Agreements. [June 2011]

Even as we participate in the Open-Record Hearings on the Development Agreements, many remaining issues still concern us. Unfortunately, many of the City Council's changes to your Honor's recommended Transportation Conditions benefit the Master Developer while increasing the risk, uncertainty, and future costs to the City and the Region and its citizens. Major concerns are:

1. There is no validated **Baseline Traffic Demand Model** to provide predictions, reduce risk, and lend some certainty to understanding impacts on the City's and Region's Transportation infrastructure. Consequently, there is a complete lack of reliable forecasts of what future traffic pattern and volume scenarios could look like and what transportation infrastructure mitigations might even work.

2. **Mitigation Agreements** with outside jurisdictions do not include Transportation mitigations your Honor believed were technically defensible. Nor did all the independent Technical experts and the vast majority of the Public. Consequently, those negotiations have no common database with which to work and, thus, the mitigations listed are suspect, at best, and completely inadequate, at worst.

3. The Developer is effectively vested on all transportation-related standards and requirements through full build-out. Such standards and requirements protect the Master Developer, **not** the City, its residents, or the Region's citizens. They will unduly handcuff future City Councils by putting the burden of proof on the City to substantiate the MPDs are causing future traffic problems--a recipe for future lawsuits.

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Transportation Written Statement

4. The changes needed to the region's **Transportation Infrastructure** due to total size of the MPDs--over 6,050 homes and 1.15 million sq ft commercial footprint--are not likely to be feasibly or economically mitigated due to the geographic and funding constraints. The region's Transportation infrastructure could suffer gridlock for several decades.

5. The Master Developer proposes **Funding Sources** that rely primarily on other people's money to build needed infrastructure or monies that currently do not exist and are not likely to exist. Both the WA State and King County Departments of Transportation have precious little funds to allocate in southeast King County. The Alaskan Way Viaduct Replacement and 520 Bridge Replacement projects will drain State funding coffers for a very, very long time. King County is trying to stretch its ever-dwindling transportation budget to simply maintain road safety, not increase capacity, in the unincorporated areas as is its policy. State-elected officials, WSDOT, KCDOT, and the PSRC (e.g., Transportation 2040) have repeatedly made these points abundantly clear. This is possibly where risks are the greatest !

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Transportation Written Statement

VIII. CONCLUSIONS

In closing, it is clear designing, financing, and building the massive amount of Transportation infrastructure necessary to support the proposed MPDs is a massive undertaking--both financially and technically.

Throughout the Expert testimony of the FEIS Appeals Hearings and the Public testimony of the MPD Application Hearings no-one believed the traffic problems associated with adding over 6,000 homes and over 1.1 million square feet of commercial/business space (once again, effectively quintupling the City of Black Diamond) all feeding onto an undivided 2-lane State road, SR-169, were properly mitigated--including you, your Honor! Unfortunately, after 17 months of hearings and documents being written by the Applicant and negotiated with City Staff, sadly nothing really has changed!

In this Section Conclusions are listed for each of the major Transportation issues. Accompanying each Conclusion are those specific segments of the **Stop-Light Assessment Table**, shown earlier in Section II. Overview/Summary, that apply to each MPD Ordinance Transportation Condition or Black Diamond Municipal Code requirement addressed. They are reproduced here for convenience of the reader.

1. TRANSPORTATION PLANS

The Development Agreements lack a credible overarching **Transportation Plan**, let alone a detailed one, to address future traffic loads and develop needed mitigations. Transportation Plans must, *at a minimum*, define the traffic mitigation needs and locations, project descriptions, schedules, estimated costs, funding sources and mechanisms, risks, and potential impacts related to each risk factor for both route and intersection improvements to fully mitigate all transportation-related impacts on all geographic areas studied before each Phase of the MPDs begins.

The Development Agreements fall far short in this critical area. Important provisions of the MPD Ordinance Conditions dealing with Transportation Plans--10 and 29--are not met, as highlighted in the Stop-Light Table.

Transportation Written Statement

Cond.	Subsect.	Citation	Assessment of DAs	Gr.
# 10	Trans-portation Planning	...construct any new roadway alignment or intersection improvement....specify for which projects...eligible for either credits or cost recovery and by what mechanisms....	□ No ***Transportation Plan*** detailing tasks and schedule. □ No details on Credit or Cost Recovery mechanisms.	
# 29	Regional Infra-structure Implemen-tation Schedule	Prior to the first implementing project...being approved, a more detailed implementation schedule of the regional infrastructure projects...shall be submitted for approval.	□ No ***Transportation Plan*** that includes a detailed implementation schedule (i.e., What information will inform such a Schedule and How will it be vetted?).	

2. **FINANCIAL PLANS**

The amount of funding to upgrade and build new Transportation infrastructure contemplated here is enormous and primarily relies on the Master Developer using the new mechanism of CFDs. The Master Developer does not have the money--the risks are great!

Cost-Risk-Benefit Analyses must be included and continually revisited throughout the life of the projects. Such critical analyses must address impacts of funding mechanisms not materializing for all mitigations proposed in order to identify those mitigations unlikely to be fully funded and the attendant adverse impacts on traffic levels of service.

In addition to cost risks, assessments also must include technical risk and schedule risk to weigh against the perceived benefits. The Development Agreements do not even address these risk area, which are a critical consideration of any Financial Plan, especially for something as large and important to the City and Region as these MPDs.

Important provisions of the MPD Ordinance Conditions dealing with Financial Plans--18 and 34 a.--are not met, as highlighted in the Stop-Light Table.

Transportation Written Statement

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 18	Funding Responsi-bility & Pro-Rata Shares	The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established...which must cover the complete mitigation list.	☐ No ***Financial Plan*** that provides assurance obligations can be met, nor provides a process to evaluate pro-rata shares amongst jurisdictions.	
# 34a	Project Responsi-biltity Split	...address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.	☐ No ***Financial Plan*** that provides cost estimates, timing, funding sources, contingencies, or risks. ☐ No ***Cost-Benefit-Risk Plan***.	

3. **TRAFFIC ANALYSES**

A comprehensive **Traffic Analysis Plan** that provides details on how the **Traffic Demand Model** will be used and what assumptions will be made and on what bases must be formulated. A clear methodology must be presented to determine, analyze, and mitigate future traffic scenarios. An understanding of the model's key assumptions and the sensitivity of results to those assumptions, along with how model results will be assessed is a necessity. This especially is important once 850 building permits are issued and the validated model is ready to be used.

A complete unknown is what model will be used prior to that 850 threshold. A validated Traffic Demand Model does not exist. In fact, the new Traffic Demand Model, as dictated by the MPD Ordinance Conditions of Approval, is not yet complete! One cannot contemplate initiating projects of this size, scope, and far-reaching regional consequences without knowing how severe the traffic problems could be and how to mitigate them without analysis tools that are sufficient for the job and proven to produce verifiable and reproducible results for a variety of traffic scenarios.

In the FEIS Appeals Hearings and the MPD Application Hearings your Honor stated that Black Diamond currently has an inadequate **Traffic Demand Model**, which lacks sufficient detail, and has used several suspect input variables. This results in a total lack of confidence in the output of the existing model (i.e., currently defined traffic mitigations). Consequently, the mitigations proposed to Black

Transportation Written Statement

Diamond and Maple Valley by YarrowBay may be, and most probably are, wholly inadequate. This puts the City and its citizens at risk until 850 building permits are issued and the model is validated. With the long lead times typically involved for traffic mitigation planning, design, and construction this will mean a traffic volume increase of between 50% and 75% before the correct traffic mitigations can be put in place. Consequently, much greater congestion will exist at many key intersections in Black Diamond and surrounding communities for several years. These situations can and must be avoided.

The Development Agreements simply parrot the MPD Conditions of Approval without providing any detailed plans and methodology to address inadequate or failed mitigations. What process will be put into place? When and what are the key trigger points? Who makes the decisions? Where are the checks and balances? None of this is described in the Development Agreements.

Important provisions of the MPD Ordinance Conditions dealing with Traffic Analyses--12, 14, 17 and 25--are not met as highlighted in the Stop-Light Table.

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 12	Model Assump-tions & Analyses	The model must be run with currently funded transportation projects...shown in the applicable 6-yr & (unfunded) 20-yr TIPs.	☐ No ***Traffic Analysis Plan*** ☐ No details on assumptions.	
# 14	Model Internal Capture Rate (ICR)	The new model must include a reasonable ICR assumption. The assumed ICR must be based upon and justified by an analysis....	☐ No ***Traffic Analysis Plan*** ☐ No details on assumptions.	
# 17a. thru j.	Trans-portation Analysis ***[most critical Transp. Condi-tion]***	[Three pages long.] 17f.: Proposed conditions & mitigations ...shall be revised if...the conditions or mitigation measures...have resulted in an unsatisfactory level of mitigation....	☐ No ***Traffic Analysis Plan*** describing what will be done with results and how they will be used to inform needed mitigations. No [post-850-building-permit] ***Traffic Analysis Plan***.	

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Transportation Written Statement

# 25	Pre-Phase Modeling	...model...traffic impacts of a...phase before submitting land use applications...to determine at what point a ...(facility)...is likely to drop below...adopted LOS....	□ No ***Traffic Analysis Plan*** [Also, Condition conflicts with provisions of Conditions 11 and 17 on timing.]	

4. TRANSPORTATION CONCURRENCY

A **Transportation Concurrency Plan** is needed to lay out the details of concurrency testing to ensure *"concurrency at full build-out"* as required by *Black Diamond Municipal Code 18.98.080(A)(4a).* Concurrency testing is a pillar of the State's Growth Management Act as set forth in *WA State RCW 36.70A.070(6)(b).*

The plan also must meet the provisions of the *Black Diamond Comprehensive Plan sections 7.2.2, 7.9.2, and 7.11.1.* Finally, the plan must address the methodology to be employed should certain elements of the Transportation infrastructure fail concurrency testing. What are the contingencies?

Important provisions of the MPD Ordinance Conditions dealing with Transportation Concurrency--17, 20, and 25--are not met as highlighted in the Stop-Light Table.

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 17a. thru j.	Trans-portation Analysis ***[most critical Transp. Condi-tion]***	[Three pages long.] 17f.: Proposed conditions & mitigations ...shall be revised if...the conditions or mitigation measures...have resulted in an unsatisfactory level of mitigation....	□ No ***Traffic Analysis Plan*** describing what will be done with results and how they will be used to inform needed mitigations. No [post-850-building-permit] ***Traffic Analysis Plan.***	
# 20	Trans-portation Monitor-ing Plan	The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service....	□ Transportation Monitoring Plan is re-active, not pro-active; does not identify proper "trigger mechanisms" that can be measured and assessed.	

Transportation Written Statement

# 25	Pre-Phase Modeling	...model...traffic impacts of a...phase before submitting land use applications...to determine at what point a ...(facility)...is likely to drop below...adopted LOS....	☐ No ***Traffic Analysis Plan*** [Also, Condition conflicts with provisions of Conditions 11 and 17 on timing.]	

5. **TRAFFIC DEMAND MODEL**

Validation of the **Traffic Demand Model** is a cornerstone of any subsequent traffic analyses and mitigation identification and evaluation. A **Traffic Model Validation Plan** needs to be developed that provides the methodology and schedule to be used to verify model results and reproducibility of same. This is required by MPD Ordinance Transportation Condition 17. The Development Agreements provide no Traffic Model Validation Plan, nor any details on how validation will be accomplished and tested.

A more complete discussion of the concerns and risks associated with the questionable validity of the Traffic Demand Model to be used prior to reaching the 850 building-permit-issued threshold for model validation is contained in Conclusion 3. above.

The Traffic Demand Model was a major point of contention during the FEIS Appeals Hearings with much Expert Testimony provided. None of the issues raised during those testimonies--scope and depth, assumptions, timing, validation--have gone away.

It is difficult to ascertain how some of the MPD Ordinance Transportation Conditions, which conflict in terms of the timing for the Traffic Model and Traffic Analyses--11, 12, 14, 17, and 25--can be met. Certainly, the dearth of details in the Development Agreements provide little confidence they can be met.

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

Transportation Written Statement

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 11	Traffic Demand Model	The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation.	□ No ***Model Validation Plan*** to validate and re-validate the model leading to identification and evaluation of additional mitigation.	
# 12	Model Assump-tions & Analyses	The model must be run with currently funded transportation projects...shown in the applicable 6-yr & (unfunded) 20-yr TIPs.	□ No ***Traffic Analysis Plan*** □ No details on assumptions.	
# 14	Model Internal Capture Rate (ICR)	The new model must include a reasonable ICR assumption. The assumed ICR must be based upon and justified by an analysis....	□ No ***Traffic Analysis Plan*** □ No details on assumptions.	
# 17a. thru j.	Trans-portation Analysis ***[most critical Transp. Condi-tion]***	[Three pages long.] 17f.: Proposed conditions & mitigations ...shall be revised if...the conditions or mitigation measures...have resulted in an unsatisfactory level of mitigation....	□ No ***Traffic Analysis Plan*** describing what will be done with results and how they will be used to inform needed mitigations. No [post-850-building-permit] ***Traffic Analysis Plan.***	
# 25	Pre-Phase Modeling	...model...traffic impacts of a...phase before submitting land use applications...to determine at what point a ...(facility)...is likely to drop below...adopted LOS....	□ No ***Traffic Analysis Plan*** [Also, Condition conflicts with provisions of Conditions 11 and 17 on timing.]	

6. **TRAFFIC MITIGATION**

Transportation and adequate mitigation for up to 15,000 additional vehicles and all the vehicle trips to be generated by the MPDs are the potential Fatal Flaws of the entire project. Given this, the Public still does not know what mitigations will work how much they will cost, who ultimately will pay, and when they will be built and operational.

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

Transportation Written Statement

If the Development Agreements don't answer any of these questions, nor even show methodologies to address them then when and by what mechanism will the City and the Public find out answers to such critical questions? And at what future short- and long-term costs and risks to the taxpayers and the communities affected?

Important provisions of the MPD Ordinance Conditions dealing with Traffic Mitigation--18, 20, 29, 33 a., and 34 a.--are not met as highlighted in the Stop-Light Table.

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 18	Funding Responsi-bility & Pro-Rata Shares	The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established...which must cover the complete mitigation list.	□ No ***Financial Plan*** that provides assurance obligations can be met, nor provides a process to evaluate pro-rata shares amongst jurisdictions.	
# 20	Trans-portation Monitor-ing Plan	The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service....	□ Transportation Monitoring Plan is re-active, not pro-active; does not identify proper "trigger mechanisms" that can be measured and assessed.	
# 29	Regional Infra-structure Implemen-tation Schedule	Prior to the first implementing project...being approved, a more detailed implementation schedule of the regional infrastructure projects...shall be submitted for approval.	□ No ***Transportation Plan*** that includes a detailed implementation schedule (i.e., What information will inform such a Schedule and How will it be vetted?).	
# 33a	Limiting Green Valley Rd Traffic	...a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the (calming) improvements....	□ The "process" simply states the Master Developer will submit permit applications. No description of a process whereby the Master Developer, GVR residents & KCDOT develop mutually agreeable solutions. ***[Traffic Calming Study was simplistic.]***	
# 34a	Project Responsi-biltity Split	...address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.	□ No ***Financial Plan*** that provides cost estimates, timing, funding sources, contingencies, or risks. □ No ***Cost-Benefit-Risk Plan***.	

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

Transportation Written Statement

7. VEHICLE TRIP REDUCTION

The *Black Diamond Municipal Code 18.98.010(H)* calls out the need for **Vehicle Trip Reduction**. With the magnitude of the potential traffic volumes to be generated by the proposed MPDs, vehicle-trip reduction schemes are a must to the success of the projects. The Development Agreements barely give such schemes lip service and, thus, provide no basis to determine what could work and how much it would reduce traffic volumes and/or travel times if employed.

This important provision of BDMC 18.98.010(H) dealing with Vehicle Trip Reduction is not met as highlighted in the Stop-Light Table.

BD Code	Subsect.	Citation	Assessment of DAs	Gr.
18/98.010 (H); [COL 11]	---	Provide environmentally sustainable dvmt. (COL 11 implies this includes Vehicle Trip Reduction)	☐ No ***Vehicle Trip Reduction Plan***.	

8. TRANSPORTATION MONITORING

Transportation Monitoring should be used to assess the adequacy of mitigations as they are put into service. However, the purported use of such "monitoring" as espoused in the Development Agreements--to aid in identifying traffic mitigations--is the wrong use of such a "tool."

"Monitoring" should be used to provide needed traffic data in terms of traffic patterns, intersection timing and queueing, and traffic speed and throughput. This important information must be used to verify results of traffic model runs and intersection analyses. The Development Agreements need to identify the right tools and how and when they will be used.

MPD Ordinance Condition 20 Transportation Monitoring Plan is not adequately described or detailed in the Development Agreements, nor is the use of Transportation Monitoring as a tool to measure key traffic data correctly described, as highlighted in the Stop-Light Table.

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

Transportation Written Statement

Cond	Subsect.	Citation	Assessment of DAs	Gr.
# 20	Trans-portation Monitor-ing Plan	The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service....	□ Transportation Monitoring Plan is re-active, not pro-active; does not identify proper "trigger mechanisms" that can be measured and assessed.	

A set of Recommendations based on these Conclusions and the arguments presented in this Written Statement is provided in the next section: Section IX. Recommendations.

Transportation Written Statement

IX. RECOMMENDATIONS

The Development Agreements must be rejected outright based on Transportation considerations alone, as needed analyses and assessments have not been conducted and plans poorly defined or missing and undefined. This violates many of the Transportation Conditions of Approval as highlighted in the Stop-Light Table and detailed throughout this Written Statement.

During the FEIS Appeals Hearings the Public was constantly mollified by statements such as *"this is not addressed at the programmatic-level FEIS, but all the details will be provided in the project-level Development Agreements."* That wasn't true then, and it certainly isn't true now that the incredibly detail-deficient Development Agreements have been released to the Public.

A complete rewrite of the Development Agreements clearly is required. This must include detailed plans, schedules, costs, and risks--all identified and justified. These Development Agreements must be rejected to protect the Public, the community, and the greater region from flawed, inadequate, or missing plans and unacceptable long-term unmitigated impacts. The Public expects that once your Honor reviews all the Oral Testimony from these Hearings and the extensive Written Statements, you will reject these Development Agreements.

Once these Development Agreements are rejected and subsequently improved--hopefully vastly improved--I look forward to speaking before you again at the next set of Development Agreement Hearings. Thank you for your focussed attention to the concerns of the Public and your careful review and consideration of all the evidence presented in Oral Testimony, Exhibits, and Written Statements.

Transportation Written Statement

X. FOR THE CITY COUNCIL

Although beyond the scope of your Honor's jurisdiction in these Hearings, please forward on to the Black Diamond City Council the following, along with the Section VI. *Proposed "New" Conditions*.

Clearly, the Transportation Conditions require a major rewrite and possible redirection. Since a full and adequate evaluation of future Transportation Infrastructure needs is required, which would directly impact the viability of both proposed MPDs, a repeal of the MPD Approval Ordinances is recommended.

Should the process be restarted, as it must be, a rigorous re-assessment of the major Transportation impacts imposed by the size and breadth of the proposed MPDs is necessary to truly understand the Transportation infrastructure needs, costs, timing, and risks. This is especially true of the critical Maple Valley Transportation Mitigation Agreement, which provides for wholly inadequate mitigations along SR-169 the backbone of the the Cities of Black Diamond and Maple Valley and the surrounding unincorporated area communities. It is expected that such a re-assessment will call for a significant downsizing of the proposed MPDs.

Some deficiencies in the Development Agreements could have been cured had the Hearing Examiner's MPD Application recommendations on Transportation Conditions been followed. Yarrow Bay proposed deleting this condition and City Staff agreed and recommended deleting it. The Black Diamond City Council accepted City Staff's recommendation to delete this critical condition. As a result no new analyses will be run to develop a new set of credible mitigations prior to the approval of any *"implementing projects."* Consequently, the Development Agreements are grossly deficient in the area of traffic modeling, analyses, and mitigation. This possibly is the most glaring flaw in the entire MPD process!

If an improved **Traffic Demand Model** is built, validated with existing traffic data, and then used to conduct **Sensitivity Analyses** prior to Development Agreement approval, the proper mitigations can be known early enough to forestall the

exacerbation of existing and growing traffic problems during peak commuting times. In this way the acceptance and associated funding responsibilities for those mitigations can be made a part of the Development Agreements. This would be the prudent path to take. The new traffic model and methodology should be used to analyze at least five (5) future scenarios ranging from both "business-as-usual" growth patterns to full MPD buildout over the next 5, 10, 15, 20, and 25 years. This must all be done before approval of the Development Agreements.

There are ways to fix this and ensure a sustainable set of downsized MPDs that would maintain Black Diamond's "Rural by Design" goals, while protecting the greater region from traffic nightmares. The Public is ready and willing to help make this a reality.

Brenda Martinez

From: Sierra Club <information@sierraclub.org> on behalf of Michael Adams <mikea98092@hughes.net>
Sent: Thursday, August 04, 2011 10:03 AM
To: Brenda Martinez
Subject: Rewrite MPD agreements with sufficient information for decision makers

Aug 4, 2011

Brenda Martinez
Black Diamond, WA

Dear Martinez,

The Black Diamond MPD Development Agreements should be rewritten to ensure the city Conditions of Approval are met, and to provide sufficient information for the public and elected officials to make informed decisions.

I hate form letters, and there is no way of stopping the project since there is a lot of money behind it and it will greatly increase the importance of Black Diamond government. And I assume that utilities will be adequately addresses since the development is impossible without them.

HOWEVER, the transportation issue is a major concern, both because of congestion and because the cost of gasoline will continue to go up, making a long commute extremely expensive. I wonder if Yarrow Bay has considered the possible impact upon sales of the commute problem. They could lose a lot of money and it might be better for them to start small.

The impacts of these MPDs are enormous given the scale of the planned developments and their locations on the fringes of the urban areas, far from major job centers and commercial hubs. Permitting of such massive MPDs would set a bad precedent for all future development in western Washington. Placing such developments where little or no infrastructure exists in locations that are likely to increase reliance on fossil fuels would hinder our attempts to become more sustainable and resilient in the face of climate change. The size of the MPDs is so immense that adequate mitigation is impossible, and they must be down-sized.

Sincerely,

Michael Adams
35855 207th Pl SE
Auburn, WA 98092-9008

EXHIBIT
119

Brenda Martinez

From: blscott60_3@q.com
Sent: Thursday, August 04, 2011 11:37 AM
To: Steve Pilcher
Cc: Andy Williamson; Brenda Martinez; Stacey Borland
Subject: Yarrow Bay MPDs

To Black Diamond council members,

I live in Ravensdale and have been following this development the whole time. I am very concerned about it.

These MPDs are way out of scale for a small community and will cause a lot of problems. So many homes will

cause a lot of unacceptable impacts. Traffic will be the number one headache, but that is just a starter. Water and

sewer are inadequate plus the impact on wildlife will be very bad--with forests cut down and sensitive wetlands filled in.

Mitigation is not the answer.

These MPDs would give Yarrow Bay free rein to lock in development rights no matter what happens down the

road. No changes could be made!

The bottom line: we that live in the area will experience clear-cutting of forests, loss of wildlife habitat along with

the wildlife, increased air pollution, degraded water quality and overburdened public services.

And Yarrow Bay will leave, and we citizens will be stuck with all these headaches.

How can the Black Diamond council even consider such a massive debacle? What a shame! Let's tone down this

development into way way less homes and do it right, so we don't all regret it in the future.

Thank you for allowing me an opportunity to speak out in opposition to this bad idea.

Bonnie Scott, Ravensdale, Wa

EXHIBIT

120

To: Steve Pilcher (spilcher@ci.blackdiamond.wa.us)

Cc: Andy Williamson (AWilliamson@ci.blackdiamond.wa.us)
Brenda Martinez (bmartinez@ci.blackdiamond.wa.us)
Stacy Borland (sborland@ci.blackdiamond.wa.us)

From: Mike Irrgang (mike@irrgang.net)
Subject: Unfunded Obligations

The development agreements as currently written allow for the inevitable creation of significant unfunded obligations/liabilities. These fall into two categories:

- Obligations which, while not illegal, create an immoral, inappropriate and **hidden** taxpayer or other subsidy of YarrowBay. While it is legal to have these subsidies, the Hearing Examiner should recommend new conditions to the City Council to prevent the situations occurring that will necessitate these inappropriate subsidies from occurring or affecting the citizenry of the region in a hidden manner.
- Obligations which create an inevitable illegal situation. The development agreements MUST be changed to correct these conditions.

Each of these topics is detailed below:

Immoral, Inappropriate and Hidden Subsidy Of Yarrowbay

In most parts of the U.S., and particularly in Texas, where I last lived, developers are expected to pay for themselves. It is a fundamental assumption in these United States that property rights are of paramount importance – that if I have a piece of land, I should be able to use this land to the greatest degree possible as I see fit. Therefore, a developer such as YarrowBay should be able to build their MPDs.

But along with these rights there is an assumption and understanding on the part of everyone that no landowner or developer should be able to force their neighbor to pay for items that only benefit themselves; e.g. if I want to build a deck behind my house, I should be allowed to do so. But under no circumstances does my neighbor pay for me to build my deck.

In Texas, the way this is handled is that either a developer may not develop until all infrastructure is in place, or else the developer must pay for all infrastructure. If the developer does not want to pay directly, the developer may set up what is called a Municipal Utility District (MUD), which only incorporates that development (i.e. MPD) and which requires the future residents to pay additional taxes to pay for such infrastructure. This almost always includes all water, sewage, schools and roads associated with and necessitated by the

EXHIBIT

121

development. I lived in a MUD for 20 years, and basically paid double-high property taxes (vs. the surrounding communities) because of it.

Yet YarrowBay with the MPDs as currently written, is forcing their neighbors to pay for costs that they should pay themselves. An incomplete list of such costs is:

- Sewage treatment: After 1800 residences are constructed in the YarrowBay MPDs, King County will be required to expand the sewage treatment system. By law, King County ratepayers are required to pay for it. Nevertheless, it is immoral and unjust that King County will be required to pay for sewer expansion that is only necessary because of this development. The Hearing Examiner should recommend an additional condition that the developer should be required by the city to reimburse King County for these costs after 1800 residences are constructed. If the developer does not pay for this, then construction should cease on any further residences until the developer , or again another hard stop
- Fire, Police & Emergency: Based on a quintupling of residents, BD will require considerable additional services. Given that YarrowBay currently pays much of these costs for Black Diamond, where is the requirement to fund the additional infrastructure and operating funds. The City Council needs to address that this is funded prior to allowing development under these development agreements.
- Transportation: This is the biggest unfunded liability, which I will address further in a separate document, where I will prove that the YarrowBay MPDs will create a gridlock at rush hours that will necessitate building out 169 as a freeway from Black Diamond to Renton (I-405). According to the mayor of Maple Valley, a study was done in 2004 which estimated the costs of such a project to be at least $300 million, if not more. Why should the taxpayers of Washington have to pay for this, which is only necessary to allow YarrowBay to build their development.

YarrowBay expects to sell their 6,050 homes for in excess of $2 billion dollars. In fact, when they were talking about this development in community meetings in 2008, they quoted an "average home price" of over $400,000, which would mean more than $2.5 billion in total sales. Why can't they pay for all the costs of infrastructure associated with their project?

The Hearing Examiner should recommend that the City Council require them to pay for ALL impacts to the surrounding region from their $2 billion plus revenues!

Inevitable Illegal Situation from Unfunded Liabilities

Another HUGE cost that the YarrowBay MPDs are imposing on taxpayers in the surrounding area is the cost of the schools.

Schools are covered in the MPD Approval ordinances in Condition 98, which states: *The Applicant shall enter into a separate school mitigation agreement....school mitigation may be addressed in the Development Agreement...through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws)... All school sites shall be located either within the MPDs or within one mile of the MPDs.*

The Tri-Party School Agreement has been approved as a mitigation agreement. Personally, I believe that the school board should be impeached for having been so financially irresponsible to sign such a one-sided agreement, which obligates the Enumclaw School Districts taxpayers to pay for 90% of the construction costs and 100% of the operating costs, in exchange for a paltry 10% of construction and land worth a minuscule several million dollars.

I say "minuscule" because the seven new schools which are required by state law for the number of expected residents are estimated to cost $350 million to construct, with operating costs in the millions of dollars annually. Enumclaw should have required YarrowBay to set up a Texas-style MUD to force the 6,050 homes in the MPDs to pay for the schools from taxes limited to the MPD residents.

But they did not.

Enumclaw residents will effectively get no benefit from these new schools, but they are expected to be financially responsible for them.

Knowing this, is it likely that the very small tax base of the Enumclaw School District will approve either bonds or taxes to fund schools for **new** Black Diamond residents?

Any reasonable person will know that the answer is a resounding ***"No!"*** Bond issues have already failed on the ballot where Enumclaw residents were going to receive a benefit in their own community – why would they fund a different community?

In other words, the most likely scenario is that a point will be reached where a school will be required by state law, yet it has not been built and there is no Enumclaw money to build it. **RCW 28A.150.100** requires a basic ratio of school staff to student population; if the facilities do not exist to accommodate this staff, then additional facilities must be built. The population of the MPDs as the units are sold will determine the number of schools required and the amount of the facilities in these schools to accommodate the staff.

Since the Tri-Party Agreement is done, signed, and cannot be renegotiated, the only legal remedy for such a situation would be to modify the development agreements to prohibit the construction of any home until the schools required by the total number of homes *currently* in the MPDs are completely constructed and in service. In other words, for example, if, say, 812 homes required "n" schools to be built, and they are, but 813 homes would require the next school to be built, then home #813 ***cannot*** be built until the next school is both built and operational. The developer would have the choice of either holding off on home construction until the taxpayers fund the school construction or else the developer could pay for the schools themselves (as they morally should, anyway!).

Attn: BD Community Development Director Steve Pilcher at (spilcher@ci.blackdiamond.wa.us)

We are retired seniors, residing in Black Diamond. We support the Community Center here. We are constantly amazed to discover how many seniors were born here and lived here all or most of their lives.

Is anyone going to be able to pay the taxes on their property as they continually rise, to play for school levies, etc., and just because their property has risen in value?

We are not against growth - just not this much, and not this fast. From 4,000 population to 18,000 plus at build - out, is simply devastating.

So what, if Black Diamond hasn't changed much in the last fifty years? Who gave Yarrow Bay the right to change the landscape and the lives of the citizenry for many miles around? When you come right down to it, all they want is money. Ours! Are they going to live here? Most certainly not. They will all go back from whence they came, and Black Diamond and all the surrounding area will be struggling for many years to cope with urban sprawl and all the attendant problems.

Early one evening we were on the Lake Sawyer Road S.E. on our way to Black Diamond, when we saw an oncoming car blink its' lights and stop. We slowed and stopped, for there in front of us was the most magnificent stag! (Didn't have the time to count points on his antlers.) He looked at us, then the other car, and proceeded regally across the road and disappeared in the trees.

We had just passed the sign announcing the building to take place on this parcel of land.

So, if you were a citizen of this unique small town, would you welcome this unfortunate inundation?

Respectfully

Yours,

S/S
Vern and Betty

Gibson

32800 1st Ave -

POB 581

Black Diamond,

Wa. 98010

EXHIBIT
122

Testimony for Development Agreement Hearings – City of Black Diamond, "The Villages" and "Lawson Hills" applications.

August 4, 2011

Kristen Bryant, 1006 139th Pl NE, #C-4. Bellevue, WA 98005

This document addresses traffic improvements not being made or paid for by the developer. The city of Black Diamond should consider whether the Development Agreement appropriately allows them to place additional traffic conditions or update impact fees for road improvements. As the town grows from only 4000 in population to up to 20,000 in population, many streets will experience the impacts of growth. Many of these are not uppermost in our minds right now.

Those streets we think of and have planned for the developer to improve are those that today, even with a small population, already have traffic problem. These include Lawson St and 3rd Ave (Highway 169), for example. But paying for a traffic light and traffic flow improvements that are already needed today does not mean that this will be sufficient as the population dramatically increases.

Below are some additional streets to consider in and around Black Diamond. What improvements will be needed and how will (we) the city, the county, or the state pay for them? If a street or intersection is already improved, will it be enough not just for today but for 5 times the traffic?

Most of the images shown are of areas that will not receive *ANY* traffic funds from the developer, but will receive many additional drivers from the population increase.

1. Ravensdale Road and Kent-Kangley Road. This will not be improved by Black Diamond or the developer, but will see significant traffic increase.

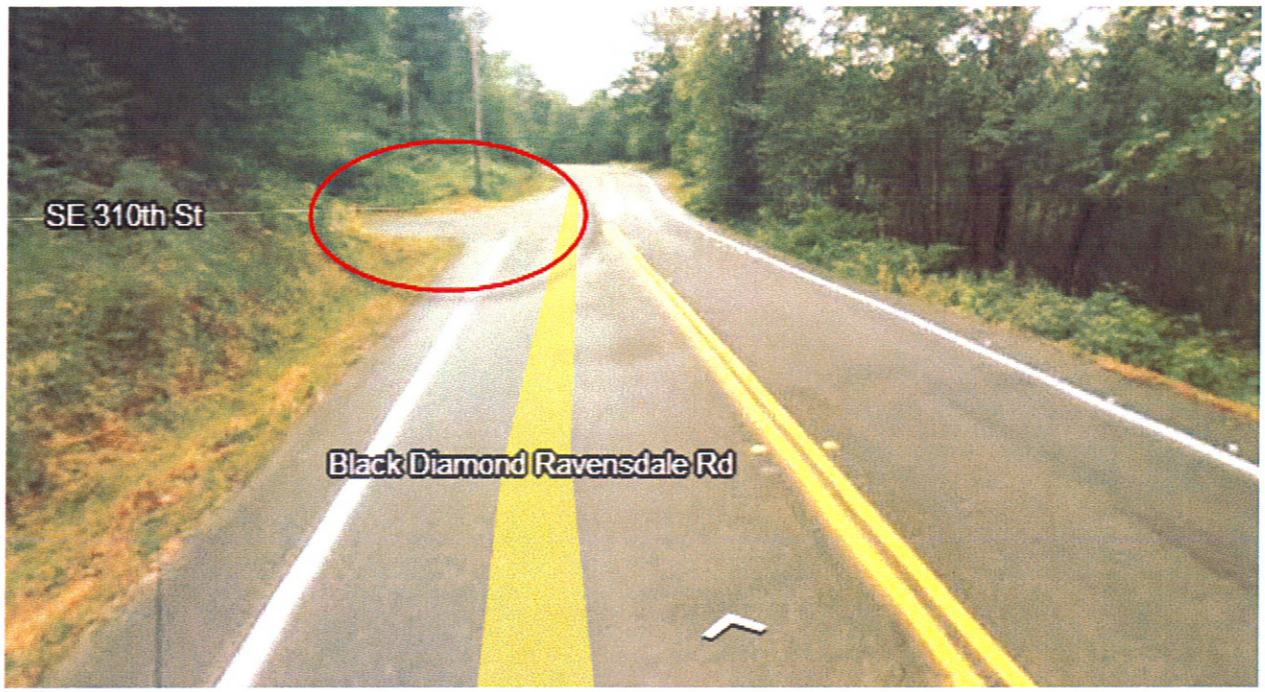
EXHIBIT

123

2. Ravensdale-Black Diamond road between Highway 169 and Morgan Creek development. Narrow sholder, drops to Ginder Creek on one side, up hill on the other. Cannot be widened, and no funds

planned to do so.

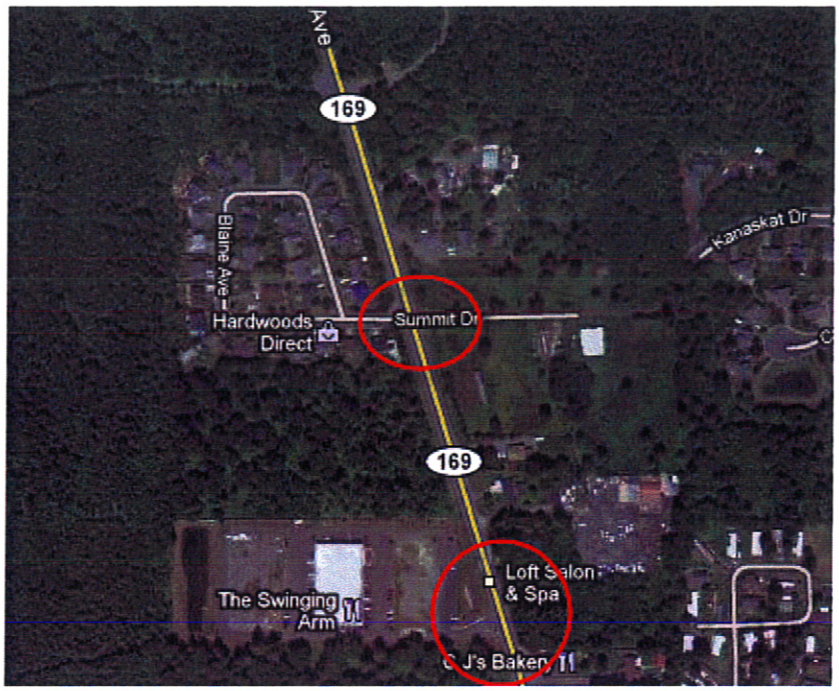
3. The intersection of SE 310th and BD-Ravensdale Road. Already a dangerous stretch with poor visibility due to corners. Additional traffic will likely lead to accidents.



4. Highway 169 between Four Corners and Black Diamond. This is not only an example of an area that will become more congested, it is an example of the future road NEEDS of Black Diamond. Notice the wide turn lanes and widening at traffic lights. This is the kind of thing that will be needed when Black Diamond grows to the size of Maple Valley, but most of the streets don't have the open space next to them to allow it. Most residents don't want the extra pavement. The environmental mitigation is difficult as well.

5. Highway 169 and 280th Street in Black Diamond.

6. Where Summit Drive intersects Highway 169. There is no traffic light. Residents of Diamond Glen will endure long wait times to turn. Additionally, the business area further south where a number of businesses will find it increasingly difficult for customers to make left turns.



7. Highway 169 south of Summit Dr.

8. The entrance to Cedar Brook Mobile Home Park. From 90-100 homes have occupied this area for many years. It is already difficult to turn in and out due to traffic.

9. Auburn-Black Diamond Road near town.

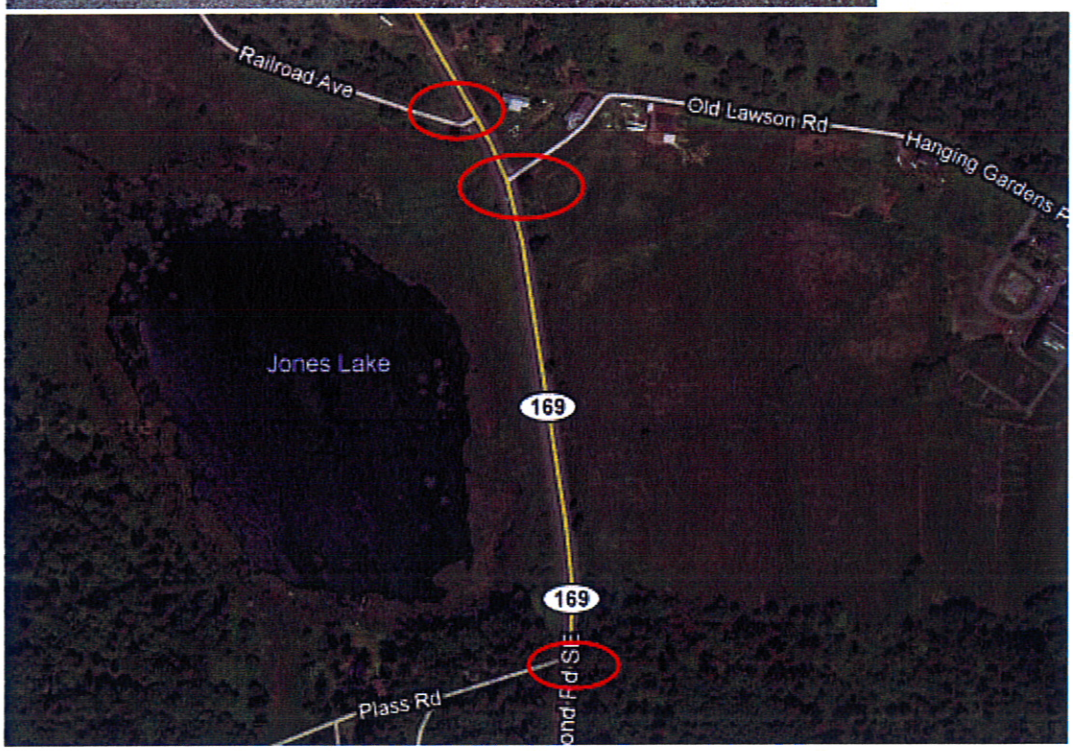
10. Near 101 Pines on the Auburn-Black Diamond Road. The people who live here will not get a traffic improvement paid by Yarrow Bay.

11. Covington-Sawyer Road.

12. Roberts Drive coming into Black Diamond from the west. This road may be overwhelmed during construction, but little improvements will be paid by the developer. The bottom of the hill has a small old bridge going over wetlands.

13. The intersection near Lake Sawyer Grocery does not have funds from the developer.

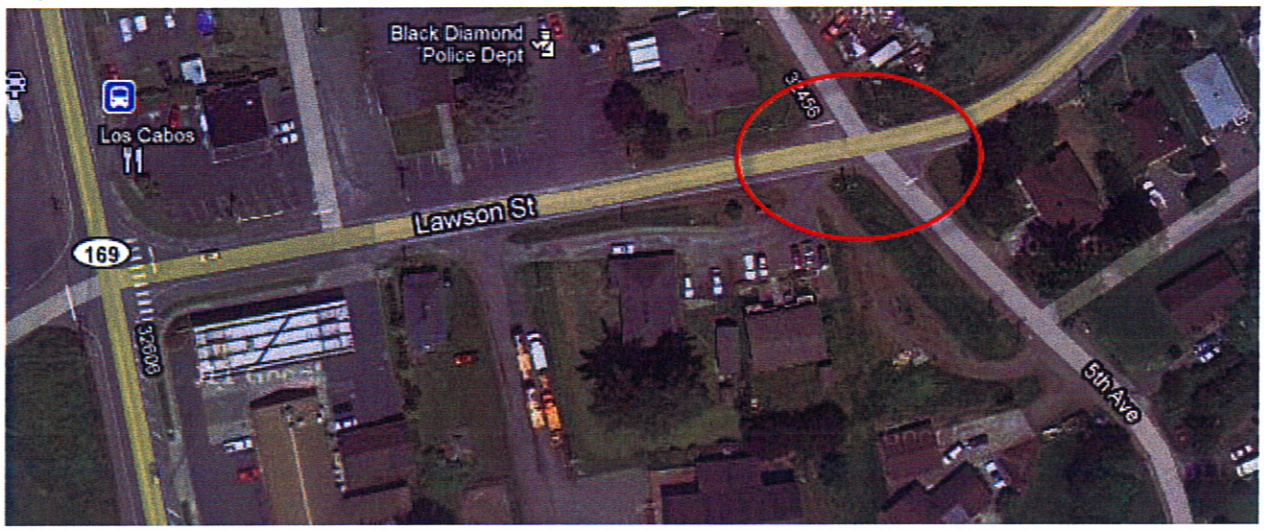
14. Highway 169 near Jones Lake. Turning left from Railroad Ave, Old Lawson Road, or Plass Road will be increasingly problematic. Additionally, how will construction on Lawson Hill and the corresponding water drainage work in the area affect traffic? These local roads, as well as local business and local commuters will face large challenges for a number of years.



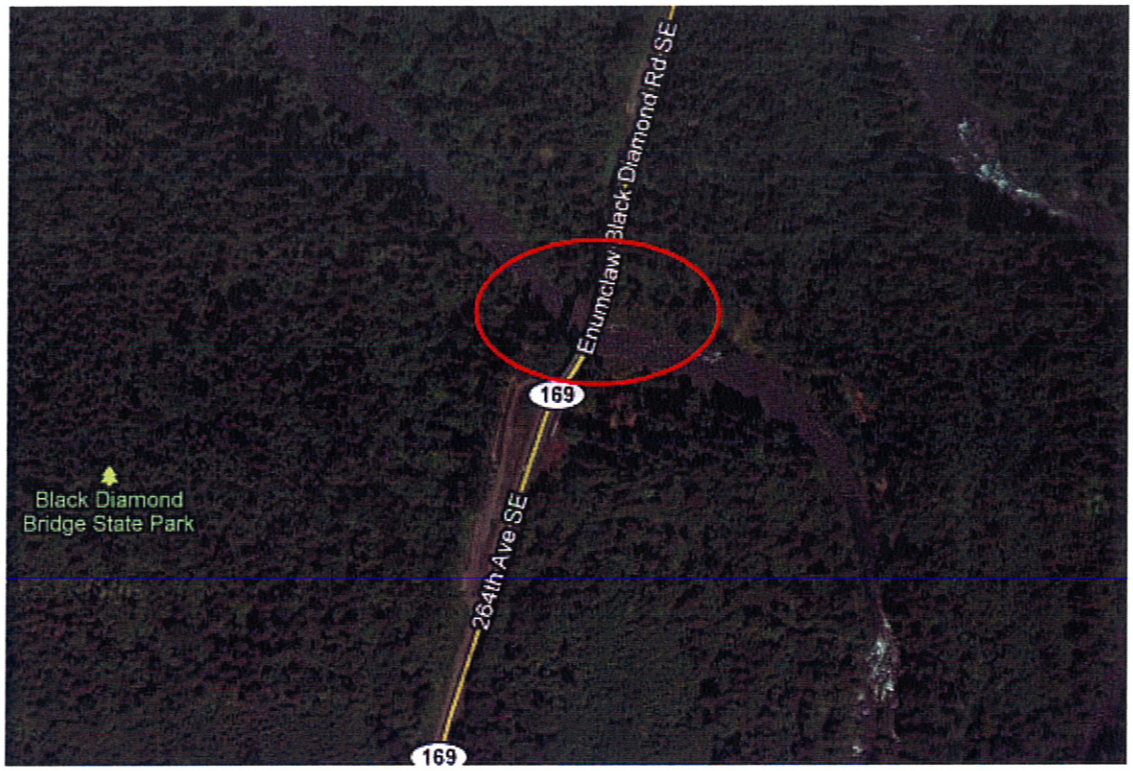
15. Railroad Avenue will become a pass-through for some residents headed south from the Villages. However, tiny Merino street is already in a difficult position for residents to go out into town. The street has poor visibility for those on Railroad Ave. This is not much of a problem now because the

road in front of the bakery sees little traffic except on Sundays when people are not in a hurry.

16. The intersection of 5th St and Lawson. When a traffic light goes in at Highway 169, and when traffic greatly increases on Lawson, the backup of cars will potentially make a left turn from 5th Street impractical at busy times.



17. Wear and tear on the Green River Gorge bridge to Enumclaw

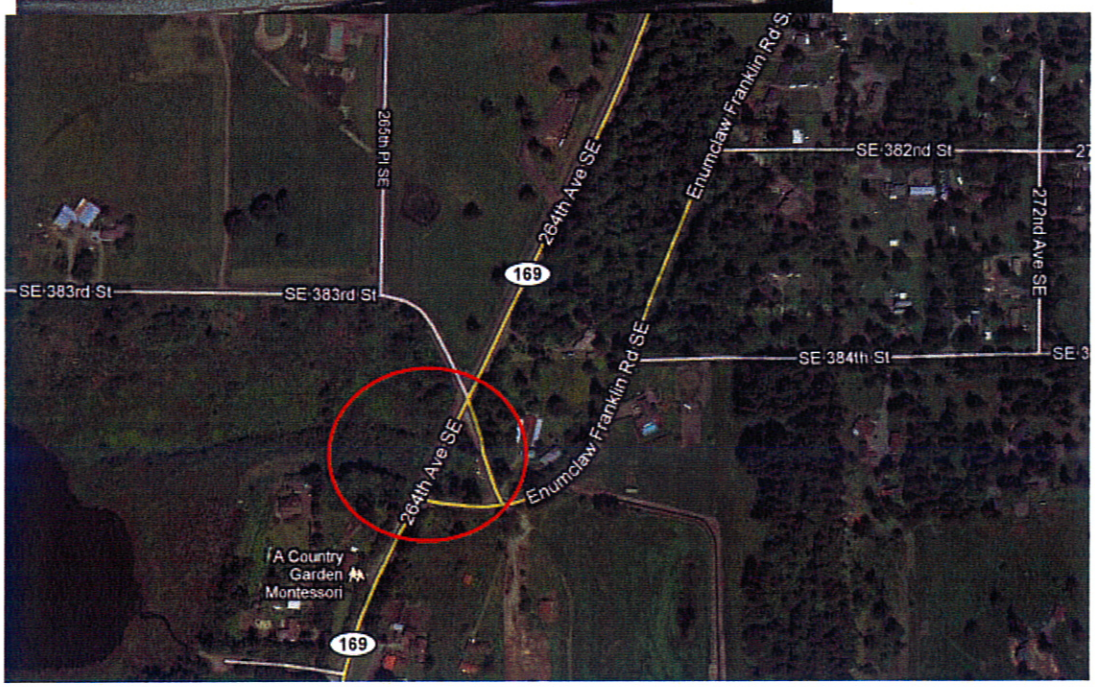


18. Lawson St. Consider maintenance on Lawson St. Lawson St will see a huge increase in construction traffic and later residential traffic. This street on a steep hill is already an aging road.

19. Highway 169 headed toward Enumclaw. No funded improvements planned. Narrow shoulders and power lines will make widening difficult.

20. Green Valley Road and Highway 169.

21. Enumclaw-Black Diamond Road and Enumclaw-Franklin Road. This intersection can already be very difficult to cross. See information in next item below about additional school-year traffic problems.


265th Pl SE
264th Ave SE
Enumclaw Franklin Rd S
SE 382nd St
272nd Ave SE
SE 383rd St
SE 383rd St
169
Enumclaw Franklin Rd SE
SE 384th St
264th Ave SE
Enumclaw Franklin Rd SE
A Country Garden Montessori
169

22. Krain Corner – 400th St in Enumclaw. During the school year (unfortunately pictures not available during summer when this document was produced), this intersection gets very backed up. With additional students driving to Enumclaw high school and parents driving to middle schools and possibly elementary schools Enumclaw for years during the build-out, this intersection will be a major problem.

23. Roberts Dr near the intersection of Morgan St. It will be many years before an additional connector road will take some of the traffic from the Villages over to Highway 169. In the meantime, this road will have to take a lot of construction traffic and traffic from new residents. How are changes and needs of this road going to be handled by the city and is there a way to hold the developer

accountable for construction noise and road damage?

24. Existing Roberts Drive:

25. Roberts drive has homes close by, and narrow streets crossing it. It is quaint and charming now. Too much traffic could necessitate expensive projects to widen involving moving power lines and

acquiring homes to be demolished.

26. On Morgan St in Black Diamond, it can be difficult to widen the road or do construction repairs because of nearby historic homes.

Public Hearing Testimony

To The City of Black Diamond

Development Agreements for The Villages and Lawson Hills

From: Kristen Bryant
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My testimony includes this document as well as an additional document titled "DevAg Testimony 2011-07-14.pdf".

A view from Lawson Hill. Much of these trees will be removed as part of the Lawson Hills development. If there are run-off problems during and after construction, the city needs to find a way to hold the developer accountable. The city also needs to protect the peace and quiet this area affords for existing residents.

The city of Black Diamond must protect Ginder Creek. This includes allowing changes for unforeseen consequences of development. The drainage from Lawson Hills will be very near here. These images depict parts of the creek as it is today.

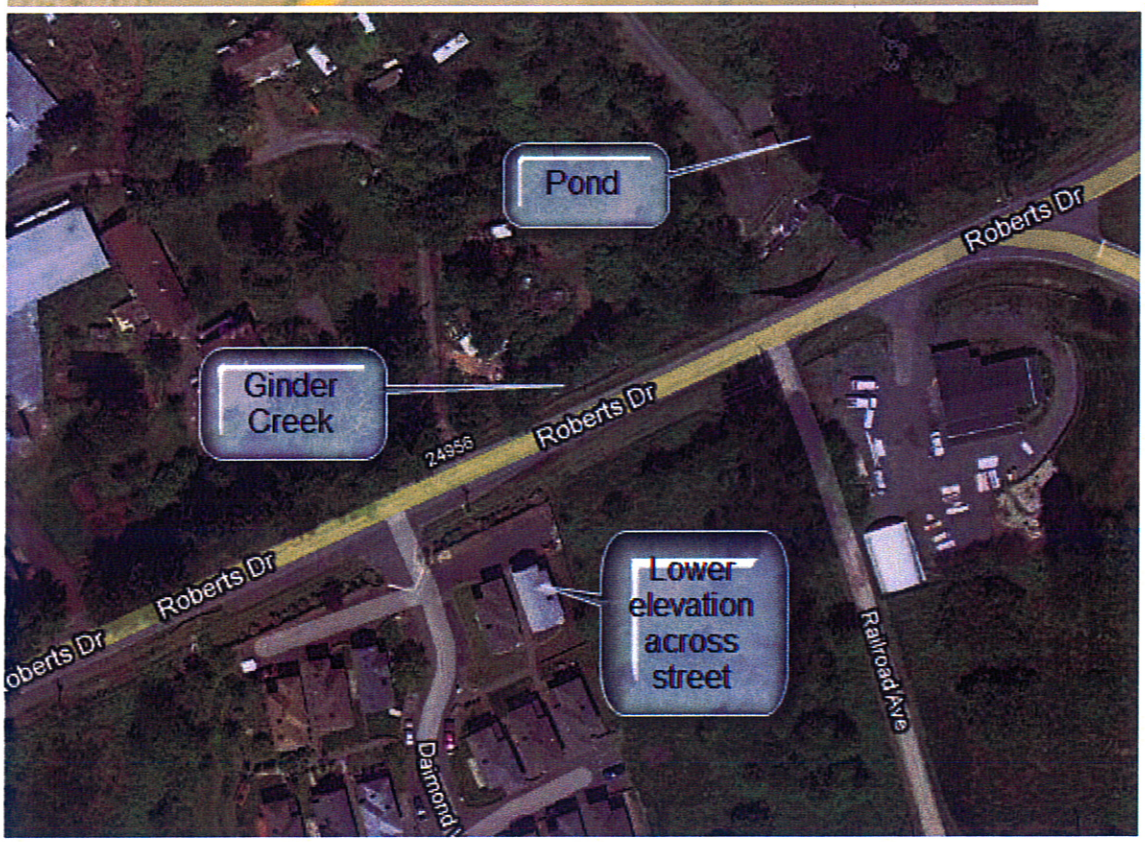
EXHIBIT

124

Jones Lake from the air. Stormwater may impact the lake. The city should require all legal options to prevent impacts to this natural treasure.

Black Diamond Lake and surrounding area. The watershed and buffers should be protected. The city must take the strongest precautions possible. When looking at 20 year impacts, this legacy should be kept in mind. Using the Tree Ordinance and Open Space rules, it is possible to require the developer to keep large numbers of the evergreens shown.

Roberts Drive next to Ginder Creek. Every few years the road floods and has to be closed.



Near Ginder Creek, Highway 169, & Ravensdale Road:

The creek near the above location. BD Community Center in the background.

Near the same location, this images shows pollution in the water where bubbles form.

Further upstream:

See next page...

Wetlands near Abrams Avenue in Black Diamond. This watershed will be affected by the Lawson Hills and the Villages Developments as warter flows through the area via Ginder Creek, other streams, and underground. If any of this area is damaged, the developer should be required to stop work and prevent further damage.

Testimony

To the Hearing Examiner and others in attendance, thank you for this opportunity to address you this evening. I will address both The Villages and Lawson Hills, occasionally giving examples that pertain to one of the other.

Stormwater and Ecology Impacts

Issaquah

In a previous similar large planned development, the Issaquah Highlands, the water and stormwater impacts were huge. The initial programmatic plans to deal with these impacts were not adequate. At the project level, more work had to be done as Issaquah Highlands were built out. It was difficult and expensive, but the development agreement required it.

This example shows good reason why, In Black Diamond, We want the highest possible level of protection and the most stringent review standards before every project or plat-level build out. The Development Agreement must be clear that environmental and stormwater reviews are required and additional stage.

Black Diamond Church

Closer to home, In Black Diamond, the construction of the new Catholic Church on Lawson Hill generated stormwater impacts for downhill properties. There were initially two deep stormwater ponds in an area downhill from the church. This has since been redone and made into one bigger pond. As a side note, it is fenced in with a very unattractive chain-link fence in an otherwise beautiful area. Even after the changes, I have been told by down-hill residents that extra water runs down the hill in places it did not before the church construction. The city government should protect Lawson residents. These are the heart and soul of historic Black Diamond. If the property is further put at risk by more stormwater issues, its value will be decreased. Existing residents will also bring their new water problems to the city, potentially requiring city time and money to deal with the problems. Only If the developer is held to the highest possible standard, and if clauses allowing the city to halt any project and require repair of land changes that have unintended consequences, can the city and residents protect themselves.

I have also been told by residents along Lawson Drive that they have sump pumps in their basements and water problems. Even though they are on a down-hill slope, the water does not drain away fast enough.

Ginder Creek

Closer to home, there are currently frequent floods of Ginder Creek. These occur just downstream from the proposed traffic circle on highway 169. (go to map, point it out). In fact, the creek seems to be experiencing sediment buildup just downstream from the dam that exists. With additional stormwater planned from Lawson hill, and changes to add impervious surface with a traffic circle, I'm deeply concerned about the risk for future worsening floods and pollution in that section of river. The floods

can send water 8-9 inches high over the driveway that crosses the Ginder Creek, and over the road to the point that the road must be closed by the city. On the opposite side of the street from the stream, there is a housing development, diamond village which is lower in elevation. These homes are at risk if Ginder Creek absorbs more stormwater. The creek turns and further downstream it is quite close (I estimate only 50 foot buffers) to the homes.

With regard to pollution, salmon spawn along Roberts Drive, just before the dam and can easily be observed in a walk along the road.

Again, this example shows why Black Diamond must make sure the DA's contain the most stringent review standards before every project or plat-level build out. They must also contain requirements to halt further construction if stormwater impacts are not being mitigated as projected.

In general, Require "success" of previous project phases before continuing to the next Project phase

As planned, this is the largest MPD in King County history, so none of us have the experience to plan it well enough to *ensure* success. Small increments of building with success criteria requiring mixed use development in all phases must be adopted. Each increment should only proceed if the previous one is proven successful. Some criteria are traffic, schools, environmental impact. Although these have been addressed in previous programmatic steps, the development agreement can either lock in the right to build regardless of results 5 or 10 years down the road, or the city can look to make future growth contingent on success of prior project-level build-out.

School Bonds

The Tahoma School District recently failed to pass a construction bond. The sorely needed new elementary school will not be built.

The Snoqualmie District, one that experienced massive growth with the Master Planned Community Snoqualmie Ridge, failed twice this year to pass its school bond.

In both Tahoma and Snoqualmie, there are a large number of young families brought in by new housing. They have children in school, and the schools are incredibly crowded and will be for the foresee-able future.

The Development Agreement must add language preventing construction of additional residential units if a new school is needed and school bonds are not passed by the voters. In addition, language should be added so that the school population is never "more than one school behind." Thus, if there are enough children to warrant an entire new school, and even if that school were to pop into existence today, there would still be more students from Black Diamond than the recommended capacity of schools in Black Diamond, residential build out must stop.

I'd like to address the idea that if a school bond doesn't pass, the answer is to put up single family housing and bring in *more* families with young children who will be likely to vote for bonds. This has not worked for Tahoma and Snoqualmie.

The bond in Tahoma would have built an elementary school and created an average tax increase of $400 per year. That is for one elementary school. It is my belief that it is absolutely certain that taxpayers will not pass bonds for multiple schools over approximately 20 years, up to 7 as shown in the plan. (This is my belief despite the fact that I personally would be willing to pay taxes for education. I don't expect 60% of the Enumclaw school district to agree over and over again). The city of Black Diamond must provide a way to protect children in the future. Rather than create a 20 year contract that allows all the residences to be built without guaranteeing schools, create a protection for the city to do something about the potential problem in the future.

This is ever more important when you consider that the tri-party school mitigation agreement as written states that if the school bonds do not pass, the master developer does not pay its impact fees or deed the land. (the agreement sets an impact fee, but allows land to be given instead and the value of the land will replace the direct payment of the impact fees.)

Over-riding King County and Cascade Land Conservancy:

The following is excerpted from Page 8 of the Lawson Hills DA, Section 3.1

3.1 EFFECT OF DEVELOPMENT AGREEMENT

Annexation of part of the property included in The Lawson Hills MPD was preceded by and subject to several multi-party agreements, including:

A. The Black Diamond Urban Growth Area Agreement between the City of Black Diamond, King County, Plum Creek, and Palmer Coking Coal Company dated December 31, 1996 ("BDUGAA");
B. The Black Diamond Area Open Space Protection Agreement between King County, the City of Black Diamond, Plum Creek Land Company, and Cascade Land Conservancy dated June 6, 2005 (the "Open Space Agreement");
C. The Pre-Annexation Development Agreement for the West Annexation Area between Plum Creek Land Company and the City of Black Diamond dated December 8, 2005 (the "West PAA"); and
D. The Pre-Annexation Development Agreement for the East Annexation Area between BD Lawson Partners LP and City of Black Diamond dated August 20, 2009 (the "East PAA").

These agreements are hereinafter collectively referred to as the "Prior Agreements." The Prior Agreements set forth pre-conditions for annexation of a portion of the Project Site, including requirements for dedication of open space, and development standards. A summary of the Prior Agreements is contained in attached Exhibit "D". With respect to the property included in The Lawson Hills MPD, this Agreement fulfills and implements all provisions related to development standards, infrastructure, Open Space and land use within The Lawson Hills MPD contained within the Prior Agreements. To the extent there is any conflict between this Agreement and any of the Prior Agreements, the terms of this Agreement shall control, as between the City and Master Developer. This Agreement incorporates many of the terms of the Prior Agreements and to the extent any provision or requirement of a Prior Agreement is not included in this Agreement said provision or requirement shall be construed as not applicable to the Development of The Lawson Hills MPDs.

3

As a resident of King County, I object to any language which negates an agreement made by King County to which King County is not a party. An agreement with another party, the CLC also cannot be over-written.

Open Space and the BDUGAA

The Black Diamond Urban Growth Area Agreement must be kept intact. In addition to the BDUGAA and the space is preserved in exchange for expanding the Urban Growth Boundary in Black Diamond, The city of Black Diamond planned to preserve 50% open space in its ordinances on MPDs. The acreage in these projects does not provide 50% open space. This is included in the appeal of the MPD ordinances from 2010, and I would like to note that for the record here. If the MPD Ordinance is found invalid, the Development Agreement cannot be valid with the acreage as written.

South Connector

The south connector was not evaluated in the EIS that was reviewed by the Hearing Examiner. The south connector was moved with MPD approval. It goes through a beautiful wetland area south of Jones Lake to get from what would be the villages to Highway 169. We maintain that a supplemental EIS should be done for this road. Further, the MPD ordinance, which incorporates an EIS that did not have this road, must be amended and subject to public before this road can be built and thus even these development agreements will need to be amended to incorporate any changes that result. If there are any similar changes that occur at the implementing level, a supplemental EIS must be done and the city council and public must be allowed all rights under the current law at the time it is done, not at the time of this application's vesting.

Clauses Pertaining to Constraint Maps

The Lawson Hills Master Planned Development
Development Agreement

8.2.2 Fish and Wildlife Habitat Conservation Areas Final

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

8.2.3 Mine Hazard Areas

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

8.2.4 Seismic Hazard Areas

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

Ere,

Is even legal under state law or other regulatory authority to include this language. It is also an example of why this entire agreement should be looked at with a fine-toothed comb. The city of Black Diamond can look to protect its interests and not agree to something that protects the developer as described above, but does not extend similar protections to the city.

Additional Non-MPD development

Finally, the city needs to add conditions to protect its residents from the consequences of additional developments beyond these MPDs.

There are other smaller developments planned in the coming 20 years, and there are many, many parcels of land for sale on Highway 169. Outside of the Black Diamond city limits, Black Diamond has little say on what happens along this road. If there are major traffic impacts from them, this is another reason Black Diamond must set traffic thresholds above which they can require halting of development if traffic improvements are not made. If they don't do this, they run the risk of residents in nice homes being confined, unable to enter streets during rush hour and waiting for 3 or 4 traffic light cycles to get to a light. This happens in Redmond now along the Avondale Road area.

Please consider how the rest of the area will or may grow in the next 20 years and creatively add protective clauses.

Thank you.

Laurie Ann Reynolds
PO Box 181
Black Diamond, WA 98010
August 4, 2011

Steve Pilcher
Hearing Examiner
City of Black Diamond
24301 Roberts Road
PO Box 599
Black Diamond, WA 98010

Dear Mr. Pilcher:

I am concerned with safety and financing of the proposed schools in the development area. We as citizens and the government have ethical and fiduciary responsibilities which I believe were not adequately addressed.

The Black Diamond area was a major coal exporter. There are abandoned mines throughout the area. Are any of the proposed schools located on these abandoned mine sites? Furthermore, are these sites stable in event of an earthquake? This is a reasonable question to consider given recent events in New Zealand and Japan.

I looked at the copy of the Full Mitigation Agreement (PDF) on the ESD homepage. Section 11 Contingency Period Subsection 11-1 states:

Developer's Provision of Site Information. Within twenty (20) days after the Developer has delineated boundaries for the Identified School Sites pursuant to Section 6.1.1, the Developer shall deliver or make available to the District copies of: (a) all available plans and specifications relating to the Identified School Sites, including, all surveys, topographical and plat maps, results of soil tests, engineering studies, environmental reports and permits and any other test results, reports and other information pertaining to the physical condition of the Identified School Sites reasonably requested by the District and in Developer's possession or control; and (b) all contracts or agreements, with the exception of purchase and sales agreements, affecting the Identified School Site except to the extent that such contracts or agreements are recorded on the title of the Identified School Site. At a minimum, the Developer shall provide the District with copies of the reports referenced on the attached Exhibit R. Notwithstanding anything herein to the contrary, the Developer shall be entitled to redact any portion of the reports, studies or documents that contains confidential or proprietary information.

How come ESD and Yarrow Bay are waiting so far in the process to identify safe sites for schools? If identified sites are unsafe, it will increase both cost and time to build the schools. If EDS and/or Yarrow Bay already performed test, what were the results?

EXHIBIT
125

Lastly, I am concerned with the financing of the future schools. In light of recent economic news from Washington, D.C. and Olympia, federal and state assistance is unlikely. If the bond issues fail, how and where will the children be educated?

I have neither seen nor read of any contingency plan if the bond fails. Our children's education is too important to just wing. A Plan B is needed.

Thank you for opportunity to participate.

Sincerely,

Laurie Ann Reynolds

Tom Hanson
32506 236th Ave se
Black diamond, WA 98010

Development Agreement Comments 7/14/11

My first comment is on the setbacks. Homes that is directly adjacent to the development like mine have an established setback. I would like to see existing vegetation left in that setback. I hope all the existing vegetation is not removed and new plants put in their place. The existing vegetation will leave a better buffer for noise, dust and other impacts. The natural (existing) trees and vegetation will also be a better visual barrier, and will be a better buffer for wildlife.

Noise and dust have been mentioned, but I would like to see a noise study done before any clearing has begun as well as the magnitude the earth moving equipment can give off as far as vibration. My son has Asthma and my wife has MS. We already fight dust with having a dirt driveway, I would like to make sure the DA outlines dust control.

My land is unique in that it is 100% sand. We are constantly feeling the vibration from trucks and other heavy traffic on Roberts's Drive. My home was built in 1978 before hurricane strapping was required on my foundation. The impact for developing the villages will possibly damage my foundation and will potentially be felt. Even with straps I am not sure if that would be enough to limit vibration. Having a vibration test before construction is started would help with future mitigation.
Thank You,
Tom Hanson

EXHIBIT
126

To the City of Black Diamond,

I am concerned about the Development Agreements for both Lawson Hills and The Villages from Yarrow Bay. I support testimony urging the city to be cautious and protect its existing residents, those living nearby, the environment, our tax dollars, our peace and tranquility, and our historical heritage.

I include by reference the testimony by organizations and individuals such as Save Black Diamond, others who testified against the agreements, and the Citizens Technical Action Team. Please consider me a party of record for the Development Agreement Hearings for both the Lawson Hills and The Villages Master Planned Developments.

Sincerely,

Name	Address
Jim Kemmer	25327 Baker St B.D. WA
Seth Hutchinson	25922 432nd ST Enumclaw WA 98022
Mike Chilcott	32509 3rd Ave BLK. DIA PO Box 1
Ken Kiehl	25027 MORGAN ST BL DIAMOND
Seneca Gilmore	32513 [illegible] BLACK DIAMOND, WA
Jill [illegible]	32424 4th Ave BLK DIA 9800 PO B 698
Kachi Crossat	25721 LAWSON ST Black Di WA
Leonard Crossat	25721 LAWSON ST BLACK DI WA
George Crouch	24029 ROBERTS DRIVE BLACK DIAMOND
Robin Mitchell	32604 Highland DR Blk Diam
Philip Embrace	PO Box 661 Black Diamond WA
Janet Malgarini	24029 Robert DR Black Diamond WA

Must be received by Black Diamond Community Development office before Aug 4, 2011 at 5:00 PM

EXHIBIT

127

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Sincerely,

Name	Address
Tamie Deady Tamie Deady	32424 1st Ave Blk Diamond WA 98010
Carol Palmer Carol Palmer	32400 2nd A. BD. 98010
[illegible] [illegible] PALMER	32400 2ND AVE BLK DIAMOND
[illegible] Dennis Boxx	P.O. Box 123 32517 2nd Ave Black Diamond, WA 98010
Troy Boxx Troy Boxx	Po box 16 32522 RR Ave Black Diamond WA 98010
Kristy Boxx Kristy Boxx	PO Box 16 32522 Rail Road Ave, Black Diamond WA 98010
[illegible] JAMES R. WILLIS	P.O. BOX 34 32522 Rail Road Ave Blk. Dia 98010
James R Willis	21723 SE 241st St Black Diamond WA 98010
Ben [illegible]	25453 SE 357 Auburn We 98092
DIANA L. BOXX Diana L Boxx	P.O. B. 123 32517 2nd AVE BLACK DIAMOND 98010

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Sincerely,

Name	Address
Ken Newkirk (Ken newkirk)	31108 Ave Cedar Booke # 335
Wesley A. Davis Wesley A. DAVIS	31108 3rd Ave #236 Cedar Brook
Joe Hanna 76 Food Mart	31509 3rd Ave Suite A Black Diamond, WA 98010
Cassandra Frye	22513 331st AuBurn WA 98092
Yancy Sipes	31527 3rd Ave. Black Diamond Wa
Mike Sebree	30836 3rd Ave Black Diamond
PECUS	27617 = 240 AVE NVE
STEVE METSCHAN	32410 NEWCASTLE DR BD
LORI METSCHAN	32910 NEWCASTLE DR BD
Leslie Frazier	32529 Railroad Ave BD
ALBERT BIGELOW	32523 RAILROAD AVE B/D

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Community Development Director Steve Pilcher

Hearing Examiner Olbrechts

We wish to make known our disapproval of the proposed developments in Black Diamond. We feel that they will endanger our livelihood and seriously endanger the environment in the area, not only in Black Diamond but the entire rural area.

Thank You,

Andy & Karen Benedetti

24215 SE Green Valley Rd

Auburn WA 98092

EXHIBIT

128