

Black Diamond Villages Plat 2C Comments - *Praveen*
Submitted by Save Black Diamond, Kristen Bryant, and David and Anne Hurd.

Comment format:

Red, Underlined items are in the city document referenced. Where not mentioned, the city document is the Plat 2C staff report
Blue bold items are comments.

City of Black Diamond Comprehensive Plan, 2009

The City of Black Diamond Comprehensive Plan (BDCP) establishes a vision for the future development of the city, evaluates existing conditions and sets goals and policies to align future development with the vision. Not all policies apply to Plat 2C. Only those most directly applicable to the preliminary plat approval are addressed. **Staff should have shown its work by going through each policy and noting relevance.** In addition to the BDCP, other adopted plans that govern future development are the Parks, Recreation and Open Space Plan (2008) and the Water System Comprehensive Plan (December 17, 2009).

The Villages MPD Development Agreement (Ordinance No. 11-970)

Chapter 18.98.050, MPD permit—this section requires an approved MPD permit and development agreement for every MPD. Both MPD permit approval and a recorded development agreement are required before the city will grant approval to an application for any implementing development approval. The Development Agreement requires implementing projects of The Villages MPD to be consistent with the provisions of the Development Agreement. In staff's review below, only applicable sections are addressed. **Staff should have shown its work by going through each section and noting relevance.**

Black Diamond Design Guidelines for Master Planned Development, Framework Design Standards & Guidelines (June 18, 2009)

BDMC 18.74.020 requires all development to comply with the design standards and guidelines applicable to the type of use and/or the district in which the proposed development is located. The standards and guidelines applicable to Plat 2C are the Black Diamond Design Guidelines for Master Planned Development, a chapter of the Framework Design Standards and Guidelines (FDS&G). Approval of the TV MPD required consistency with the design guidelines for MPD, and implementing projects of the master plan must be consistent with the TV MPD and the DA. Therefore, in general, any implementing project that is consistent with the MPD would be consistent with the design guidelines.

However, review of consistency of Plat 2C with the MPD design standards and guidelines is appropriate because some standards and guidelines apply to the preliminary plat stage of design more than master plan design. Some standards and guidelines apply to structures that will be reviewed at the building permit stage and are not part of this submittal. Therefore, the consistency analysis notes where consistency was reviewed under the TV/MPD or the DA, is not applicable to the proposal, or will be reviewed at a later design stage. Staff should have shown its work by going through each guideline and documenting why it should be reviewed at the plat or the building permit stage. MPD conditions strongly suggest that all standards and guidelines should be reviewed by the Design Review Commission at the Preliminary Plat stage. Otherwise, the standards and guidelines are specifically addressed for Plat 2C.

63. *Provide mitigation facilities within the project limits, expansion parcels or provide an agreement with King County for long term City ownership and/or maintenance of off-site facilities not within City limits.*

STAFF RESPONSE: All of the proposed facilities for Plat 2C will be within the boundaries of Plat 2C, except for the infiltration pond associated with Phase 1A. This condition does not apply. Plat 2C relies on Phase 1A pond, so this condition does apply.

64. *Native plants shall be primarily used as part of the planting palette within the MPD. Lawn planting shall be reduced wherever practical.*

STAFF RESPONSE: This condition will be enforced with utility or building permit applications. Must be shown on plat in order to trigger later permit 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 stormwater 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.*

STAFF RESPONSE: This condition is addressed in the Development Agreement Section 7.4.4.A.3, which restricts roofing materials and roofing maintenance procedures. Asphalt shingle material was submitted with the application on November 8, 2013 (Exhibit 3n). Compliance of the proposal with this condition will be ensured at the building permit stage. In addition, condition of approval #2 will require the applicant to submit covenants, conditions, and restrictions (CCRs) that include the above restrictions prior to final plat approval. The final plat approval and CCR review by the City Attorney will be purely administrative, so the details of these restrictions should be included in the preliminary plat approval where it can be fairly evaluated and subject to public review.

70. The Development Agreement shall include language that binds future developers and contractors to a requirement to comply with any NPDES permits issued by the Washington State Department of Ecology and acknowledge that although permit conditions imposed by NPDES permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer shall fund necessary costs for training related to inspection services.

STAFF RESPONSE: This condition applies to the creation of the DA (subsequently addressed in DA Section 7.4.4.A.1 and DA Section 7.4.4.A.2) and rights the City reserved for itself to enforce the NPDES conditions. It does not impose an NPDES requirement on implementing projects. All MPD conditions flow through to the implementing projects whether or not they are addressed in the DA. It does bind the applicant to pay for training related to inspection services, which the applicant complied with by funding training of two City employees and as a result the City currently has two employees as well as a contract civil engineer who are Certified Erosion Control Lead Specialists. This condition has been met. But no training specifically related to NPDES has been documented.

75. 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.

STAFF RESPONSE: This condition does not apply to Plat 2C. The intent of this condition was to provide certainty to the applicant and city that "previously approved" plats and utility permits did not need to be modified in future land use actions in order to equalize design standards that are anticipated to change. In order to facilitate this vesting process, the design criteria must be archived and the basis for the design (primarily as it relates to detention volumes in regional stormwater ponds) must be identified and unambiguous. The applicant prepared and submitted a stormwater design report for Phase 1A that included capacity for Plat 2C and that report met this condition. Phase 1A regional stormwater pond is now complete and operational. There is no documentation in the record of this fact, nor of any evaluation of its performance.

The design of the Phase 1A pond accommodates 167.7 acres of impervious surface drainage, of which 27.7 is projected to come from Phase 1A and 17.1 from Plat 2C. This condition is met.

76. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the Stormwater Management Manual for Western Washington, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

STAFF RESPONSE: This condition would be applied through the authority of the Development Agreement, Section 7.4.4.A. No, this condition flows through to the implementing project directly as well as through the DA. The condition applies to, "all new ponds and facilities applied for as part of

an implementing project..." and as such does not apply to this application since no new stormwater ponds or treatment facilities are being constructed with this project. Infiltration is included in this proposal and these are considered treatment facilities. These facilities reduce phosphorus, but if poorly designed they can overflow and cause phosphorus laden mud flows.

Treatment for stormwater generated from this project is within the regional stormwater facility that has already been approved as a part of Phase 1A and is under construction; no new treatment facilities are proposed. In addition, the Department of Ecology has not approved any new treatment technologies that would apply under this condition at the time of the application. Are there facilities that meet the second test, ie AKART?

77. *The Development Agreement shall include language to allow deviations from the stormwater facilities listed in the FEIS when justified by a technical analysis and risk assessment.*

STAFF RESPONSE: The applicant requested a stormwater deviation for an alternative zone delineation in order to better manage stormwater runoff and protect Lake Sawyer from additional phosphorus loads. The deviation was approved by the City on August 12, 2014 (Exhibit 20c). Was this deviation properly approved and considered under SEPA? Shouldn't it be considered during this hearing? The deviation request included a technical analysis and a risk assessment, and demonstrated compliance with the BDEDCS November 25, 2014 26 and City code, according to the City's consulting engineer. To ensure implementation of the conditions of approval of the stormwater deviation, those conditions are included with the staff report (#8).

78. *The applicant shall obtain all necessary permits from King County for both construction, including any necessary approval or agreement providing the City ability to perform maintenance of the large regional storm pond proposed to the west of the project. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.*

STAFF RESPONSE: This condition does not apply to Plat 2C because this application does not include the referenced stormwater pond. But this application does rely on the pond, so this condition does apply.

81. *Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of Tp, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake*

Sawyer basin that collectively provide an offsetting reduction in T_p so as to bring the discharge below the annual maximum identified pursuant to this Condition.

STAFF RESPONSE: The required monitoring has been initiated by the applicant (Exhibit 13). The November 25, 2014 27

applicant started monitoring phosphorus runoff in Zone 2, which contributes to Lake Sawyer via Rock Creek, in 2011. The Status Update on Stormwater and Groundwater Monitoring Completed to Date in the Rock Creek Drainage (Exhibit 13b) documents the monitoring that will be conducted to determine a base load level of phosphorus so that levels post-construction can be compared. The final results of the monitoring are not required prior to the end of calendar year 2014. To ensure compliance, condition #11 has been added to prohibit the submittal of applications for permits for construction of impervious surfaces until such time as the report is submitted and approved. The Plat should not be approved until this monitoring report is completed.

85. A Water Quality 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 desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Water Quality Review committee shall review and evaluate compliance with the stormwater conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the November 25, 2014 28

matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

STAFF RESPONSE: The committee has been formed and is functioning as described. The committee consists of two representatives of Yarrow Bay, one of the City, and two of the Black Diamond community. Four meetings were held in 2012 and 2013. Topics discussed included the annual report on to be issued by the committee, and the water quality monitoring activities by Tetra Tech. The condition has been met. The Committee should have reviewed the deviation and the required monitoring report.

A. Minimize impacts to water quality in Lake Sawyer by assuring no net increase in phosphorus to Lake Sawyer occurs associated with MPD development within basins that drain to Lake Sawyer. No net increase can be accomplished by on-site or off-site source or mechanical controls, control of

phosphorus from off-site compensating projects, or other methods approved by the Designated Official.

STAFF RESPONSE: In general, Plat 2C would direct stormwater runoff from roofs (non-pollutant sources) to wetlands through dispersal trenches. Stormwater from pollution-generating sources will be discharged to the regional stormwater facility on Phase 1A for eventual infiltration. Therefore, only water from non-pollution-generating sources will drain to the system that supplies Lake Sawyer. The standard is satisfied by the proposed deviation from the DA. Monitoring for phosphorus to establish a baseline amount has been conducted (Exhibit 13 and 13b). Monitoring will continue to assess future potential impacts. This requirement is met. [NOTE: update with confirmation of monitoring requirements] this Note is not clear.

The Master Developer shall monitor stormwater for the following parameters: Total Phosphorus (Tp), Temperature, pH, Turbidity, Conductivity, and Dissolved Oxygen (DO). Monitoring of a specific stormwater facility shall continue for five (5) years following the completion of development that discharges into that facility.

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STAFF RESPONSE: This section does not require monitoring of stormwater separate from the long-term monitoring that is required for The Villages to ensure compliance with the "no net increase" in phosphorus restrictions in Lake Sawyer. Not true. Note that other parameters such as DO, Temperature, etc. are included in the requirement. Those monitoring requirements (identified in the MPD Conditions of Approval No. 85) have begun to be implemented in the Rock Creek drainage basin with water quality samples taken beginning in 2011 for the monitoring years 2011/12, 2012/13, and 2013/14 by Tetra Tech, the applicant's stormwater engineering consultant. The applicant submitted updated monitoring reports in January and May 2014. (Exhibit 13b) The monitoring will continue for 5 years following completion of all of The Villages development.

11.7 PHASING OF DEVELOPMENT

The sequencing of Implementing Projects, Implementing Approvals, construction completeness and City acceptance of facilities shall be confirmed by the Designated Official, who shall make a finding within each staff report for proposed preliminary plats or binding site plans within The Villages MPD whether required infrastructure and amenities have been scheduled to meet the demands of the future occupants of that specific plat or binding site plan.

Pursuant to Condition of Approval No. 153, the details of Open Space protection and dedication follow. Currently, portions of the Project Site are protected by recorded temporary conservation easements in favor of the City. Required Open Spaces shall be identified with each Implementing Project and conserved or conveyed to the City during the final plat process, site plan approval or engineering review. Once Open Space has been adequately conserved or dedicated for the Implementing Project, the City shall, within ten (10) business days, execute a partial release and reconveyance of the conservation easements created pursuant to the Open Space Agreement (as defined in Section 3 of this Agreement) as necessary

for the remaining undeveloped lands of the Project Site.

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STAFF RESPONSE: A memorandum documenting the Designated Official's finding of compliance with the proposed phasing for The Villages and Lawson Hills Phase 2 was issued on June 13, 2014 (Exhibit 29a). This should be part of the Plat review. **Is the condition being applied properly? The staff report here is clearly inadequate.**

Required open space is listed in Table 9-1 of the DA for the original parcels that formed the site for the MPD permit application Parcel E requires 75.58 acres of open space. Plat 2C, which forms perhaps half of parcel E, provides 95 acres mapped as numbered tracts on Preliminary Plat Phase 2 Plat C, Sheet CV4 (Exhibit 2).

The open space tracts are also listed on Sheet CV4 in the Open Space Tract Table. The tracts are designated for specific uses, such as access, utilities, parks, and landscaping. As of the writing of this staff report, the applicant on Sheet CV4 indicates ownership will be by the HOA or the Master Developer and not the City. Tracts are not developable and they would conserve the designated parcels. With conditions, the requirements are satisfied.

3. *Maximize water conservation by maintaining or restoring pre-development hydrology with regard to temperature, rate, volume and duration of flow; use native species in landscaping; recycle water for onsite irrigation use.*

STAFF RESPONSE: The drainage analysis for The Villages evaluated water balance to ensure that the hydrology of adjacent wetlands and Rock Creek would be maintained after development. (Exhibits 20, 28, and 20a) The stormwater management plan proposed would direct non-polluting runoff to wetlands and the remaining runoff will be treated and infiltrated. The proposal is consistent with this guideline. **This doesn't address the policy completely. What about landscaping, temperature, and duration of flow?**

6. *Grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain significant natural contours.*

STAFF RESPONSE: Sections 12.8.1.C and 13.2 of DA required project compliance with DMC Chapter 15.28 (Exhibit "E"). It must also comply with this policy. Therefore, compliance with Chapter 15.28 BDMC will be addressed subsequent to preliminary plat approval. The Plat should set forth general phasing of grading, and identify which natural contours will be maintained. Staff is assuming that 15.28 covers these issues adequately, which it does not. This language has some "teeth" and developer is trying to evade it. The proposal will be required to comply during review for clearing and grading permits.

17.15, Subdivision Code [2009] Subdivisions are stand-alone applications. The code provisions that apply are those in effect at the time of final plat approval (Legal citation here)

Policy CF-3: Require new development to finance the facilities and services needed to support the development wherever a direct connection of benefit or impact can be demonstrated.

STAFF RESPONSE: There are no existing city utilities or services on the area covered by Plat 2C. Sections 7 and 11 of The Villages DA requires that YarrowBay, as the current Master Developer, construct on-site and off-site water, sewer, and transportation improvements that will be needed to serve the lots in Plat 2C. Development of all of Phase 2 of The Villages will trigger the infrastructure improvements listed in November 25, 2014 48

the Detailed Implementation Schedule for Phase 2 Regional Infrastructure Improvements (Exhibit 29). The City approved the list of improvements in June 2014. Since the number of units proposed for Plat 2C is relatively low even when added to units in Phase 1A, no thresholds that would trigger off-site transportation improvements will be met. Other infrastructure improvements will be triggered as units in both Phase 1A and Phase 2 are built out. The applicant is committed to funding those improvements through the DA. This "commitment" doesn't meet the standard that every plat must meet. Specific commitments must be set forth in the conditions of approval of each plat. In addition, the MPD Funding Agreement (Exhibit "N" of The Villages MPD DA) requires

the applicant to pay the costs for City staff to review and implement the projects in The Villages. Pursuant to Condition of Approval No. 98 of the MPD permit, school mitigation is accomplished through the Comprehensive School Mitigation Agreement between the City, the Enumclaw School District and the master developer. This agreement may not result in adequate school capacity. Fire mitigation will be provided in accordance with Section 13.4 of the DA, which will consist of fire impact fees and provision of a satellite fire station, once the number of units constructed warrant a new station. The applicant will also be paying a general government facilities mitigation fee and/or dedication of land and/or construction of general government facilities. The proposal is consistent with this policy.

29. 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.
STAFF RESPONSE: The Detailed Implementation Schedule of Regional Facilities (including for transportation) was submitted by the applicant and accepted by the Designated Official (Exhibits 29 and 29a). A schedule for implementing the transportation improvement projects has been established for Phase 2. The proposal meets this condition. This condition flows through to the implementing project and should be considered as part of the plat review.

2. Width
a. Not less than 8 feet wide to allow for multiple modes of use.
STAFF RESPONSE: A soft-surface trail that is intended to implement DA Figure 9.2—Park and Trail Plan—is depicted on Sheet CV4. Section 9.7 of DA addresses trail standard width, which vary from 4 to 12 feet, depending on the intended type and intensity of use. This requirement will be reviewed at the utility

permit phase for Plat 2C. This kind of condition is normally considered at the Plat stage. The width of a trail is a policy determination whereas a utility permit is a functional engineering administrative determination. Utility Permits are not defined in code, and they have no approval criteria.

5. Applicable city development standards are met or exceeded;

The applicable city development standards for roads in subdivisions consist primarily of the road section in the DA and the City's engineering standards in the BDEDCS. Chapter 6 of the DA, Internal Street Standards within The Villages MPD, sets standards for design, connectivity, and ownership and

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maintenance. Standards not defined in Chapter 6 are governed by the City's Street Standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E" of the MPD permit). Road capacity is set in Section 6.2 of the DA by multiplying the number of trips for a use by the appropriate number of units to determine the number of lanes that must be provided to serve the project site. For Plat 2C, 203 single family units are expected to generate 137 net new trips in the PM peak hour. Each travel lane can serve 600 peak hour trips. Therefore, the two-lane roadways shown in the preliminary plat for Plat 2C have capacity. The typical section is for two 10-foot vehicles lanes, 7-foot parking areas, 4.5-foot planting strips and 5-foot sidewalks, which meets the DA standards. The proposed plat, Sheets SSWA41-4, shows road right-of-way that scales to approximately 63 feet, which would allow the typical section to be built. A plat note states that all road sections to be per The Villages MPPD Development Agreement. On-street guest parking is provided, and planting strips and sidewalks are shown. The criterion is met. Compliance with MPPD DA does not itself constitute compliance with all applicable road standards.

C. Sensitive Areas

The report describes the existing conditions within Plat 2C as having undulating topography with alternating swaths of uplands and lowlands. There is a logging road system used by unauthorized offroad vehicles, pedestrians and pets. Most of the site and surrounding land has been managed for forestry plantations for decades and was logged as recently as the late 1970s to early 1980s. As a result, the forest is characterized by an even-aged stand of Douglas-fir and a low lying native understory.

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Part of Rock Creek and six wetlands are on the subject site. The boundaries of the wetlands TOS, E1, E7, E8, E10, and 213 were determined during development of the DA and are fixed by that document. The DA does not have the authority to fix wetland boundaries because this is a function of subdivision review. The applicant has designed all proposed development to avoid substantial modification of wetland buffers and avoid all direct impacts to wetlands in Plat 2C. Some minor temporary exceptions for installation of trails and utilities occur in the outer edges of some buffers and buffer averaging is proposed in several small areas for development, as follows: the buffer is reduced 182 square feet for Lots 156 and 157; at 373 square feet for Lots 147 and 140; 1,366 square feet for Lots 134-141; and 196 square feet for Lots 129-131. The total buffer reduction at these locations is understood to be 2,117 square feet from the provided information. The total buffer area added in compensation is understood to be 26,222 square

feet. The functions and values of the reduced buffer width have not been specifically compared to the compensatory buffer area. Area size alone is not a sufficient indicator.

The applicant submitted a Sensitive Areas Study, Buffer Averaging Plan and Wildlife Analysis for Plat 2C (SAS) (WRI, December 24, 2013 and revised versions February 24 and May 6, 2014. (Exhibits 28, 28a, 28b). The SAS documents further work to classify the wetlands and evaluate wetland recharge/water balance. The applicant's wetland scientist, Wetland Resources, Inc. [WRI] and Perceet, the City's consulting scientist, established the wetland buffer depths based on each wetland's classification. The Cowardin and the Washington Department of Ecology (adopted by Black Diamond) classification systems were used. Wetlands TOS and E1 have the highest ratings for hydrologic function and habitat value. Wetland TOS is part of the Core Wetland Complex identified by BDMC 19.10.230 and is a Category I wetland with a designated 225-foot protective buffer. Wetland E1 is a Category II wetland with a 110-foot buffer in the northern portion and a 225-foot buffer in the southern basin. Wetlands E7, E8 and E10 are Category III wetlands with 100-foot designated buffers. Wetland 213 is a Category IV wetland with a 40-foot designated buffer. The table below lists the wetlands, their City classification and buffer widths and the tract number on the plat associated with the wetlands and their buffers. The tracts will be owned and maintained by the Master Developer. The second table below shows how a wetland function rating score translates to buffer widths. Specific conditions should be included in the plat for protection of buffer areas during construction and after, including flagging, temporary and permanent fencing.

Category Buffer width Tract # on Sheets PP1-5 Total Functional

Scores:

Wetland TOS Category I 225 feet 903 91
Wetland E1 Category II 110 feet (north part)
225 feet (south part)
925 & 930
Part of 903

57

Wetland E7 Category III 110 feet 927 & a portion of 928 44
Wetland E8 Category III 110 feet 929 and a portion of 928 41
Wetland E10 Category III 110 feet Within tract 903 41
Wetland 213 Category IV 40 feet Within tract 925 28

³ The Black Diamond Sensitive Areas Ordinance (BDMC 19.10) categorizes wetlands based on the scores that a scientist assesses for how well the wetlands are functioning using a number of different types of functions. Examples are habitat, water retention, infiltration, etc. The higher the number, the better the wetland functions across all measures.

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Buffer Dimensions for Other Wetlands (Moderate Intensity) [BDMC]

Wetland

Category

Wetland Characteristics Minimum Buffer

Width

Category IV / All 40 feet
 Category III Moderate level of function for habitat (score for habitat 20—28 points)
 110 feet
 Not meeting above characteristic 60 feet
 Category II High level of function for habitat (score for habitat 29—36 points) 225 feet
 Moderate level of function for habitat (score for habitat 20—28 points)
 110 feet
 High level of function for water quality improvement and low for habitat (score for water quality 24—32 points; habitat less than 20) 75 feet
 All others 75 feet
 Category I National Heritage Wetlands 190 feet
 Bogs 190 feet
 Forested Based on score for habitat or water quality
 High level of function for habitat (score for habitat 29—36 points) 225 feet
 Moderate level of function for habitat 20—28 points) 110 feet
 High level of function for water quality improvement (24—32 points) and low for habitat (less than 20 points) 75 feet
 All others 75 feet

A wildlife habitat assessment was submitted to the city with the SAS. The purpose of the assessment was to identify any Wildlife Habitat Conservation Areas or Wildlife Habitat Networks designated by the City's Sensitive Areas Ordinance (19.10). Three general habitats were found: a ponded wetland in the northeastern corner of the property, an area dominated by Douglas fir and western hemlock, and a linear open wetland with ponded water. The Washington Department of Fish and Wildlife maintains a list of Priority Habitat types that are considered priorities for conservation and management. Five Priority Habitat types are located among the regulated sensitive areas and would be protected by the governing regulations on BDMC 19.10. No indication of active breeding sites or evidence of breeding or nesting use by any federal state special-status wildlife species were found within the subject property during the assessment. The assessment was inadequate and conducted at times that would lead to missing the presence of some wildlife species. Plat conditions should include provisions for ongoing monitoring and the establishment of protective measures if species are found during the project phase. MPD approval included wildlife protection requirements that exceeded 19.10, and these have not been included. In May 2014, the applicant requested approval of an averaged buffer for Plat 2C (Exhibit 30). WRI's SAS presented information to meet the criteria for approval of buffer averaging. Per teat, the City's consulting wetland scientist, reviewed the buffer averaging request and found that the request was acceptable and exceeded the standards of BDMC 19.10 by adding additional wetland buffer area of 24,105 feet. BDMC 19.10.230(f-1) considers buffer averaging a modification to the standard buffer, and

averaging requires the applicant to demonstrate that no functions or values of wetlands are reduced. Code requires a benefit, not just no reduction.

The City approved the wetland buffer width averaging plan for The Villages MPD Phase 2 Plat C
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Preliminary Plat as shown on plat set sheets PP-1-PP-4 (letter dated June 5, 2014 to BD Villages Partners, LP, Exhibit 30a). This approval should have been informed by and subject to review during the hearing. Moreover, the plat map incorrectly shows buffer areas. Three conditions were recommended and have been added to the condition of approval #39:

1. Trail alignments within wetland buffers shall be field located by the applicant and observed by a representative of the City, to avoid clearing of significant trees. Downed woody debris that is removed for the trail must be placed in naturalistic locations, similar to what exists on the site for ground contact, instead of making slash piles, and culverts must be provided when the trail bisects surface or groundwater drainages.
2. Trail alignments within wetland buffers shall be combined with the infiltration trenches, wherever feasible, subject to final design work to be reviewed by the City. Condition should be added to ensure that the Trail alignment will not negatively impact the hydrology of the wetland.
3. The portion of the proposed soft surface trail shown on the plans bisecting Wetland E1 shall be eliminated.

In addition, the Plat 2C preliminary plat conditions of approval contain the mitigation measures from the Plat 2C MDNS:

4. Prior to issuance of a clearing/grading permit for any portion of the plat, the tree plan required by Chapter 19.30 BDMC shall delineate root protection zones for all significant trees retained, relocated, or planted for the division under the plan (condition of approval #38).
5. Pursuant to BDMC 19.10.220.D, wetland buffer boundaries adjacent to land within this plat shall be permanently delineated by split-rail fencing and identification signs, as approved by the City (condition of approval #44).
6. Wetlands and all required wetland buffers shall be defined as separate tracts in the final plat (BDMC 19.10.150.B) (condition of approval #35)
7. To ensure compliance with BDMC Ch. 19.10, subsequent review of development activities in future development tracts adjacent to Wetlands E7, E8 and E10 is required (condition of approval #47).
8. Pursuant to the City of Black Diamond Engineering Design & Construction Standards, Section 1.17, a construction management plan shall be developed by the applicant for review and approval by the City (condition of approval #40).

8.1 SENSITIVE AREAS ORDINANCE APPLICABILITY

All Development within The Villages MPD shall be subject to the standards, requirements and processes of the Sensitive Area Ordinance. The sensitive areas boundary determinations have been completed and verified for the Project Site and are depicted on the Constraint Maps attached hereto as Exhibit "G".

Buffers for the sensitive areas, as well as categories for the wetlands and classification of fish and wildlife habitat conservation areas, mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

STAFF RESPONSE: To show compliance with the DA Chapter 8 and BDMC Chapter 19.10, the applicant submitted the SAS and the Wetland Buffer Vegetation Management Plan . The second constraint map of Exhibit "G" of the DA shows Parcel E of the MPD. Wetlands associated with the area comprising Plat 2C are the wetlands TOS, E1, E7, E8, E10, and 213. In accordance with the DA, the boundaries of the wetlands are fixed. **Subdivisions must comply with code. Code requires review of wetland boundaries at time of plat review.** The applicant's biologist, WRI, studied the wetland boundaries and categorized the wetlands. The buffers are established by the wetland categories. Perteet, the City's consulting scientist, reviewed the report and requested additional clarification from WRI. Perteet's scientist accepted WRI's analysis in a memorandum dated May 19, 2014 (Exhibit 28e). The preliminary plat drawings PP1 through PP5 for Plat 2C show the wetland boundaries established by the DA and the buffers approved by the City. The proposal meets the requirements of this section. Compliance with the Sensitive Areas Ordinance, BDMC 19.10 is addressed below, under the BDMC section.

A. Project action. *Any project action taken pursuant to this chapter shall be mitigated and result in equivalent or greater functions and values of the sensitive areas associated with the proposed action.*
STAFF RESPONSE: No mitigation will be required because no permanent impacts to any sensitive areas will occur. The wetlands and fish and wildlife conservation area of Rock Creek will be protected from impacts by buffers, as shown on Sheets PP1-5. All residential development will occur outside the buffers. There will be minor temporary disturbance when the master developer installs stormwater infiltration facilities and the public access trail that will cross the wetland buffers at a few locations (to be determined at the utility permit stage). Condition of approval #39a requires that a representative of the City monitor all clearing and grading within the buffers. This standard is met. This code section conflicts with the DA contention that wetland boundaries are fixed. If a wetland is larger than what was approved in the DA, how could a subsequent project action meet the required standard of "equivalent or greater function"?

19.10.210 Designation, rating and mapping wetlands.

Wetlands in Black Diamond are designated and classified in accordance with the following provisions:
A. Designating wetlands. *Wetlands are those areas designated in accordance with the requirements of RCW 36.70A.175 and 90.58.380 and the Washington State Wetland Identification and Delineation Manual (1997). All areas meeting the criteria in manual regardless of mapping or other identification are designated sensitive areas and are subject to the provisions of this chapter.*

B. Wetlands shall be rated based on categories that reflect the functions and values of each wetland.
1. Core wetland and stream complex. *The wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as the core stream and wetland complex. The general boundaries of the area affected are designated within*

the Best Available Science Document, Technical Appendix B, provided that the dimensions of the area shall be defined by the field verified wetland boundaries and the buffers defined in Section 19.10.230 STAFF RESPONSE: The dimensions of the core wetland and stream complex were established and mapped prior to the adoption of the DA. The DA set the boundaries of the wetlands for the duration of the DA. The applicant surveyed the boundaries in the field and they are shown on the preliminary plat drawings. The proposal complies with the requirement. Note that the code calls for field verification. This is another basis for why the MPPD and DA wetland boundaries cannot be permanently fixed and thereby evade review at the subdivision stage.

5. Storm water detention/retention ponds are not permitted in a wetland buffer. However, storm water conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a wetland buffer, but only if the following criteria are met:

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- a. Due to topographic or other physical constraints, there are no feasible locations for these facilities to discharge to surface water through existing systems or outside the buffer.
 - b. Locations and designs that infiltrate water shall be preferred for category I, II, III, or IV wetland buffer over a design that provides for pipelines or surface discharge across the buffer or into the wetland. Only infiltration facilities are allowed within the buffer of a wetland in the core complex, or the buffer of a headwaters wetland and only when no trees of greater than four inches in diameter are disturbed.
 - c. A hydroperiod analysis is conducted and no impact is demonstrated by the study.
 - d. The discharge into a category I, II, III, or IV wetland is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation and avoids long-term fill or channel erosion. Surface water discharge into a wetland in the core complex or a headwaters wetland is prohibited unless analysis demonstrates that infiltration is not feasible because of inherent features such as soil type.
- STAFF RESPONSE: No ponds are proposed. Approximately 14 flow dispersal trenches for stormwater runoff will be constructed in the outer edge of wetland buffers (Exhibit 2, Sheets RS1 – 4). There are no other feasible locations for the flow dispersal trenches because the configuration of lots and streets is constrained by the sensitive areas. The trenches are appropriate in the buffers because they will help to infiltrate water from pervious surfaces and rooftops to recharge the wetland. Triad Associates, Inc. the applicant's consultant, conducted a hydroperiod analysis as part of their drainage analysis. Golder Associates, the applicant's geotechnical consultant, reviewed the hydroperiod analysis and determined that it met the SWMM/WW standards in a memorandum to the applicant (May 8, 2014, from Scott Stoneman and James G. Johnson to Colin Lund, Exhibit 28f). The memorandum recommended a condition of approval that during final engineering review of Plat 2C, an update to the preliminary drainage analysis be conducted by Triad to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings (#13). The trenches are not expected to result in any erosion as long as they are correctly designed to infiltrate and disperse flows without causing

erosion or sedimentation. The design will be reviewed and confirmed at the utility permit stage. If infiltration trenches are not feasible, then ponds may be required. A preliminary design that is informed by a planning level analysis of soil types and storm volumes should be done at the plat review stage in order to ensure that facilities can be constructed.

e. Adopt and implement an integrated pest management system including limiting use of fertilizers, herbicides and pesticides within twenty-five feet of the buffer of category III, or IV wetland, within fifty feet of the buffer of a category I, II, or headwaters wetland, and within one hundred feet of the buffer of a wetland in the core complex.

STAFF RESPONSE: Condition of approval #2 will be creation of CCRs, to be approved as to form by the City Attorney prior to final plat approval, that include the above restriction. This is an illegal delegation to the City Attorney. It is not the Attorney's role to make determinations about the content of CCRs. The content of the CCRs should be specifically called out during the Plat review. The Applicant should then be required to draft the CCRs for City review. The City could then choose any manner of review that is appropriate.

E. Sanitary Sewer

Sheets SSWA1-4 of Plat 2C show schematic locations of the proposed sewer gravity mains. The eightinch sewer lines are proposed to be installed in Roads A, B, and C, and Woonerf A. The schematics are considered only representative of the general location and configuration of the sanitary sewer collection system. The construction drawings are expected to provide the final location, pipe sizes and the details of construction during review at utility permit stage. While the final construction drawings sometimes differ from the schematic configuration shown in this application, all 203 lots would be served by sewer lines that will connect to the existing Black Diamond sewer system. The pipeline and treatment capacities for the proposed lots are described in the following paragraphs and in the staff responses to applicable review criteria, below. Once constructed and accepted by the City for ownership, all sewer lines would be maintained by the City.

Development in The Villages is to be served by the city's wastewater system, which comprises primarily gravity mains and three lift stations. All wastewater is directed to the existing Black Diamond Pump Station, which belongs to King County Wastewater Treatment Division (KCWTD). From there, flows are directed through the County's system to the treatment plant in Renton. Sewer service to Plat 2C will be available via connections to the sewer mains that have been approved for Preliminary Plat Phase 1 Plat A (Phase 1A), which will connect to existing City sewer lines in Roberts Road. In addition, a temporary lift station is required to be constructed by Phase 1A Preliminary Plat conditions of approval. Construction permits have been issued for Phase 1A and the infrastructure will need to be in place prior to the approval of the final plat for Plat 2C. Prior to the approval of the first Building Permit in any phase of The Villages, the off-site sewer system in Phase 1A must be completed and operational and accepted by the City. Inconsistent. Will it be in place at final plat or permit? Normally off-site sewer systems must be completed and operational at the final plat stage, not building permit phase.

After completion of the sewer system improvements in Phase 1A there will be sufficient capacity in the

local and regional sewer systems for sewage flow up to 208 additional gallons per minute, which is the amount allowed by King County (Exhibit 37). Applications that cause the 208 gpm threshold to be exceeded will be permitted after regional sewer capacity improvements are completed and KCWTD acknowledges that sufficient capacity exists in the regional system for additional flows. It is not clear that the King County facilities can handle the flows from Plat 2C. Availability of capacity must be certified at time of preliminary plat approval.

Policy CF-3: Require new development to finance the facilities and services needed to support the development wherever a direct connection of benefit or impact can be demonstrated.

STAFF RESPONSE: There are no existing city utilities or services in the area covered by Plat 2C. Sections 7 and 11 of The Villages DA requires that Yarrow Bay, as the master developer, construct on-site and offsite water, sewer, and transportation improvements that will be needed to serve the lots in Plat 2C. The document entitled Detailed Regional Infrastructure Improvements is a list of how the developer will mitigate for the development impacts that building The Villages will cause. This document should be incorporated as a condition of approval for the plat. The City approved the list of improvements in June 2014. The record does not address how this list was approved, nor whether it was subject to SEPA and other due process procedures. Since the Document is a Comprehensive Planning implementation document, it should have been approved legislatively. The applicant is committed to funding those improvements through the DA. This is not clear, and does not address compliance with CF-3. In addition, the MPD Funding Agreement (Exhibit "N" of The Villages MPD DA) requires the applicant to pay the costs for City staff to review and implement the projects in The Villages. The applicant will also be paying a general government facilities mitigation fee and/or dedication of land and/or construction of general government facilities. The fee will be paid at the building permit stage. The proposal is consistent with this policy.

The Villages MPD Permit Conditions of Approval (2010)

55. *King County will be constructing a sewer flow equalization storage reservoir in a location to serve the needs of the City.*

STAFF RESPONSE: This condition is not applicable to Plat 2C because this off-site regional facility requirement is triggered by the construction of the 1,150^m ERU within the City of Black Diamond's sewer district. Preliminary Plat Phase 1A is authorized to develop 921 ERU. Plat 2C would represent 203 ERU. Combined with maximum build-out (Phase 1A and Plat 2C together), they would create 1,124 ERUs, less than the threshold of 1,150 ERUs. However, permits are issued on a first-come, first-served basis. If

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other developments outside the MPDs receive wastewater permits that result in the 1,150^m ERU being in either Phase 1A or Plat 2C, then the threshold will be triggered. What other projects are currently in the development pipeline? Are the existing storage facilities adequate for existing demand? The City should not approve this plat until it can be determined that a funded plan is in place to provide for all existing and forecasted demand including the subject plat and

Plat 1 as development occurs. The City should not allow a plat to be built and lots sold that may not be able to hook up to sewers for years.

7.1.2 Project-Level Facilities

Project-Level Facilities are items such as on-site water mains, sewer and stormwater facilities. Project-Level Facilities will be Constructed by the Master Developer as Development progresses across the Project Site consistent with the Black Diamond Engineering Design and Construction Standards (Exhibit "E") as further detailed in this Section.

STAFF RESPONSE: On-site facilities are needed for each implementing project, of which Phase 1A and Plat 2C are the first to be permitted as preliminary plats. The DA shows conceptual sanitary sewer, water supply, and stormwater facilities to provide municipal service to parcels V28 and V29. General Note 5 on Sheet CV4 indicates that the applicant intends to construct the facilities in compliance with the BDEDCS and the DA (including Table 9.3 and Figure 9-4 of Exhibit "K"). Staff and the team technical consultants reviewed the schematic drawings for preliminary compliance BDEDCS and the DA and found that they comply with standards at this preliminary plat stage. Stormwater facilities are shown on Sheets RS1-4 and sewer and water supply plans are shown on Sheets SSWA1-4. Further detailed review will occur in the application for utility permits.

The proposal complies with this section. Preliminary Plats should have enough detailed engineering plans in order to establish the location and capacity of all utility facilities. General schematics are insufficient. What if an alternative utility route is proposed that will affect a sensitive area? What if a design assumption becomes impractical such as the ability to infiltrate all stormwater, or locate a corridor away from a wetland? At the very least, there should be conditions that state that the performance and impacts of utility revisions shall be identical to those approved in the plat. There should also be a condition to trigger a plat revision if a revision is major.

7.1.3 Location and Type of Facilities Approximate

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. Meeting "intent" is not the same as meeting the "performance and impacts".

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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. Utility Permits do not require public review or SEPA

7.3.1 Sewer Availability

This Agreement provides sewer availability to service 4,800 Dwelling Units on The Villages MPD (3,600 Single Family and 1,200 Multi-family) as well as 775,000 square feet of commercial/office/retail/light industrial uses, plus additional Public Uses and schools as defined in part by the School Agreement. Any Implementing Project application process that calls for a certificate of sewer availability shall be satisfied

by reference to this Agreement. A certificate of sewer availability is an independent determination made at the preliminary plat stage or building permit stage and cannot be fulfilled by a DA alone.

STAFF RESPONSE: The proposal would add wastewater flows from 203 units. When added to the 921 ERUs approved for Phase 1A, the demand would be 1,124 ERUs. After completion of the sewer system improvements approved in Preliminary Plat 1A there is sufficient capacity in the local and regional sewer systems for sewage flow up to 1,150 ERUs (which excludes flows from existing customers). Building permits within Black Diamond will be issued on a "first-come-first-served" basis up to the available additional 1,150 ERU-capacity in the local and regional sewage systems. As a result, until regional improvements are completed by KCWTD, applications that would result in exceeding the 1150 ERU

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threshold will not be permitted. KCWTD will need to acknowledge that the capacity exists in the expanded regional system for additional flows in excess of 1150 ERU or alternative sewerage disposal methods have been approved. The City will acknowledge that the capacity limit of 1,150 has been removed via letter to the Master Developer.

17.15.020 - APPROVAL CRITERIA. [AS APPLICABLE TO WASTEWATER SERVICE]

A. The following criteria must be met to approve any subdivision. The criteria may be met by conditions.

3. The public use and interest is served by the establishment of the subdivision and dedication. In considering this criteria, it shall be determined if appropriate provisions are made for all relevant matters, including, but not limited to, the public health, safety and general welfare, open spaces, storm drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds.

STAFF RESPONSE: Appropriate provisions are made for sewer services as demonstrated in the previous staff responses. The preliminary plat shows that proposed lots can be served by sewer lines that connect to Phase 1A. The City's public works department personnel and consultant engineer have reviewed the schematic designs and found that they are constructible and meet the City's public works standards as November 25, 2014 98

much as is appropriate for the preliminary plat stage. According to King County, there is or will be when? sufficient capacity, with conditions to construct a lift station (#52) and connections to Roberts Drive (#53). This criterion is satisfied. "Is or will be sufficient capacity" does not meet the test for "appropriate provisions".

7. Concurrency exists for all utilities and transportation system improvements prior to occupancy of any structures;

STAFF RESPONSE: The City's interpretation of state concurrency regulations is as follows: "concurrency" means that adequate public facilities or services are available when the impacts of development occur and "available public facilities" means that the facilities or services are in place (or that a financial commitment is in place) to provide the facilities or services within a specified time.

Three essential elements of concurrency are: 1) constructability, 2) supply and/or capacity, and 3) timing for impacts. Appropriate provisions must be made for sanitary sewer service. To make a determination

- of concurrency, the City is responsible for confirming:
- o the constructability of the sanitary sewer lines;
 - o the available capacity of downstream (i.e., King County) sewage treatment facilities;
 - o the timing of the construction of sanitary sewer lines to serve Phase 1A and the lines to serve Plat 2C

With respect to constructability, the City's consulting civil and transportation engineers and the public works director reviewed the proposal's schematic plans and technical reports. They found no topographic or engineering constraints that would prevent the proposed sanitary sewer lines from being designed to meet the City's standards in the BDEDCS and The Villages DA. Therefore, for the purposes of preliminary plat approval, those facilities are constructible. The additional sewer capacity would be built by King County WTD.

Sanitary sewer capacity as of the writing of this staff report is 1,150 ERUs. Phase 1A and 2C will generate a demand equal to 1,124 ERUs. Barring the issuance of building permits for more than 26 ERUs for development outside of The Villages, the City reasonably expects that sanitary sewer capacity exists for Plat 2C. In the event that the existing capacity of 1,150 ERU is exceeded before building permits for all of the proposed development in Phase 1A and Plat 2C, then the City will deny requests for subsequent and additional building permits until KCMTD constructs additional regional capacity. There will be sufficient capacity in the existing City sewer pipelines, with the addition of Phase 1A infrastructure, for the expected demand from Plat 2C.

Offsite sanitary sewer improvements are necessary in order to provide service to this plat. Some of the improvements have been designed and approved for construction, but not yet completed, in conjunction with Phase 1A utility permitting on property owned by the Phase 1A developer. Some of the improvements have not been designed and have not been completed but will be designed and completed in conjunction with Phase 1A utility permitting (or with Plat 2C utility permitting) on public right of way. The applicant has recorded an easement (Exhibit 44) that will allow the Plat 2C applicant to complete that work if those improvements are not completed by the Phase 1A Developer. Conditions of approval #1 and #5 require that those facilities be complete (or bonded for completion) before final plat.

With the information provided by the applicant and the conditions noted herein, there is an adequate provision of sanitary sewer service to ensure that facilities will be in-place to serve this application prior to Final Plat.

Notwithstanding the phasing plan of The Villages MPD, for each application for preliminary plat approval, the City must determine and make a finding that the facilities necessary to serve the lots in Plat 2C will be available at the time the building permit applications are submitted for homes in Plat 2C. Which is it? The staff report first says that facilities will be in-place prior to Final Plat. Then the staff report says that it will be available at the time of building permit. The City maintains that there is substantial evidence "substantial evidence" is not the same as a determination that there will be adequate capacity in the record to show that there will be sufficient sanitary sewer facilities at the final plat stage, as follows:

□□ The applicant has provided a narrative and schematic plans showing how sewer lines can serve

- the proposed subdivision and residential lots within it.
- King County Wastewater Treatment Division has allowed for sewer flows to its facilities up to 1,150 ERU. The combined ERUS for Phase 1A and Plat 2C are 1,124.
- The sewer system approved for Phase 1A was sized to accommodate discharge flows from Plat 2C (as well as from other future development).
- Condition of Approval #79 of the Preliminary Plat approval for Phase 1A (Exhibit 36) required the applicant to confirm that "there are no root intrusions, blockage, breakage or other deficiency that would render the City's existing sewer system downstream of the proposed point of connection insufficient to convey the sanitary sewer flows anticipated from Phase 1A, prior to approval of the first utility permit for Phase 1A. As of the writing of this staff report, the applicant has investigated and remedied any obstructing conditions per condition #79.
- Construction permits for the Phase 1A sewer system have been issued and the road in which the Phase 1A sewer mains will be constructed has been laid out.
- Condition of approval #53 requires the completion of a connection to Roberts Drive either through connecting to the Phase 1A facilities or in a Plat 2C sewer connection in the temporary access and utility easement across Phase 1A (Exhibit 44). The City finds that there is evidence to support a finding of concurrency for sanitary sewer facilities for Plat 2C.

F. Water Distribution and Supply

Normally, an applicant would be required to have a certificate of water availability before they could get a preliminary plat approval. That isn't happening here. Instead the plat is being "conditioned" with the following narrative.

The existing City water system is supplied by springs near the Green River (Spring Field, approximately two miles southeast of the city). There are two reservoirs to which water is pumped from Spring Field, and the distribution system operates with three pressure zones, 965, 850, and 750. Equalizing, fire flow, and standby storage are provided by the 850-zone reservoir and delivered to the 750 zone through existing pressure reducing stations. According to the City's Public Works Director, there is overall water system capacity for full build-out of all of The Villages and Lawson Hill's MPDs, including Plat 2C, with improvements (Exhibit 35). While there is sufficient capacity in the 850 reservoir and in the city-wide supply water distribution system to support the 203 residences proposed in this application (203 ERU), the existing chlorine disinfection system at the Springs will need to be upgraded prior to issuance of the first building permit at The Villages. What is the status of this project? The City couldn't issue a water certificate unless this project were complete. The City, or the City with the applicant, or the applicant alone, plans to upgrade the chlorine system in 2015 (also listed as a 2014-2017 project on Figure 9.1a of the Water System Comprehensive Plan). After that upgrade, the next limitation on the system is peak day supply or pumping capacity.

The City's existing spring source and pumping system has capacity for an additional 561 new water supply connections (using supply criteria in the Comp Water Plan). The City intends to make improvements in the Spring source within the next three years that will increase the capacity to an

additional 1,100 ERU. Here again, the City could not issue a water certificate using normal procedures. The City will supply the additional water demands for this application from either the Spring source (if it available) or from the Tacoma intertie which has sufficient capacity for full buildout of the Villages development. Tacoma may have sufficient capacity for full buildout, but do they have capacity now for this plat? That is the relevant factor.

⁴ City of Black Diamond Water System Comprehensive Plan, no date.
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With the information provided by the applicant and the conditions of approval #1, and #57 through #64, there is an adequate provision of potable water service to ensure that facilities will be in-place to serve this application prior to Final Plat. The applicant has provided schematic plans for providing potable water to and within the Plat. The preliminary plat application is located within the 750-pressure zone confirmed by Figure 7.2A of the DA, Conceptual Water System Plan. The on-site water distribution system is generally composed of loops of 12-inch diameter pipe proposed to be located within the completed rights-of-way. The pipes are looped for redundancy and reliability and are equipped with strategically located valves and inter-connections so that short-term failures can be isolated and repaired with a minimum of service disruptions. Because the City expects that future phases will need service from higher pressure pipelines (the 850 zone), the City requested an additional 850 water main. Therefore, both a low pressure and high pressure pipeline may be constructed side-by-side in Road A right-of-way. The plat should have 850 zone level service, but only 750 is currently available so a parallel system is proposed. This does not satisfy requirements. This is a common practice and consistent with the City's Comprehensive Water System Plan. Where possible, future 850 zone mains should be interconnected to the 750 zone to improve service to the Plat 2C customers and to prevent stagnation of water in unused pipelines. These mains may be isolated from the 750 zone in the future when buildings are constructed in the 850 zone. The remaining Roads B and C and Woonerf A that serve the residential lots will have one 12-inch 750 pressure water main. Connections to water supply in Phase 1A will occur in two places, one at Road A and SW Willow Avenue and the other at Woonerf A. Pressures at the water meters (for properties within the 750 pressure zone) will range from 75 to 90 psi. Water service will be available from off-site water mains that will be completed in conjunction with the Phase 1A Preliminary Plat which will connect to the existing city-owned water mains that are off-site. The Phase 1A mains have been approved for construction but have not yet been completed; the off-site Phase 1A mains have not been designed or approved for construction. Plat 2C is relying on connections to off-site mains through the Phase 1A process, so a finding of water availability for Plat 2C cannot be made at this time. The applicant must either wait until the on-site and off-site mains are in-service and operational (completed by others) or must complete those mains as approved. All existing water mains must remain in-service during construction. The water conveyance system as designed is consistent with City standards and requirements. All elevations within the project can be served, including the highest anticipated finished floor elevations within future structures, without booster pump stations. Water mains are sized to provide the required flow rates during maximum fire flow conditions, while meeting the minimum pressure criteria. All water

mains are public and are to be located in public rights of way or within utility easements that provide a minimum of 15' of unobstructed space for access and maintenance.

Required fire flows are estimated to be 1,500 gpm, although Tracts 905, 906 and 907 could be developed with higher fire flow requirements (multi-family or commercial/retail). The mains have been sized and configured to allow 3,500 gpm fireflow rates in these future development areas. Fire hydrants will be provided in rights-of-way. Additional hydrants may be required around some buildings as determined by Fire Department review and approval of building permits. The language here about fire flow is unclear. The question is simply this: will Plat 2C have legal fire-flow at the time of final plat approval? Sprinklers will be provided in buildings according to the requirements of the International Fire Code.

All water meters will be located within the rights-of-way or in public utility easements. The meter locations must be compatible with the design standards contained within Exhibits "H" of TV DA. All water meters must be located such that they can be accessed with the City's drive-by meter reading system.

The Villages MPD Permit Condition No. 58 and TV DA Section 7.2.5 established water conservation and monitoring requirements. The water conservation plan requirements applicable to water fixtures will be November 25, 2014 103

applied during future building permit review and approval; the monitoring requirements will be implemented by the Designated Official, per Section 7.2.5 of TV DA.

It should be noted that previous planning efforts anticipated that off-site improvements would be provided as a cooperative effort between several off-site property stakeholders in accordance with a document titled Water Supply and Facility Funding Agreement (WSFFA). The WSFFA allows the City to maximize and optimize supply from the spring source before using water supply from Tacoma. Springs upgrades are necessary for this application. The plat must be reviewed consistent with the adopted Regional Water Supply Plans in coordination with the Covington Water District.

The application shows a schematic of the pipelines and in some cases details about connections and pipe routing. These are considered schematic and representative of the general location and configuration of potable water mains. The actual location, pipe sizes, interconnections, valves, meters and the details of construction will be identified in subsequent utility permits and will likely differ from the schematic configuration shown in this application.

48. *Construct an appropriately sized reservoir in 850 Zone or construct an 850 Zone loop back to the existing system in the vicinity of Railroad Avenue.*

STAFF RESPONSE: Previous engineering studies for the WSFFA (August 11, 2003 and July 22, 2004) have identified that the existing 850 Zone Reservoir and the pipeline loops shown in this application are appropriately sized and no further improvements are necessary. The condition is met. This provision flows through to the Plat. The City must have a current finding that 850 service is available, not rely on a ten year old finding. Why would the MPD approval include this provision if the matter had already been determined? The discussion earlier suggest that 850 service is not available for Plat 2C.

7. *Concurrency exists for all utilities and transportation system improvements prior to occupancy of any structures.*

STAFF RESPONSE: The City's interpretation of state concurrency regulations is as follows: "concurrency" means that adequate public facilities or services are available when the impacts of development occur and "available public facilities" means that the facilities or services are in place (or that a financial commitment is in place) to provide the facilities or services within a specified time.

Three essential elements of concurrency are: 1) constructability, 2) supply and/or capacity, and 3) timing for impacts. Appropriate provisions must be made for water supply. To make a determination of concurrency, the City is responsible for confirming:

- o the constructability of water lines and other necessary infrastructure or improvements;
 - o the availability of sufficient water supply from the sources, storage capacity and fireflows;
 - o the available capacity of water treatment facilities; and
 - o that the water lines will be in place and operational when the first building permit applications for homes in the subdivision are submitted to the City for approval.
- The preliminary plat for Plat 2C shows schematic design of a looped system that is required by the City's water standards. It also provides water lines in the streets necessary to serve all of the lots with lateral connections. Improvements will be needed to the chlorine treatment facility prior to any building permits being issued and a temporary lift station will also be needed after 561 units have received permits. With respect to constructability, the City's consulting civil and transportation engineers and the public works director reviewed the proposal's schematic plans and technical reports and found no topographic or engineering constraints that would prevent the proposed water system from being designed to meet the City's standards in the BDEDCS and The Villages DA. Therefore, for the purposes of preliminary plat approval, those facilities are constructible.
- With respect to adequate capacity, the City of Black Diamond currently provides Water Investigation Certificates to developers who inquire about water availability. A specific provision of the GMA regarding water availability was codified in RCW 19.27.097(1) of the state Building Code Act. Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit, a letter from an approved water purveyor, or another form sufficient to verify the existence of an adequate water supply. The City uses the Certificate format that supports a documentation and tracking program on capacity and current water usage. The Water System Comprehensive Plan determined that storage, pumping and treatment capacity is sufficient to provide flow requirements by use (Table 4.18) of 1,000 to 3,500 gpm for low density use and school/industrial uses, respectively. Peak hour demands met the Department of Health system-wide standard in 2007. **A current finding is required for this plat.**

The City provided evidence in a memorandum (Exhibit 35) that, with conditions, there is sufficient source supply from the Spring Field and from the Tacoma Interlie for total build-out of the MPD and flows in the area of Plat 2C would be able to meet the demand and standards for fireflow pressure and

volume. Improvements will be needed to the chlorine treatment facility prior to any building permits being issued and a temporary lift station will also be needed after 561 units have received permits. Those improvements will be conditions of approval prior to final plat approval (#58), whether constructed by the City or the applicant, or jointly by both.

Timing has been a topic of discussion with the applicant because the preliminary plat shows connections to utilities and roads in Phase 1A but there is no condition on the Phase 1A preliminary plat with respect to timing. The applicant has put a general note on the Preliminary Plat (Sheet No. CV4) that the water, sewer, and stormwater systems necessary to serve the plat must be completed or bonded to be completed prior to final plat approval. The phasing plan in Exhibit "K" of the DA recognizes that development is tiered on previous, approved phases. Notwithstanding the phasing plan of The Villages MPD, the applicant must demonstrate that the facilities necessary to serve the lots in Plat 2C will be available at the time the building permit applications are submitted for homes in Plat 2C.

Consequently, staff foresees that timely provision of water supply for Plat 2C could occur under one of two scenarios. The first scenario depends on the completion and operation of utilities in Phase 1A to connect lines in Plat 2C to the City's existing water system. Phase 1A water mains in the future Willow Avenue SE are shown on the Phase 1A preliminary plat as stubbed to Road A of Plat 2C to provide a connection to the existing lines in Roberts Drive. The second scenario would occur if Phase 1A facilities are not in place to allow a connection with Plat 2C development at the final plat stage. The applicant has recorded a temporary access and utility easement (Exhibit 44) over Phase 1A and in that case, the Master Developer would construct utilities for water, sewer and roads between Plat 2C, across Phase 1A, to existing City utilities and Roberts Drive. The City recommends condition of approval #1 and #58 requiring the future public water distribution facilities in Willow Avenue SE to Plat 2C be constructed and operational, or else bonded for completion, prior to final plat approval.

The City maintains that there must be substantial evidence in the record to show that there will be sufficient water facilities at the final plat stage. There is evidence that the facilities to connect Plat 2C to the existing network can and will be provided by the final plat approval stage, as follows:

- The applicant has provided a narrative and schematic plans showing how water facilities serve the proposed subdivision and residential lots within it.
- Adequate capacity is provided by the connecting water lines in Phase 1A and in existing City infrastructure.
- Construction permits for Phase 1A have been issued.
- The City's consulting engineer has reviewed the schematic plans and found no topographic or engineering constraints that would prevent the proposed water lines from being designed to meet the City's standards.
- The temporary access and utility easement recorded on October 31, 2014 (Exhibit 44) will allow for construction of utility connections between existing City facilities at Roberts Drive and Plat 2C.
- Recommended plat condition of approval requiring completion of water supply to Plat 2C, or be bonded for completion, at final plat. (Condition of approval #1)

Staff finds that concurrency exists for the needed water supply and distribution.

19.04, SEPA Ordinance [2009]

The FEIS for The Villages notes that with planned upgrades in the City's 2008 Comprehensive Water System Plan that sufficient capacity will exist to provide potable water to future proposed development. The mitigation measures include upgrading the Springs supply source, using Tacoma Intertie, construction of the 850 zone loop or storage, 750 zone loop, and improvements in the City's Comprehensive Plan.

The applicant's SEPA checklist cites Section 7.2 of the DA as evidence of water availability. No impacts are expected and no mitigation needed.

Comment: The Covington Water District wrote on August 5, 2014 (Exhibit 11 that any work related to water transmission lines must be approved by Department of Health prior to construction and that utility service to a portion of the Villages development have not been resolved. The City cannot issue a certificate of water availability under these circumstances?

The Villages Development Agreement (2011)

13.3 SCHOOLS

Pursuant to Condition of Approval No. 98 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"). [...]

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STAFF RESPONSE: No schools are proposed for Plat 2C. This condition does not apply. The condition applies to school mitigation, not school siting. Plat 2C requires provisions for school mitigation whether or not a school is sited there

17.15, Subdivision Code [2009]

17.15.020 - APPROVAL CRITERIA. [AS APPLICABLE TO SCHOOLS]

A. *The following criteria must be met to approve any subdivision. The criteria may be met by conditions.*

3. *The public use and interest is served by the establishment of the subdivision and dedication. In considering this criteria, it shall be determined if appropriate provisions are made for all relevant matters, including, but not limited to, the public health, safety and general welfare, open spaces, storm drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds.*

STAFF RESPONSE: Development of a school site on Plat 2C is not proposed or appropriate for the site. The preliminary plat for Plat 2C represents only 4.3% of the total number of allowed dwelling units in The Villages. The Comprehensive School Mitigation Agreement directs the City and the Master Developer to provide a specific number of school sites based on number of students of each type of school, per dwelling unit. The minimum site size for a school is 10 acres for elementary schools. If a 10-

acre site were dedicated for an elementary school for 450 students, there would be only approximately 47 students within Plat 2C with 39 acres of developable land (assuming .401 students per dwelling). Since Plat 2C is somewhat isolated from the rest of the more intensive and imminent residential development for the time being, it would make more sense for students to attend schools at the sites identified in Phase 1A. The criterion is met. The code requires that a finding of adequate school capacity be issued. Staff report does not accomplish this.

148. The Applicant's requests 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.

STAFF RESPONSE: No deviations to the Sensitive Areas Ordinance is requested. This is incorrect. Delineations are not being done in conformance with the SAO because they are assumed to be fixed by the Development Agreement and have not been reviewed during plat review in violation of BDMC. Deviations from road standards and stormwater utility standards were requested by the applicant in January and June 2014 and reviewed and approved by City staff (Exhibits 17, 20c, 21). This condition is met.

2.1 PROJECT ENVELOPE

The Development Agreement governs and vests the development, use, and mitigation for The Villages Master Planned Development (the MPD). Land within the boundaries of The Villages MPD shown on Exhibit "U" of the MPD can be developed only in accordance with the terms and conditions of the TVDA.

STAFF RESPONSE: Exhibit "U" of The Villages MPD contains the Conceptual Site Plan for The Villages. In 2013, the applicant sought a minor amendment to change the range of densities for parcel V28 of The Villages from 229-305 units to 25 -203 units (revising Table 4-1). The reduction in density resulted in a change to the zoning from MPD-M (moderate density) to MPD-L (low density). The development of 203 single family lots on parcels V28 and V29 is consistent with the land use designation of MPD-L, the density ranges in amended Table 4-1 (41-330) and the location shown on Exhibit "U", with the exception of the park at the south end of parcels V28 and V29 (refer to the discussion on parks). The staff decision to reduce the density of the proposed plat may result in a transfer of density to other areas within Phase 2 without public review or without consideration of TDRs. The Hearing Examiner should request clarification about this issue.

5.1 DRC REVIEW REQUIRED FOR DESIGN GUIDELINES AND STANDARDS

The 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. The DRC's approval shall be noted in each such application, which shall be submitted to the City for review and

processing. In the event that the City determines that an Implementing Project application does not comply with Exhibits "H" and "I" or the MPD Framework Design Standards and Guidelines, or that the DRC has failed to provide approval, the Designated Official may require changes to or deny the application.

STAFF RESPONSE: Exhibit 31 contains the DRC's approval letter dated November 5, 2013. Staff finds that the requirement for DRC approval of the implementing project and its compliance with the Project Specific Design Standards of this section is satisfied. The DA does not require the DRC to provide evidence of how it reviewed the application and the specifics of how the application complies. The DRC is a government sponsored entity and is required to conduct itself in a manner that is consistent with due process and other requirements that are applied to land use actions. This includes the documentation of sufficient findings to support its actions. The staff report asserts that only certain of the standards and guidelines apply at the preliminary plat stage, but this is not consistent with a plain reading of the condition, i.e. "The DRC shall review and approve each Implementing Project application...for compliance with the MPD Project Specific Design Standards and Guidelines..."

5.2 DIMENSIONAL STANDARDS

5.2.1 Lot Size and Lot Width

A. *The MPD Ordinance does not impose a minimum lot size. The minimum lot size for Detached Single Family is 2,200 sq. ft.*

B. *The minimum width of a flag lot is 14 feet for the portion of the lot that serves as access. One "flag" driveway may access up to two (2) lots.*

STAFF RESPONSE: All lots proposed for Plat 2C are between 3,150 and 8,547 square feet. The average lot size is 4,574 square feet. Therefore, standard 'A' is met. No flag lots are proposed.

5.2.2 Residential Setbacks and Maximum Height

The DA shows the setbacks and height restrictions that apply to MPD-L zones in Table 5-2-1.

Table 5-2-1

Density Range	Required Setbacks and Maximum Height ^{6, 8, 9}	Maximum Building Height ^{5, 7}
Front Yard	@Street ^{1/}	
Garage		
Front Yard	@Common	
@Common	Green ¹	
Side Yard ^{2, 3}	Side Yard @	
Side Yard ^{2, 3}	Corner	
Lot ⁴	Rear	

Yard
MPD – L 10'20' 10' 5' 10' 5' 45'

Notes:

1. *Measured to property line.*
2. *Note that side yard Setback does not apply to common wall on townhome, duplex, other similar attached Dwelling Units or alternative lot configurations as provided in Subsection 5.2.7.*
3. *Use easements may be utilized for provision of private yards. Use easements shall not be used for building code fire separation distance.*
4. *Setbacks at corner lots with buildings with wrap around porches may be reduced to 5'.*
5. *Maximum building height may be exceeded by 10' for tower rooms less than 300 sq. ft., and distinctive architectural elements such as towers, cupolas and spires.*
6. *Table 5-2-1 does not apply to flag lots, see Section 5.2.5(F).*
7. *On at least one side of the building there shall be a 32' or lower accessible eave.*
8. *Access to escape and rescue windows shall be provided for in building design as required by the applicable City building code.*
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9. *Buildings over 35' in height shall provide a minimum 7' by 12' permanent, useable staging area on at least one side of the building for fire access to the roof. The staging area shall be located adjacent to the accessible eave.*

STAFF RESPONSE: The application did not provide information on setbacks because no structures for the lots are proposed with this application. The DA does not specify when the provisions of section 5.2 and Exhibit "H" must be established. At the City's request, the applicant submitted a diagrammatic representation of how different homes could be situated on all of the proposed lots and meet the setbacks (Exhibit 43) but compliance will be determined at the building permit stage. The DRC is required to review the Plat. (see 5.1 line 1 above) How can the DRC do this if information about the building designs are not submitted?

EXHIBIT "H" OF THE VILLAGES DEVELOPMENT AGREEMENT, DESIGN STANDARDS AND GUIDELINES (MAY 24, 2011)

These Design Standards shall apply to all residential buildings within the villages and Lawson Hills.
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Lot Sizes and Front Yard Setbacks (Single Family Detached)

In order to avoid the monotony of streets lined with single family detached homes of similar width, height, and setback, the following criteria shall be applied. However on a limited basis, specific locations within neighborhoods may vary from this requirement.

Corner lots side yard setback on the street side shall be at least 5 feet wider than interior lots.

STAFF RESPONSE: Side yard setbacks on corner lots are set at 10 feet in Chapter 5 of the DA, Table 5-2-1, which is 5 feet wider than interior side yards. Corner lots on the preliminary plat Sheets PP1-56 for Plat 2C are shown (from left to right on PP5) as 203, 184, 176, 175, 165, 164, 12, 45, 63, 31, 64, 75, 76, 68, 122, 109, 96, 95, 90, 83, 89, 82. All of the corner lots have wider street frontages than the interior lots

between corners. Therefore, the standard can be accommodated on the corner lots. The standard will be enforced at the building permit stage.

Excluding oversized corner lots within a block, any row of lots over 400 feet long shall have at least one lot of different width per every six houses. The differing lot may be wider or narrower, but shall vary in width by at least 5 feet.

STAFF RESPONSE: The street network for Plat 2C is curvilinear so some variety will be supplied by variations in lot widths at the streets to account for the curves. Many of the blocks created by the intersections of the roads, alleys and woonerfs are over 400 feet long based on a sum of the lot widths. Below is a table showing how the proposed lot designs in the application meet this standard.

Street Predominant lot width Lot number and width of qualifying lot

Amount of variation from dominant lot width

Road A 48 #5, 53 feet 5 feet

45 #47, 52 feet 7 feet

45 #57, 50 feet 5 feet

45 #181, 40 feet 5 feet

47 #166, 69 feet 22 feet

Road A & Alley A 45 #114, 50 feet 5 feet

Road B 50 #24 (also lot 25), 55 feet 5 feet

50 #38 (also lot 37), 45 feet 5 feet

Road C 45 #142, 40 feet 5 feet

45 #149, 38 feet 7 feet

Staff finds that this requirement is met.

Varied front yard setbacks shall be applied to 20% of homes on each side of the street on each block. Offsets shall be an increase of no less than 33% of the standard front yard setback.

STAFF RESPONSE: The preliminary plat drawings do not show how the standard will be met. On October 9, the applicant submitted a diagrammatic drawing, "Conceptual Demonstration of How Residential Design Guidelines May Be Met." (Exhibit 43). The diagram is scaled and building footprints are colorkeyed to show how a 25-foot-wide house, for example, could fit onto a 35-foot wide lot and consequently meet the setback standards. There appears to be sufficient room within the blocks to vary the setbacks to meet this requirement. The DA does not establish how this requirement will be tracked and reviewed by either the City or the DRC. Before the first building permits are reviewed, the City will establish a method for tracking all of the design compliance requirements established by the DA. The DRC is required to review all of these design features at the preliminary plat stage. This has clearly not been done.

Design Guidelines for Master Planned Development
GENERAL PRINCIPLES AND SITE PLANNING
A. Environmentally Sustainable

2. Incorporate energy saving techniques into all aspects of building's design and operation.
STAFF RESPONSE: This guideline is not applicable at the stage of preliminary plat approval. General policies like this can only be applied at the plat stage because building permit reviews are administrative and not governed by general policy.
4. Use measures that can mitigate the effects of potential indoor air quality contaminants through controlling the source, diluting the source, and capturing the source through filtration.
STAFF RESPONSE: This guideline is not applicable to the proposal at the subdivision phase. General policies like this can only be applied at the plat stage because building permit reviews are administrative and not governed by general policy.

17.15, Subdivision Code [2009]

17.15.020 - APPROVAL CRITERIA. [AS APPLICABLE TO LAND USE]

A. The following criteria must be met to approve any subdivision. The criteria may be met by conditions imposed by the hearing examiner as conditions of approval:

1. The proposed subdivision meets all city zoning regulations and is consistent with the city's comprehensive plan maps and policies, and with the Black Diamond design standards and guidelines where applicable;

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STAFF RESPONSE:

Zoning Code Compliance

The subject site is zoned MPD, Master Planned Development.

Development on the parcels consistent with the zoning code is principally governed by the conditions of approval in The Villages MPD Permit and the provisions of the DA. City staff and the consultant reviewers (MDRT) have reviewed the proposal against all of the provisions of The Villages MPD Conditions of Approval and DA. But not the Code? Where the MPD conditions and the DA refer to sections of the BDMC, the proposal was also reviewed for compliance with the BDMC. All of the BDMC applies. This staff report presents the results of review of each topic that is relevant to the standards of the BDMC, the MPD, and the DA. Staff finds that the proposal, with the exceptions noted under each topic area and in Conclusions, meets the standards.

Consistency with the Black Diamond Comprehensive Plan

The City of Black Diamond Comprehensive Land Use map designates the land contained within parcels V28 and V29 as Low Density Residential with a Master Plan Development Overlay. Plat 2C proposes a net density of 6.49 units per acre, which meets the definition of low density.

The Black Diamond Comprehensive Plan states that areas with an MPD overlay designation are intended to develop only after an MPD permit has been issued. The Villages MPD permit was approved on September 20, 2010 (Ordinance 10-946). In Conclusion of Law #16, the ordinance states that "The proposed project is generally consistent with the vision statement and the City's development regulations and policies. Further, Page 5-13 of the Comprehensive Plan (Land Use element) discusses the MPD Overlay plan designation. The Villages MPD is also consistent with that section of the Comprehensive Plan." Plat 2C Preliminary Plat is an implementing project of the approved The Villages MPD. Because staff finds that the proposal is consistent with MPD and DA, it is consistent with the "Master Planned Development Overlay" requirements for that designation.

In addition, the proposal has been evaluated and found to be consistent with the specific policies relating to each topic area addressed in this staff report. Staff finds that the proposal is consistent with the comprehensive plan.

Design Guidelines for Master Planned Development

The City of Black Diamond Design Guidelines (BDDG) apply to development within all zones. The applicable set of guidelines for Plat 2C is the MPD Framework Design Standards & Guidelines. These standards and guidelines are primarily intended for, and apply to, overall MPD design, but some apply to projects that implement an MPD at later permitting stages, such as preliminary plat design, utility design, and building construction. **All of the standards and guidelines apply unless the staff can document why they do not.** The introduction to the MPD Framework Design Standards and Guidelines notes that the standards and guidelines are not intended to prescriptive rules and are intended to provide an amount of flexibility. Decisions regarding strict application of any guideline contained will be made by the City Council as part of its consideration for granting overall MPD approval.

Consistency with the BDDG is discussed above.

2. *The proposed subdivision results in a net density that is equal to or less than the allowable maximum density established by the zoning regulations, and is greater than or equal to any applicable minimum density requirement;*

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STAFF RESPONSE: Density within the proposed subdivision has been established through the City's approval of The Villages MPD under BDMC 18.98.120 [2009], and subsequently through the standards established by the DA. BDMC 18.98.120(F) allows a density of 18 units per gross acre. Condition of Approval No. 128 of The Villages MPD Permit permits the zone categories and densities corresponding to the Site Plan map and Table 4-1 (as amended). Table 4-1 of the DA establishes the residential density range for parcels V28 (25-203) and V29 (54-127). The notes to Table 4-1 establish the category of MPD-L (low density residential) with a density range of from 4 to 8 units per acre. Condition of Approval No. 131 of The Villages MPD establishes a minimum density requirement of 4 units per net acre for residential development.

The Land Use Capacity Table on Sheet CV3 of the preliminary plat (Exhibit 2) shows calculations for gross and net density for V28 and V29 and proposed number of units within the context of the authorized number of units and commercial development for The Villages as a whole.

Parcel V28 has a net development area of 18.63 acres and 140 lots are proposed. Table 4-1 authorizes 25 to 203 units. Net density would be 7.51, meeting the minimum standard of 4 units per acre. Parcel V29 has a net development area of 12.63 acres and 63 lots are proposed. Table 4-1 authorizes 16 to 127 lots. Net density proposed is 4.99 units per acre. Therefore, the proposal is consistent with Table 4-1 and the net density requirements.

Both parcels combined would have a net density of 5.13 units per acre, and a gross density of 6.49 units per acre. Both net and gross densities for Plat 2C are less than the maximum allowed by BDMC 18.98 and within the range allowed by the DA.

Therefore, staff finds that the proposed density is greater than the applicable minimum and less than

the maximum density requirements.

5. Applicable city development standards are met or exceeded;

STAFF RESPONSE: The Villages MPD permit was approved on September 20, 2010 (Ordinance 10-946). In Conclusion of Law #16, the ordinance states that "The proposed project is generally consistent with the vision statement and the City's development regulations and policies. Further, Page 5-13 of the Comprehensive Plan (Land Use element) discusses the MPD Overlay plan designation. The Villages MPD is also consistent with that section of the Comprehensive Plan." Plat 2C Preliminary Plat is an implementing project of the approved The Villages MPD and its consistency with the MPD permit and DA (which also requires consistency with specific parts of the BDMC), implies some consistency with applicable city development standards. "Implies" consistency is not the standard. It must actually comply with each provision of the city's development code. The SEPA checklist for Plat 2C notes the same in part 9 on land use: that the City's approval of the MPD permit and the DA determined consistency with the City's development regulations and therefore with the City's goals and objectives. The relevant land use standards are primarily in the DA, Chapter 4, Land Use and Project Elements, and Chapter 5, Additional Bulk, Landscape & Sign Standards. Those chapters are addressed in the staff report. As noted above, the proposal is consistent with the MPD Site Plan (land use) Map in Exhibit "J" of the DA, the zoning and the maximum number of residential units and target densities in chapter 4. Most of chapter 5's standards are also met. However, exceptions have been noted above and if addressed, staff could determine complete consistency with the standards. Staff's comment indicates that their analysis is incomplete. We agree. Other development standards are in the BDMC and are addressed in the sections primarily pertaining to sensitive areas, land division, tree preservation, and zoning, which are addressed in those sections.

8. If the proposal is in an approved MPD, the proposed subdivision shall be consistent with the approved MPD, the MPD conditions of approval, the MPD design standards, and the MPD development agreement;

STAFF RESPONSE: The proposal is in The Villages MPD, which was approved in 2010 (Ordinance 10-946). The proposed preliminary plat for Plat 2C has been evaluated against all of the MPD Permit conditions of approval, the MPD design standards and the MPD development agreement in Part IV of this staff report for each topic area. Staff has concluded that where information has been provided by the applicant and with conditions, the proposal meets the standards. If information has not been provided, then the staff cannot determine conformity with standards and the proposal must be sent back for additional information.

2. Implementing permits or approvals—Residential subdivisions. Each residential subdivision that is part of an approved MPD shall be reviewed at the time of preliminary plat review for compliance with the city's MPD design standards. This review shall include typical elevations, and exterior material samples for the single-family residences and other structures to be built on the subdivided

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lots. This review shall be merged with the hearing examiner's review of the preliminary plat.

STAFF RESPONSE: The review process applies to Plat 2C because it is an implementing project of an approved MPD. The applicant provided exterior materials (Exhibit 3n) and elevations for the single family homes. (Exhibit 3j) The typical elevations Consistency with the BDDG is addressed for the individual project components in Part IV of this staff report. Staff report only addresses the two specific design issues mentioned in the condition, however, the condition requires compliance "with the city's MPD design standards". These include many issues that have not been addressed and are proposed to be addressed at building permit stage. This is not consistent with the condition.

4. Implementing permits or approvals—Residential building permits. Staff shall administratively review residential building permit applications in approved and recorded subdivisions and short subdivisions for consistency with the MPD design guidelines.

STAFF RESPONSE: The proposal is for a preliminary plat approval; this criterion does not apply. The condition requires a second design guideline review at building permit stage. This should be noted on plat.

6. Future project consistency. The decision-maker shall not approve a preliminary plat or short plat, or issue a building permit or site plan review approval for a parcel located within an MPD, unless the city has found that the proposal is consistent with applicable MPD design standards.

STAFF RESPONSE: Staff reviewed the proposal's consistency with MPD design standards and found it to be consistent with applicable MPD design standards. The staff has not done this review. Instead, it is proposed that this review will occur at building permit stage.

The Villages Development Agreement (2011)

12.0 DEVELOPMENT REVIEW PROCESS

12.3 DESIGN REVIEW COMMITTEE

... The DRC shall ensure that Implementing Projects within The Villages MPD are consistent with the MPD Project Specific Design Standards and Guidelines (Exhibit "H") and the High Density Residential Supplemental Design Standards and Guidelines (Exhibit "I") as applicable, and shall have sole responsibility for ensuring compliance with the DRC Design Guidelines. Except for Utility Permits and permits for Schools as set forth in the School Agreement, all Implementing Project applications, including any formal modifications to Implementing Approvals and ADU applications, must be reviewed by the DRC before the application or formal modification is submitted to the City. In the event of a conflict, City review requirements supersede those of the DRC. An Implementing Project application submitted without written documentation of DRC approval is not complete and may be rejected by the City.

STAFF RESPONSE: The DRC reviewed the preliminary plat for Plat 2C and approved it. A letter from the DRC approving the application was submitted with the application on November 8, 2013 (Exhibit 3j). The application complies with this section. The DRC did not consider all issues relating to design review. Staff is proposing to review these additional features at Utility Permit stage, thus bypassing the DRC. There is no due process or approval

criteria in the code for utility permits, so this procedure cannot be used by the City to make discretionary substantive determinations.

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

STAFF RESPONSE: Plat 2C does not propose any reclassification of development parcels and this condition does not apply. By lowering the density of Plat 2C did an increase in density elsewhere in Phase 2 become mandatory? Will the City be forced to approve a Major Amendment, or could it refuse to transfer the density?

164. 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.

STAFF RESPONSE: The applicant submitted a detailed implementation schedule for regional projects. City staff approved the implementation schedule. (Exhibits 29 and 29a). Since regional project implementation involves capital budgeting, the City Council should be required to make this approval legislatively, not just the staff.

1. Public comments were submitted following publication of the MDNS and Notice of Hearing for the August 25, 2014 hearing [subsequently postponed]. None of the comments raised issues that cannot be, or have not already been, addressed by staff or the applicant. This is obviously an inadequate response to comments. Each comment should have been specifically addressed.

2. Approval criteria: BDMC establishes preliminary plat approval criteria in 17.15.020 1 through 14.
1. *The proposed subdivision meets all city zoning regulations and is consistent with the city's comprehensive plan maps and policies, and with the Black Diamond design standards and guidelines where applicable;*

The City of Black Diamond Comprehensive Land Use map designates the land contained within parcels V28 and V29 as Low Density Residential with a Master Plan Development Overlay. Plat 2C proposes a net density of 6.49 units per acre, which meets the definition of low density.

The Black Diamond Comprehensive Plan states that areas with an MPD overlay designation are intended to develop only after an MPD permit has been issued. The Villages MPD permit was approved on September 20, 2010 (Ordinance 10-946).

Development on the parcels is principally governed by the conditions of approval for The Villages MPD permit and the provisions of the DA, except where text defers to the BDMC, primarily for sensitive areas and tree removal, and to the engineering standards. This is incorrect. The development is governed principally by the code. The applicant's proposed

subdivision has been evaluated in this staff report for consistency with the MPD permit conditions, the DA, and the City's MPD design guidelines with respect to land use and design, utilities
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(stormwater, sanitary sewer, water), transportation, sensitive areas, and parks/recreation/open

space. Staff finds that the proposal meets the standards. The MPD Framework Design Standards & Guidelines apply to Plat 2C. Consistency with the BDDG was evaluated for the project components, including stormwater, roads, pedestrian ways, sensitive areas, open space, water conservation, tree preservation, and land use. Staff finds the proposal is consistent.

7. Concurrency exists for all utilities and transportation system improvements prior to occupancy of any structures;

The City's interpretation of state concurrency regulations is as follows: "concurrency" means that adequate public facilities or services are available when the impacts of development occur and "available public facilities" means that the facilities or services are in place (or that a financial commitment is in place) to provide the facilities or services within a specified time.

Capacity for the planned systems were determined as follows:

- o Stormwater: the proposed stormwater facilities can be constructed on site to manage the amount of projected runoff from impervious and pervious surfaces as stated in the Preliminary Drainage Analysis report and as reviewed by staff and the consulting engineer. Stormwater flows from 17.1 acres of pollution-generating impervious surfaces in Plat 2C will be directed to the existing Phase 1A regional stormwater pond which has capacity to accept flows from 167 acres of impervious surfaces. Phase 1A is expected to drain from 27.7 acres of impervious surfaces. Therefore, there is a finding of concurrency for stormwater systems for Plat 2C.

- o Water supply: The City provided evidence in a memorandum that there is sufficient source supply from the Spring Field and from the Tacoma Interite for total build-out of the MPD and flows in the area of Plat 2C would be able to meet the demand. Improvements will be needed to the chlorine treatment facility prior to any building permits being issued and a temporary lift station will also be needed after 561 units have received permits. With conditions of approval to implement these requirements, there will be adequate capacity at the time of development.

- o Sanitary sewer: capacity as of the writing of this staff report is 1,150 ERUs. Phase 1A and 2C will generate a demand equal to 1,124 ERUs. Barring the issuance of building permits for more than 26 ERUs for development outside of The Villages, the City reasonably expects that sanitary sewer capacity exists for Plat 2C. In the event that the existing capacity of 1,150 ERU is exceeded before building permits for all of the proposed development in Phase 1A and Plat 2C, then the City will not accept building permit applications until KCMTD constructs additional regional capacity. There will be sufficient capacity in the existing City sewer pipelines, with the addition of Phase 1A infrastructure, for the expected demand from Plat 2C.

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- o Transportation: The Traffic Monitoring Report (Exhibit 25) evaluated concurrency of the offsite

transportation system for Phase 2. Table 1 of the report summarizes the intersection improvements and construction timing needed to meet demand. No improvements would be required to be constructed by any implementing project of Phase 2 until certificates of occupancy are issued for the 1,393rd ERU. Since Plat 2C build-out would be 137 ERUs, and Phase 1A is 1,190 ERUs, no improvements will be triggered by the 1,327 ERUs for the combined plats. The road capacity for the on-site road network meets the standards of the DA, which is one lane per 600 peak hour strips, once it connects to the existing road network through construction of roads in Phase 1A. There will be sufficient transportation capacity for Plat 2C at that point.

The water, sanitary sewer, and transportation facilities for Plat 2C are dependent on construction of facilities in Phase 1A (PLN11-0001, approved). While these systems are planned to connect to facilities not yet built in Phase 1A, construction of those facilities has begun. The dependency is as follows:

- o Pipes to drain stormwater from Plat 2C to the regional pond in Phase 1A will need to be constructed.

- o Phase 1A water mains in the future Willow Avenue SE need to be built to Road A of Plat 2C to provide a connection to the existing lines in Roberts Drive.

- o Phase 1A sanitary sewer lines in the future Willow Avenue SE need to be built to proposed gravity lines in Road A of Plat 2C.

- o Willow Avenue SE in Phase 1A needs to be constructed to connect Road A and Woonerf A and the lots in the Plat 2C subdivision to the existing Roberts Drive.

The applicant has indicated the intent to provide the facilities in Phase 1A to serve Plat 2C. A general note on the Preliminary Plat (Sheet No. CV4) states that the water, sewer, and stormwater systems necessary to serve the plat must be completed or bonded to be completed prior to final plat approval. The phasing plan in Exhibit "K" of the DA recognizes that development is tiered on previous, approved phases as follows:

In general, the infrastructure necessary for each phase for each MPD is dependent on the infrastructure built in preceding phases for that MPD. For example, in order to build The Villages Phase 1B, the infrastructure projects listed for The Villages Phase 1A would also be needed. These two phases could be built simultaneously or The Villages Phase 1A could be built first. (page 9-1 of The Villages Master Plan Development application)

Timing of Project-Level Facilities. [..]Final design and construction plans must be approved and on-site improvements constructed prior to final subdivision, final Binding Site Plan approval or occupancy, whichever comes first. (page 9-3 of The Villages Master Plan Development application)

Notwithstanding the phasing plan of The Villages MPD, the applicant must demonstrate that the facilities necessary to serve the lots in Plat 2C will be available at the time the building permit applications are submitted for homes in Plat 2C.

To provide additional assurance of concurrency, the applicant recorded a temporary access and utility easement over Phase 1A (Exhibit 44) that is sufficient to provide a connection for all essential facilities between Plat 2C and existing city facilities in Roberts Drive. Therefore, should the Phase 1A facilities be unavailable by the time of final plat approval for Plat 2C, the applicant will have the requirement to

construct and connect those facilities. The problem with this approach is that Phase 1A was reviewed and conditioned to accommodate Phase 1A, with only certain components configured to accept Plat 2C and only to the extent the impacts of Plat 2C were known. Since then Plat 2C has changed significantly, but Phase 1A has not. Additionally, a Plat 2C connected to a completed Phase 1A will have substantially different impacts to the community than a Plat 2C with no Phase 1A and long extensions of utilities and transportation through an undeveloped Phase 1A. For example, the speed of cars going through an undeveloped Phase 1A will be higher. The fiscal impacts will be different as well. A set of contingency conditions based on an analysis of Plat2C without Phase 1A construction should have been applied. For these reasons, staff find there is concurrency for public facilities.

5. Compliance with the terms and conditions of the Detailed Implementation Schedule for Phase 2 Regional Infrastructure Improvements (Exhibit 29, dated January 28, 2014 and approved on June 13, 2014) is required. This condition will be enforced during utility permit approval. The utility permit process is not appropriate for this review. [Note: MDNS Mitigation Measure]

7. Prior to approval of the first utility Permit for Plat 2C which enables impervious surface construction all off-site utilities and improvements necessary to convey, treat and detain stormwater (as shown for Plat 2C on Sheets RS1 through RS4 and as described in the Preliminary Drainage Report for Plat 2C and Phase 1A [Exhibit 20]) shall be in place and operational. The applicant shall provide certification from the Master Developer that all off-site utilities and improvements necessary to meet this condition are complete and in compliance with the conditions of approval for Phase 1 Plat A. This condition will be enforced with utility permits. Clearing and grading permit should also be used to ensure compliance since clearing and grading creates stormwater runoff.