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From: Nancy Rogers <NRogers@Cairncross.com>
Sent: Monday, December 29, 2014 4:19 PM
To: MDRT User; Andy Williamson; olbrechtslaw@gmail.com
Cc: Kristi Beckham
Subject: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 1 of 3)
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Dear Mr. Examiner and MDRT Team and Mr. Williamson:

Yarrow Bay's reply materials are in three parts: (1) the attached 22 page memo, (2) the full PP1A decision (December 2012), and (3) the Hearing Examiner's Recommendation of Approval for The Villages Development Agreement (September 2011), together with a Department of Ecology Guidance Document (April 2005), and a memo from Transpo (December 2014). Please let me know if you do not receive all parts or have any trouble opening.

We will also be filing the separate reply materials on January 9 after we review the City's response, due Jan 7.

Thank you,

CH& Nancy Bainbridge Rogers

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MEMORANDUM

To: Black Diamond Hearing Examiner

From: Colin Lund, Chief Entitlement Officer, YarrowBay 

cc: Nancy Rogers, Legal Counsel for YarrowBay
Megan Nelson, Director of Legal Affairs, YarrowBay

Re: YarrowBay's Reply and Rebuttal to City and Public Comments regarding The Villages Preliminary Plat Phase 2 Plat C (PLN13-0027)

Date: December 29, 2014

I. INTRODUCTION

BD Village Partners, LP ("YarrowBay") submits this reply and rebuttal to the public comments heard at the December 11 hearing, and submitted in writing as of December 17, regarding The Villages Preliminary Plat Phase 2 Plat C (PLN13-0027) ("Plat 2C"), and the City's responses submitted December 22. YarrowBay will file a separate reply to the Bryant wetland-related submittals on or before January 9.

YarrowBay seeks to respond to all the issues raised whether or not outside the proper scope of this plat hearing. YarrowBay's response to such written comments, however, does not supersede any of our relevancy objections and shall not be viewed by any party as a waiver.

We have attempted to reference each commenter by name, and have organized this memorandum by substantive topic area.

II. YARROWBAY'S REPLY AND REBUTTAL

A. The Matters Presented for Examiner's Decision are Limited and do not Include Re-Review of Prior Approvals

The sole issue presented to the Hearing Examiner for decision is YarrowBay's proposal to subdivide 136 acres of land into 203 residential lots, plus approximately 95 acres of protected open space, plus associated roads, utility tracts, and parks. The plat drawings with details and labels are found at Exhibit 48 and 49. The color maps presented at the hearing (Exhibits 69, and 73 - 75) were illustrative, intended to bring those black and white survey maps to life, and to more easily show where new uses were located and where existing lands would be protected.

The preliminary plat approval criteria are found in BDMC 17.15.020. As described on pp. 174 – 181 of the Staff Report, each of the preliminary plat approval criteria are met.¹ As described in the entire Staff Report, all of the applicable provisions of other Code sections, the MPD Permit, and the Development Agreement also are met. For those reasons, the Staff Report (Ex. 58) recommends approval of Preliminary Plat 2C.

However, many comments were made raising concerns outside the scope of the Plat 2C decision. For example, Mr. Dummet² questioned why map Exhibits 69 and 73 appeared to focus attention only on a small area of land, rather than the overall MPD development. Plat 2C is an Implementing Project that is just part of the build out of The Villages Master Planned Development.

In 1996, The City of Black Diamond, King County and the then property owners of The Villages MPD property and other lands, signed the Black Diamond Urban Growth Area Agreement (“BDUGAA”). Pursuant to the BDUGAA, the City of Black Diamond began planning for urban development. In 2009, an updated City Comprehensive Plan and set of modern development regulations was enacted. Pursuant to those regulations, the City of Black Diamond approved The Villages MPD Permit in 2010. The MPD Permit and adequacy of the environmental impact statement (“EIS”) for the development was appealed all the way to the State Supreme Court, and the MPD Permit and EIS adequacy were affirmed at every level. Similarly, the City of Black Diamond approved The Villages Development Agreement in 2011. Again, the Development Agreement was appealed through the courts, and no court has overturned the Development Agreement.

The first Implementing Project inside The Villages MPD was Preliminary Plat 1A, sometimes referenced as “PPIA.” As the Examiner explained in his December 2012 decision³ on Preliminary Plat 1A, there is ample case law on the preclusive effect of one land use decision on another. Collateral attacks between land use permitting decisions are not allowed.⁴ The current proposal, Plat 2C, is the second Implementing Project brought to the Examiner for approval. Some residents now wish to revisit the MPD Permit and Development Agreement approvals, the Examiner’s approval of Preliminary Plat 1A, or even the BDUGAA itself, however, those issues are not open for review by the Hearing Examiner.

Ms. Bryant submitted a letter from Dennis Reynolds, dated December 17, which appears to argue that the Development Agreement provisions in Section 8.1 and 8.2.1 are “*ultra vires*”

¹ That YarrowBay’s proposal complies with the preliminary plat approval criteria is also described in the Staff Report’s Analysis of each substantive area. See, e.g., Staff Report Analysis of the subdivision code related to stormwater management, at Exhibit 58, pp. 39 – 42.

² We have attempted to capture the correct spelling of all persons names, but do not have a formal list of those who testified. Accordingly, we apologize for any misspellings.

³ Exhibit 38 contains the PPIA conditions; the complete decision is provided as an attachment to this Memorandum.

⁴ *Chelan Cy. v. Nykreim*, 146 Wn.2d 904, 926 (2002) (holding that even if a land use approval is legally questionable, it becomes valid and cannot be revoked if not timely challenged under LUPA); *Habitat Watch v. Skagit Cy.*, 155 Wn.2d 397, 407-411 (2005) (holding that even illegal decisions must be challenged in a timely manner and cannot be collaterally attacked in the appeal of another land use decision); and *Wenatchee Sportsmen Ass’n v. Chelan Cy.*, 141 Wn.2d 169,173 (2000) (holding that a prior rezone decision could not be collaterally attacked in a subsequent plat proceeding).

and should not be applied by the Hearing Examiner. Mr. Reynolds is wrong. First, even Mr. Reynolds admits that the Examiner lacks authority to determine whether or not any term of the Development Agreement is *ultra vires*. Second, as required by State law, the terms of a final Development Agreement are binding and were subject to appeal. RCW 36.70B.180 and .200. In fact, as described above, The Villages Development Agreement was appealed and was not reversed, overturned or modified in any way. As further described above, there is ample case law on the preclusive effect of one land use decision on another and collateral attacks are not allowed. Mr. Reynolds attempt to cloak his argument with the *ultra vires* doctrine, does not change the reality that his argument is grounded in impermissible collateral attack.

Most importantly, as called for by State law, the Development Agreement is consistent with City Code. *See, e.g.*, The Villages Development Agreement Section 1.2. Because his argument lacks direct citation, we are left to assume that Mr. Reynolds' concern is that The Villages Development Agreement includes language that modified otherwise applicable development regulations, and that such modifications as to BDMC Title 19 are not allowed.⁵ While it is true that BDMC 18.66.020.B stated that applicable development regulations "may be modified in the development agreement," The Villages Development Agreement was crafted to be consistent with all applicable development regulations, including those in Title 19, not to modify them.

In relevant part, The Villages Development Agreement Sections 8.1 and 8.2.1 state:

All Development within The Villages MPD shall be subject to the standards, requirements and processes of the Sensitive Areas Ordinance. The sensitive areas boundary determinations have been completed and verified for the Project Site and are depicted on the Constraint Maps attached hereto as Exhibit "G". Buffers for the sensitive areas, as well as categories for the wetlands, . . . will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

The presence and absence of wetlands, wetland typing, and delineations are shown on the Constraint Maps attached hereto as Exhibit "G". The wetland typing shown on the Constraints Maps is for planning purposes only and is not yet final. The wetland delineations outlined in the Constraints Map as surveyed on 7/27/09 are deemed final and complete through the term of this Agreement. Pursuant to Condition of Approval No. 155 of the MPD Permit Approval, if during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped and described boundary shall prevail. Buffers and categories for the wetlands mapped on Exhibit "G" will be determined and approved by the City on an Implementing Project by Implementing Project basis consistent with the regulations set forth in the City's SAO (Exhibit "E").

⁵ If Mr. Reynolds is arguing that the City's Sensitive Areas Ordinance is not a development regulation, then he is also incorrect. By definition in State law, critical areas ordinances are development regulations. RCW 36.70A.030(7).

The determination that the wetland delineations outlined in the Constraints Map are deemed final and complete for the term of the Development Agreement is consistent with the Black Diamond Municipal Code. Specifically, BDMC 18.98.040(A)(1)(a) and (A)(15) required that the MPD Site Plans show existing environmentally sensitive areas and their buffers, together with the reports, surveys, and delineations used to identify their locations, as well as a narrative description of how the project would comply with the SAO. Likewise, BDMC 18.98.140(A) defined open space to include “environmentally sensitive areas and their buffers,” and subsections .140(B) – (E) called for open space to be located and designed as part of the MPD process, and for the MPD Permit and Development Agreement to establish uses and protections for such open space.

Consistent with those requirements, MPD Condition 155 stated that “[o]nce the mapped boundaries of the sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed.” When the Examiner reviewed the draft Development Agreement for The Villages, the issue of whether or not to deem the delineated wetland boundaries as final and complete also arose. As described on pp. 50 – 55 of the Examiner’s Recommendation of Approval for The Villages Development Agreement,⁶ YarrowBay explained that the delineations were consistent with BDMC 19.10.210(B)(1), and provided sufficient detail to meet the requirements of BDMC 19.10.230. Because he was unable to review the Constraints Map directly, the Examiner advised the City Council to assure that the mapping “be precise enough to establish the boundaries for project level development,” that the Council could not alter Condition 155, but should “not agree to any boundaries unless they are as accurate as any boundaries that would be expected for an implementing project,” and the Examiner “finds the delineations to comply with City regulations, subject to the verification of a couple issues.”

The Council review of The Villages Development Agreement resulted in further review and verification of these issues. And the ultimate language of the Development Agreement, quoted above, fixed the boundaries of the wetlands, but allowed analysis of the wetland categories and buffers on a project by project basis. Mr. Reynolds’ (and Mr. Bortleson’s and Ms. Bryant’s) attempts to undo that determination is a prohibited collateral attack.

B. Relationship to PP1A

In December 2012, the Hearing Examiner approved the Preliminary Plat for Phase 1A (the “PP1A Plat”). The PP1A Plat also is an Implementing Project that is part of the build out of The Villages MPD. The PP1A Plat is located to the northwest of Plat 2C. The two plats are separate projects, and there is no plat approval criterion in BDMC 17.15.020 that would allow the Examiner to stay or deny the Plat 2C approval until PP1A is fully built. YarrowBay is proceeding to develop PP1A. As set forth in the Development Agreement, including Sections 11.1 and 11.2, phases of the MPD and Implementing Projects may proceed simultaneously, concurrently, or in a different order based on the needs of the Implementing Projects. Both Chapter 9 and Chapter 11 of the Development Agreement assure that necessary infrastructure,

⁶ The City of Black Diamond Hearing Examiner’s Recommendation of Approval for The Villages Development Agreement is provided as an attachment to this Memorandum.

like roads, and desired amenities, like parks, will be built on a schedule that meets the demands of the new residents and businesses.

C. Concurrency generally, and sewer capacity specifically, are assured

Staff Recommended Conditions 1, 15, and 34, including with the minor revisions recommended by YarrowBay in Exhibit 72, assure the availability of the infrastructure necessary to serve Plat 2C.

The testimony of Mr. Webber asserted that the termination clause of a draft covenant not to sue (described in Exhibit 43) might be too broad and somehow result in harm to the citizens of Black Diamond. Exhibit 43 was a legal memorandum prepared by YarrowBay's counsel, related to confirming the applicable definition of concurrency for infrastructure development. The covenant not to sue that was described in Exhibit 43 was offered by YarrowBay to the City to give the City additional comfort that the Master Developer and City shared the same understanding and definition of concurrency. The City has not asked that the covenant not to sue be executed or recorded, and even if it is, the termination clause relates only to retaining rights that YarrowBay already has under law.

Similarly, Kristen Bryant submitted a letter prepared by Dennis Reynolds (Exhibit 94) that both misstates and misunderstands Exhibit 43. The Reynolds Letter states that in Exhibit 43, YarrowBay "asserts that approval of a preliminary plat without issuance of a water certificate, but merely a condition that—for final plat approval—the applicant must show the availability of water is legally sufficient." YarrowBay has made no such assertion. In fact, as explained in the Exhibit 43 at pages 8-10, any requirement for a water availability certificate for Plat 2C already has been satisfied. The Development Agreement for The Villages at Section 7.2.1 states plainly and unambiguously: "Any Implementing Project application process that calls for a certificate of water availability shall be satisfied by reference to this Agreement." In addition, the City also issued an independent letter certifying the availability of water. Exhibit 47. Contrary to the assertions in the Reynolds Letter, and as outlined in detail in YarrowBay's Concurrency Memo, at Exhibit 43, appropriate provisions have been made for water supplies.

Because any requirement for a certificate of water availability already has been satisfied, YarrowBay's Concurrency Memo focused on the City's concern that water utilities would need to be installed on adjacent property and connected to Plat 2C prior to water being literally deliverable to the plat. As explained at page 7, the "City may...include a condition in the preliminary plat approval that requires the facilities to be constructed and connected to Plat 2C, or bonded for, prior to final plat approval." YarrowBay controls the development of both Plat 2C and the adjacent, already approved PP1A Plat. And, even if the same developer did not control both Implementing Projects, an easement has been provided to assure that the developer of Plat 2C can construct what is required across the PP1A Plat (Exhibit 44).

The Reynolds Letter at Exhibit 94, also pronounces that development regulations trump comprehensive plan provisions and a development agreement cannot change applicable law. YarrowBay is not asserting contrary conclusions or asking the Examiner to defer any decisions that must be made at the preliminary plat stage of review. As explained in

YarrowBay's Concurrency Memo, the City's Comprehensive Plan provides for the funding of appropriate water supplies to serve The Villages Phases 1A and 2 and the Development Agreement for The Villages independently assures the availability and adequacy of roads, utilities and other public facilities needed to serve Plat 2C. Those provisions are more than sufficient to support a finding at the preliminary plat stage of review that adequate provisions have been made for potable water supplies and other utilities and roads.

The testimony of Mr. Edelman argued that sewer capacity might be insufficient for Plat 2C based on possible allocations of existing capacity to other projects. But as acknowledged by Mr. Edelman, Table 11-4-1 of The Villages Development Agreement sets a construction threshold for a wastewater storage facility. In addition, Section 7.3.1 of the Development Agreement constitutes the Certificate of Sewer Availability for Plat 2C. The City also issued an independent letter certifying the availability of sewer service. Exhibit 47. And, King County has confirmed that capacity projects related to Black Diamond have been added to the County CIP. See Exhibit 47 and Staff Recommended Condition 52. The Staff Report discussion of sewer and sewer capacity is correct, and the existing terms of the Development Agreement assure that sewer capacity will exist prior to building permits being granted that require that capacity. In addition, the City's rebuttal materials include a memo from RH2 detailing the sewer capacity availability.

D. Potential Impacts to Schools are Mitigated

Commenters including Mr. Davis and Ms. Proctor and Ms. Bryant assert that the Plat 2C should not be approved because of alleged impacts upon schools or uncertainty about the provision of schools, or school capacity.

The issue before the Examiner is whether or not to approve Plat 2C. Pursuant to RCW 58.17.110 and BDMC 17.15.020, appropriate provisions for schools as well as appropriate provisions for walking conditions for school children should be shown. In almost all cases throughout Washington, these standards are met by showing that school impact fees will be paid, if an impact fee program exists, and that sidewalks are being built.

In Black Diamond, all Implementing Projects, like Plat 2C, inside The Villages MPD are subject to the Development Agreement. Pursuant to Section 13.3 of The Villages Development Agreement, school mitigation is accomplished through the Comprehensive School Mitigation Agreement. The Comprehensive School Mitigation Agreement (submitted as part of Exhibit 9), at Section 3.1 makes clear that the Agreement "constitutes full, total, complete and sufficient mitigation of the impact of full build out of The Villages MPD on school facilities of the District." This includes the obligation in Section 9 of the Comprehensive School Agreement for YarrowBay to pay mitigation fees. In addition, as described at p. 180 of Ex. 58, the Staff Report, safe walking conditions are assured. No objections to Plat 2C have been received from the Enumclaw School District. As to Plat 2C, these facts end the inquiry. Adequate provision for schools, and safe walking conditions are assured.⁷

⁷ The Examiner essentially made these findings and conclusions in the PP1A proceeding, in 2012. See, PP1A Decision, Finding 6.f, and Conclusion 13.

The remainder of Ms. Proctor's complaints are not relevant to the approval of Plat 2C and are only briefly addressed here. Estimated dates of conveyance for school sites as listed in the summary table presented by Ms. Proctor are not binding deadlines. The notes and emails Ms. Proctor submitted asserting that they show some confirmation from King County staff as to the timing of conveyance of land in transactions between YarrowBay and the Enumclaw School District could not possibly change the binding terms of the Comprehensive School Mitigation Agreement. Also, it appears those handwritten notes relate to later conveyance of a high school site, not the conveyance of the elementary school site located within the PP1A Plat which was the focus of Ms. Proctor's testimony. Again, the school sites will be conveyed when requested by the School District, mitigation fees will be paid, and the MPD Permit approval, Development Agreement, and Comprehensive School Mitigation Agreement all assure that adequate provisions for schools are made.

Finally, allegations were made related to the Auburn School District. No portion of Plat 2C is located within the Auburn School District.

E. Phosphorus Monitoring is Underway

Ms. Proctor alleged that phosphorus monitoring required by the Development Agreement as well as the additional conditions imposed on the PP1A Plat has not timely occurred. In fact, the time trigger for a baseline monitoring report under the Baseline Monitoring Section of Exhibit O to the Development Agreement is the date that construction begins on lands that actually drain to Lake Sawyer. That date has not yet occurred. The Baseline Phosphorus Monitoring has occurred over multiple water years, is still on-going, and pursuant to the independent requirement of the Development Agreement, YarrowBay will provide the results to the City before the required deadline. City Staff's rebuttal materials, including the memo from RH2, also confirms that this monitoring report was not required before approval of the preliminary plat for Plat 2C.

F. Protection of Wetlands, Wildlife, and Trees

Comments from Ms. Scott and Ms. Taeschner and others raised concerns about removal of trees, protection of wildlife, and lack of green space. The relationship between these issues and the preliminary plat approval criteria is fully addressed by the Staff Report, Exhibit 58, at pp. 127 - 131 (tree removal), pp. 64 - 88 (protection of sensitive areas and buffers and wildlife habitat), and pp. 116 - 127 (provision of new parks and green spaces). All issues of concern are addressed under the adopted and applicable standards. In addition, and as described by the Examiner in the 2012 PP1A decision (p. 9), project level impacts of development are:

thoroughly addressed by project level development standards. The City has adopted reams of stormwater, road, zoning, building and other development standards that apply to this project. Many of these standards are based upon model standards that have gone through decades of refinement from experts throughout the world. Those standards represent the most effective means of mitigating impacts that modern day science and development practices can

reasonably apply. To the extent that anything is left for debate, the Applicant and City have undertaken a substantial amount of peer reviewed analysis.

Just like in the PP1A Plat, trees in the areas for development will be removed. However the area that will be developed is approximately 30 percent of the overall 136 acre site. Therefore, trees and vegetation will remain on over 70 percent of the overall site following development. Trees in the wetland and buffer and other protected green spaces will remain. A wildlife corridor across The Villages site is assured by the prior approval of the Development Agreement, as shown on the Map at Exhibit G, (Exhibit 15) and new parks and open spaces will be provided as part of the new development.

Ms. Bryant continues to argue that the northern edge of the buffer for Wetland E-1 should be wider, and that the planned trail should be located further away from the Wetland. Ms. Bryant simply disagrees with YarrowBay and the City's application of BDMC 19.10.230.E, which states, in pertinent part:

Measurement of wetland buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. The required buffer should be extended to include any adjacent regulated wildlife habitat area, landslide hazard areas and/or erosion hazard areas and required buffers. Buffers shall not be extended across existing human features that functionally and effectively separate the potential buffer from ecological functions of the resource, and shall include hardened surfaces including improved roads or other lawfully established structures or surfaces, or the developed portions of lots, under separate ownership, lying between the habitat area and the subject property, unless restoration of buffer functions on such property is or may reasonably be expected to be the subject of a permit condition or an adopted public plan. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways and other mowed or paved areas will not be considered buffers.

(Emphasis added). There is an existing improved gravel road in this location. Exhibit 48 at PP1. Perteet and the MDRT conducted several site visits specific to Wetland E1 and its buffer. Perteet agreed that the buffer should stop at the road, except for the road located in the vicinity of Tracts 927 & 928 where roadway use had been minimal and the roadway had become overgrown. In this specific area, the plans show the buffer not stopping at the edge of roadway. Pursuant to the City's Sensitive Area Ordinance, YarrowBay presented to the City and the City has already approved a wetland buffer averaging plan, using the process set forth in City Code. Staff Report, Ex. 58, pp. 66 - 67; *see also*, BDMC 19.10.230(H) (stating that "the mayor or his/her designee may allow modification of the standard wetland buffer width in accordance with an approved sensitive area report and the best available science on a case-by-case basis by averaging buffer widths.") In addition, Ms. Bryant's request to eliminate the soft-surface trail that bisected Wetland E1 has already been addressed, by Staff Recommended Condition 39.c.

Ms. Bryant also alleges that a purported lack of “interpretive purposes” along the trails in the wetland buffers precludes the trails. Exhibit 55, pp. 5 – 6. But Ms. Bryant misreads BDMC 19.10.220(B)(3) (a) and (c). Those code provisions actually specifically authorize trails in wetland buffers without any need to serve interpretative purposes, and also separately authorizes trail sections and viewing platforms within the wetlands themselves but only to serve interpretive purposes. None of the trails proposed by YarrowBay in Plat 2C are located within the wetlands themselves.

Ms. Bryant also appears to ask the Examiner to revisit the segregation determination made for Wetland E1 in the PP1A plat conditions. That is not subject to review in this Plat 2C proceeding. Moreover, the characterization of Wetland E1 has been fully studied. *See, e.g.*, Exhibit 28, and Exhibit 71, and Attachment 2 to Exhibit 71. *See also* City’s response to comments, Perteet attachment.

Ms. Bryant also asked the Examiner to deny Plat 2C because it includes future development tracts near existing wetland buffers. Future development tracts are commonplace and any future development proposal will require future review. In fact, Staff Recommended Condition 47 assures that “subsequent review of development activities in future development tracts adjacent to wetlands E7, E8, and E10 is required.”

Ms. Bryant and Ms. Wheeler’s concerns re steelhead in Rock Creek are rebutted in Exhibit 71, and attachments 2 and 3. In short, a 225 foot buffer protects Rock Creek from any development activity. *See also* City’s response to comments, Perteet attachment.

Regarding wetland boundaries, see also, the discussion of Development Agreements Sections 8.1 and 8.2.1 under Section A, above.

The Bryant/Bortleson/Carrier submittal of December 17, pp. 10 - 12, asserts that the wetland buffer widths must be increased to meet a chart published in an Ecology Guidance document, because the development density is greater than 1 unit per acre, or that the Plat 2C density must be reduced. The City of Black Diamond, however, did not adopt this portion of the Ecology Guidance document into its SAO. The argument that either the buffer widths need to be increased or that Plat 2C’s density needs to be decreased is another impermissible collateral attack on the adopted regulations of the City of Black Diamond.

The Ecology Guidance is just that: guidance, intended to help the City when it adopted its SAO. A complete copy of the Guidance Chapter is attached to this Memorandum. The Guidance chapter referenced by the opponents contains far more information than the excerpted table provided by the opponents, as does the overall guidance document. For example, the table cited by the opponents is directed at a type of buffer regulation that the City of Black Diamond did not adopt. Black Diamond adopted a more complex – and more “flexible” -- wetland buffer width system that does not just focus on land use and the wetland, but also on the quality of the wetlands themselves. *See, e.g.*, Guidance, p. 6 and compare to BDMC 19.10.230. Next, as described at pp. 9 – 10 of the Guidance document, buffer widths for “high” intensity uses can be reduced to buffer widths recommended for “moderate” intensity when certain types of mitigation

and design measures – many or all of which are included in the City’s SAO – are utilized. Therefore, the guidance for “moderate” intensity uses is referenced in the City’s Code, even though the City of Black Diamond either has none or very little residential zoning that exceeds 1 unit per acre, because those additional protective measures were adopted by the City.

In addition, Plat 2C has already been through the buffer averaging process -- which is the same process that would be required to enlarge the buffers from the code-adopted standards. The result of that detailed analysis was that the buffer averaging proposal was approved, and no buffers were called out by the Mayor or Designated Official to need enlargement. There is no basis to reduce the density of Plat 2C or increase the buffer widths.

G. Protection of Off-Site Wells

Written testimony of Erika Morgan (Exhibits 52 and 56), and the oral and written testimony of Max Beers and Judith Carrier all raised concerns about aquifer recharge areas and the protection of off-site wells, and requested more analysis of these issues before Plat 2C was approved. Procedurally, these concerns have not been tied to any preliminary plat approval criteria, such that there is no basis to withhold approval. Even more importantly for the neighbors of The Villages, substantively, all of this analysis has already been conducted, so as to design the build-out of The Villages to avoid any impacts to off-site wells.

First, an extensive analysis was conducted and published in the Technical Report on Geology, Soils and Groundwater prepared by Associated Earth Sciences Inc. (AESI, 2008), published with the EIS for The Villages MPD. Golder’s geotechnical report dated December 5, 2013 (Exhibit 23), Section 4.5 for Plat 2C discusses the location of sensitive aquifer recharge areas. Golder Associates has been conducting additional study of the off-site well concerns since YarrowBay received Mr. Beers’s correspondence with the State Department of Ecology earlier this year. In addition, Exhibit 71 includes as Attachment 8, a memo from Golder Associates, dated December 10, 2014 responding to Ms. Morgan’s concerns. No evidence has been presented that supports a showing of any potential impact to off-site wells associated with Plat 2C and, therefore, there is no basis by which the Examiner could impose mitigation. Indeed, as the Examiner found in his recommendation for approval of the Development Agreements, at p. 30:

Potential impacts to springs, aquifers, and sources of water (wells) were analyzed and presented in Appendix D of the Villages EIS (pp. 7-8 through 7-12). It was the finding of that report that no measurable impact would occur to ground water resources and no additional mitigation was required. This conclusion was further documented in the EIS and FOF 19 of the Villages and Lawson Hills MPD approvals, which expressly stated that the MPD would avoid any risk of adverse impact to private wells and springs. The same analysis and conclusions were recorded for the Lawson Hills MPD permit approval (Ordinance 10-947, FOF 19; Lawson Hills EIS, Appendix D, pp. 71, 73).

The concerns expressed over the proposed project consist of personal testimony by local residents and anecdotal evidence and do not provide any new

information that wasn't already considered by the City in approving the MPD. Conversely, the City's finding of no significant impact to water systems, including private wells and springs, is based on technical reports and analysis provided during the preparation of the two EISs for the MPD permits. The MPD conditions do not require that private wells be addressed in the DAs. The Council would have to acquire agreement from the developer to further protect the private wells in the DAs.

Nothing in the testimony provided in the Plat 2C hearing alters that finding. Staff's rebuttal memo from RH2 also confirms that analysis has been conducted and mitigation included in the Development Agreement.

H. Mine Hazards Risk is Low

Mr. Taeschner and Mr. Derdowski asserted that underground coal mines were not studied and could present risks to the development of Plat 2C. Similar to the concerns raised about protection of off-site wells, in fact, coal mine risks were studied and evaluated in The Villages EIS. In addition, Golder's geotechnical report dated December 5, 2013 Section 4.3 for Plat 2C (Exhibit 23) assessed the coal mine hazard for the project site, concluding that the top of the bedrock is more than 50 feet deep, and below glacial soils, and the mined coal seam is over 1500 feet deep below the site.

I. Mitigation Measures and Conditions need not cover every applicable standard, nor need they be listed on the face of the plat.

The Bryant/Bortleson/Carrier rebuttal submitted December 17, pp. 2-3, asserts that air emission BMPs and a requirement to follow existing regulations regarding lighting should be mitigation conditions. Again, every requirement that independently exists under other regulatory schemes does not need to be a project condition. Similarly, contrary to the demand made later in that rebuttal on p. 3, there is no need to list every Condition of Approval on the plat map (and doing so simply wastes paper).

J. Stormwater Design is Preliminary, and Sufficient for Preliminary Plat Approval

In short, Mr. Lider's testimony, memoranda, and the memo from Silver Tip Solutions assert that the Preliminary drainage analysis prepared for the Preliminary Plat application for Plat 2C was too "preliminary." The types of concerns raised by Mr. Lider will be addressed in the formal drainage and hydrology analysis that is conducted at the time of construction. City Staff's rebuttal memo from RH2 confirms that the analysis is sufficient for preliminary plat.

Also, it is not clear that Mr. Lider understood that a portion of the drainage from Plat 2C is designed to use a regional stormwater facility that is located within the PP1A Plat.

The platting process in the State of Washington is structured so that the preliminary plat approval is a land use approval of the general layout of a subdivision.⁸ Specifically, a “preliminary plat” is defined as:

a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

RCW 58.17.020(4); *see also*, BDMC 17.08.010. All that is required as to stormwater drainage for a preliminary plat application is “Storm drainage design analysis at a level of detail to allow for accurate sizing of storm drainage facilities and tracts.” BDMC 17.12.010.F. Thus, the preliminary plat itself is to disclose only: “Generalized plans of proposed water distribution systems, storm sewers, sewerage systems and shoreline modifications, if any, indicating locations and sizing.” BDMC 17.12.020(J).

Under BDMC 17.15.020, the preliminary plat approval criteria call only for assurance that appropriate provisions are made for storm drainage ways. The application and approval criteria were met by the submittal by Triad of The Villages MPD Preliminary Plat Phase 2 Plat C Preliminary Drainage Analysis, Exhibit 3g; *see also* Staff Report pp. 19 - 42. Stated simply, the preliminary plat approval under review by the Examiner approves the general layout of the plat and confirms that public services and infrastructure like stormwater controls can be provided, but does not extend to review of detailed engineering models and analysis. *See* RH2 Memo in City rebuttal as well.

The detailed level of review Mr. Lider’s testimony asserts is necessary will occur, after the preliminary plat layout is approved and, therefore, it is known exactly how many lots and roadways, and other improvements there will be. After the general layout of the subdivision is approved via the preliminary plat, detailed engineering and construction plans are submitted to the City. The Black Diamond Engineering Design and Construction Standards, Section 4.2.01, which are contained in Exhibit E to the Development Agreement, dictate the hydrologic analysis methods to be used:

The City of Black Diamond requires the use of EPA’s HSPF (Hydrologic Simulation Program-Fortran) program or an approved equivalent model when sizing flow control and water quality BMP’s, Reference the Department of Ecology, Stormwater Management Manual for Western Washington. The City of Black Diamond requires the use of SBUH (Santa Barbara Urban Hydrograph) or similar model to determine peak discharge rates for sizing conveyance systems.

⁸ Other requests, such as Ms. Bryant’s call for detailed engineering review of retaining walls, or Mr. Derdowski’s assertions that utility permits should be wrapped into preliminary plat review, are contrary to applicable State law and City Code, which plainly define the preliminary plat as a land use approval setting only the general layout of a subdivision.

Because the City's Engineering Design and Construction Standards require use of the SBUH model for conveyance calculations, it was used by Triad to determine peak discharge rates. This was done to assess the approximate number of dispersal systems needed to meet the City's 0.5 cfs peak flow limit to each facility (*City of Black Diamond Engineering Design and Construction Standards, Standard DWG SD-15*). A water balance calculation was used to do a preliminary estimate of the number of rooftops needed to approximately match pre-development hydrology. This provided the information needed to inform the general layout of the plat utilities, tracts and easements.

In the final design, YarrowBay agrees with Ms. Bryant, Mr. Lider, and Silver Tip that the WWHM or another HSPF based model should be used to confirm the required roof dispersal systems necessary to match wetland hydrology. Proposed Conditions 6 and 8 in the Staff Report are consistent with this recommendation and the requests made by project opponents, including the direct call for protection of the predevelopment hydrology of the receiving wetlands. As described in YarrowBay's presentation at the hearing, to provide further comfort that proper modeling will be used, and since YarrowBay already planned to conduct this detailed analysis, YarrowBay could also accept a new condition that provides:

Storm drainage design for Plat 2C shall utilize an HSPF based continuous runoff model (such as WWHM). For drainage facility design receiving runoff from drainage basins 320 acres and larger in total area, a calibrated model should be considered.

Commenters also raised concerns about erosion control during construction. Again, the City has rigorous erosion control plan requirements, and Plat 2C will be subject to the construction NPDES permit issued by the Department of Ecology, and both the City and Ecology require use of rigorous Best Management Practices. *See* Attachment 1 to Exhibit 71.

H. Access and Traffic Concerns

Ms. Bryant continues to assert that plat access is not adequate. The Staff Report, Exhibit 58, at p. 50 explains MPD Condition of Approval No. 21 and the access requirements. 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, Attachment 7 to Exhibit 71 confirms access is adequate. The City Staff Rebuttal memo from RH2 also confirms that the access is allowed under City standards and that "a single point of public connection on an interim basis and a second point of public connection in the future when the area to the south of this pre plat is developed."

Ms. Vukich testified that she wanted to see a construction management plan that avoided use of Green Valley Road. The Construction Traffic Management Plan is depicted and described on Sheet UA1 of the Preliminary Plat (Exhibits 48 and 49). The construction route precludes use of Green Valley Road except as necessary to access the Cadman pit driveway on Green Valley Road.

Mr. Fettig raised traffic concerns including the intersection of SR 169 and Ravensdale Road, and requested traffic mitigation. The MPD Permit and Development Agreement for The Villages were prepared after extensive analysis of transportation impacts and include a traffic monitoring and mitigation trigger process that is being followed by Plat 2C. The Plat 2C traffic report, Exhibit 24, also did assume full build out and occupancy of the PP1A project - meaning the Plat 2C report assumed that additional traffic would also be on the roads when Plat 2C was completed.

The appropriate way to analyze traffic accident rates also was challenged by Mr. Derdowski, but no expert evidence was provided that contradicted the approach taken by YarrowBay and the City and its peer reviewer. Just as the Examiner found in the PP1A decision, p. 22, this is a case where the opponents have not provided any other methodology for predicting future traffic safety impacts, beyond the standard methodology applied by YarrowBay and reviewed by the City.

Safety concerns were raised about the design and use of woonerfs. As explained by the City's transportation expert, John Perlic, woonerfs present no safety concerns. In addition, YarrowBay's expert, Kevin Jones, P.E., has provided a short memorandum that confirms Mr. Perlic's testimony and describes how federal and industry standards recognize woonerfs as a "whole street design traffic calming measure," and that, as a traffic calming measure, a woonerf will improve conditions for non-motorized street users, i.e., pedestrians and cyclists.

I. Covington Water District disputed area

Mr. Derdowski contends that a dispute over water service to 98 acres of land in the PP1A project should be resolved prior to approval of Plat 2C. Of course, there is no legal authority to do so, and even the comments made by Covington Water District on Plat 2C were limited to noting that the dispute was not yet resolved, and that certain water improvements require Department of Health approval. There is no basis to withhold approval or deny Plat 2C based on this separate pending dispute.

J. Complaints about the Staff Report and Alleged Procedural Problems

Mr. Derdowski's testimony and Exhibit 86 include a number of allegations that City Staff should have done more or different analysis and organized its analysis differently. The Staff Report is beyond comprehensive and, most importantly, covers all issues that are relevant to the approval of Plat 2C.

YarrowBay chooses not to rebut point by point the allegations made in Exhibit 86 because there are simply no points made that justify rejecting the City Staff's recommendation for approval of Plat 2C, subject to conditions.

In most cases, the comments in Exhibit 86 simply call for duplication of requirements that independently apply. For example, p. 2 of Exhibit 86 asserts that details of roof types should be included in the preliminary plat process. But, the restriction on the types of roofs was already set by MPD Permit Condition 68, documented in Section 7.4.4.A.3 of the Development

Agreement, and reconfirmed in Staff Recommended Plat 2C Condition 2. Likewise, complaints at p. 15 assert that requiring City Attorney review of the CC&Rs is illegal; and that the CC&Rs should be part of preliminary plat review misunderstand the process. CC&Rs are private real estate documents created to govern the actions of a Homeowners' Association, they are not land use permits. Review by the City of the terms of the CC&Rs exists only to assure that matters otherwise required by MPD Permit conditions, Development Agreement, or Plat conditions to be included in the CC&Rs are, indeed, in the CC&Rs.

Other complaints raised in Exhibit 86 fall into the category of misunderstanding the applicable processes and procedures, and the timing for review. For example, at p. 9 there is an assertion that trail width not be evaluated and controlled at Utility Permit, and that utility permits do not exist in Black Diamond code. But, the term "Utility Permit" was defined in the Development Agreement to include all of the different construction and engineering plans required by the City, and Staff Recommended Plat 2C Condition 39 controls trail construction. Similarly, at p. 26, the allegation is made that an earlier-approved minor amendment to reduce the density of development parcels from MPD-M to MPD-L somehow resulted in an undocumented transfer of density to other areas of Phase 2; however, that makes no sense and ignores that the zoning for each development parcel authorizes a broad density range. And, at p. 27, the assertions that the Design Review Committee is a government entity are wrong; under Section 12.3 of the Development Agreement, the DRC is established by the Master Developer. Other issues raised simply repeat comments made by others and responded to elsewhere in this memorandum.

Mr. Derdowski's Exhibit 90, excerpts from the Black Diamond Municipal Code, is not entirely accurate. For example, the exhibit quotes from BDMC 19.30.040, *Retention of significant trees*, are from a version of that code that was adopted in 2011, rather than the vested codes for The Villages MPD (and Plat 2C specifically) contained in Exhibit E to the Development Agreement, Exhibit 15.

Ms. Bryant's Exhibit 55 asserts that City Department Head review was not conducted. But Exhibit 55, at p. 9, includes an email distributing the Plat 2C materials to the Public Works Director, Fire Chief, and Natural Resources Director, to conduct review under BDMC 17.16.010(B). The materials were reviewed, as evidenced in Exhibits 33 and 40. Contrary to Bryant's allegations, the Public Works Director reviewed the subdivision to ensure all requirements necessary to minimize flood damage are met. *See e.g.*, Staff Report (Exhibit 58), pp. 23, 78, and 178 (no flooding), and pp. 43, 64, 101, and 109. Contrary to Bryant's assertion, the "Fire Marshall has reviewed the streets for emergency vehicle access" and with conditions, confirmed that the subdivision approval criterion "is met." *See*, Staff Report (Exhibit 58), p. 63. Similarly, the Natural Resources Director as well as the City's peer reviewer at Perteet, reviewed the project for compliance with the Sensitive Areas Ordinance. *See*, Staff Report (Exhibit 58), pp. 64-76. There is no requirement in the code for a specific analysis or findings by the police chief.

K. Unsupported Substantive Allegations are Not Sufficient to Delay or Preclude Approval of Plat 2C

YarrowBay chooses not to rebut point by point the allegations made in Exhibit 87 because there are simply no points made that justify rejecting the City Staff's recommendation for approval of Plat 2C, subject to conditions.

Mr. Derdowski's Exhibit 87 opens by asserting an error in Staff's Stormwater analysis, because the "assumption that there are non-polluting surfaces is wrong. For example, roofs collect phosphorus from the air..." Even Save Black Diamond's own witness, Mr. Lider, understands that rooftops are "non-pollution generating impervious surfaces." Lider memo, dated December 17, 2014, p. 3. The very next allegation of Exhibit 87 is that YarrowBay's consultants did not include a qualified wetlands scientist. But, of course, as shown in Exhibit 63, YarrowBay's expert at Wetland Resources is a qualified wetlands scientist. And Exhibit 87 continues in this same vein. Unsupported, and often obviously incorrect, allegations are insufficient to support the Examiner delaying or denying Plat 2C.

For those same reasons, the assertions related to tree inventory in the wetland buffers are not well taken. Exhibit 87 does not have page numbers; partway through the document, Mr. Derdowski alleges that language on p. 87 of the Staff Report does not make sense. There, the Staff Report describes BDMC 19.10.230(F), including a requirement that if existing tree cover is less than a relative density of twenty, planting shall be required consisting of a density of three hundred seedlings per acre or the equivalent. The Staff Report explained that a significant tree inventory (Exhibit 3m)⁹ based on sample plots was submitted with the application. The samples showed that the relative density of significant trees was close to 15, more dense than the minimum requirement of 20 and, therefore, no plantings are required. Mr. Derdowski asserts 15 is less than 20 such that this does not make sense. But as described in Exhibit 27, p. 2, and also cited by the Staff Report, the relative density standard is about the spacing between trees. Thus, an area with a relative density of 15 means the trees are spaced 15 feet apart, rather than 20 feet apart, meaning the tree cover is more dense at 15.

Similar to Exhibit 86, in most cases, the comments in Exhibit 87 simply call for duplication of requirements that independently apply, or misunderstand the applicable processes and procedures, and the timing for review. Other issues raised repeat comments made by others that are responded to elsewhere in this memorandum. Many others raise issues that might have been considered in a SEPA appeal but are outside the scope of this preliminary plat hearing.

Finally, Exhibit 87 appears to suggest a variety of revisions to some of the Staff Recommended Conditions of Approval. YarrowBay requests that these revisions (and sometimes questions) not be incorporated and, instead that the conditions of approval for Plat 2C be adopted as proposed in the Staff Report, Exhibit 58, as modified by YarrowBay in Exhibit 72, and as further modified below in response to the City Staff review and rebuttal.

⁹ There is a typo in the Staff Report, which references exhibit 2m.

L. Fiscal Analysis

Allegations were made that the fiscal analysis was done incorrectly because it combined Phases 1A and 2. This is contrary to common sense, since, of course, the point of the fiscal analysis is to ensure the entire project has no adverse financial impact on the City. This is also a collateral attack on the previously approved permits, which expressly require such analysis. MPD Condition 156, Development Agreement, Section 13.6 and Exhibit N.

N. Reply to Proposals to Revise Conditions

YarrowBay proposed revisions to some Staff recommended conditions for Plat 2C. *See* Exhibit 72. Both the City and some public commenters responded. In addition, some commenters requested that other conditions be revised.

Condition 1

The City did not object to YarrowBay's revision to Condition 1. Bryant/Bortleson/Carrier object for reasons that appear not to understand how Conditions 1, 15 and 34 work together. YarrowBay requests that condition 1 be revised as stated in Exhibit 72.

Condition 2

The City confirmed all of YarrowBay's revisions to Condition 2 were acceptable, except that the City wants the reviewing official to be the "City Attorney as to form" rather than the Designated Official as was provided in the PP1A Plat conditions. Bryant/Bortleson/Carrier object to YarrowBay's assertion that the reviewer should be the same as for the CC&Rs in Plat PP1A. YarrowBay thinks there is less opportunity for confusion and conflict if the same reviewer looks at CC&Rs for multiple Implementing Projects. YarrowBay asks Condition 2 be revised as stated in Exhibit 72.

Condition 3

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 3. YarrowBay asks that Condition 3 be revised as stated in Exhibit 72.

Condition 4

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 4. YarrowBay asks that Condition 4 be revised as stated in Exhibit 72.

Condition 8

Based on comments on pp. 7 – 8 of the Bryant/Bortleson/Carrier submittal, it does not appear they were aware Condition 8 exists. Condition 8 as proposed by Staff addresses the citizens' concerns.

Condition 9

Bryant/Bortleson/Carrier do not object to revised Condition 9. The City objects, raising the concern that YarrowBay's condition could result in private utilities located in the right-of-way before a franchise is approved. Because the rights-of-way will not become public rights-of-way until dedicated on the face of the final plat, the City's objection is not well taken. YarrowBay's revision better accommodates construction timing. The City would still have the ability to reject a franchise, at which point infrastructure might have to be moved, which is entirely YarrowBay's risk to take. YarrowBay asks that Condition 9 be revised as stated in Exhibit 72.

Condition 11

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 11. YarrowBay asks that Condition 11 be revised as stated in Exhibit 72.

Condition 12

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 12. YarrowBay asks that Condition 12 be revised as stated in Exhibit 72.

Condition 13

Both the City and Bryant/Bortleson/Carrier object to revised Condition 13. YarrowBay asks either that Condition 13 be revised as stated in Exhibit 72, or else that if it is retained as proposed by Staff, that the Examiner clarify for the opponents that the level of drainage analysis conducted at the time of preliminary plat review is, appropriately and under code, less than the level of analysis conducted when construction and engineering plans are prepared.

Condition 16

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 16. YarrowBay asks that Condition 16 be revised as stated in Exhibit 72.

Condition 26

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 26. YarrowBay asks that Condition 26 be revised as stated in Exhibit 72.

Condition 27

The City did not object to YarrowBay's revision to Condition 27. Bryant/Bortleson/Carrier object because they want to be sure MPD Condition 32 is carried forward. YarrowBay's revisions were drafted to better ensure that MPD Condition 32 is carried forward, because of the Examiner's additions to requirements made in the PP1A decision. Condition 27 should be revised as stated in Exhibit 72.

Condition 34

The City does not object to revised Condition 34. Bryant/Bortleson/Carrier object, but their rationale appears to be text copied from their objection to Condition 27, which does not apply. YarrowBay asks that Condition 34 be revised as stated in Exhibit 72.

Condition 35

The City does not object to revised Condition 35. Bryant/Bortleson/Carrier object based on an apparent misunderstanding of how dedication works on the face of a final plat. The protections they seek are assured. YarrowBay asks that Condition 35 be revised as stated in Exhibit 72.

Condition 37

The City does not object to revised Condition 37. Bryant/Bortleson/Carrier object based on an apparent misunderstanding and to reiterate their concerns about Wetland E1. Given that the City has not objected, and all of the other evidence assures that the Wetland E1 concern is misplaced, YarrowBay asks that Condition 37 be revised as stated in Exhibit 72.

Condition 39b

Bryant/Bortleson/Carrier's rebuttal argument seeks to amend this condition to add superfluous language, about applying the more protective code provision. The Code already addresses the citizens' concerns and this language seems more likely to confuse than clarify. Condition 39b should stand as recommended by City Staff.

Condition 40

Based on comments on p. 7 of the Bryant/Bortleson/Carrier rebuttal, it does not appear they were aware Condition 40 exists. Condition 40 as proposed by Staff addresses the citizens' concerns.

Condition 42

Based on comments on pp. 8-9 of the Bryant/Bortleson/Carrier rebuttal, they are dissatisfied with the terms of Condition 42, but fail explain what is missing from Condition 42. Condition 42 as proposed by Staff addresses the citizens' concerns and expressly assures that the conditions requested by Perteet, which were then repeated by WRI, will be met.

Condition 44

The City does not object to revised Condition 44. Bryant/Bortleson/Carrier object based on a misunderstanding of the nature of a plat map, and allegations that split rail fencing is important to "rural design." The map provided by YarrowBay adequately and clearly defines where fencing should be located, and as described in Exhibit 72, there is no requirement for split

rail fences. As anyone who has visited new development sites can attest, the chances of chain link fence ever being used are close to zero. YarrowBay asks that Condition 44 be revised as stated in Exhibit 72.

Conditions 49 and 50

Neither the City nor Bryant/Bortleson/Carrier object to revised Conditions 49 and 50. YarrowBay asks that Conditions 49 and 50 be revised as stated in Exhibit 72.

Condition 64

The City does not object to revised Condition 64. Bryant/Bortleson/Carrier object asserting that YarrowBay should be required to make application for a water plan amendment in the event one is needed, as well as pay for it. But, any such amendment would affect the City's water system, such the City also has the ability to be the applicant for the plan amendment and there is no reason to preclude the City as potential applicant. YarrowBay asks that Condition 64 be revised as stated in Exhibit 72.

Condition 65

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 65. YarrowBay asks that Condition 65 be revised as stated in Exhibit 72.

Condition 66

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 66. YarrowBay asks that Condition 66 be revised as stated in Exhibit 72.

Condition 67

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 67. YarrowBay asks that Condition 67 be revised as stated in Exhibit 72.

Condition 70

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 70. YarrowBay asks that Condition 70 be revised as stated in Exhibit 72.

Condition 73

Neither the City nor Bryant/Bortleson/Carrier object to revised Condition 73. YarrowBay asks that Condition 73 be revised as stated in Exhibit 72.

Condition 80

Bryant/Bortleson/Carrier object to revised Condition 80, based on fire safety concerns. The City recommends revising Condition 80 to state: "Parking is prohibited on any section of roadway that is 20 feet wide or narrower, consistent with IFC standards." YarrowBay agrees with the City's revision and notes that it addresses the citizens' concerns. YarrowBay asks that Condition 80 be revised as stated herein.

Condition 81

City staff makes no objection to YarrowBay's amendment to Condition 81. Bryant/Bortleson and Carrier seek to amend the condition to add an opportunity for additional public comment. But there is no need or basis to impose a public comment period. Condition 81 requires a simple archeological probe study be conducted, that the results be presented to the City and that if any actions are required, the City impose those obligations on the clearing and grading permit. YarrowBay asks that Condition 81 be revised as stated in Exhibit 72.

New Condition A

Neither the City nor Bryant/Bortleson/Carrier object to new Condition A. YarrowBay asks that new Condition A be added, as stated in Exhibit 72.

Additional New Condition B

As described above, and to alleviate the concerns regarding drainage design and wetland hydrology, YarrowBay recommends a new condition be added stating:

Storm drainage design for Plat 2C shall utilize an HSPF based continuous runoff model (such as WWHM). For drainage facility design receiving runoff from drainage basins 320 acres and larger in total area, a calibrated model should be considered.

III. CONCLUSION

YarrowBay reiterates its request that the Examiner approve the preliminary plat for Plat 2C, with the modified conditions discussed in Exhibit 72 and this memorandum.

Attachments:

City of Black Diamond Hearing Examiner Decision, approving Preliminary Plat 1A (December 2012)

City of Black Diamond Hearing Examiner's Recommendation of Approval for The Villages Development Agreement (September 2011)

Department of Ecology Guidance Document, Appendix 8-C, Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System (April 2005)

Declaration of Kevin L. Jones dated December 22, 2014 and attached technical memorandum.