

Tracey Redd

From: Kristen Bryant <kristenbry@gmail.com>
Sent: Wednesday, December 17, 2014 4:59 PM
To: MDRT User
Cc: Judy Carrier; Gil Bortleson
Subject: Rebuttal to exhibits - Plat 2C Hearing
Attachments: Rebuttal to Exhibits.pdf; Rebuttal to 72 Applicant's Proposed Amendments to Conditions of Approval.pdf; Lider Resume June 2013.pdf; Black Diamond Villages Hearing Plat 2C Lider Supplemental Review 17Dec2014 FINAL.pdf; LiderDec15Comments.pdf; Black Diamond Villages Hearing Plat 2C Lider Document Review Log 16Dec2014.pdf

Hello City of Black Diamond,

Please accept the following attachments in response to the Plat 2C rebuttal of exhibits.

Thank you,

Kristen Bryant
Judy Carrier
Gil Bortleson

Preliminary Plat 2C

Rebuttal to Exhibits from Hearing of December 11, 2014

Date: December 17, 2014

From: Judith Carrier, Kristen Bryant, Gil Bortleson

Document Format Notes:

In general, citizen rebuttal is shown in Bold.

Quoted excerpts from Exhibits or city code are indented.

Each comment is separated by *****

Part 1 – Technical Review

Due to the technical nature of certain comments in Exhibit 71, we asked Civil Engineer William Lider of Lider Engineering to respond.

Mr. Lider responded to these attachments to exhibit 71

Attachment A: “Villages MPD Phase 2, Plat Hearing, Additional Document Review dated Dec 15” responds to:

- 1) Tetra Tech Letter Regarding Response to Preliminary Plat 2C Public Comments

Attachment B: “Villages MPD Phase 2, Plat Hearing, Additional Document Review dated Dec 17” responds to

Certain specific parts of the following memos and and certain related pages in Exhibit 71 where noted in the attachments.

- 4) Golder Associates Memorandum Regarding Response to Public Comments on Preliminary Plat 2C
- 5) Triad Associates Memorandum Regarding The Villages - Preliminary Plat 2C Public Comments

Attachment C: Lider Document Review Log

Attachment D: Lider CV

Part 2: Review of Exhibit 71

Exhibit 71 Header:

Re: YarrowBay's Response to Written Public Comments regarding The Villages Preliminary Plat Phase 2 Plat C (PLN13-0027)

Date: December 11, 2014

Citizen Comment Response to Applicant's Exhibit 71 -Page 4. Response to Exhibit 9. Item 7,

Rebuttal: A specific finding of adequate school capacity to serve the Plat is required under State law and BDMC. The Applicant's response that: "The Villages MPD as a whole (emphasis added) provides adequate provision for school sites through the terms of the CSMA." does not mean that this plat will be adequately served. The applicant must address the adequacy of this Plat.

Citizen Comment Response to Applicant's Exhibit 71 -Page 4. Exhibit 10, Response to Exhibit 1

- 1. The Environmental Checklist makes specific statements about conditions that will be met but these conditions are not listed on the Plat or its approval document.*

Mr. Bortleson unfortunately does not list the "specific statements about conditions that will be met" in the Environmental Checklist to which he refers. Absent more information, it is difficult to respond more specifically. YarrowBay has reviewed its Plat 2C SEPA checklist and has determined that statements contained within the checklist are indeed recommended conditions of approval contained within the Staff Report.

Rebuttal: The following SEPA mitigation condition is not contained in the conditions of approval for the Plat:

To minimize the potential adverse impacts from emissions resulting from construction activities, Best Management Practices (BMPs) will be implemented to ensure that minimal amounts of dust and exhaust fumes leave the preliminary plat site. BMP measures may include street cleaning/swEEPing, wheel washing, and watering of the site as necessary to help control dust and other particulates; and minimizing vehicle

and equipment idling to reduce exhaust emissions at the site. Refer to page 4-89 of the FEIS for specific mitigation measures.

The proposed preliminary plat will provide a mix of housing units affordable to a range of income levels within the City of Black Diamond, thereby assisting the City in accommodating project growth and housing targets.

d. Proposed measures to reduce or control light and glare impacts, if any:

The project will comply with the City of Black Diamond's Lighting/Dark Sky Ordinance (BDMC Chapter 18.70) as set forth in Exhibit E of The Villages MPD Development Agreement to reduce light and glare impacts.

The following statement in the checklist does not correctly state that only portions of the 2005 DOE Stormwater Manual for Western Washington will be used. Specifically, the chapter that requires continuous simulation modeling was not adopted by the City of Black Diamond. When we reviewed the Environmental Checklist we relied on the checklist statement that the Manual would be applied, thus alleviating our concerns for the impacts to stormwater and wetland systems. Now we learn that the critical provisions requiring continuous simulation modeling will not be applied. This will result in damaging changes to the ground and surface water flows into the associated wetlands.

All stormwater from this preliminary plat and included Future Development Tracts is proposed to either be infiltrated to groundwater, or discharged via level spreader within wetland buffers. Surface water runoff will be handled in accordance with the 2005 DOE Stormwater Manual for Western Washington, the Villages MPD Permit Approval and The Villages MPD Development Agreement, prior to discharge or infiltration from the approved stormwater system. See The Villages MPD Phase 2 Preliminary Plat C Preliminary Drainage Analysis, for additional information regarding the stormwater collection, treatment, and infiltration systems.

In addition to the stormwater collection, treatment and infiltration systems proposed within this preliminary plat, the project will also include restrictions within the Homeowners' Association CC&Rs that restrict roofing materials and the application of roof treatment and fertilizer chemicals per Condition of Approval No. 68 of The Villages MPD Permit Approval and Section 7.4.4 of The Villages MPD Development Agreement.

Citizen Comment Response to Applicant's Exhibit 71 - Page 6, Item 5. Response to Exhibit 10, excerpted below:

5. The mitigation conditions proposed only deal with a very narrow range of issues. Even though various technical submittals recommend many conditions, and even though the applicant has stated his intent to comply with some of these conditions, none of them have been incorporated into the conditions of approval prepared by the City for the plat.

It is unclear which conditions this comment is referencing. The Staff Report contains 81 recommended conditions of approval including the ten MDNS conditions that the City previously determined are required to mitigate potential environmental impacts from Plat 2C. If there are in fact conditions that YarrowBay has agreed to during the Plat 2C review process that do not appear in this extensive list, YarrowBay is agreeable to the Hearing Examiner including such conditions in his decision.

Suggested Condition of Approval : The Conditions of Approval should be listed on the plat map so that they are clearly referenced at the time of construction, dwelling unit, etc.

Citizen Comment Response to Applicant's Exhibit 71 - Page 6, Item 6. Response to Exhibit 10:

6. The condition regarding archaeological resources requires a report but does not require protection.

In response to Mr. Bortleson's comment above, YarrowBay is recommending the following additional language be added to the Staff Report's recommendation condition of approval 81:

Prior to submittal of the first clearing/grading permit for any portion of Plat [2]C, the proponent shall place additional archaeological shovel probes on lands near Rock Creek (Parcel E) and provide a report to the City prepared by a qualified professional summarizing the results and any recommended actions. Such

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recommended actions shall be conditions of any clearing and grading permit issued by the City for Plat 2C.

Rebuttal: We do not support the amendment. The recommendations of the "qualified professional" should not be the final word without review by staff and public comment. We propose adding after "for Plat 2C" the following: "subject to review and approval by the Designated Official after public input from affected tribes and other parties".

Citizen Comment Response to Applicant's Exhibit 71 -Page 7. Item 7, Response to Exhibit 10, excerpted below with arrows for emphasis:

7. The condition regarding an update to the preliminary drainage analysis only addresses “subtle” design changes and does not provide for any meaningful review of SEPA impacts relating to stormwater management.

This MDNS Mitigation Measure has been incorporated into the Staff Report as recommended condition of approval 13. The condition requires an update to the Plat 2C preliminary drainage analysis (Exhibit 3g) if any design changes are made between the preliminary plat stage and final engineering. The condition presumably includes the word “subtle” because only subtle changes, at most, are anticipated to be made between the preliminary plat stage and final engineering. Should an update to the Plat 2C preliminary drainage analysis reveal new information about impacts to the environment that have not been analyzed, state law requires that the City review this information to determine what additional mitigation, if any, is required.

To eliminate any confusion, however, YarrowBay proposes rewriting recommended condition of approval 13 to remove the word subtle, as follows:

The Preliminary Drainage Analysis (Exhibit 20) must be updated during final engineering review of Plat 2C to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings. The update to the preliminary drainage analysis should use the same methodology as the applicant’s consultant previously completed. [Note: MDNS Mitigation Measure]

In their response, the applicant added the above underlined clause (between arrows) without noting that this was done. Note the difference from the original staff report excerpt of Condition of Approval 13 is shown below, with #13 circled:

November 25, 2014

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13. The Preliminary Drainage Analysis (Exhibit 20) must be updated during final engineering review of Plat 2C to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings. [Note: MDNS Mitigation Measure]

14. As the first subdivision in Phase 2, Plat 2C must comply with the conditions of the current NPDES permits (issued to the City by the Washington State Department of Ecology) in effect on November 8, 2013.

Because of the highly technical implications of the clause, “The update to the preliminary drainage analysis should use the same methodology as the applicant’s consultant previously completed”, a technical expert civil engineer William Lider, was asked to review and comment. His comments are shown in Appendix 1.

We do not support the amendment. The Applicant’s amendment mischaracterizes our earlier comment and actually goes backwards from the standpoint of the public interest. Our comment was directed to the need to provide as much detail in the preliminary plat design as possible and not defer important decisions that may be brought forward as “subtle” design changes without public review. Our consultants have testified as to the inadequacy of the stormwater design review, and those concerns may well be shared by the Applicant’s consultant who recognized that the submittals may need to be revised, with “subtle” used as a term of art to avoid the discussion at this time.

Moreover, we have testified as to the inadequacy of the methodology used by the Applicant, and are not satisfied with a condition that would give it specific approval and standing in a plat condition.

The condition would inappropriately restricting the city and could prevent the city from fulfilling its own code* and stormwater management protection obligations. This is particularly egregious given that the preliminary analysis uses a model (the SBUH) that cannot and does not accommodate real-world rainfall and only applies to sizing one type of drainage, a retention pond, that can accommodate a 6-month, 24-hour storm event. (this is detailed in the Silvertips Solution comments submitted December 11 letter "Re: Stormwater issues of concern for Public Hearing on Yarrow Bay's Plat 2C" This preliminary model should not have been used for preliminary plat processing, and certainly should be used for final plat approval. (As noted in the 2005 SM, Chapter 2 2-2 Volume III page 2-2, this model does not account for flow control, which is required for sizing all aspects of the stormwater and runoff system, from drains, pipes, culverts, infiltration pits, to rain gardens.)

* example of code that cannot be met, BDMC [emphasis with underline added]:

"14.04.170 Review and acceptance.

A.

The director shall review all drainage related submittals for compliance with the specific criteria set forth in this chapter. Incomplete submittals shall be returned to the proponent without being reviewed. An acceptance of a stormwater site plan or construction stormwater pollution prevention plan by the director does not relieve the proponent or the project engineer from responsibility for ensuring that all facilities are safe and that calculations, plans, specifications, construction and drawings of record comply with normal engineering standards, this chapter and applicable federal, state and local laws and codes."

and

14.04.330 Director may modify minimum requirements.

A.

This chapter presents minimum standards for achieving the city's goals. The Director has the authority to increase requirements to protect the public interest on the basis of reports pertaining to threatened water quality, erosion, habitat destruction, protection of uninterrupted services and endangerment to property.

B.

Alternatives to standard plans, specifications and design details found in the Stormwater Manual may be accepted by the administrator if they meet or exceed the performance of the standards set forth herein.

C.

Where requirements in this chapter are covered in any other law, ordinance, resolution, rule or regulation, the more restrictive of the two shall govern.

(Ord. No. 914, § 6, 6-25-2009)

Citizen Comment Response to Applicant's Exhibit 71 -Page 7 Item 8, Public Comment:

8. *The condition requiring infiltration trenches to be combined with trail alignments is inconsistent with provisions of 19.10.120 since the conditions for trail alignments are more lenient than the conditions for infiltration trenches. This should be clarified to make sure that the more stringent condition applies.*

This comment refers to the MDNS Mitigation Measure that has been incorporated into the Staff Report as recommended condition of approval 39b: "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." It is unclear to YarrowBay how this condition is inconsistent with Black Diamond Municipal Code §19.10.120. YarrowBay agrees that this condition does not shield the design of the infiltration trenches from the requirements contained within City code. YarrowBay further agrees that the infiltration trenches shall be located to conform with the requirements contained in Black Diamond Municipal Code §19.10.220(C)(5). Rather than allowing YarrowBay to change the location of the infiltration trenches, this condition serves to require YarrowBay to field locate the soft surface trails, where feasible, with the infiltration trenches (whose location, again, must conform to City code) in order to reduce any impacts to Plat 2C's wetland buffers.

It appears that the Applicant and we are in agreement that the condition should not allow a more lenient locational criteria to be used. To make this clear in the Plat conditions, we propose the following

Condition of Approval: "Where soft surface trails and infiltration trenches are co-located, the more protective wetland buffer locational and conditioning criteria shall be applied".

Citizen Comment Response to Applicant's Exhibit 71 -Page 7 and 8. Item 9, Response to Exhibit 10:

9. *The condition that requires a construction management plan in the future is inadequate because the plan should be determined at the preliminary plat stage. In fact, the preliminary plat approval documents include discussion and specific*

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determinations about the construction management plan but do so in a piecemeal manner.

This comment refers to the MDNS Mitigation Measure that has been incorporated into the Staff Report as recommended condition of approval 40: "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 before the clearing and grading permit is issued. . . ." The timing of submittal of such plan is set forth in the City's Engineering Design & Construction Standards at Section 1.17. Earlier submittal would require an amendment to such City adopted standards. Moreover, providing a construction management plan at the final engineering and design stage is a more logical place for the City to require it because the information contained at the preliminary plat stage is too general to provide the basis for a realistic construction management plan. For example, the details of how roads will be constructed are created during the final engineering and design stage. Those details are used in creating a construction management plan. Were the City to require a construction management plan at the preliminary plat stage, the City would be required to devote time and resources to review a document that would likely change significantly—requiring even more time and resources for review—before construction actually begins. Requiring a construction management plan later in the process, when both the City and the applicant have a better idea of what will be required, helps the City save money and avoid unnecessary work.

Rebuttal: The Applicant's points regarding the impracticality of designing a construction management plan at preliminary plat are noted. In order to accomplish our objective of adequate review and consideration of this management plan we recommend the following:

Recommended Condition: "A construction management plan will be required to be submitted and approved by the Designated Official prior to the application of any land alteration permit, including clearing and grading permits. The Plan shall include all appropriate provisions to ensure that the water quality, noise, and traffic control requirements of the BDMC, the MPD permit approval and the DA are met."

Citizen Comment Response to Applicant's Exhibit 71 -Page 9. Item 1, Response to Exhibit 10:

- 1. The Applicant has failed to comply with conditions of approval requiring monitoring and the establishment of a baseline phosphorous load. The consultant's report identifies on-going work and is a work in progress. The report should be concluded and reviewed by the City before the project SEPA review and plat conditions are approved.*

Contrary to Mr. Bortleson's above comment, YarrowBay has complied with all stormwater and groundwater monitoring conditions of approval set forth in The Villages MPD Permit. Such conditions are set forth in Exhibit "O" of The Villages MPD Development Agreement and state as follows:

Prior to construction of the first implementing project within the Lake Sawyer drainage basin, the Master Developer, in conjunction with the City of Black Diamond shall review, plan and institute the following:

- 1. Monitor pre-development phosphorous levels at pre-determined locations within the project drainage basins. Monitoring is to occur consistently over the course of at least one water year (October to September) in accordance with the procedures and criteria outlined in Chapters 6 through 12 of the OAPP (see Attachment 1). Use data collected over the water year to establish a baseline phosphorous load from the project. This load should be factored to an average year rainfall volume for future comparisons of phosphorous loads for years where the rainfall is more or less than the average.*

(emphasis added).

The only timing associated with the above stormwater monitoring condition is that monitoring be performed and the associated data be used to establish a baseline phosphorous load from the MPDs prior to construction of the first implementing project within the Lake Sawyer drainage basin. Such construction has not yet commenced and, therefore, there is no requirement that such report be completed at this time. However, YarrowBay's consultant has performed the monitoring of the pre-development phosphorous levels (see Exhibits 13a-c).

Rebuttal: Applicant's statements that the monitoring condition applies to the first implementing project, and comments and exhibits in the record that a detailed analysis and report are due for completion in early 2015, are noted. Since Plat 2C could be the first implementing project to go to construction we propose the following

Condition of Approval: "A baseline phosphorous monitoring and analysis report that meets the requirements of the BDMC, the MPD permit approval, and the DA shall be submitted and approved by the Designated Official prior to the acceptance of any permit for land alteration including clearing and grading."

Citizen Comment Response to Applicant's Exhibit 71 -Page 10. Item 2, Response to Exhibit 10:

Comments on Wetland Buffer Vegetation Management Plan prepared by Wetland Resources ("WRI") on December 19, 2013:

- 2. The report recommends specific conditions that are not included in the conditions of approval, even though the Applicant has asserted their intent to abide by those conditions.*

Compliance with the Wetland Buffer Vegetation Management Plan for Plat 2C prepared by Wetland Resources Inc. (Exhibit 27) is required by the Staff Report's recommended condition of approval 42. This condition addresses the concern raised in Mr. Bortleson's above comment.

Rebuttal: The Wetland Resources report contains the following proviso:

This Wetland Buffer Vegetation Management Plan for The Villages MPD Phase 2 Plat C is supplied to BD Village Partners, LP as required by the City of Black Diamond. This report is based largely on readily observable conditions and, to a lesser extent, on readily ascertainable conditions. No attempt has been made to determine hidden or concealed conditions.

This proviso suggests that during construction, there may well be the need to modify the plan to take into account actual field conditions. We suggest the following condition: "The Wetland Buffer Vegetation Management Plan is a minimum action plan that may need to be revised to address issues that may arise during construction"

The Wetland Buffer Vegetation Management Plan contains many detailed provisions (see pages 8-49) and these should be included by reference in a condition of approval. We suggest the following:

Amendment to condition of approval #42: "All of the conditions recommended in the Wetland Buffer Vegetation Management Plan are incorporated by reference as conditions for the Plat".

Same page, Item 3:

3. *The Perteet recommendations are not incorporated into the conditions of approval, and should be.*

Contrary to Mr. Bortleson's above comment, the Perteet recommendations are incorporated into the Staff Report's recommended condition of approval 42. Perteet's memorandum (Exhibit 28c) states as follows: "It is assumed from our field observations that the wetland buffers that remain after clearing will have substantially similar species composition and spacing as the sampled area. However, post-clearing monitoring of the buffer areas is required [to] verify that the tree density remains comparable to this tree inventory." And, the Staff Report's recommended condition of approval 42 provides in pertinent part: "The applicant shall comply with the Wetland Buffer Vegetation Management Plan for The Villages Phase 2 Plat C including: when clearing adjacent to a wetland buffer, the developer shall *conduct monitoring which includes: (i) initial compliance/as-built report of post-development tree density in the wetland and adjacent buffer; (ii) Annual site inspections in the autumn to document that the minimum tree density (20) and weedy/invasive plant coverages are maintained in the wetland and its buffer; . . .*" (emphasis added).

The Perteet report contains many detailed provisions and these should be included by reference in a condition of approval. We suggest the following :

Amendment to condition of approval #42: "All of the conditions recommended in the Perteet Report are incorporated by reference as conditions for the Plat".

Same page, Item 4:

4. *The additional conditions proposed by Wetland Resources in response to the Perteet comments should be included as specific conditions of approval.*

Compliance with the additional conditions proposed by Wetland Resources in response to the Perteet comments is required by the Staff Report's recommended condition of approval 42.

A close reading of the Wetland Resource response suggests that condition of approval 42 is not sufficient as proposed. We suggest the following

amendment to condition of approval 42: "The additional conditions proposed by Wetland Resources in response to the Perteet comments are incorporated by reference as conditions for the Plat".

Citizen Comment Response to Applicant's Exhibit 71 -Page 17-18. Item F, Response to Exhibit 52: Public Comment

F. Density of Development Along Wetland Buffer May Be Higher Than Allowed.

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Ms. Bryant's above comment appears to allege that the Plat 2C residential density proposed for the areas surrounding Wetland E1 violate some undefined section of the Black Diamond Municipal Code or unnamed professional guidance. The density in parcel V28, which is the parcel that borders Wetland E1, is 5.81 units/acre, not 8 units/acres as alleged in Bryant's comments. YarrowBay is unaware of any City code provision that limits the density surrounding Wetland E1 to something below the density provided in Plat 2C.

Rebuttal: In fact, the land use next to the wetland and its buffer does need to be taken into account. Black Diamond Municipal Code sets buffer width requirements according to the following:

BDMC 19.10.230(2)(D).

“Other wetlands—Standard buffer widths. The standard buffer widths presume the existence of a relatively intact mature native vegetation community (relative density of twenty or greater) in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer shall be planted to maintain the standard width. **The minimum buffer requirements assume that adjacent land use meets the conditions outlined in section 19.10.220(D), in accordance with the Department of Ecology's Guidance on Wetlands in Washington State (2005), Volume 2 - Protecting and Managing Wetlands, Appendix 8C (Moderate Intensity Land Use).** Required standard wetland buffers based on wetland category are ...” [Emphasis added]

And, from Department of Ecology's Guidance on Wetlands in Washington State (2005), Volume 2 - Protecting and Managing Wetlands, Appendix 8C (Moderate Intensity Land Use):

Table 8C-2. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses (Buffer Alternative 2).

Category of Wetland	Land Use with Low Impact *	Land Use with Moderate Impact *	Land Use with High Impact*
IV	25 ft	40 ft	50 ft
III	75 ft	110 ft	150 ft
II	150 ft	225 ft	300 ft
I	150 ft	225 ft	300 ft

* See Table 8C-3 below for types of land uses that can result in low, moderate, and high impacts to wetlands.

Table 8C-3. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations *
High	<ul style="list-style-type: none"> Commercial Urban Industrial Institutional Retail sales Residential (more than 1 unit/acre) Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) High-intensity recreation (golf courses, ball fields, etc.) Hobby farms
Moderate	<ul style="list-style-type: none"> Residential (1 unit/acre or less) Moderate-intensity open space (parks with biking, jogging, etc.) Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) Paved trails Building of logging roads Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	<ul style="list-style-type: none"> Forestry (cutting of trees only) Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) Unpaved trails Utility corridor without a maintenance road and little or no vegetation management.

* Local governments are encouraged to create land-use designations for zoning that are consistent with these examples.

If the developer does not wish to reduce residential density to below 1 unit/acre, then the buffer width must be increased because the adjacent land use does not **“meets the conditions outlined in section 19.10.220(D).”** While the code does not prescribe buffer widths next to High Impact land use, we can gather from

the manual's Table 8C-2 (also shown above), where a 300' buffer would be required, that the additional negative impact of high density development is significant, and much more buffer is needed.

This applies to both wetlands TOS and E1. The buffer widths shown are inadequate for high impact land use.

The BDMC addresses this case where additional buffer is necessary to protect wetland functions with the following code:

BDMC 19.10.230(2) (G)

Increased wetland buffer widths. The mayor or his/her designee **shall** require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis **when a larger buffer is necessary to protect wetland functions and values** based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

1. A larger buffer is needed to protect other sensitive areas;
2. The difference between the buffer widths proposed and the minimum required is not feasible to erode and the design or proposed site-specific control measures will not prevent adverse impacts to the wetland.

Citizen Comment Response to Applicant's Exhibit 71 - Page 18, Letter I, Public Comment

Letter I., (emphasis added with underline):

I. Buffer Averaging Plan Does Not Improve Protection.

There is no evidence in the record to support Ms. Bryant's allegation set forth above. See Wetland Resources Inc.'s comprehensive response to this allegation at Attachment 2 as well as the Buffering Averaging Plan by Wetland Resources Inc. (Exhibit 28a). Contrary to Ms. Bryant's allegation, YarrowBay submitted a wetland buffer width averaging plan pursuant to BDMC 19.10.230(H) for Wetland E1 that will improve the protection afforded by the current buffer widths. YarrowBay requested to be allowed to take small portions of the existing buffer (a maximum of eight feet in width from one point in a 110-foot buffer) and opted to allow much larger areas, in more sensitive locations, to be classified as buffer area. In all, YarrowBay requested to be allowed to use 2,117 square feet of current buffer area and offered to put 26,222 square feet of land into the buffer area. This averaging plan, which former Mayor Gordon approved on June 5, 2014 (Exhibit 30a), results in a net gain of 24,105 square feet, or more than one half of an acre, of additional buffer area. Moreover, the land that YarrowBay has suggested putting into the buffer area is in locations that are currently more sensitive, meaning this will provide greater protection for Wetland E1. By allowing this land to be used as buffer area, YarrowBay has qualitatively increased the protection for Wetland E1, in addition to quantitatively increasing the buffer area.

Unfortunately, the plan does not improve protection. The reason for the disagreement arises because the buffer boundary on Wetland E1 was never shown or described correctly. Wetland E1 requires a minimum 110' buffer. At

the north portion, the applicant stopped the buffer at an old gravel logging road, that appears in some cases to be a few feet from the wetland edge, near tract 192, and maybe 40' from the edge near tract 202. The logging road does not meet the code requirements for an ecological break (as described in BDMC 19.10.230(E)). The applicant also apparently agrees that the ecology is connected because they describe the buffer averaging "additional" area as a more sensitive location.

Condition Recommended: Applicant is required to extend the correct buffer for E1, and restore the logging road to a natural vegetated state. Then, if desired the applicant may re-apply for a buffer averaging plan.

Citizen Comment Response to Applicant's Exhibit 71 - Page 20, Numbers 4 and 5, Public Comment

4. Condition of approval number 60 states that stormwater designs "shall include low impact development techniques wherever practical and feasible" but the plat conditions include no provisions to accomplish this. Techniques such as permeable pavement on road and walkways have not been considered even though these have been found to be both "practical and feasible".

See the Staff Report's recommended condition of approval 77. This recommended condition requires the use of low impact development techniques in Plat 2C where feasible. See also Attachment 5 containing Triad's response to Ms. Carrier's above comment.

5. No consideration has been given to the reduction of runoff from individual lot landscaping.

YarrowBay asked its civil engineering consultant, Triad, to review Ms. Carrier's above comment. Please see Triad's response attached hereto as Attachment 5. In summary, the reduction of runoff from lot landscaping is not a condition of either The Villages MPD or The Villages MPD Development Agreement. In addition, the treatment of lot landscaping is typically dealt with during the construction plan phase when those details are specified. It is likely that re-use of topsoil strippings within the Plat2C site will result in a greater depth of topsoil than in the existing condition. This will help reduce runoff from lot landscaping by

providing a zone for the absorption of runoff. Again, this will be dealt with in detail when applying the City drainage code to the preparation of the final construction plans for Plat 2C.

Due to the technical nature of the information, Civil Engineer William Lider was asked to respond to the exhibit. His response is attached.

Citizen Comment Response to Applicant’s Exhibit 71 - Page 28, Attachment 1 “Tetra Tech Letter Regarding Response to Preliminary Plat 2C Public Comments”

Due to the technical nature of the information, Civil Engineer William Lider was asked to respond to the exhibit. His response is attached as Appendix B.

Citizen Comment Response to Applicant’s Exhibit 71 - Page 40, part of Attachment 3, “Wetlands & Wildlife, Inc. Memorandum Regarding Response to Public Comments Regarding Fish and Wildlife Habitat The Villages MPD Phase 2 Preliminary Plat C”

Page 40 excerpt regarding DPS Steelhead Trout:

As stated in Ms. Bryant's public comments, Puget Sound DPS steelhead trout are listed as a Threatened species. However, the project proposal does not include any impacts to Rock Creek or any open water associated with the wetland areas associated with Rock Creek. Further, Rock Creek and the associated wetland areas are regulated and protected as a Core Stream and Wetland Complex. Therefore, Rock Creek, wetland areas, and associated protective buffers will be protected in perpetuity and the project does not include any proposed impacts to the Core Stream and Wetland Complex or buffer areas. Based on this information, the proposed project will not create any adverse impacts on steelhead trout.

Wetlands & Wildlife, Inc.
Response to Public Comments–Habitat Assessment
The Villages MPD Phase 2 Preliminary Plat C

December 3, 2014

Page 4

Contrary to the above comment, the protection for the Rock Creek wetland bordering residential development in Plat 2C does not meet the city code. To avoid lengthy repetition, please refer to the comment already made under “Citizen Comment Response to Applicant’s Exhibit 71 -Page 17-18. Item F, Response to Exhibit 52: Public Comment”

This explains that **BDMC 19.10.230(2)(D) requires additional protection for high intensity land use.**

Additionally, if the city wanted to impose additional protective conditions as it has a right and obligation to do for a threatened species, the city should consider a 300’ buffer listed under ecology’s table 8C-2, “width of buffer needed to protect wetlands in Western Washington considering impacts of proposed land use.” Note the use of the word “needed.” The wetland and therefore the threatened steelhead species habitat will not be properly protected under the proposed 225’ buffer.

Citizen Comment Response to Applicant’s Exhibit 71 - Page 19, Item 2:

2. Condition of approval number 21 requires the development of a street grid system, but the plat utilizes a single access system and other design approaches that are inconsistent with a grid system.

Please see the Staff Report's response to MPD Condition of Approval No. 21 on page 50. Roads A, B, and C provide the main NW to SW access to Plat 2C while the alleys and woonerfs connect them in a modified grid. Plat 2C meets this MPD condition. In addition, please see YarrowBay's traffic consultant's response to this comment attached hereto as Attachment 7.

The applicant refers to "SW access" to the Plat, but it there is no apparent SW access. Some of the Plat drawing show what looks like a road crossing from the development tracts to the southwest over Wetland E1, but the city has not reviewed or approved this. Additionally, alleys and woonerfs are not intended for through traffic. Thus, it is hard to understand how a street grid system requirement has been met.

Citizen Comment Response to Applicant's Exhibit 71 - Page 49, Item 2:

2.0 RESPONSE TO COMMENT #6

The City of Black Diamond adopted the 2005 Edition of the Department of Ecology's Stormwater Management Manual for Western Washington (SWMMWW), with the exception of Volume 1, which was replaced by Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit (Phase II Permit), titled "Minimum Technical Requirements for New Development and Redevelopment."

The hydroperiod analysis methodology as referenced in Comment #6 was intentionally omitted from the Phase II Permit supplemental guidelines adopted by the City of Black Diamond. Regardless, Golder Associates Inc. (Golder) conducted a review of the hydrologic methodology used by Triad in their Preliminary Drainage Analysis and found it to maintain the average annual recharge volume to the wetlands from pre-developed to developed project conditions. It is our opinion that the methodology used by Triad maintains the hydrologic conditions of discharges to the wetlands and meets the requirements of the 2005 Ecology Stormwater Manual for Western Washington as adopted by the City of Black Diamond

050814661_fm villages hydroperiod.docx

Golder Associates Inc.
18300 NE Union Hill Road, Suite 200
Redmond, WA 98052 USA
Tel: (425) 882-0777 Fax: (425) 882-5498 www.golder.com



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Colin Lund
BD Villages LP

2

May 8, 2014
063-1076-001.212

and amended by the Phase II Permit. Therefore, we believe no substantial impact to wetland hydrology is demonstrated by Triad's preliminary drainage analysis.

We do recommend that during final engineering review of Phase 2 Plat C, 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.

The city code does have the exception noted. However, the applicant states in the development agreement. It would be perfectly legal for the development agreement to stipulate a more environmentally protective or more restrictive toward the developer requirement that goes above and beyond the city code. And in fact, that is what it does. It is clear throughout the DA that the 2005 Stormwater manual is required.

Regarding the 2005 manual, the following letter from Department of Ecology states that Appendix 1-D should be used. The record does not show that the applicant did the required monitoring referenced in the letter below.

From: Heye, Amanda (ECY)
To: William Lider
Cc: Garsley, Dan (ECY); Howle, Douglas (ECY); O'Brien, Ed (ECY); Lakin, Fomoran (ECY); Dettlback, Anne (ECY)
Subject: RE: City of Black Diamond Stormwater Manual
Date: Wednesday, December 17, 2014 2:48:52 PM

Bill,

Thanks again for the questions. First, a clarification: WWHM does not calculate wetland hydroperiods; the modeling criteria (in both the 2005 and 2012) simulate inputs that are designed to preserve the wetland. The actual hydroperiods of the wetland are best observed through extensive monitoring as described in Appendix I-D. A slight difference that I thought was worth clarifying.

As I stated below, you cannot demonstrate compliance with the modeling criteria using a single event model. It appears, based on your description, that the proponent was attempting to use a single event model along with Ecology's modeling criteria. This does not appear to be the correct methodology. However, Ecology does not evaluate specific site plans. It is the Permittees' responsibility (in this case, the Municipality) to ensure that the development in their community meets their NPDES Permit.

The NPDES Permit does allow for some rare exceptions and variances. There is also a provision within the Permit that allows a municipality to demonstrate other approaches to satisfying Ecology's Minimum Requirements. I do not know if it was the intent of Black Diamond to employ one of these provisions within the NPDES Permit.

Let me know if I can be of any further assistance.

Regards,

Amanda

Amanda Heye, P.E.

Amanda Heye | Stormwater Engineer | WA Department of Ecology - Water Quality Program
PO Box 47600 Olympia, WA 98504-7600 | amanda.hey@ecy.wa.gov | (360) 407-6457

From: William Lider [mailto:Bill@LiderEngineering.com]
Sent: Tuesday, December 16, 2014 2:49 PM
To: Heye, Amanda (ECY)
Subject: RE: City of Black Diamond Stormwater Manual

Amanda just to confirm, in your opinion does both the 2005 and 2012 SWMMWW manuals require the use of WWHM or similarly approved continuous simulation models to calculate wetland hydroperiods for Class I or Class II wetlands?

Preliminary Plat 2C
Rebuttal to Exhibit 72 from Hearing of December 11, 2014
Date: December 17, 2014
From: Judith Carrier, Kristen Bryant, Gil Bortleson

Document Format: This document started with a copy of Exhibit 72. The copy may not match perfectly the original due to scanning errors.

Our comments are throughout in bold italic red text.

VIA HAND DELIVERY

Mr. Phil Olbrechts
Hearing Examiner
City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010

Re: Applicant's Request for Plat 2C Approval with Revisions to Plat Conditions of Approval
Preliminary Plat 2C, PLN13-0027

Dear Hearing Examiner Olbrechts:

This firm represents BD Village Partners, LP ("Yarrow Bay"), the applicant for the above-referenced preliminary plat, commonly referred to as "Plat 2C.;"

Introduction and Request for Approval of Plat 2C

Yarrow Bay concurs with the City Staff recommendation for approval, and requests that the Examiner approve the preliminary plat for Plat 2C, subject to conditions. The Preliminary Plat 2C is depicted in the most recent plan set, which includes a table labeled "Transfer of Development Rights (TDR) Information" on the cover page.¹

The City Staff Report is quite lengthy. For a good summary of how Plat 2C meets the applicable plat approval criteria found in BDMC 17.15.020, we direct you to pp. 174-181.

For the reasons explained in this letter, Yarrow Bay requests revisions and additions to the Staff Recommended Conditions of Approval for Plat 2C. This letter also asks the Examiner to take note of certain clarifications to statements made in the Staff Report.

Finally, we ask that you focus your decision on Plat 2C. While our presentation materials will include responses to all public comments received, many of those comments are irrelevant to Plat 2C. Similarly, there appears to be a strong desire in the community to restate all conditions of approval from

¹ The cover page for the most recent Preliminary Plat plan set is, unfortunately, un-dated, but can be easily distinguished from prior sets due to the addition of the table labeled "Transfer of Development Rights (TDR) Information."

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Hearing Examiner
December 11, 2014
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The Villages MPD Permit and all terms of The Villages Development Agreement for purposes of imposing conditions on Plat 2C itself. As the Examiner is aware, all Conditions of Approval included within The Villages MPD Permit Approval (Black Diamond Ord. 10-946) and incorporated as Exhibit "C" to The Villages MPD Development Agreement (Black Diamond Ord. 11-970) and the Development Agreement itself are independently applicable to each The Villages MPD implementing project, such as Plat 2C, and do not need to be restated as a project-specific condition of approval in order to control. The staff report states in various places that certain MPD Permit Approval conditions do not apply to the Plat. ***We agree that the MPD Permit conditions control, but not listing them may confuse future permit reviews by suggesting that only those conditions that have been expressly stated in the Plat conditions apply. Applicant's contention that they do not need to be restated as project-specific conditions of approval is trumped by a precautionary approach that would state each condition's applicability to the Plat. An alternative could be a condition recorded on the Plat that "all MPD Permit Conditions adopted by Black Diamond Ordinance 10-946 apply to the Plat and all its implementing permits".***

Comments and Clarifications to Staff Report

We ask that the Examiner take note of the following comments and clarifications regarding statements in the Staff Report.

1. In the Chronology, at Item 4 (p. 13), this date should be November 8, 2013 instead of 2014.

2. At p. 17, in the description of Applicable Codes and Standards, under The Villages MPD Permit Conditions of Approval (Ordinance No. 10-946), the statement is made that the Hearing Examiner approved the MPD Permit. As the Examiner is aware, the Examiner recommended approval and the final approval was granted by the Black Diamond City Council.

3. At p. 71 and p. 74, the Staff discussion of MPD Condition of Approval 125 and Development Agreement Section 8.2.6 could be misleading to those not unfamiliar with the history of The Villages permitting process. The 300-foot wildlife corridor discussed in the MPD Conditions of Approval and the Development Agreement was not addressed through conditions on Preliminary Plat IA. Rather, provision of the corridor is a generally applicable requirement, which was met by approval of the Development Agreement, including Sheet 3 of Exhibit G (Constraints Map), which located and mapped the wildlife corridor, to the south of the Plat 2C site. ***We support the inclusion of the staff discussion regarding the wildlife corridor. The Development Agreement cannot itself "meet" a requirement that is intended to apply to implementing projects. A determination of compliance with MPD conditions of approval is required during implementing project review, and the staff discussion is intended to document that compliance.***

4. At p. 77, the Staff Report discussion of the requirements of BDMC 19.10.130 confirms that the City's peer review wetlands expert is qualified under the City's requirements. Likewise,

Yarrow Bay's experts at WRI are qualified as demonstrated by the curriculum vitae to be submitted at the hearing.

5. At pp. 106 - 107, regarding Section 7.2.1 of The Villages Development Agreement, the Staff Report could have also stated that The Villages Development Agreement at Section 7.2.1., provides that any "application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement." *A certificate of water availability is a requirement that flows from State law regarding subdivisions. At the time of each subdivision, a finding of water availability, normally by a certificate of water availability from the water purveyor, must be made. The Applicant's suggestion here could have the result that this and future implementing projects would not be evaluated for availability of water. The Development Agreement's statement does not guarantee the physical reality of water availability. What if, for example, a portion of the City's water system or the Tacoma Pipeline fails prior to the review of a future implementing project? Would the City slavishly rely on the Development Agreement and order by fiat that water was available? For another example, what if that portion of the MPD that is served by the Covington Water District is denied service availability?*

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Requested Revisions and Additions to the Staff Recommended Conditions of Approval

Enclosed with this letter is a markup of the Staff recommended conditions for Plat 2C. Yarrow Bay requests the Examiner approve Plat 2C subject to the Conditions listed at Staff Report pp. 181- 190, as revised and modified on the enclosed markup. The rationale for each modified condition is listed here:

Plat 2C, Conditions 1 and 15:

Condition 15, as drafted by Staff, applies to "off-site" improvements that will provide service to Plat 2C, and Yarrow Bay accepts Condition 15 as drafted. Yarrow Bay asks that Condition 1 be revised to clarify its applicability to "on-site" improvements within Plat 2C. ***Condition 1 is simply re-stating a legal requirement that the enumerated services must be "completed or bonded" prior to final plat approval. These services must be completed and bonded, as Condition 1 states, whether they are on-site or off-site. If at the time of final plat approval off-site services that are required to serve the plat are not completed or bonded, then the final plat cannot be approved. Condition 15 describes off-site improvements, but it does not require, as Condition 1 does, that the stated services must be either constructed or bonded at the time of final plat approval. We recommend that the existing language of Condition 1 remain unchanged because it states a mandatory legal finding for final plat approval.***

Plat 2C, Condition 2:

Consistent with the philosophy stated above, Condition 2 ought not restate terms that already apply pursuant to the MPD Conditions of Approval and the Development Agreement. As drafted by Staff Condition 2 largely repeats obligations that independently exist and apply. However, rather than delete those terms, Yarrow Bay's requested revisions alter the approval authority for the CC&Rs to match the PPIA conditions (approval by the Designated Official), and to state more clearly that the CC&R provisions of concern to the City are tied to those prior approvals. ***We agree that Condition 2 should not be revised to delete the requirements of the MPD Conditions of Approval and Development Agreement. We commented earlier that the specific conditions of the CCRs should be determined at Preliminary Plat to the extent possible. If the Hearing Examiner allows for CCRs that are not thoroughly reviewed and specific, we do support an amendment that states that the Designated Official shall review and approve. We do not agree that the conditions for Plat 2C should match the PPIA conditions. PPIA conditions are not part of the record for Plat 2C, they have not been reviewed in the context of Plat 2C, and they have not been subject to public review in these proceedings. The Applicant's proposed amendment would amount to an amendment to the MPD conditions of approval and Development Agreement in that it would bind future plats to CCRs that were approved for the first plat.***

Plat 2C, Condition 3:

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Condition 3 is revised to correct a date reference. It appears the City pulled the date "December 6, 2016" from the PPI A plat approval conditions. Pursuant to MPD Condition of Approval 156, the schedule for the fiscal analysis update is 5 years from the most recent update. Based on the fiscal update that was submitted and approved for Phase 2 of The Villages, the correct date is June 16, 2019. ***We commented earlier that the fiscal analysis for PPIA and Plat 2C are required by the MPD conditions of approval and the Development Agreement to be done independently rather than together as proposed by the Applicant. If the Hearing Examiner concurs with our comment, then we have no objection to two different dates. However, if they are merged as proposed by the Applicant, then the date applicable to PPIA should apply.***

Plat 2C, Condition 4:

Condition 4 is revised to clarify that the easements will be shown on the face of the "final" plat.

Plat 2C, Condition 9:

Condition 9 is revised to address two timing concerns. First, that the Master Developer or HOA might obtain the franchise agreement well before utility permit review for Plat 2C, and, second,

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that if that has not occurred the franchise agreement should be requested at the time of the first relevant utility permit review for Plat 2C, so that it can be approved before the final plat is approved.

Plat 2C, Condition 11:

Condition 11 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, and is revised to better reflect the language of those existing documents. ***The Applicant's proposed amendment is more than a clarification. The Applicant's proposed amendment would defer important environmental conditions until after impervious surfaces are created. However, clearing and grading will be a major contributor to phosphorus loads and should not be approved until the environmental conditions for baseline data and management programs are completed.***

Plat 2C, Condition 12:

Condition 12 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, and is revised to better reflect the language of those existing documents. ***The Applicant's proposed amendment is more than a clarification. The Applicant's proposed amendment would defer important environmental conditions until after impervious surfaces are created. However, clearing and grading will be a major contributor to phosphorus loads and should not be approved until the environmental conditions for baseline data and management programs are completed.***

Plat 2C, Condition 13:

Condition 13 is revised in response to public comments to delete the word "subtle," so that it is clear that any changes are required to meet the condition, and is revised to reflect the recommendation of Yarrow Bay's consultants, as described in Yarrow Bay's response to public comments. ***We do not support the amendment. The Applicant's amendment mischaracterizes our earlier comment and actually goes backwards from the standpoint of the public interest. Our comment was directed to the need to provide as much detail in the preliminary plat design as possible and not defer important decisions that may be brought forward as "subtle" design changes without public review. Our consultants have testified as to the inadequacy of the stormwater design review, and those concerns may well be shared by the Applicant's consultant who recognized that the submittals may need to be revised, with "subtle" used as a term of art to avoid the discussion at this time. Moreover, we have testified as to the inadequacy of the methodology used by the Applicant, so why would be satisfied with a condition that would give it specific approval and standing in a plat condition?.***

Plat 2C, Condition 16:

The final sentence of Condition 16 is deleted, because it is inconsistent with the terms of other conditions and State law which require dedication of improvements on the face of the final plat.

Plat 2C, Condition 26:

Condition 26 is revised to add language that appears in the Development Agreement which appears to have been inadvertently omitted, and to add the correct recording number reference.

Plat 2C, Condition 27:

Condition 27 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, as well as Plat IA condition language, and is revised to better reflect the language of those existing documents. ***We do not support this amendment. MPD Permit Condition #32 applies to implementing projects including Plat 2C. The review that led to Plat 1A's Condition 30 is not part of the record for Plat 2C.***

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Plat 2C, Condition 34:

Condition 34 is revised to clarify its relationship to Condition 15 and to re-confirm that, as stated in Condition 15, certain improvements may be built or bonded. ***We do not support this amendment. MPD Permit Condition #32 applies to implementing projects including Plat 2C. The review that led to Plat 1A's Condition 30 is not part of the record for Plat 2C.***

Plat 2C, Condition 35:

34. Condition 35 is amended because it is inconsistent with the terms of other conditions and State law which require dedication or conveyance on the face of the final plat. ***This may be more than a technical amendment. The proposed language is not acceptable unless the final plat also includes the requirement to legally protect the designated tracts from alteration or development.***

Plat 2C, Condition 37:

Condition 37 is amended to be clear that the buffer averaging plan be followed and that lands that are currently wetland buffer, but which have been approved under the buffer averaging plan to become development area, may be cleared and graded, just like lands where temporary buffer impacts are required, while also assuring protection for all other buffer areas. ***The proposed amendment is unclear and confusing. Staff proposed language accomplishes what Applicant seems to want, namely that the areas added for development as a result of averaging may be cleared and graded. Moreover, we testified at hearing that the plat map showing the buffer averaging area incorrectly established the buffer boundary as an old unimproved logging road and thereby dramatically reduced the buffer area below code requirements. We request that the Hearing Examiner rule that the buffer boundary to the north of wetland E1 be correctly established at 110' and that the temporary logging road be restored. This action would make this amendment moot.***

Plat 2C, Condition 44:

Given the amount of wetland area contained within the boundaries of Plat 2C, determining where fences should be placed to protect the wetland areas is more easily depicted on a map, rather than in text. Condition 44 is revised to reflect a map that Yarrow Bay has also prepared. In addition, while the fencing may be split rail, split rail fences are not required by the Code or applicable

design standards. Thus, the Condition also is revised to allow flexibility in fence style. ***We do not support the amendment. The Plat map shows general boundaries and may be subject to revision for utilities, roads etc. Mapping the fenced areas now could result in areas being missed or improperly fenced. The staff's condition establishes a "performance standard" of fencing adjacent land that can be applied regardless of plat configuration. Moreover, the preference for split rail fencing was the subject of fairly extensive discussion during MPD deliberations and is an important rural design element that should not be eliminated. Allowing "flexibility" will likely result in the elimination of split rail given the cost difference between chain link and split rail.***

Plat 2C, Conditions 49 and 50:

Conditions 49 and 50 erroneously state they are MDNS mitigation measures. Yarrow Bay recommends deletion of that language.

Plat 2C, Condition 64:

Condition 64 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, and is revised to better reflect the language of those existing documents. Specifically, there is no requirement that the water plan amendment be initiated by Master Developer (versus the City). Rather, the requirement is that the plan update be paid for by the Master Developer. ***We do not support the amendment. Since Condition 64 is based on a voluntary Applicant request to modify the City's Water Comprehensive Plan, it is appropriate to require that the Applicant make application for a modification in addition to paying for it. If a requirement is not addressed in the MDP permit approval or Development Agreement, it does not mean that it cannot be addressed during Plat review.***

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Plat 2C, Condition 65:

Condition 65 is revised to be clear that it applies to the application being approved, Plat 2C.

Plat 2C, Condition 66:

Yarrow Bay recommends correction of a typographical error in Condition 66.

Plat 2C, Condition 67:

Condition 67 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, and is revised to better reflect the language of those existing documents.

Plat 2C, Condition 70:

Condition 70 restates independent requirements of the MPD Conditions of Approval, and the Development Agreement, and is revised to better reflect the language of those existing documents.

Plat 2C, Condition 73:

Yarrow Bay has resubmitted the Preliminary Plat plan set to the City. That resubmittal includes a table on the cover page labeled "Transfer of Development Rights (TDR) Information" that provides the information requested in Condition 73. Therefore, Yarrow Bay recommends that Condition 73 be deleted.

Plat 2C, Condition 80:

80. The desired parking prohibition contained in Condition 80 is already assured by Conditions 30 and 31. In addition, Condition 80 would also prohibit parking on even 28 foot wide woonerfs, where parking has been expressly designed to occur. Therefore, Yarrow Bay recommends that Condition 80 be deleted. *We do not support the amendment. Restricting parking on alleys and woonerfs is a requirement for fire safety. Condition 30 addresses signage and Condition 31 addresses minimum road widths. Neither Condition 30 nor 31 directly restricts parking. There is no information in the record to support the Applicant's contention that 28 foot wide woonerfs are appropriate for parking.*

Plat 2C, Condition 81:

Condition 81 is revised to state that any recommended actions which result from the shovel

probe testing, will become conditions of approval for subsequent clearing and grading permits. ***We do not support the amendment. Restricting parking on alleys and woonerfs is a requirement for fire safety. Condition 30 addresses signage and Condition 31 addresses minimum road widths. Neither Condition 30 nor 31 directly restricts parking. There is no information in the record to support the Applicant's contention that 28 foot wide woonerfs are appropriate for parking.***

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81. This is intended to address a concern raised in public comments that the recommended actions of the shovel probe testing would somehow not be enforceable. ***We do not support the amendment. The recommendations of the "qualified professional" should not be the final word without review by staff and public comment. We propose adding after "for Plat 2C" the following: "subject to review and approval by the Designated Official after public input from affected tribes and other parties".***

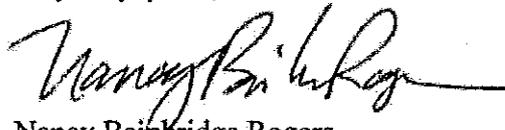
Plat 2C, New Condition A:

- A. In response to public comments, Yarrow Bay offers Condition A, to state the independent requirement of State law that in the event certain State level permits are required, those permits will be obtained.

Conclusion

Thank you for your careful attention to these matters. Again, Yarrow Bay requests that Preliminary Plat 2C be approved, as depicted in the most recent plan set (which includes the table labeled "Transfer of Development Rights (TDR) Information" on the cover page), and that the Plat 2C approval be subject to the Conditions proposed by City Staff as amended in this letter and enclosure.

Very truly yours,



Nancy Bainbridge Rogers

NBR/kgb
Enclosure

VI. RECOMMENDED CONDITIONS OF APPROVAL

Boldface indicates the item is a general requirement of The Villages Development Agreement.

GENERAL

All on-site public utilities (water, sewer, and stormwater pipes and facilities) and streets necessary to serve Plat 2C must be completed or bonded prior to final plat approval. Maintenance responsibility assigned to private property owners are to be indicated on the plat for Plat 2C. These conditions will be reviewed at the final plat stage. ***We do not support amendment. Condition 1 is simply re-stating a legal requirement that the enumerated services must be "completed or bonded" prior to final plat approval. These services must be completed and bonded, as Condition 1 states, whether they are on-site or off-site. If at the time of final plat approval off-site services that are required to serve the plat are not completed or bonded, then the final plat cannot be approved. Condition 15 describes off-site improvements, but it does not require, as Condition 1 does, that the stated services must be either constructed or bonded at the time of final plat approval. We recommend that the existing language of Condition 1 remain unchanged because it states a mandatory legal finding for final plat approval.***

- 1.
 2. Prior to final plat approval of Plat 2C, the applicant shall submit Covenants, Conditions, and Restrictions (CCRs) for Plat 2C for review and approval by City Attorney as to form the Designated Official as defined in The Villages MPD Development Agreement. The Designated Official's review and approval shall be limited to the CCRs shall contain: compliance with (i) the Conditions of Approval of The Villages MPD Permit (Black Diamond Ord. No. 10-946); (ii) the provisions of The Villages MPD Development Agreement dated December 12, 2011 (Black Diamond Ord. No. 11-970); and (iii) the inclusion of the specific items described, in general, below. Provided, if CCRs have already been submitted and approved by the Designated Official that bind a certain plat or division, this condition shall be deemed satisfied. ***We commented earlier that the specific conditions of the CCRs should be determined at Preliminary Plat to the extent possible. If the Hearing Examiner allows for CCRs that are not thoroughly reviewed and specific, we do support an amendment that states that the Designated Official shall review and approve. We do not agree that the conditions for Plat 2C should match the PPIA conditions. PPIA conditions are not part of the record for Plat 2C, they have not been reviewed in the context of Plat 2C, and they have not been subject to public review in these proceedings. The Applicant's proposed amendment would amount to an amendment to the MPD conditions of approval and Development Agreement in that it would bind future plats to CCRs that were approved for the first plat.***
- A covenant stating the property owners' or HOA's specific responsibilities for stormwater facility maintenance (including rain gardens) and which will be included on the face of the plat and recorded against each lot in the subdivision.
 - A covenant stating the property owners' or HOA's specific responsibilities for maintaining and ensuring public access to the public trail and parks tracts within Plat 2C. Covenant to include maintenance of pet waste stations.

- A covenant stating the property owners' or HOA's specific responsibilities for maintaining and protecting the sensitive areas within designated tracts 903, 927, 928, 929, and 930.
- A statement that all alleys and woonerfs in Phase 2C shall be privately owned and maintained by the applicant and/or the owners of property in the plat.
- A statement that the applicant or future Homeowners Association shall be required to maintain all street side landscaping, (pursuant to MPD Permit condition of approval No. 23).
- A statement of the property owners' or HOA's specific responsibilities, if any, for maintaining signage prohibiting parking on private streets and any enforcement responsibilities.
- An integrated pest management system to limit the use of fertilizers, herbicides and pesticides within twenty-five feet of the buffer of wetlands E7, E8, and E10, within fifty

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feet of the buffer of wetland E 1 and within one hundred feet of the buffer of wetland TOS.

- Restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc.) that are known to adversely impact water quality of runoff.
- A prohibition on exterior light intrusion into, or direct lighting of, the buffer areas.
- A provision allowing the use of green technologies such as solar panels.
- The following two paragraphs related to street maintenance:
 - Master Developer agrees to maintain all private streets, alleys and autocourts serving 20 units or less as constructed in accordance with each approved implementing project, for a period of three years from final plat recording or other implementing approval, unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association), the Master Developer's street maintenance obligation, as set forth herein, shall automatically renew for an additional two year period, and continue every two years thereafter. The Master Developer, in its sole discretion, may elect to transfer the private street maintenance obligation to a homeowners' association or other acceptable entity following its initial three year obligation. The Master Developer's failure to adequately maintain private streets in accordance with this agreement will result in written notice from the City to the Master Developer requiring compliance. If a private street is not maintained in a manner adequate to maintain safe passage, in the reasonable determination of the Designated Official within ten (10) days of delivery of the written notice the City may perform the required maintenance with the reasonable costs associated therewith charged to the Master Developer. In the event of an emergency, the applicable notice period shall be reduced to twenty-four (24) hours and the City may provide notice via a phone call to the Master Developer's designated representative.
 - Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City's total costs arising from its performance of the maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for

unpaid sewer rates and charges set forth in RCW 35.67.220 –280, as amended.

3. In order to ensure compliance with The Villages MPD Condition of Approval No. 156, the Master Developer's annual Total Funding Obligation for a given year shall be equal to or greater than the Net Annual General Fund Deficit for such year (as set forth in Table 2 of the Villages Plat 2C Fiscal Impact Analysis dated April 28, 2014 and approved June 16, 2014), provided a deficit is shown in such table, until a new fiscal analysis is prepared and approved by the City's Designated Official pursuant to the terms of The Villages MPD Development Agreement Section 13.6, which shall be no later than the earlier of (1) December 6, ~~2016~~ June 16, 2019; (2) prior to the start of the next phase of The Villages and/or Lawson Hills MPDs; or (3) during Annual Review if the Master Developer elects to have a new targeted fiscal analysis prepared in its sole discretion for the next calendar year. At such time, the Master Developer's annual Total Funding Obligation to ensure compliance with Condition of Approval No. 156 shall be reevaluated. No implementing permits or building permits shall be issued by the City of Black Diamond for Plat 2C of The Villages MPD if the Master Developer fails to make an annual Total Funding Obligation payment as described herein according to a payment schedule mutually agreed to by the Master Developer and MDRT as part of the Annual Review. All capitalized terms not otherwise defined in this condition shall be as defined in the MPD Funding Agreement (Exhibit "N" of The Villages MPD Development Agreement). ***We commented earlier that the fiscal analysis for PPIA and Plat 2C are required by the MPD conditions of approval and the Development Agreement to be done independently rather than together as proposed by the Applicant. If the Hearing Examiner concurs with our comment, then we have no objection to two different dates. However, if they are merged as proposed by the Applicant, then the date applicable to PPIA should apply.***
4. All easements assigned to private property owners shall be shown on the face of the final plat.
9. The HOA or Master Developer must obtain a franchise agreement for private stormwater systems that are in public rights-of-way. This condition will be enforced during utility permit review. If a franchise agreement has not previously been approved, then a franchise agreement application shall be requested by the HOA or Master Developer at the time of the first utility permit review that includes private stormwater systems within the future public rights-of-way for this Plat.
11. As a condition of the City's approval of the first utility permit, the applicant shall provide sufficient information for the City to ensure that MPD permit conditions of approval Nos. 67, 68, 70, 73, 75, 77, 79, 81, 82, and 85 (Exhibit 14) have been satisfied. Prior to the approval of the first utility permit that allows construction of impervious surfaces that will drain to Lake Sawyer, the applicant shall comply with MPD Condition Nos. 81 and 85 including: establishing a pre-construction baseline phosphorus load from the project prior to the construction of impervious surfaces; identifying any AKART opportunities related to phosphorus reduction, including

monitoring capabilities in the stormwater utility system; and a program for approval of an end-of-water-year comparison of actual and base-load phosphorus discharge, after impervious surfaces have been constructed. (These items may not be deferred through surety.) This condition must be satisfied before the City will issue the first utility permit that allows impervious surface construction. ***We do not support this amendment. The Applicant's proposed amendment is more than a clarification. The Applicant's proposed amendment would defer important environmental conditions until after impervious surfaces are created. However, clearing and grading will be a major contributor to phosphorus loads and should not be approved until the environmental conditions for baseline data and management programs are completed.***

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12.. The applicant shall submit for review and approval the phosphorus baseline monitoring plan--referenced in the Development Agreement, Exhibit O, of which the most recent update is Exhibit 13c. The City shall not approve any permits allowing construction of any impervious surfaces until the monitoring report is submitted and approved. This condition will be enforced with utility permits. *We do not support this amendment. The Applicant's proposed amendment is more than a clarification. The Applicant's proposed amendment would defer important environmental conditions until after impervious surfaces are created. However, clearing and grading will be a major contributor to phosphorus loads and should not be approved until the environmental conditions for baseline data and management programs are completed.*

13. The Preliminary Drainage Analysis (Exhibit 20) must be updated during final engineering review of Plat 2C to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings. The update to the preliminary drainage analysis should use the same methodology as the applicant's consultant previously completed. [Note: MDNS Mitigation Measure] *We do not support the amendment. The Applicant's amendment mischaracterizes our earlier comment and actually goes backwards from the standpoint of the public interest. Our comment was directed to the need to provide as much detail in the preliminary plat design as possible and not defer important decisions that may be brought forward as "subtle" design changes without public review. Our consultants have testified as to the inadequacy of the stormwater design review, and those concerns may well be shared by the Applicant's consultant who recognized that the submittals may need to be revised, with "subtle" used as a term of art to avoid the discussion at this time. Moreover, we have testified as to the inadequacy of the methodology used by the Applicant, so why would be satisfied with a condition that would give it specific approval and standing in a plat condition?.*
16. The transportation facilities in Plat 2C shall comply with the terms and conditions set forth in the Traffic Impact Study prepared by Transpo Group dated December 19, 2013. (Exhibit 24) The terms and conditions include, but are not limited to, provision of three, two-lane public roadways with onstreet parking, curb bulb-outs at 13 intersections and at two mid-block locations (page 5 of the Traffic Impact Study), four private alleys and three woonerfs. Roads A, B, and C shall be dedicated to the City following their acceptance by the City.
26. Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City's total costs arising from its performance of the maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12)

percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

- a. In the event that the Owners' Association/Homeowners' Association fails to perform any maintenance of private street, alley or auto court as required by Section 6.5 of The Villages Development Agreement recorded under recording No. 20120130000655 and, as a result, the City of Black Diamond performs said required maintenance, the lot owners of the [plat/binding site plan] acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required private street maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement shall be a lien against all property, including individual lots, within

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this {plat/binding site plan], and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended.

27. Pursuant to MPD Permit Condition #32, prior to issuance of the Certificate of Occupancy for The Village MPD's 200th dwelling unit, the applicant shall comply with the Roberts Drive sidewalk and pedestrian connection requirement under Section 11.6 of The Villages Development Agreement, as updated by Condition 30 of the Black Diamond Hearing Examiner's decision for Preliminary Plat 1A, PLN11- 0001, dated December 10, 2012. This will be to provide a connecting sidewalk and safe pedestrian connection from the frontage improvements along parcel V13 to the northeast corner of the Guidetti Parcel along Roberts Drive. ***We do not support this amendment. MPD Permit Condition #32 applies to implementing projects including Plat 2C. The review that led to Plat 1A's Condition 30 is not part of the record for Plat 2C.***
35. As part of compliance with Condition 15, ~~the~~ the City will not issue final plat approval for the Preliminary Plat for Phase 2 Plat C until one of the following conditions has occurred:
- a. Phase IA connecting road (currently named Willow Avenue SE) is constructed by the applicant and accepted by the City, or bonded for construction; or
 - b. A road connecting Roberts Drive to Road A of Plat 2C and meeting the standards and requirements of the BDEDCS and The Villages Development Agreement has been:
 - i. built within the Temporary Access and Utility Easement in Phase IA (Exhibit 44) and accepted by the City; or
 - ii. bonded for construction.

We do not support the amendment. Condition #15 is a specific requirement that is not dependent on Condition #34. Applicant's amendment here effectively modifies Condition #15 by stating that its provisions are partially met by compliance with Condition #34. Moreover, since bonding of improvements is discretionary, the City may have good reason not to include bonding as an option for the project described in "a."

36. The applicant will conserve the identified open space tracts (Sheet CV4, Exhibit 2) on Preliminary Plat Phase 2 Plat C prior to final plat appraisal and ensure that all sensitive areas and buffers are in separate protection tracts pursuant to BDMC 19.10.ISO(B), for purposes of conveyance or dedication to appropriate entities on the face of the final plat. [Note: MDNS Mitigation Measure] ***We do not support the amendment unless it is stated that the purpose of the separate protection tracts is also to legally protect them from alteration or development, not just to convey or***

dedicate. We would propose the addition after "appropriate entities" of: "for the permanent protection and development limitations consistent with BDMC."

37. Clearing and grading activities are prohibited in the buffer areas, inclusive of areas added for the averaging approval, EXCEPT for temporary disturbances that are required for grading and construction as described in the averaging approval, and EXCEPT for temporary disturbances that are required to install utilities and construct the soft-surface trail, and EXCEPT for areas of existing buffer will be permanently impacted via conversion to development area in exchange the protected buffer addition area elsewhere. *The proposed amendment is unclear and confusing. Staff proposed language accomplishes what Applicant seems to want, namely that the areas added for development as a result of averaging may be cleared and graded. Moreover, we testified at hearing that the plat map showing the buffer averaging area incorrectly established the buffer boundary as an old unimproved logging road and thereby dramatically reduced the buffer area below code requirements. We request that the Hearing Examiner rule that the buffer boundary to the north of wetland E1 be correctly established at 110' (or more as required by code and explained in separate citizen comments) and that the temporary logging road be restored. This action would make this amendment moot.*

44. Pursuant to BDMC 19.10.220(D), wetland buffer boundaries adjacent to land lots and other areas within this plat that are readily accessible to people as shown on the map submitted as Exhibit _____, shall be permanently delineated by split-rail or other fencing

and identification signs, as approved by the City. Fencing shall be installed prior to final plat. [Note: MDNS Mitigation Measure] We oppose the amendment. *We do not support the amendment. The Plat map shows general boundaries and may be subject to revision for utilities, roads etc. Mapping the fenced areas now could result in areas being missed or improperly fenced. The staff's condition establishes a "performance standard" of fencing adjacent land that can be applied regardless of plat configuration. Moreover, the preference for split rail fencing was the subject of fairly extensive discussion during MPD deliberations and is an important rural design element that should not be eliminated.*

49. The noise hotline shall remain open until further notice from the City. [fote: MDNS Mitigation Measure]
50. The applicant will continue to convene the Phase 1A Noise Review Committee through construction of Plat 2C. [fote: MDNS Mitigation Measure]
64. Pursuant to MPD condition of approval #52, should the applicant desire new water distribution alternatives that are not consistent with the City's Water Comprehensive Plan in effect as of the date of The Villages MPD Permit Approval, the applicant shall submit an application for an amendment to the

City's Plan and be responsible for the cost of updating the plan, if needed.

Note: Revised language not shown. We do not support the amendment. Since Condition 64 is based on a voluntary Applicant request to modify the City's Water Comprehensive Plan, it is appropriate to require that the Applicant make application for a modification in addition to paying for it. If a requirement is not addressed in the MDP permit approval or Development Agreement, it does not mean that it cannot be addressed during Plat review.

65. The parks on tracts 906, 909, 911, and 921 shall be constructed or bonded prior to occupancy or issuance of final inspections for 60% of the dwelling units located in Plat 2C within 1/4 mile of the tracts 906, 909, 911, and 921 in Plat 2C.
66. The trails shown on Plat 2C shall be constructed by the Master Developer and maintained by the HOA. The segment of the trail on Plat 2C that corresponds to the trail shown on Figure 9.2 of the DA must extend to the boundary of Plat 2C at the future Willow Avenue SE and through tract 902. All trails will be constructed or bonded prior to final plat approval.
67. Table 9-5 of The Villages Development Agreement sets triggers for providing recreational facilities. One trigger is at the sooth dwelling unit. In the event the sooth Dwelling Unit is built as part of Plat 2C, the City will not issue a certificate of occupancy for that SOOth dwelling unit in any Phase until the required recreation facilities required at the trigger point in Table 9-5 of The Villages Development Agreement are constructed.
70. Pursuant to MPD Permit condition of approval No. 94, and Section 9.9.3 of the Development Agreement, public access is authorized to all parks and trails in Plat 2C, unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons. The face of the plat shall contain a note to that effect guarantee public access to the parks traets and traets econtaining trails. **We do not support the amendment. The amendment could unreasonably restrict public access. "Convenience" is far too broad, as is "Maintenance". Future HOA could restrict public access for the "convenience" of residents or to reduce maintenance costs, for example.**
73. Sheet CV 1, the cover sheet of the Preliminary Plat for 111a12C, shall have a table that shows the ratio of base density to planned density for Phase 2, and how Plat 2C units affect the totals for base and planned densities and the TDRs required (if any) for each plat or division within Phase 2.
82. Parking on private alleys and woonerfs is prohibited so as to ensure unobstructed access for emergency vehicles. **We do not support the amendment. Restricting parking on alleys and woonerfs is a requirement for fire safety. Condition 30 addresses signage and Condition 31 addresses minimum road widths. Neither Condition 30 nor 31 directly restricts parking. There is no information in the record to support the Applicant's contention that 28 foot wide woonerfs are appropriate for parking.**

83. Prior to submittal of the first clearing/grading permit for any portion of Plat 2C, the proponent shall place additional archaeological shovel probes on lands near Rock Creek (Parcel E) and provide a report to the City prepared by a qualified professional summarizing the results and any recommended actions. Those recommended actions from the report shall be conditions of any clearing and grading permit issued by the City for Plat 2C. [Note: MDNS Mitigation Measure] ***We do not support the amendment. The recommendations of the "qualified professional" should not be the final word without review by staff and public comment. We propose adding after "for Plat 2C" the following: "subject to review and approval by the Designated Official after public input from affected tribes and other parties".***

Yarrow Bay's Proposed New Conditions

- A. Should soil disturbing activities associated with Plat 2C in the Rock Creek basin require review by the Washington State Department of Fish and Wildlife and/or a Hydraulic Permit Approval, the Master Developer shall secure such review and/or permit, as necessary.

William (Bill) Lider, PE, CESCL

Principal Civil and Drainage Engineer

Bill has over thirty-five years experience in engineering, design, construction engineering, and inspection services in civil site work, erosion control, stormwater and utility design for municipal and private clients. Bill has provided expert testimony on stormwater issues and helped to resolve many NPDES permit violations by providing innovative solutions. He has been the lead civil engineer responsible for budget, cost estimates, specifications, project management, preparation of reports and AutoCAD design. Bill is familiar with design requirements specific to the City of Seattle, including coordination with public and private utility purveyors.

Bill has designed high voltage SCL duct banks following NDK-10 & NDK-20 standards for proper bend radii for steel, PVC, and fiberglass conduits, red fluidized thermal backfill (FTD), multi-conduit electrical ducts, panel vaults up to 10' x 20' (including sump pump design), hand-holes all in the downtown area per NDK-30. He has designed road and sidewalks per COS Director's Rule for "Street & Sidewalk Opening and Restoration" for repair of pavements as a result of trenching.

Maltby Food Bank, Snohomish, WA

Bill was lead civil site designer and engineer of record for a 1-acre commercial site for the Maltby Food Bank. Low impact development techniques included pervious concrete pavement, rain cisterns, and a targeted drainage report using WWHM modeling. Utility design included a 200' extension of a sanitary sewer in the County right-of-way, new fire hydrants, and extension of a 12" water main. Date: 2010-2011. Owner: Maltby Food Bank.

Appian Construction Storage Yard, Woodinville, WA

Bill was lead civil site work design and engineer of record for a 1-acre commercial pervious paver to accommodate forklift and heavy truck traffic. The Low Impact Design eliminated the requirement for a detention pond and bioswale providing over 10,000 sf of additional useable area for storage and operations. Water quality treatment and stormwater flow control was provided using a pervious paver infiltration system and stormwater modeling using WWHM methods. The design effort included preparation of SEPA documents, permit drawings. Date: 2009-2010. Owner: Appian Construction.

Marten Creek Bridge, Snohomish County

Bill was lead civil site work design and engineer of record for temporary erosion and sediment controls for the Marten Creek bridge replacement, Mountain Loop Highway, including design for in-water creosote pile removal to prevent release of creosote during pile removal. Design work also included Media Filtration Drains to provide enhanced water quality treatment. Date: 2008-2009. Owner: Snohomish County.

Lockwood Road Improvements, Snohomish County

Bill was lead supervising engineer and engineer of record for TESC, stormwater conveyance, enhanced water quality design, and detention using WWHM methods to support road widening and improvements, and preparation of a Full Drainage Report for Snohomish County. Low Impact Design work included pervious sidewalks to reduce water quality and detention requirements. Bill provided lead coordination with private utility owners to facilitate road widening. Date: 2007-2008. Owner: Snohomish County



Title

Principal Engineer

Firm

Lider Engineering, PLLC

Years Employed by Firm

3

Total Years of Experience

35

Employment History

2009-present: Lider Engineering
Principal Engineer

2002-2009: Parsons Brinckerhoff,
Supervising Civil Engineer

1998 -2002: PACE Engineers,
Project Engineer

Education

Humboldt State University, Arcata,
CA /BS Civil-Environmental
Engineering 1978

License/State/Year

PE #22171 / Washington /1984

Certified Erosion & Sediment
Control Lead/Washington/1998

Harris Creek Bridge Replacement, King County

Bill was lead civil supervising engineer and engineer of record for civil stormwater design for the Harris Bridge replacement. Work included design of an under-bridge insulated 12" water main and seismic restraint system for the water main hanger system. Design included temporary erosion and sediment controls for earthwork adjacent to an active salmon spawning stream. Design included enhanced stormwater quality treatment and stormwater detention. He prepared a King County stormwater Technical Information Report (TIR) and coordination with private utilities to facilitate bridge construction. Date: 2006-2007. Owner: King County

9th Avenue Improvements, Mill Creek

Bill was lead civil supervising engineer and engineer of record for design of stormwater conveyance and widening of one city block in the City of Mill Creek. Work included the design using Filterra biofiltration catch basins and pervious concrete sidewalks to provide enhanced water quality treatment and infiltration to Penny Creek, an anadromous fish bearing stream. Date 2006-2008. Owner: City of Mill Creek.

City of Vancouver, 36" Sanitary Sewer Relocation, Vancouver, WA

Lead supervising engineer for design of 1,700 feet of 36" sanitary sewer trunk main up to 25' deep through City right-of-way and easements through private parking. The work also included design of a jacked, 54" steel casing below active BNSF railway tracks, coordination with BNSF, design of temporary erosion and sediment control and coordination with traffic control. Date: 2006-2007. Owner: City of Vancouver.

Salmon Creek Park and Ride, Salmon Creek, WA

Lead supervising engineer for preliminary and conceptual design of temporary erosion sediment controls (TESC's) and stormwater treatment on a 6-acre, 498-stall park-and-ride lot project for the Washington State Department of Transportation (WSDOT) using of low impact development pervious pavers to minimize impacts to an adjacent Class I wetland with an endangered plant species, and a stormwater dispersion system for 100% stormwater infiltration to maintain hydraulic flow to the wetland. Date 2006-2007. Owner: WSDOT.

Sound Transit, Project C530, Advanced Utility Work—Pine Street

Lead design engineer for electrical duct and vault relocation in advance of construction of Sound Transit's Pine Street Station. Duct trenching in front of the Paramount Theater required special attention to avoid disruption to local businesses. Work included approx. 500' of relocated ducts, three 10' x 20' electrical panel vault plan and detail drawings, preparation of electrical duct profile drawings. Date 2003-2005. Owner: City of Seattle.

Fremont Bridge Approach Replacement, Seattle

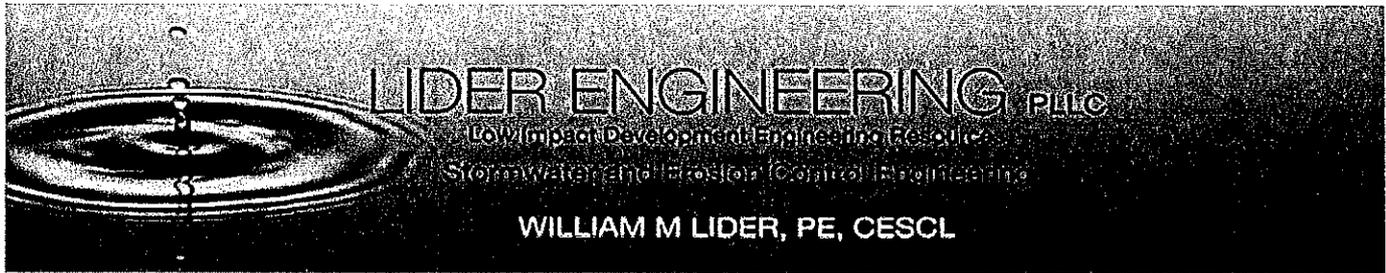
Lead civil design engineer for storm drainage, temporary erosion and sediment control, utility coordination, initial site assessment and Hazardous Materials Discipline Report (HMDR). Prepared and obtained the project JARPA permit. Design work included two large water quality wet-vaults, bio-engineered outfall in accordance with HPA requirements. Bill designed pump lift stations for the bascule pit and provided construction support and reviewed submittals as required. He coordinated with private utilities to avoid service disruptions during construction. Date 2004-2006. Owner: City of Seattle.

Lake Union Streetcar, Seattle

Bill was the project engineer and coordinated the efforts of consultants including submittal review for the streetcar track layout from Westlake Mall to Lake Union. Bill was the engineer of record for design of catch basin and inlet replacement, specialty curb inlet catch basins and 48" diameter detention facilities per City of Seattle drainage code. He was responsible for design of the electrical duct replacement for approximately 6 blocks, water service and water main relocations required for approximately 1.75 track miles, and coordination with private utility agencies. He designed a pervious paver maintenance yard for 100% stormwater infiltration to eliminate the requirement for onsite stormwater detention. Close coordination with private utilities was essential for the project success. Date 2003-2006. Owner: City of Seattle.

Sound Transit LINK Light Rail Project, C759, Tukwila

Bill was the lead supervising engineer and engineer of record for design of stormwater collection and conveyance system for approximately 2 miles of elevated track on the Southcenter Boulevard between Interstate 5 and State Route 99. Work included design of vortex enhanced basic water quality treatment facilities and design of an inline Regional Detention Pond in Gilliam Creek using WWHM software. He designed the project temporary erosion and sediment controls and coordinated with private utilities to avoid service disruptions. Date: 2003-2007. Owner: Sound Transit.



DATE: December 17, 2014

TO: Kristen Bryant, Judith Carrier, Gil Bortleson
King County, WA

SUBJECT: Villages MPD Phase 2, Plat Hearing
Review for Rebuttal to new Exhibits

Pursuant to your request, I offer the following comments related to Exhibit 71, The Villages MPD- Preliminary Plat Phase 2 Plat C. This review was informed by additional information posted on the City of Black Diamond's website, and in particular the Road, Storm Drainage and Grading plans RS1 through RS4 in Exhibit 2:

1. The Applicant's responses and attachments in Exhibit 71 still fail to demonstrate that the proposed plat will be able to maintain the wetland hydroperiod

Golder references Section 1.5.4 Volume I of the SWMMWW, 2012 but fails to note that that document also describes how it is extremely difficult, if not impossible, to divert stormwater and not disrupt a wetland's hydroperiod. The proposal to divert stormwater away from the wetland complex is apparently intended to reduce phosphorous loads to Lake Sawyer, but by doing so makes it nearly impossible in my opinion to not disrupt the wetlands hydroperiod. The proposal to infiltrate stormwater that is not diverted is beneficial to the wetland, but there is no documentation in the record that describes the volume and timing of flows to be infiltrated. By approving the plat without determining whether the proposed infiltration areas are sufficient to handle accurately predicted runoff, we may preclude the ability to employ other surface water management facilities. My review of the plat configuration indicates that to install LID treatments for infiltration, lot sizes must be increased in area.

The plat's lot sizes appear to be extremely small in the 3,600 to 4,600 square foot range with a few lots slightly exceeding 5,000 square feet. There is no data on the percent lot coverage, but given the proposed lot sizes the percent coverage could exceed 80% of impervious surfaces including roofs and driveways or nearly impervious surfaces such as lawn areas. In order to maintain the Wetland E-1 hydroperiod, it necessary to infiltrate stormwater from the development along the entire perimeter that borders the wetland. Larger lot sizes would allow for more LID features such as engineered Bioinfiltration facilities with native plantings between houses to permit infiltration necessary to maintain the wetland hydroperiod along the entire development.

2. Golder's defense of the applied methodology also overlooks the fact that Threshold Discharge Areas (TDA's) are not called out on the drawings nor is their size in acres noted on the drawings. The natural discharge areas are not called out for each TDA. Without an accurate determination of TDA's and their surface makeup, an accurate modeling of the stormwater flow cannot be accomplished nor can it be shown that the proposed stormwater flow control and water quality measures are adequate to protect the wetlands. Again the

Applicant's response in Exhibit 71 fails to demonstrate that the proposed plat will be able to maintain the wetland hydroperiod.

It is my opinion that the WWHM analysis required by the SWMMWW, 2005 has not been accomplished, and that if its provisions are not applied there will be substantial impact to the wetland from the proposed stormwater diversions. It is my understanding that the City did not adopt Volume 1, Chapter 2 of the SWMMWW, titled "Minimum Requirements for New Development and Redevelopment" was not adopted; rather Appendix 1 of the NPDES Phase II Municipal Stormwater Permit, titled "Minimum Technical Requirements for New Development and Redevelopment" was adopted in lieu of Volume 1, Chapter 2. Nonetheless, Guide Sheet 2 of Appendix 1-D of the SWMMWW 2005 states that WWHM is the preferred method to determine hydroperiod. Furthermore, the BDMC, MDP permit approval, DA, and SEPA review all make reference to the application of the SWMMWW, 2005 without reference to the deletion of the critical chapter whose requirements are necessary to meet the various adopted performance standards related to protection of the function and values of wetlands.

The technical reports attached to the Applicant's response to comments (Exhibit 71) and the comments made by the Applicant to Exhibit 6 (1,1), Exhibit 7 (2), Exhibit 10 (7 on page 7; 2,3,4,5 on pages 12-14; 2,3 on pages 14; Exhibit 51 (4 on page 20 and 8,9,10 and 3 on page 24 are all intended to defend the proposal's methodology, design and adequacy. My response to those comments is inextricably linked to the many inadequacies that my review of the proposal and its supporting documents has identified:

3. There appears to be only one stormwater pond shown in Plat C, at Tract 917. There are no details provided for these ponds and it is unclear if they are intended to be water quality treatment, flow control, or both. The contributory area to these ponds is unknown. There are no calculations supporting the pond layout on the plat map to determine whether or not the allotted size for Tract 917 is adequate. This could result in a significant revision to the approved plat drawing should a future revision be required. Exhibit 71, page 7 of 112, Response 7 indeed does not provide a meaningful review of the impacts as the stormwater management has not been properly analyzed. The city cannot sign off on the plat if it cannot analyze the impacts.
4. No tracts or other locations are called out for rain gardens. Rain gardens should be engineered biofiltration facilities using WWHM methods to show that they are adequately sized to accommodate and treat their anticipated stormwater flows and where their 100-year storm overflows will be diverted. Again Exhibit 71, page 7 of 112, Response 7 indeed does not provide a meaningful review of the SEPA impacts as the stormwater management has not been properly analyzed.
5. Stormwater sheet flows into wetland E-1 along the entire west perimeter of the proposed Plat C development. However, there are only two discharge points from the Phase 2, Plat C development to wetland E-1 at Tracts 923 and 924. Although flow spreaders are proposed at these two locations, the flow into the wetland will not be adequately dispersed. Flow spreaders function to uniformly spread flows across the inflow portion of small water quality facilities (e.g., sand filter, biofiltration swale, or filter strip) or for energy dissipation to prevent erosion at outfall pipes. Flow spreaders tend to concentrate stormwater very close

to outfall location and will not adequately disperse stormwater along the entire wetland perimeter. This will result in a detrimental concentration of water at two locations in wetland E-1 and a drying out effect in other areas wetland E-1. This impact has not been properly analyzed and is not addressed by the Exhibit 71 responses to comments.

6. As previously stated, the wetland hydroperiods have not been determined using the approved continuous simulation model such as the Western Washington Hydraulic Model (WWHM), version 2012. The Applicant has failed to determine wetland hydroperiods or to show that proposed off site diversion of stormwater will not adversely affect the wetlands adjacent to Plat C. Even using WWHM it is extremely difficult to maintain a wetland's natural hydroperiod. Therefore TDA basin diversions such as is proposed here should be prohibited. These SEPA impacts are not addressed by the Exhibit 71 responses.
7. Calculations have not been provided to show that conveyance piping to the offsite water quality/flow control ponds are adequately sized to accommodate the 100 year flow from Plat C or how they will be routed from Plat C to its point of compliance. In adequately sized conveyance piping could result in downstream flooding and this impact has not been addressed by the Applicant or in the Exhibit 71 responses.
8. WWHM calculations have not been provided as required by the City of Black Diamond's Municipal Code to show that the proposed offsite water quality/flow control pond has been adequately sized to accommodate the offsite flow from Plat C as well as other contributory areas that it must treat. This could result in the offsite water quality/flow control pond being overwhelmed and not provide adequate stormwater treatment.

Recommendations:

Prior to plat approval, the following recommendations are made:

1. For each lot state a maximum allowable cover level for:
 - Non-pollution generating impervious surfaces (NPGIS) e.g. roofs;
 - Pollution generating impervious surfaces (PGIS) e.g. driveways;
 - Non-pollution generating pervious surfaces (NPGPS) e.g. rain gardens, native vegetation;
 - Pollution generating pervious surfaces (PGPS) e.g. lawns.

This information should be included in a table format on the drawing along with similar surfaces in the public right-of-way for each TDA. On the plat map, show the location and size of all engineered biofiltration and other proposed LID stormwater facilities. It must be shown by the WWHM modeling that the small lot sizes proposed for Plat C will not harm the wetland.

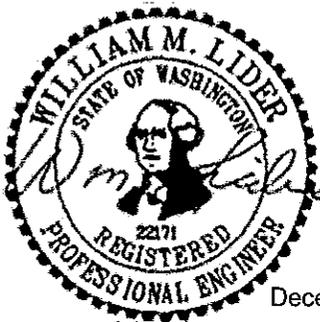
2. Show all TDA's on the plat map, call out their size in acres, and note the types of coverage outlined in recommendation 1 above.
3. Based on the types of coverages determined in recommendation 2 above, provide WWHM calculations showing that stormwater pond at Tract 917 is adequately sized to

accommodate stormwater flow control and water quality treatment per the SWMMWW, 2005, prior to plat approval.

4. Call out locations of engineered bioretention facilities and provide WWHM calculations showing that adequately sized tracks have been allocated on the plat map.
5. Provide a design showing how the pre-developed stormwater into the wetlands will be maintained along the entire wetland perimeter of the project.
6. Provide WWHM calculations showing that the wetland hydroperiods will be maintained.
7. Provide drawings showing the how water will be routed to the proposed off site water quality/flow control pond and that the piping is adequately sized to convey 100-year plus storm events.
8. Provide WWHM calculations showing that the proposed off site water quality/flow control pond is adequately sized to treat its current stormwater obligation as well as the additional Plat C flow.

Thank you for your consideration of these comments and recommendations.

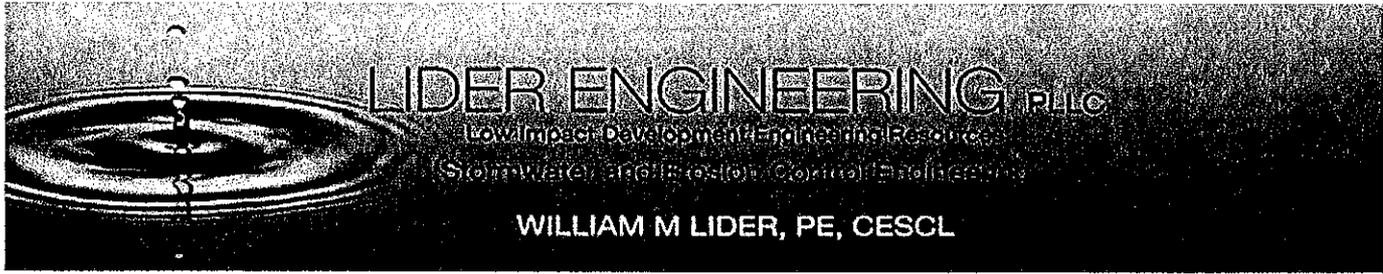
Respectfully submitted,
LIDER ENGINEERING, PLLC



December 17, 2014

William M. Lider, PE, CESCL
Principal Engineer

cc: Brian Derdowski



DATE: December 15, 2014

TO: Kristen Bryant
Black Diamond, WA

SUBJECT: Villages MPD Phase 2, Plat Hearing
Additional Document Review

Pursuant to your request, I have reviewed the Exhibit 71 document posted on the City of Black Diamond's website on December 13, 2014. I offer the following comments:

Tetra Tech Letter dated December 5, 2014, Exhibit 71, Page 28 of 112:

There appear to be numerous typographical errors on this document making it difficult to review the response prepared by Robert Plotnikoff. Checking Ecology's CESCL data base <https://fortress.wa.gov/ecy/wqcescl/>, it appears that Mr. Robert Plotnikoff is not a Certified Erosion and Sediment Control Lead (CESCL) and is therefore unqualified to submit expert testimony in regard to construction temporary erosion and sediment control BMP's or to prepare a Stormwater Pollution Prevention Plan (SWPPP).

Mr. Robert Plotnikoff refers to the use of "eurtain barriers"; it is assumed that he meant "curtain barriers" which is an incorrect terminology for "silt fence" which is described in BMP C233 of Volume II SWMMWW, 2005. Silt fences are ineffective in removing dissolved phosphorus and phosphorus adsorbed onto suspended soil or colloidal particles. Furthermore, silt fences are only marginally effective in removing larger solid soil particles when surface flow is low. Silt fences are not suitable whatsoever for concentrated flows such as in streams or ditches.

Phosphorus control is described in Volume V of the SWMMWW, 2005. Appropriate phosphorus controls include:

- Large Sand Filter
- Amended Sand Filter
- Large Wetpond
- Media Filter
- Two Facility Treatment Train

The complete Phosphorus Treatment Menu is described in Chapter 3, Section 3.3 of the SWMMWW, 2005. Whatever method is used, it should achieve a goal of 50% total phosphorus removal for a range of influent concentrations of 0.1 – 0.5 mg/l total phosphorus. Silt fences simply do not provide this level of reduction in phosphorus.

1. Recommendation to the Hearing Examiner—Condition the plat to have phosphorus control designed in accordance with Chapter 3, Section 3.3, Volume V of the SWMMWW, 2005 for construction BMP's as well as for the completed project.

Wetland Resources Letter December 5, 2014, Exhibit 71, Page 30 of 112

The letter states in the last paragraph of the first page of the letter:

“In the situation of Wetland E1 an abrupt change in the water regiment is readily apparent, identifiable, and defendable due to natural topographic change. At this surveyed topographic location, a drainage basin break occurs within a portion of the water flowing south and east into the Core complex and a portion flowing north and west into the body of Wetland E1.”

It appears that the applicant has failed to delineate or describe Threshold Discharge Areas (TDA's) as required by Chapter 4, Section 4.2, Volume I of the SWMMWW, 2005. Determination of the TDA's within the project is critical to determine effective design to address the following Minimum Requirements:

- Minimum Requirement #6—Runoff Treatment and its location on the plat;
- Minimum Requirement #7—Flow Control and its location on the plat;
- Minimum Requirement #8—Wetlands Protection; and
- Preservation of the Natural Discharge Location as determined by the TDA.

None of the documents that I have been provided for review delineate the project's TDA's or does it show its Natural Discharge Location (point of compliance). Calculations must include an estimate of the amounts of pollution/non-pollution generating pervious and impervious areas. In turn, WWHM software must be used to compute the runoff from the project site in order to show that it is in compliance with the City of Black Diamond's stormwater Municipal Code 14.04.020. At a minimum, the plat approval should show exactly how these Minimum Requirements will be accomplished and where they will be located on the plat.

2. Recommendation to the Hearing Examiner—Remand the drainage report back to the applicant to show all project TDA's and demonstrate on the plat that there is sufficient space to implement the Minimum Requirements per Volume I, SWMMWW, 2005.

Golder Assoc. Letter December 4, 2014, Exhibit 71, Page 46 of 112

Paragraph 2.4, Golder Response to Comment #2 fails to respond to the Gil Bortleson Comment that best available science for doing the hydroperiod analysis is not being accomplished. Golder in turn refers to the method that Triad presented as being suitable for matching pre-developed to developed water inputs to the wetland.

It is assumed that the Golder response in paragraph 2.4 was to the Triad *Preliminary Drainage Analysis for Preliminary Plat, Phase 2—Plat C*, November 8, 2013, Exhibit 20 that used the StormShed software to estimate flows. StormShed is based on the single event, Santa Barbara Urban Hydrograph method that is not permitted under the City of Black Diamond's ordinance nor is it allowed for use by the Washington State Department of Ecology (Ecology). In e-mail communication between Amanda Heye, PE and William Lider, PE Ms. Heye stated:

“To demonstrate compliance with the stated hydroperiod criteria requires use of a continuous runoff model. You cannot demonstrate compliance with a single event model. In Appendix 1-D of the 2012 SWMMWW, Page D-6

does explicitly state that a continuous simulation model (such as WWHM) should be used when determining increases or decreases in flows to the wetland."

While Ms. Heye referenced the SWMMWW 2012 manual that provides the best available for science, the SWMMWW 2005 manual also recommends the use of a continuous simulation model as the first choice to determine a wetland's hydroperiod.

Hydroperiod is defined in Glossary of Volume I of the SWMMWW 2005 as, "The seasonal occurrence of flooding and/or soil saturation; encompasses the depth, frequency, duration, and seasonal pattern of inundation." Altering a wetland's hydroperiod can have severe, permanent adverse impacts on wetland plant communities and the fish and wildlife that depend on these stormwater flows.

The SBUH methodology used by Triad is flawed, is not best available science, and therefore cannot be allowed to determine development impacts to wetlands.

3. Recommendation to the Hearing Examiner—Remand the stormwater design back to the applicant and require that the hydroperiod be determined using best available science including the use of the WWHM software in accordance with Appendix 1-D, Volume I, SWMMWW, 2005 to determine the wetland hydroperiod.

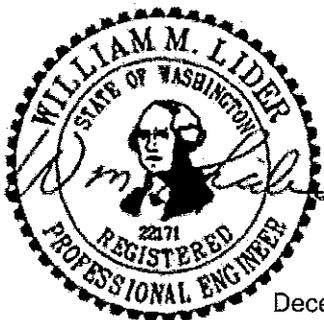
Golder Assoc. Letter December 4, 2014, Exhibit 71, Page 46 of 112

Paragraph 2.6, Golder Response to Comment #2 fails to respond to the Gil Bortleson Comment #3 also does not address the Bortleson comment. Again without performing the stormwater analysis using the continuous simulation WWHM software, Triad methodology is flawed and their stormwater report cannot show that its design for stormwater discharge volumes meets the requirements of the SWMMWW, 2005 and the City of Black Diamond's Municipal Code 14.04.020.

See recommendations to the Hearing Examiner 1, 2, and 3 above.

Thank you for your consideration of these comments.

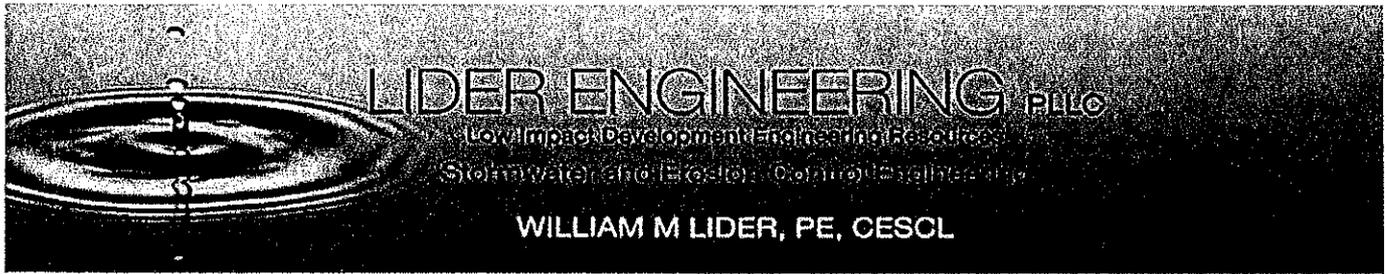
Respectfully submitted,
LIDER ENGINEERING, PLLC



December 15, 2014

William M. Lider, PE, CESCL
Principal Engineer

cc: Brian Derdowski



DATE: December 16, 2014
TO: Kristen Bryant
Black Diamond, WA
SUBJECT: Villages MPD Phase 2, Plat Hearing
Lider Document Review Log

As a part of the preparation for Lider Engineering report letters dated December 15, 2014 and December 16, 2014, the following documents were reviewed:

Exhibit 2	Plat 2c Plan set	Exhibit 22b	Response to Comments
Exhibit 3e	SEPA Checklist	Exhibit 23	Geotechnical
Exhibit 3g	Preliminary Drainage Analysis	Exhibit 23a	Comments on Geotech Report
Exhibit 13	Stormwater Report Jan 2014	Exhibit 28e	Follow-up Review- May 19, 2014
Exhibit 13a	Letter, Tetra Tech, Jan 30, 2014	Exhibit 28f	Evaluation of Hydroperiod Analysis
Exhibit 13b	Status Update Stormwater	Exhibit 29	Regional Facilities schedule
Exhibit 13c	Stormwater Report Nov 2013	Exhibit 38	Phase 1A Conditions
Exhibit 20	Preliminary Drainage Analysis	Exhibit 71	Yarrow Bay Development Response to Public Comments
Exhibit 20a	RH2 Review of Hydrology		
Exhibit 20b	RH2 Review of Stormwater Deviation		
Exhibit 20c	Stormwater Deviation Approval		
Exhibit 22a	Grading--reduced size		
			Staff Report November 25, 2014
			MPD Framework Design Standards and Guidelines
			Black Diamond Storm Comp Plan Dec 2009

Respectfully submitted,
LIDER ENGINEERING, PLLC

William M. Lider, PE, CESCL
Principal Engineer

cc: Brian Derdowski