

Tracey Redd

From: Kristi Beckham <KBeckham@Cairncross.com>
Sent: Monday, December 29, 2014 4:32 PM
To: Nancy Rogers; MDRT User; Andy Williamson; 'olbrechtslaw@gmail.com'
Subject: RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2 of 3)
Attachments: Pages from scan_20141229154717 Reduced File Size Part 2b.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

I am resending the attachment to Email 2 of 3 in two parts, 2a and 2b. We received bounce backs because of the file size. Attached is Part 2b.

Thank you.

CH& Kristi Beckham

Legal Assistant

Cairncross & Hempelmann

524 Second Ave. | Ste. 500 | Seattle, WA 98104-2323

KBeckham@Cairncross.com | d:206-254-4494 | f:206-587-2308



This email message may contain confidential and privileged information. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this email is not intended or written to be used, and cannot be used by you, (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein. Please be advised that if you use a public or employer-provided computer or workplace device or system, then there is a risk that your email correspondence may be disclosed to your employer or other third party.

From: Nancy Rogers
Sent: Monday, December 29, 2014 4:20 PM
To: 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'
Cc: Kristi Beckham
Subject: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2 of 3)

Dear Mr. Examiner and MDRT Team and Mr. Williamson:

Yarrow Bay's reply materials are in three parts: (1) a 22 page memo, (2) the attached 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

Attorney

Cairncross & Hempelmann

524 Second Ave. | Ste. 500 | Seattle, WA 98104-2323 | [vCard](#) | [Bio](#)
NRogers@Cairncross.com | d:206-254-4417 | f:206-587-2308



This email message may contain confidential and privileged information. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this email is not intended or written to be used, and cannot be used by you, (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein. Please be advised that if you use a public or employer-provided computer or workplace device or system, then there is a risk that your email correspondence may be disclosed to your employer or other third party.

discussed. Finally, the SEPA responsible official has also considered the arguments and concerns presented by the SEPA Appellants and has still concluded that the proposal will not create any probable significant adverse environmental impacts.

3. Probable Significant Adverse Environmental Impacts. The Appellants have not demonstrated that PP1A will create probable significant adverse environmental impacts to wetlands in regards to cumulative impacts. The Appellants must demonstrate that PP1A will contribute to cumulative impacts that rise to the level of probable significant adverse environmental impacts. The Appellants have limited their appeal to addressing failure to adequately analyze cumulative impacts as opposed to asserting that any exist.

Conclusions of Law:

1. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to cumulative wetland impacts. As demonstrated in Finding of Fact III(J)(6) and Finding of Fact No. III(N)(2) above, the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of wastewater impacts. As determined in Finding of Fact No. III(N)(3) above, there are no probable significant adverse impacts associated with the proposal.

O. Groundwater Impacts to Wetlands

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the SEPA Appellants assert that hydrology inputs to the affected wetlands of the project have not been analyzed and that there should be a discussion of those impacts because wetlands are completely surrounded by development. In their pre-hearing brief, the Appellants assert that development surrounding wetlands can disrupt groundwater flows and, in turn, wetlands, citing *Wetlands and Urbanization, Implications for the Future*, 2001. Azous and Horner⁽⁵⁾; Chapter 8, *The Effects of Watershed Development on Hydrology*, Chapter 14. They also reference Chapter 3.4 in *Wetlands in Washington State, Vol .1 a Synthesis of the Science*.
2. Affected Wetlands Not Surrounded by Development. The Appellants' evidence on groundwater impacts relies upon the testimony of Dr. Cooke that wetlands D4, S, T and W are "surrounded by development". Dr. Cooke referred to studies that have determined that wetlands surrounded by more than 14% development may be adversely affected by changes in groundwater hydrology. 11/1/12 Tr. at p. 138, 161-163. Dr. Cooke has participated in some of these studies. Id. at 138-39. In subsequent rebuttal testimony Dr. Cooke wrote that 3.5% impervious surface is also a threshold. Ex. 133. It is determined that the proposal is not surrounded by development in an amount sufficient to trigger the thresholds of adverse impacts referenced by Dr. Cooke.

Dr. Cooke appears to have been the most knowledgeable and qualified person to speak on the impacts of surrounding development on groundwater inputs to wetlands. However, the evidence supporting Dr. Cooke's conclusions on this issue is not compelling. Dr. Cooke does not provide any precise definition of "surrounding development", except to point to the PP1A maps, Ex. 2, to show that portions of the proposal are proximate to the affected wetlands. If "surrounded by development" was indeed something like all areas within 200 feet of the wetland buffers, then more than 60% of the surrounding area for some of the wetlands (particularly wetland S) could be considered developed.

Scott Brainard provides a more logical definition of "surrounding development", limiting it to development within the drainage basins that feed into the wetlands (hereinafter referred to as "contributing basins"). If the issue at hand is how development affects groundwater that feeds into a wetland, it would appear logical to assess development impacts to those areas from which that groundwater flows. Mr. Brainard also notes that glacial till in the surrounding area is very close to the ground surface; such that the topography of the till dictates the direction of ground and surface water flows. See Ex. 32, p. 3 and 4 of 10/16/12 letter. Mr. Brainard provided a site plan with his 10/16/12 letter that shows the location of the contributing basins. The contributing basins will clearly have very little proposed development within them. As shown on the site plan and later testified by Mr. Brainard, only 0.31% of the contributing basins will be altered by development. Mr. Brainard concluded that this would create a de minimus impact.

Dr. Cooke did not address Mr. Brainard's use of the existing drainage basins until her written comments on November 13, 2012, Ex. 160. In Ex. 160 Dr. Cooke argues that it is not appropriate to use existing drainage boundaries because the proposed grading will change the drainage boundaries. However, Dr. Cooke does not identify any grading that could change the drainage basins that feed the affected wetlands. In point of fact none of the finished contour lines shown in the proposal's grading plans, Ex. 2, encroach into the drainage basins of the affected wetlands or result in any lowering of the lip of the basins except for a nominal area identified on the site plans attached to the first and second declarations of Mr. Brainard. As previously noted, this 0.31% of disturbed area was determined by Mr. Brainard to create de minimus impacts.

Dr. Cooke also asserts in Ex. 160 that a contributing basin is only one of many factors used in modeling wetland hydrology. Dr. Cooke does not identify these other factors or explain how they would affect hydrology within the contributing basins. Since glacial till is located near the ground surface for this proposal, it would appear that water would somehow have to flow uphill in order for the proposed development to change the hydrology of the affected wetlands. Some more detailed explanation from Dr. Cooke was necessary to explain these circumstances. Dr. Cooke's testimony was based upon several studies that she referenced, but there is nothing in the record to suggest that these studies would apply to circumstances where almost no surrounding development will occur in the contributing basins and shallow glacial till is so prevalent that it dictates both groundwater and surface water flows.

The evidence in support of the Applicant's position on groundwater impacts is overwhelming. All of the project specific evidence supports a finding that affected wetlands will not be adversely impacted by changes in groundwater flows. Dr. Cooke has established that as a general proposition surrounding development can adversely affect groundwater hydrology for wetlands. However, there is nothing in the record to suggest that the general studies relied upon by Dr. Cooke would apply to development located primarily outside of contributing basins in areas composed of shallow glacial till. It is not beyond the realm of possibility that adverse impacts could occur, but the SEPA Appellants have not provided any evidence that could reasonably lead to such a determination.

3. Adequacy of Review. The SEPA responsible official has conducted an adequate review of groundwater impacts. In addition to the information outlined in Finding of Fact No. III(J)(6), the SEPA responsible official was also able to consider the substantial amount of information provided by the SEPA Appellants and Mr. Brainard and Mr. Shiels on the issue. The SEPA responsible official's conclusions on groundwater impacts are based upon information reasonably sufficient to evaluate those impacts.
4. Probable Significant Adverse Environmental Impacts. The Appellants have not demonstrated that PP1A will create probable significant adverse environmental impacts to wetlands in regards to groundwater impacts. The Appellants must demonstrate that PP1A will affect groundwater flows to an extent that those altered flows will result in probable significant adverse environmental impacts to wetlands. The Appellants base their arguments on groundwater impacts to the impacts created by surrounding development. For the reasons identified in Finding of Fact No. III(O)(3) above, there is insufficient evidence to overcome the substantial weight that must be given the SEPA responsible officials determination that the proposal will not create any probable significant adverse environmental impacts.

Conclusions of Law:

1. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to groundwater impacts on wetlands. As demonstrated in Finding of Fact No. III(J)(6) and Finding of Fact No. III(O)(4) above, the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of wastewater impacts. As determined in Finding of Fact No. No. III(O)(5) above, there are no probable significant adverse impacts associated with the proposal.

P. Wetland E1 buffer.

This issue has been dismissed in the Examiner's 10/31/12 Order on Dismissal as moot.

Q. Post-construction hydrologic support of wetlands needs to be verified.

The threshold determination is sustained on this issue for the same reasons it was sustained for wetland groundwater impacts. As testified by Mr. Brainard in Ex. 32, the contact zone on top of the shallow glacial till of the contributing basins “is of uniform thickness and generally follows the surface topography”. Mr. Brainard’s characterization of the topography in this regard is uncontested and found to be accurate. As a consequence, the contributing basins are the source of all groundwater and surface water that feed wetlands D4, T, S and E1. For the same reasons outlined on wetland groundwater impacts, the SEPA responsible official has engaged in adequate review of post-construction hydrologic support, there will be no probable significant adverse impacts relating to the hydrologic support and the threshold determination should be sustained on this issue.

R. Wetland Delineation methodology outdated.

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the SEPA Appellants assert that the delineation methodology applied to the proposal through the Villages DA is dated because the Army Corps of Engineers supplemented their delineation manual in 2008. The Appellants assert that the Washington State Department of Ecology allowed and preferred the use of the supplement from the time it was adopted on June 28, 2008 until it was required to be used starting March 14, 2011. The federal supplement was not used for the delineations set by 8.2.1 of the Villages DA.
2. Federal Supplement is Circumstantial Evidence. If the federal supplement would result in stricter delineations, this would serve as circumstantial evidence that the delineations applied to this proposal do not adequately protect against probable significant adverse environmental impacts. As determined in Conclusion of Law No. II(B)(3), SEPA can be used as a “gap filler” to address impacts where currently adopted regulations fall short. The federal supplement is required for Army Corps permits and wetlands subject to the City’s shoreline master program. See WAC 173-22-035. The supplement is not required for delineation of wetlands not subject to the City’s shoreline master program. See BDMC 19.10.210(A)(adopting a 1997 DOE delineation manual). A stricter delineation by itself may suggest that further investigation of impacts is warranted, but it would not be sufficient to show that the proposal would create probable significant adverse environmental impacts to wetlands. In this case there has been no showing made that any stricter delineation would result of applying the Federal supplement or that any difference in delineations would result in probable significant adverse environmental impacts. In point of fact the only evidence on the likelihood of a different delineation is that it’s unlikely that the delineation will change. In *Recent Advances in Wetland Delineation- Implications and impact of Regionalization*, by Jacob Berkwitz in Wetlands, Att. E to Ex.

188, the federal delineation supplement was applied to 232 wetlands that had been delineated under the prior federal manual. The wetland boundary did not change in 82% of the cases, with the boundary increasing in 12% (28 sites) of the cases. Consequently, without any other evidence it must be concluded that the delineations will not change as a result of applying the federal delineation supplement.

3. Adequacy of Review. The SEPA responsible official has conducted an adequate review of groundwater impacts. In addition to the information outlined in Finding of Fact No. III(J)(6), the SEPA responsible official was also able to consider the substantial amount of information provided by the SEPA Appellants and Mr. Brainard on this issue. The SEPA responsible official's conclusions on wetland delineation impacts are based upon information reasonably sufficient to evaluate those impacts.
4. Probable Significant Adverse Environmental Impacts. The Appellants have not demonstrated that PPIA will create probable significant adverse environmental impacts to wetlands in regards to wetland delineations. The Appellants must demonstrate that the delineations of PPIA wetlands will inadequately protect against probable significant adverse environmental impacts. The Appellants have provided no evidence that the delineations would provide inadequate protection, other than referring to the federal delineation supplement that could lead to a stricter delineation 12% of the time. This circumstantial evidence is insufficient to establish that the delineations will create probable significant adverse environmental impacts when giving substantial weight to the threshold determination made by the SEPA responsible official.

Conclusions of Law:

1. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to not applying the federal delineation supplement for wetland delineations. As demonstrated in Finding of Fact No. III(J)(6) and Finding of Fact No. III(R)(4) above, the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of wetland impacts. As determined in Finding of Fact No. III(R)(5) above, there are no probable significant adverse impacts associated with the proposal.

S. Differences in Wetland Ratings Between Applicant and City

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the SEPA Appellants assert that the City and Applicant should have resolved differences on wetland ratings prior to making a threshold determination.
2. Wetlands Classified Prior to Issuance of MDNS. As discussed in Conclusion of Law No. II(A)(2)(quoting *Moss v. City of Bellingham*, 109 Wn. App. 6, 25 (2001)), information

used to support a threshold determination can be based upon information submitted after issuance of the threshold determination. Beyond this, however, the SEPA Appellants contention that wetland classifications had not been resolved prior to issuance of the threshold determination is incorrect. WRI sent a letter to Perteet expressing its agreement to all wetland classifications and boundaries on July 30, 2012. See Ex. 22 to Staff Report. The MDNS was issued a month later, on August 31, 2012.

3. Differences in Opinion. The SEPA Appellants find fault with the wetland ratings and buffer determinations because there were some initial differences of opinion between Perteet and WRI. As determined in Finding of Fact No. III(J)(5), the fact that these determinations appear to have been negotiated does not reasonably suggest that Perteet compromised its professional judgment or agreed to determinations that are in conflict with applicable regulations. The differences of opinion are not probative of the accuracy of the final ratings. Indeed, as discussed in Finding of Fact No. III(J)(5), the deliberative process involved in an honest exchange of competing ideas can serve to improve the accuracy of the ratings as opposed to detract from them.
4. No Probable Significant Adverse Environmental Impacts. There are no probable significant adverse environmental impacts resulting from the wetland classifications and ratings recommended by staff. Except for the classification of Wetland E1, which is addressed in another SEPA Appeal issue, the SEPA Appellants have provided no evidence that the ratings and classifications create adverse impacts other than to point out that Perteet changed its initial position on some ratings after deliberating about the proper rating with WRI. As determined in Finding of Fact No. III(J)(5), this deliberative process does not establish any compromised impartiality on behalf of Perteet and so is not probative of adverse impacts.

Conclusions of Law:

1. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to the allegedly negotiated process employed to set the wetland ratings and classifications recommended by staff. As demonstrated in Finding of Fact No. III(J)(6), the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of wastewater impacts. As determined in Finding of Fact No. III(S)(4) above, there are no probable significant adverse impacts associated with the proposal.

T. Baseline Phosphorous Load for Rock Creek

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the SEPA Appellants assert that the Applicant has undertaken inadequate sampling to establish baseline phosphorous loading for Lake Sawyer. The appeal statement further asserts that an annual

phosphorous goal has not been set as required by SEPA and the Water Quality Committee has not conducted required review.

2. Baseline Monitoring Added to Project Instead of Reduced. Pre-construction baseline sampling has been an understandable source of tremendous confusion for the SEPA Appellants. The SEPA Appellants have contended throughout their briefing that baseline monitoring in the adopted stormwater monitoring program (Ex. O to the Villages DA) has been significantly reduced from baseline monitoring that was proposed in the draft monitoring program initially proposed for the project, Ex. 189. The SEPA Appellants have misconstrued a new and additional baseline monitoring program as a substitute for the draft baseline monitoring requirements. The draft monitoring requirements are in fact still required. The new requirements only add to what was already required in the draft requirements. As a result, contrary to the arguments made by the SEPA Appellants, the final stormwater monitoring program added monitoring requirements to the draft program instead of reducing them.

As previously noted, the Appellants' confusion on this issue is completely understandable. The new monitoring program added in the final adoption was labeled a "monitoring" program. The pre-existing monitoring requirements were labeled as "baseline monitoring", even though the "baseline monitoring" program is required to be commenced after the initial "monitoring" program. The draft version of the stormwater monitoring plan, Ex. 189, contained a 1/3/11 memo from Triad that summarized the monitoring requirements of the Quality Assurance Project Plan ("QAPP"), another part of Ex. O. The final version of Ex. O failed to include this summary by what the Applicant termed "administrative error", see Ex. 148, Applicant Rebuttal Comments and Closing Remarks, FN. 2, and instead included a memo that summarized the far less stringent requirements of the newly added baseline requirements. Given this confusing use of terminology and the "error" in omitting the 1/3/11 Triad memos, it was reasonable for the SEPA Appellants to believe that baseline monitoring requirements had been significantly reduced.

3. Applicant Has Complied with Newly Added Baseline Monitoring Program. It is uncontested that the Applicant has complied with the newly added baseline monitoring requirements in Ex. O, referenced in Finding of Fact No. 2 above. The new baseline monitoring requires three samples from three locations on Rock Creek taken at three separate times. The Applicant has complied with this requirement. See Ex. 9.
4. Applicant Has Set Annual Phosphorous Goal. The SEPA Appellants assert that the City has not complied with Villages MPD COA 81, which requires the Applicant prior to Villages DA approval to identify the estimated maximum annual volume of total phosphorous that will be discharged from runoff in the Villages MPD. This required information was provided by the Applicant in Ex. 37 and the methodology and estimate was approved by the City's third party reviewer, Tetra Tech, in Ex. 38. Ex. 37 and 38 were prepared in January, 2011 and the Villages DA was approved in December, 2011.

5. Water Quality Committee Has Met. The SEPA Appellants assert that the water quality committee has not been convened as required by Villages MPD COA No. 85. Villages MPD COA No. 85 requires the committee to meet at least once per year. As demonstrated by the letter from Colin Lund to Mayor Olness, Ex. 38, the water quality the committee has met twice. The meeting requirement is satisfied.
6. Adequacy of Sampling and Methodology. In Ex. 27, p. 3, Rob Zisette concludes that the baseline monitoring requirements in the QAPP (those initially required in the draft monitoring plan and adopted into the final plan) were flawed due to inadequate sampling and inaccurate methodology. Mr. Zisette concluded that samples from several hundred storm events were necessary to accurately determine baseline conditions as opposed to the six to eight events recommended in the QAPP.

The Applicant and City have provided no evidence to counter the sampling and methodology flaws asserted by Mr. Zisette at p. 3 of Ex. 27. The Applicant simply argues that the sampling methodology cannot be challenged because it has been set by the Villages DA. Mr. Zisette is an expert in stormwater management. There is no reason to reasonably conclude that his conclusions on p. 3 of Ex. 27 are in error and there has been no expert testimony provided to counter those conclusions. Given these circumstances, it must be concluded that the methodology used to compute baseline phosphorous conditions of Rock Creek is flawed and will not generate reasonably accurate results.

It is of no consequence that Mr. Zisette was unaware that the newly adopted "monitoring" requirements differed from the "baseline monitoring" requirements of the draft monitoring plan, as discussed in Finding of Fact No. III(T)(2). As outlined in the conclusions of law below, PP1A triggers the baseline monitoring of the draft plan in addition to the new monitoring plan added upon the adoption of the Villages DA. Further, even though the newly adopted monitoring plan was instituted for the sole purpose of assessing how differences in hydrologic conditions between years has an influence on water quality conditions, there is nothing to suggest that the methodology flaws cited by Mr. Zisette would not similarly cause problems in the results generated for the newly added monitoring regime.

7. Probable Significant Adverse Environmental Impacts. The sampling methodology proposed to set baseline phosphorous conditions is determined to create probable significant adverse environmental impacts. The extensive phosphorous monitoring required for the project has little value if baseline conditions are inaccurate. Inaccurate baseline measurements could result in phosphorous levels that exceed TMDL levels, which as determined in the FEIS would create probable significant adverse environmental impacts.

The impacts of the monitoring program can be brought back below the SEPA threshold if a reasonably accurate methodology is employed. A condition will be added to the MDNS requiring that the concerns of Mr. Zisette expressed in the first two full paragraphs of p. 3 of Ex. 27 shall be evaluated by the City's MDRT team and that his

methodology be incorporated into setting baseline phosphorous readings. At a minimum, the revised baseline monitoring shall include a significant increase in the amount of sampling to provide for an acceptable error of 0.05 and the use of hydrograph separation, smearing and other techniques to estimate separate loadings for base flows.

Conclusions of Law:

1. Baseline Monitoring Required. The baseline monitoring required in the QAPP has been triggered by this implementing project. The September 19, 2011 letter from Alan Fure in Exhibit O to the Villages DA requires QAPP baseline monitoring “[p]rior to construction of the first implementing project within the Lake Sawyer drainage basin”. It is uncontested that PPIA will include two SR 169 improvements within the Lake Sawyer drainage basin. Section 14 of the Villages DA defines an implementing project as a development project that implements the Villages DA and Villages MPD, “including but not limited to Construction Permits and Land Use Permits”. Inclusion of the term “construction permits” in the definition establishes that the size of the development is not a significant factor in determining whether development qualifies as an implementing project. If an implementing project was intended to only include large scale development, it would not have referenced construction permits. Further, the SR 169 improvements satisfy, and thus implement, the transportation mitigation requirements of the Villages DA and/or Villages MPD. The plain meaning of the September 19, 2011 letter requires QAPP baseline monitoring prior to construction of the SR 169 improvements.
2. It is recognized that from an environmental protection standpoint, requiring baseline monitoring at this stage of development is not ideal. Deferring baseline monitoring to a later day will allow for baseline monitoring over a more extended period of time (because it would be done with the monitoring already completed), which may provide for more useful results. Since the SR 169 improvements in the Lake Sawyer drainage basin are also relatively minor, inaccurate readings in the newly adopted baseline monitoring (those added to the draft at the Villages DA adoption) caused by the methodology problems identified by Mr. Zisette are unlikely to result in any significant adverse environmental impacts, especially with the phosphorous control conditions adopted by this decision for those improvements. While potentially not providing for any significant environmental benefit, the QAPP monitoring requirements could create significant delays in the Applicant’s construction schedule. If requiring QAPP baseline monitoring for this project does become unduly burdensome on the Applicant, the City may be required under constitutional due process requirements to allow for a more flexible interpretation of the timing of QAPP baseline monitoring. It is not immediately clear from the record what impacts this interpretation will have on the Applicant. The Applicant is invited to request reconsideration if it is able to demonstrate from the administrative record that due process mandates a more flexible interpretation.
3. DA Monitoring Requirements Don’t Preclude SEPA Review. As determined in Conclusion of Law No. II(B)(3), Villages DA requirements cannot be used to preclude

SEPA review and mitigation unless the requirement is itself and exercise of SEPA substantive authority that was intended to be final mitigation of the impact at hand. There is nothing in the record to suggest that the monitoring requirements were adopted as an exercise of SEPA Authority. The accuracy of the methodology used to set baseline conditions is still subject to SEPA review and can be mitigated accordingly.

4. Threshold Determination Sustained. As additionally mitigated, there are no grounds for overturning the threshold determination of the responsible official as it applies to the allegedly negotiated process employed to set the wetland ratings and classifications recommended by staff. As demonstrated in General Finding of Fact No. 6, in conjunction with all the stormwater information the responsible official has reviewed over the course of the hearing, the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of wastewater impacts. As determined in Finding of Fact No. III(T)(7) above, there are no probable significant adverse impacts associated with the proposal as further mitigated by this decision.

U. Excessive Queue Lengths

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the Appellants noted that the *Traffic Impact Study* and its updates (Ex. 16) show mitigated queue lengths at some intersections which are very long, despite the intersection as a whole functioning at a sufficient level of service (LOS). Additionally, though the whole intersection may have a sufficient LOS, individual legs fall to LOS D. The Appellants argue that while averaging intersection LOS may be common practice, additional mitigation, such as traffic signal timing, should be evaluated when one intersection leg is predicted to have an uncharacteristically long queue length. In their Pre-Hearing Brief, the Appellants note that for the intersections of SE Covington-Sawyer Road/216th Avenue SE and SE Auburn-Black Diamond Road/Main Street, certain intersection legs are predicted to exceed the 95th percentile for volume/capacity and that the queue may be even longer than those shown in the Applicant's *Traffic Impact Study*.

In the Applicant's Rebuttal Brief (Ex. 116), the Applicant argued that the roadways all have enough capacity to hold the predicted queues without causing gridlock. Dan McKinney of Transpo provided a memorandum to the City entitled Villages Preliminary Plat 1A – Response to September 21, 2012 Transportation Comments (See McKinney Declaration Ex. 42). Mr. McKinney stated,

“Queue lengths ... represent the estimated 95th percentile queues during the weekday PM peak hour Phase 1A buildout. The 95th percentile queue is used to ensure adequate storage length for roadway design and represents the queue length that will only be exceeded approximately 5 percent of the analysis period. Traffic volumes used in the

analysis represent the peak 15 minute period during the peak one hour interval of the afternoon/evening commute period, which typically have the highest volumes throughout the entire day."

Mr. McKinney goes on to state the 507 foot queue, the longest predicted, is located at SE Covington-Sawyer Road/216th Avenue SE, and equates to approximately 20 vehicles. Queues would typically clear the intersection during each cycle of the signal. Mr. McKinney stated, "based on the forecasted queue length and intersection operations, additional mitigation measures are not necessary in the professional opinion of Transpo" (Ex. 42, page 6).

The City's transportation expert, Mr. Perlic, testified that he had reviewed the Applicant's methodology with respect to queue lengths and found it to be the standard methodology used in the profession. Mr. Perlic stated his team had not found any issues with the way the Applicant calculated queue length or the intersection level of service. He stated the calculation of queue lengths is embedded in the level of service calculations which were performed in the intersection analysis that served primarily as the basis for the required mitigation at several intersections. Mr. Perlic stated standard practice is to design intersections to accommodate the 95th percentile of traffic. Mr. Perlic testified that the longest queue length, of 507 feet, though being rather long does not represent a significant adverse environmental impact. This is because the intersection overall still operates at a level of service B with an average vehicle delay of 20 seconds. (See 11/02/21012 Tr. 154-161) Mr. Perlic also noted that King County concurred with his analysis in a letter by Paulette Norman of the King County Road Services Division (Ex. 49).

2. FEIS Analysis. The FEIS analysis did mention intersection queue lengths as a specific issue in FEIS Transportation Finding of Fact No. 9 when it stated, in part,

"The FEIS did not include a detailed analysis of potential queue lengths resulting from increased traffic... A queue analyses at the project level will allow consideration of signal timing, actual volumes, intersection design, and will more accurately predict what the specific mitigation needs would be..."

The FEIS Transportation Conclusion of Law No. 11 states,

"It was not necessary for the FEIS to analyze queue lengths. Review of queue lengths is more appropriately done at the project level, rather than the programmatic stage. Such analysis should be done when looking at specific improvements in the construction phase, so that determinations of significant adverse impacts can occur in conjunction with construction, rather than trying to guess what will happen 15 years from now. The FEIS contained a reasonably thorough discussion to inform the City of the environmental impacts of traffic while recognizing that more detailed information on environmental impacts will be available with subsequent project proposals. However, the Hearing Examiner will recommend additional conditions for this topic as part of the MPD."

3. Villages MPD Permit Approval. The Villages MPD FOF 5(K)(vii) addressed queue lengths by deferring their analysis to the project level. The MDP COL and COA did not specifically address queue lengths.
4. Probable Significant Adverse Environmental Impacts. There is nothing in the record to suggest that the queue lengths at intersections as mitigated will create probable significant adverse environmental impacts. In their appeal statement the SEPA Appellants assert that additional mitigation measures, such as traffic signal timing, should have been considered. Beyond the issues identified above, the SEPA Appellants have not identified any adverse impacts associated with intersection queue length as mitigated or with the use of averaged interaction level of service associated with PP1A. The City's consultant concurs that the Applicant's methodology is standard industry practice and that there will be no gridlock. Even during the busiest 15 minutes of the day, most cars should be able to pass through the busiest intersection during the first cycle. Substantial weight must be given to the threshold determination of the SEPA responsible official. In this case, the Appellant has provided no evidence of any probable significant adverse environmental impact related to intersection level of service and associated queue lengths.
5. Adequacy of Review. The Environmental Checklist describes the primary access of the property, the then-existing public transit route and stop, and the proposed new roads and street improvements. The Environmental Checklist also references the *Villages MPD Phase 1A Traffic Impact Study* (Ex. 16) by Transpo. The Applicant provided several supplemental documents in support of the Environmental Checklist including *Villages MPD Preliminary Plat 1A Traffic Impacts to Green Valley Road* (Ex. 46), a *Traffic Monitoring Plan* and responses to comments (Ex. 16, 27 and 94). The City's consultants, Parametrix, prepared the *SE Green Valley Road – Traffic Calming Strategies* and a *Rock Creek Bridge Evaluation* (Ex.192). The SEPA Responsible Official, Steve Pilcher, reviewed this information prior to determining that the proposal would not create probable significant adverse environmental impacts. See 11/3/12 Tr. at p. 283-286. Mr. Pilcher also considered all of the evidence presented by the SEPA Appellants on alleged impacts during the hearing and concluded that the proposal would not create any probable significant adverse environmental impacts. The SEPA Responsible Official's conclusions on the environmental impacts of the proposal are based upon information reasonably sufficient to evaluate the environmental impact of the proposal.

Conclusions of Law

1. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to queue lengths. As demonstrated in Finding of Fact No. III(U)(5), the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of queue lengths. As determined in Finding of Fact No. III(U)(4), there are no probable significant adverse environmental impacts resulting from the queue lengths generated by the proposal.

V. Inadequate Intersection Mitigation

Findings of Fact:

1. Overview of Appeal Issues. In their appeal statement, the Appellants argue the Applicant's Traffic Impact Study (Ex. 16) is not credible with respect to the efficacy of proposed intersection mitigation. Specifically, the Appellants question the ability of the proposed mitigation to affect 10-fold reductions in modeled intersection delay after mitigation. In their pre-hearing brief, the Appellants further note that for two critical intersections, SR 169/Roberts Drive and SR 169/SE Black Diamond-Ravensdale Road, the PP1A traffic analysis proposed evaluated mitigations that exceeded those required by the DA. The Appellants further argued that the Applicant's Interim Improvements at these two intersections are simply placeholders.

In the Applicant's Rebuttal Brief (Ex. 116), the Applicant argued "transportation impacts of PP1A have been thoroughly analyzed and necessary mitigation has been imposed" (See Ex. 116, page 10). Dan McKinney of Transpo provided a memorandum to the City entitled Villages Preliminary Plat 1A – Response to September 21, 2012 Transportation Comments (See McKinney Declaration Ex. 42). Mr. McKinney stated the large differences in traffic delay for each mitigated intersection is explained by the differences in LOS reporting standards for signalized or roundabouts versus stop-controlled intersections. He stated,

"At intersections controlled by traffic signals or roundabouts, the LOS of the intersection is reported based on the average delay for every vehicle entering the intersection during a specified time period.

For side-street stop-controlled intersections, LOS is defined in terms of the average vehicle delay of the worst performing approach or movement at the intersection. ... The lower volume of traffic on the side street will experience a high level of delay, which results in the poor level of service for that minor movement." (See Ex. 42, pages 6-7)

The previously stop controlled intersections would have very high delays on the side streets in an unmitigated condition. After the mitigation of either a signal or a roundabout, the average delay for the entire intersection decreases.

In a declaration, the City's traffic expert, John Perlic, stated he concurred with both the Applicant's methodology and their conclusion regarding the substantial decrease in intersection delay reported by Transpo (Ex. 135). Mr. Dan Ervin testified the signal improvements proposed for the SR 169/Roberts Drive and SR 169/SE Black Diamond-Ravensdale Road intersections will have a 50-year lifespan. (11/3/2012 Tr. 7).

2. FEIS Analysis. The FEIS analysis discussed individual intersection improvements in a limited way in FEIS Transportation Finding of Fact No. 10 when it stated, in part,

“The FEIS did not address individual turning movement failures at the various ‘legs’ of each intersection. The FEIS concluded that all proposed alternatives would result in increased traffic volumes and delays, some resulting in failing levels of service. The Transportation Technical Report analyzed individual turning movements, but the FEIS itself only addressed failing intersections.”

FEIS Transportation Finding of Fact No. 15 also addressed intersections,

“The FEIS addressed levels of service and included a reasonable discussion of the impacts resulting from increased traffic volumes and decreased levels of service. The FEIS generally describes mitigation measures in general and in more extensive terms in the body and technical appendices. The Applicant has also proposed a monitoring plan and a mid-point review condition to analyze transportation impacts and ensure the mitigation measures are effective. ... Forty-six intersections were identified for review in the scoping process, an unprecedented number for a non-project FEIS. In accordance with standard practice and the City of Black Diamond code, entire intersections (rather than portions thereof) were studied at PM peak hours, to address the most congested time of day. When the levels of service become unacceptable, mitigation is identified to reduce delays and return to acceptable levels of service. Additional review and potential additional mitigation will be done in conjunction with specific projects.” (Emphasis added.)

The FEIS Transportation Conclusion of Law No. 5 states,

“Analysis of whole intersection failure was sufficient to establish necessary mitigation. The City’s LOS standards for intersections applies to the whole intersection...it is standard practice to analyze the entire intersection because mitigation is tied to failure of [the] whole intersection...Analysis of the LOS at intersections contained a reasonably thorough discussion of significant aspects of probable environmental consequences.”

3. Villages MPD Permit Approval and Developer Agreement Conditions. The Villages MPD Approval Ordinance 10-946 contained a broad discussion of impacts to intersections and required mitigation in Villages MPD Findings of Fact No. 5(B, C, H, J, and K(v)) and Villages MPD Conclusions of Law No. 23(A) and 30(F). The Villages MPD COA required an extensive list of Applicant improvements to intersections (Villages MPD COA No. 10, 15, 16, 18, 19, 20, and 25). The Villages DA Section 11.5 provides for the timing, construction and funding of off-site regional infrastructure improvements including transportation intersection improvements (TVDA Table 11-5-1 and Exhibits Q and R).
4. Probable Significant Adverse Environmental Impacts. There is nothing in the record to suggest that proposed intersection mitigation will create probable significant adverse environmental impacts. In their appeal statement the SEPA Appellants assert that the proposed mitigation is essentially too good to be true. There is nothing in the record to reasonably suggest that the City’s engineering and construction standards for intersection design are insufficient to adequately mitigate traffic impacts. Substantial weight must be

given to the threshold determination of the SEPA responsible official. In this case, the Appellant has provided no evidence of any probable significant adverse environmental impact related to the proposed intersection mitigation.

5. Adequacy of Review. The Environmental Checklist describes the primary access of the property, the then-existing public transit route and stop, and the proposed new roads and street improvements. The Environmental Checklist also references the *Villages MPD Phase 1A Traffic Impact Study* (Ex. 16) by Transpo. The Applicant provided several supplemental documents in support of the Environmental Checklist including *Villages MPD Preliminary Plat 1A Traffic Impacts to Green Valley Road* (Ex. 46), a *Traffic Monitoring Plan* and responses to comments (Ex. 16, 27 and 94). The City's consultants, Parametrix, prepared the *SE Green Valley Road – Traffic Calming Strategies* and a *Rock Creek Bridge Evaluation* (Ex.192). The SEPA Responsible Official, Steve Pilcher, reviewed this information prior to determining that the proposal would not create probable significant adverse environmental impacts. See 11/3/12 Tr. at p. 283-286. Mr. Pilcher also considered all of the evidence presented by the SEPA Appellants on alleged impacts during the hearing and concluded that the proposal would not create any probable significant adverse environmental impacts. The SEPA Responsible Official's conclusions on the environmental impacts of the proposal are based upon information reasonably sufficient to evaluate the environmental impact of the proposal.

Conclusions of Law

1. Collateral Attack. The methodology for assessing impacts to intersection was expressly found to be adequate in the Examiner decision approving the adequacy of the FEIS, as outlined in the findings of fact above. Consequently, the methodology used for assessing impacts to intersections cannot be challenged in subsequent SEPA review as outlined in Conclusion of Law No. II(B)(2).
2. Threshold Determination Sustained. There are no grounds for overturning the threshold determination of the responsible official as it applies to intersection mitigation. As demonstrated in Finding of Fact No. III(V)(5), the SEPA responsible official has made a showing that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA in his review of traffic safety impacts. As determined in Finding of Fact No. III(V)(4), there are no probable significant adverse environmental impacts resulting from the intersection mitigation generated by the proposal.

W. SEPA Checklist Deficiency A.9

The SEPA Appellants assert that the Applicant has filed a permit application for development of land that adjoins the proposal to the west. The Appellants have not provided any information on this adjacent permit application beyond the permit number. There is no evidence presented that the adjoining development would create any environmental impacts that would affect the impacts created by the proposal. In the absence of any such information, there is no basis to conclude

that the SEPA responsible official should have investigated the permit application further to amount to prima facie compliance with the procedural requirements of SEPA and there is certainly no basis to conclude that the adjoining permit application would result in the creation of probable significant environmental impacts by PPIA. The alleged failure to include information on the adjoining development is not sufficient to overturn the threshold determination.

X. SEPA Checklist Deficiency A.10

The SEPA Appellants devote a substantial amount of their appeal asserting that required governmental approvals are not identified in the environmental checklist. The failure to identify a required government approval, by itself, is not sufficient to invalidate a threshold determination. The adequacy of a checklist is not grounds for administrative appeal. The SEPA rules clearly provide that the only administrative appeal allowed in the SEPA review process is an appeal of a threshold determination or the adequacy of an FEIS. See WAC 197-11-680(3)(a)(ii). As previously discussed, the only grounds for overturning a SEPA threshold determination are that there are unmitigated probable significant adverse environmental impacts or that the SEPA responsible official failed to establish that he conducted a prima facie review of environmental impacts. As is evident from the permits more specifically addressed below, it is unlikely that failure to disclose a required government approval would ever result in any probable significant adverse environmental impacts or provide any significant amount of information that could support finding that the SEPA responsible official failed to make a prima facie showing of adequately reviewing environmental impacts.

1. King County Stormwater Approval. The SEPA Appellants assert that the SEPA checklist failed to identify King County approval for PPIA discharges to Horseshoe Lake to “actively control the level of the lake to pre-development conditions”. Alan Fure, in his declaration admitted as Ex. 44, states that no King County approval is required because the Villages DA 7.4.3.F requires that post-construction stormwater flow volumes into Horseshoe Lake are approximately the same as pre-construction volumes. The SEPA Appellants have not provided any reference to any ordinance or statute that would require King County approval. Further, the SEPA Appellants have provided no evidence that a requirement for a King County approval would result in any probable significant environmental impacts. In the absence of any such information, there is no basis to conclude that the SEPA responsible official should have investigated the permit application further to amount to prima facie compliance with the procedural requirements of SEPA and there is no basis to conclude that the adjoining permit application would result in the creation of probable significant environmental impacts by PPIA. The alleged failure to include information on King County approval, which most likely isn’t even required, is not sufficient to overturn the threshold determination.
2. HPA Approval. The SEPA Appellants assert that the checklist fails to address HPA approval for proposed stream crossings (specifically additions to the Rock Creek Bridge and a water main crossing), outfall installations and potential wetland fills. The arguments pertaining to the HPA issue were primarily presented during the testimony of Cindy Proctor. See 11/1/12 Tr at 55-79. In their testimony, the Appellants claim that the

Rock Creek Bridge will be widened based upon its inclusion in the City's six year transportation plan, Ex. 23, and a photograph showing that the bridge is narrow and has no shoulders, Ex. 22. The Appellants also testified that twelve inch water mains will be constructed over the bridge. The Appellants note that City standards require a 15 foot access easement for public water lines, which shows that there isn't room within the existing footprint of the bridge to accommodate a water line. The SEPA Appellants also noted that the Department of Fish and Wildlife rely upon the disclosure of the need for an HPA in SEPA checklists to trigger their review. The SEPA Appellants presented an email from a WDFW official, Ex. 24, that noted an HPA would not be required for water or sewer lines built on the bridge but would be required for the construction of a new trestle to support the utility lines. Ms. Proctor noted that in the Applicant's Motion for Dismissal, the Applicant had asserted that a new trestle may be constructed to support a pedestrian crossing. The SEPA Appellants also argued that it's disingenuous to assert that the Applicant will add pedestrian safety features to the bridge if determined necessary as required by Villages DA 11.6, but at the same time argue that no widening of the bridge is currently proposed.

The City and Applicant responded that the City's six year transportation plan only requires further study of the bridge and also shows the widening of Robert's Road up to but not including the Rock Creek Bridge. Mr. Sterbank also pointed out that the WDFW official who authored Ex. 24 is not an attorney and is not competent to represent WDFW on legal matters. Mr. Sterbank noted that the HPA regulations require an HPA permit only when structures are placed within the bed of a stream or a project otherwise uses the water of a stream or diverts or changes the natural flow of a stream. He also noted that if pedestrian improvements were made via a trestle that the trestle could span the river in such a manner that no portion of it would affect stream flows or be built within the stream bed.

HPA permits are unquestionably an important means of ensuring that impacts to streams are adequately mitigated. However, the failure to identify the requirement of an HPA permit in the environmental checklist from a threshold appeal standpoint is ultimately of little significance. Since an HPA permit is definitely within the realm of possibility for work on Rock Creek Bridge, the environmental checklist should have said that a permit "may be required". Even the Applicant concedes that an HPA permit "may be required" depending on what pedestrian improvements are made to the Rock Creek Bridge. See Fure Declaration, Ex. 44, p. 8 of 11 of 10/30/12 letter. It is acknowledged that the checklist only requires "permits that will be needed for your proposal" (emphasis added), but identifying permits that "may" be needed to this response is consistent with the "worst case" analysis required by WAC 197-11-080(3)(b).

If the checklist had identified that the HPA permit "may be required", this may have made it more likely that WDFW would require an HPA permit and it may also have triggered more SEPA comment from WDFW. However, the record is far from clear that the failure to include this information will result in probable significant adverse environmental impacts. In the uncertain event that the Applicant does work that triggers

an HPA requirement, there is nothing to suggest that the Applicant won't take the initiative to apply for an HPA permit. Indeed, given the monitoring by the SEPA Appellants and other community members, it would be foolish for the Applicant not to apply for a permit if it were required to do so. If a permit is ultimately required and approved it is unlikely that the result would lead to any probable significant adverse impacts given the strict criteria applicable to HPAs and the potential additional SEPA review that may go along with it. In the unlikely event that the Applicant manages to construct improvements without a required HPA permit it becomes a little more likely that probable adverse environmental impacts will result, but the Appellants have not overcome the substantial weight standard to establish this level of impact. Indeed the Appellants have not identified any specific impacts that could result.

In order to remove any doubt as to the marginal impacts of failing to identify the HPA in the SEPA checklist, a new MDNS condition will be imposed requiring the City to revise the checklist to identify that an HPA permit may be required for pedestrian improvements to Rock Creek Bridge. The revised checklist will be sent to WDFW with an invitation for extended comment and an explanation that staff have been granted the authority to impose additional SEPA mitigation in response to any comments provided by WDFW. It should be understood that sole purpose of requiring the revised checklist is to trigger whatever policies WDFW may have for requiring HPA permits and also to trigger comment from WDFW. If the checklist revision is insufficient to provide these triggers, that is WDFW's problem. WDFW has the authority to comment with or without references to HPA permits in environmental checklists and it can and should enforce HPA permitting requirements without their references in checklists as well.

2. Army Corp and DOE Wetland Fill Permits. The SEPA Appellants assert that the proposal may include wetland fill that will trigger permits from the Army Corps of Engineers and DOE. The Applicants emphatically deny that any wetland filling will occur and nothing in the record suggests that filling will occur.
3. Fish and Wildlife Conservation Area Permit Triggers. In their appeal statement, the SEPA Appellants assert that construction work near the fish and wildlife conservation areas will trigger WDFW and Army Corps permitting requirements. The Appellants have not identified what permits would be required or what permitting criteria would be implicated by the Applicant's proposal beyond the HPA issues addressed above. Without this explanation the Examiner can only speculate as to what the SEPA Appellants are alleging and he will only do so for a few limited issues.

It is determined that the only work that will be within the ordinary high water mark to Rock Creek or within its wetlands is some potential pedestrian crossing improvements as discussed under the HPA improvements above. There is no other Rock Creek Bridge work required of the Applicant. A study for needed improvements is budgeted in the City's six year transportation plan, See Ex. 22 and 23, but the City has no concrete plans beyond this study within the foreseeable future to improve the bridge itself. Linking the

Applicant's proposal to City initiated bridge improvements that may or may not occur, with or without the Applicant's proposal, is too remote and speculative for SEPA review.

As outlined in Mr. Fure's declaration, Ex. 44, p. 8 of 10/30/12 letter, the proposed water main crossing of Rock Creek will occur below the pavement grade of the bridge but above the bottom of the bridge. The SEPA Appellants have not identified any WSDF or Army Corps permitting requirement that would be triggered by this construction activity and none is immediately apparent.

In their appeal statement, the SEPA Appellants assert that the wetland delineations will require WDFW and Army Corps permits. No reason for such permits is apparent from the record. If the SEPA Appellants are asserting that the wetland delineations are so wildly inaccurate that the delineations plus their buffers are not sufficient to prevent filling of areas that would be considered wetlands by the Army Corps, that is difficult to believe. As previously discussed, use of the federal supplement delineation manual instead of the manual used by the City only results in an increased wetland boundary 12% of the time. There is nothing in the record to suggest that the wetland boundaries set by the Villages DA, in conjunction with the buffers assigned to them, would encompass an area that is smaller than that covered by Army Corps wetland delineations.

In their appeal statement the SEPA Appellants assert that the wildlife crossing proposed by the Applicant does not conform to the requirements of the FEIS and that this will trigger WDFW and Army Corps permits. There is no explanation as to why the wildlife crossings would trigger a permit requirement or how the proposed wildlife crossing fails to comply with the FEIS. No relevance to Checklist A.10 is apparent on this issue.

Y. SEPA Checklist Deficiency B.1(a) and B.1(b)

In their appeal statement the SEPA Appellants assert that the checklist description of some isolated 15% slopes are understated and misleading. In their opening brief the SEPA Appellants further elaborate that the checklist fails to identify whether geologically hazardous areas will be avoided. This issue is beyond the scope of the appeal statement pertaining to a description of the slopes of the site. The Applicant is not required to provide information on what it will do to the slopes of the project site in Checklist B.1. The SEPA Appellants have not identified where slopes exceed 15% on the project area or why they consider these slopes to be more than isolated.

Z. SEPA Checklist Deficiency B.4(d)

In their appeal statement the SEPA Appellants assert that the response to the question on proposed landscaping and use of native plants is incomplete because it only references compliance with the City's tree ordinance and some landscaping proposed for parks. In their opening brief the SEPA Appellants elaborate that greenbelt areas need to be addressed as part of a landscaping plan and that the landscaping for stormwater facilities should be identified. The Appellants note that landscaping information should include root protection zones and that

mature stands of trees should be designated for protection. The SEPA Appellants assert that under the construction recommendations of Golder and Associates Inc. (Exhibit C-5, Geotechnical Report, October 10, 2010, p. 26) all trees and vegetation will be grubbed and removed from the site.

The SEPA checklist includes a reasonably thorough discussion of landscaping, noting that landscaping is proposed within open spaces, trails and park areas and that street trees will be required along streets. The loss of trees per se is not a significant environmental impact on its own. The environmentally significant function that trees play in serving as wildlife habitat is already covered by the City's sensitive area regulations. Beyond this, the aesthetic value of trees is environmentally significant to the extent it is protected by the City's tree preservation and landscaping requirements. Except as noted below, the record does not establish any probable significant adverse impacts that are not already adequately mitigated by the City's sensitive area and landscaping requirements. There is also no information to suggest that the SEPA responsible official has not made a prima facie showing of adequate review of landscaping and tree impacts.

The SEPA Appellants make a compelling point regarding advance planning for root protection zones required by Villages MPD COA No. 118. COA No. 118 sets a legislative standard of environmental significant for the protection of significant tree systems. The location of these root protection zones should be determined prior to any site work that unnecessarily limits the optimal locations for these areas. The MDNS will be revised to include a condition requiring that prior to any site work, the tree plan required by Chapter 19.30 BDMC shall delineate the root protection zones for all significant trees retained, relocated or planted under the plan.

AA. SEPA Checklist Deficiency B.5(a)

In their SEPA Appeal Statement the SEPA Appellants identify several species of wildlife that have not been identified in the SEPA checklist.

The FEIS discussion on wildlife, referenced in the checklist, contains a thorough discussion of wildlife species and impacts at the site. Consideration of the FEIS easily satisfies the requirement that the SEPA responsible official establish a prima facie showing of adequate review of environmental impacts. Further, the comprehensive and detailed review in the FEIS of wildlife impacts and associated mitigation measures makes it unlikely that wildlife impacts are open to further SEPA consideration under the collateral attack doctrine of *Glasser v. Seattle*, 139 Wn. App. 728, 738 (2007). Even if further evaluation and/or mitigation is still permitted under *Glasser*, the SEPA Appellants have not expressly claimed that any species protected by local, state or federal regulations have not been identified and/or protected by the FEIS and mitigation adopted pursuant to the FEIS. Unless the SEPA Appellants had established to the contrary, only impacts to protected species would be considered probable significant adverse environmental impacts.

BB. SEPA Checklist Deficiency B.5(c)

The SEPA Appellants assert that the Applicant has inaccurately stated “none known” in response to whether the PP1A site is part of a migration route. The SEPA Appellants note that the project site has been used for elk hunting for years and that elk migration is evidenced by the “beaten-down trails of a large animal, hoof prints, and droppings.”

Scott Brainard, wetlands/wildlife expert for the Applicant, contends in his Ex. 32 declaration at p. 7 of his 10/16/12 letter that the use of an area by elk for bedding and foraging does not make it a migration route. He notes that the King County Wildlife Habitat Network has identified a wildlife corridor south of the proposal, but none within the proposal. He asserts that no wildlife migration routes have been identified within the boundary of PP1A.

Mr. Brainard limited his comments to major wildlife corridors for large animals such as elk. In their reply on new SEPA evidence, Ex. 191, att. 4, the SEPA Appellants correctly point out that p. 4-75 of the FEIS distinguishes between large wildlife corridors and smaller ones that can connect wetlands and provide for passage of smaller animals such as beaver, river otter, mink and raccoon. The FEIS does not address this more minor category of wildlife corridors, leaving it fair to conclude that type of review is deferred to the implementing projects. There appears to be an opportunity for providing this type of connectivity between wetlands T, D4, S and E1. There are also opportunities to in turn connect these wetlands to the open space located along the western perimeter of the project and possibly even a continuous greenbelt area from the core complex to the western perimeter. As noted by the SEPA Appellants in Ex. 191, att. 4, BDMC 18.98.155(B) requires proposals to be designed to minimize impacts to wildlife habitat and migration corridors.

Since the SEPA Appellants have not provided any evidence on whether Wetlands T, D4, S and E1 can serve as migration corridors, it cannot be concluded under the substantial weight SEPA standard that failure to do so would result in probable significant adverse environmental impacts. However, BDMC 18.98.155(B), which requires minimum impacts to wildlife corridors, is also a requirement that applies to the PP1A application itself. The Applicant has the burden of proof in establishing compliance with that standard. Since the Applicant has provided no evidence on whether or not there is any corridor benefit to connecting the affected wetlands, the PP1A conditions of approval will require an evaluation of the potential for that connectivity. If the evaluation results in any recommended connections that are reasonable and capable of being accomplished, those connections will be made conditions of approval.

CC. SEPA Checklist B.7(b)(2); B.14(g) and B.15

As noted in the SEPA Appeal itself, the issues arising from these checklist items are covered by other parts of the Appeal.

IV. SEPA Mitigation Measures

The following mitigation measures are added to the MDNS as a result of the SEPA Appeal in order to ensure that the proposal does not create probable significant adverse environmental impacts.

1. The Applicant has three options for addressing pedestrian traffic safety over the Rock Creek bridge:
 - a. The Applicant shall construct a safe pedestrian connection across Rock Creek for pedestrian linkage to Morganville prior to the issuance of the certificate of occupancy of the 200th dwelling unit for the Villages MPD. In lieu of construction, the City shall have a financial commitment in place to complete the improvements within six years of PP1A approval; or
 - b. The City's MDRT team shall prepare a study, at the Applicant's expense, assessing PP1A pedestrian safety impacts over Rock Creek Bridge. The study shall identify any mitigation necessary to eliminate any pedestrian safety hazards that constitute a probable significant adverse environmental impact. Mitigation shall be implemented by the Applicant within time frames necessary to avoid probable significant adverse environmental impacts; or
 - c. The threshold determination shall be reversed and a limited scope EIS shall be prepared to assess pedestrian safety on Rock Creek Bridge. In addition to the information required in an EIS, the EIS shall also identify the costs of constructing any recommended improvements and the Applicant's proportionate share of those improvements. Approval of PP1A is contingent upon the Examiner sustaining the SEPA responsible official's threshold determination. If the Applicant chooses reversal of the SEPA responsible official's threshold determination, staff shall determine whether re-application will be necessary for further consideration of PP1A or whether the PP1A application will remain vested and reviewed under a second hearing after completion of the limited scope EIS.

PP1A shall not be deemed approved until the Applicant commits to choices (a) and/or (b). A combination of (a) and (b) may be allowed where the Applicant determines the option it desires after the study required in (b) is completed. Nothing in this condition shall be construed as prohibiting the City or any other party from participating in the funding and/or construction of required Rock Creek Bridge pedestrian improvements.

The Applicant shall submit its choice, in writing, to the City within 17 days from the date of issuance of this decision. The City shall post the Applicant's choice on its website within one business day of receipt.

This condition is designed to supplement and not replace Villages MPD COA No. 32 and Villages DA 11.6. Regardless of the option chosen, the Applicant will have to comply with Villages MPD COA No. 32 and Villages DA 11.6. Of course, if the Applicant chooses the limited scope EIS, the City will still retain substantive SEPA authority to require the Applicant to construct some or all of the improvements identified in Options (a) and (b).

Applicable SEPA Policies: Comp Plan policy LU-27 (encourage walking); T-10 (enhances small town character by maintaining "walkability"); T-33 (reduces vehicular traffic); BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare; adequate streets); MPD Design Standard A(5)(community connectivity) and (D)(1)(pedestrian connectivity to services).

2. Prior to final plat approval of the first division, the Applicant shall acquire all required approvals from King County for the connection and/or discharge of all of PP1A wastewater into King County's wastewater collection and treatment system.

Applicable SEPA Policies: Comp Plan policy CF-27; BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare, adequate sanitary waste).

3. The Applicant shall prepare a detailed noise control plan as required by Villages MPD COA 35 that does more than just repeat noise reduction measures already required for the project. The Applicant shall present the plan to the Noise Review Committee created by Villages MPD COA 45 for input. Notice of the Committee meeting shall be mailed to all property owners within 500 feet of PP1A at least ten days in advance. The plan shall be approved by staff prior to the initiation of any on-site construction activities.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); BDMC 17.15.020(A)(8)(compliance with Villages MPD COA 35).

4. As discussed in Finding of Fact No. III(M)(3), the City's MDRT team shall re-evaluate the Class II designation for Wetland E1 on the basis of whether Wetland E1 was properly segregated under the guidelines of the City's adopted and applicable wetland classification manual. The re-evaluation shall be completed prior to conducting any activities within Wetland E1 or its buffers that would be prohibited in a Class I wetland and no later than issuance of the first certificate of occupancy for a PP1A dwelling unit.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); Comprehensive Plan Policy LU-4 (preserve and protect wetlands).

5. Off-site improvements required for PP1A within the Lake Sawyer Drainage basin shall be construed as the "first implementing project" as referenced in the September 19, 2011 memo from Alan Fure in Ex. O to the Villages DA. "Baseline monitoring", as referenced in that Fure memo, shall be completed within the timeframes required by Ex. O.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); BDMC 17.15.020(A)(8)(consistency with Villages MPD COA 35); Comprehensive Goal Plan Goal 10 (protect and enhance water quality), UGA Policy NE 3 (protect surface water quality).

6. The sampling frequencies set by Ex. O of the Villages DA for setting baseline phosphorous levels for Rock Creek shall be increased to the extent necessary to address

the sampling error identified by Robert Zisette in the first two full paragraphs of p. 3 of Ex. 27. An expanded baseline monitoring program in this regard shall be prepared by the MDRT team after consultation with the SEPA Appellants and the Applicant. At a minimum, the revised baseline monitoring shall include a significant increase in the amount of sampling to provide for an acceptable error of 0.05 and the use of hydrograph separation, smearing and other techniques to estimate separate loadings for base flows.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); Comprehensive Goal Plan Goal 10 (protect and enhance water quality), UGA Policy NE 3 (protect surface water quality).

7. SEPA Checklist A.10 shall be revised to provide that an HPA permit “may” be required for pedestrian improvements across Rock Creek Bridge. The checklist shall be sent to WDFW along with an invitation to comment within ten days. The SEPA Responsible Official is authorized to impose additional MDNS mitigation measures as reasonably necessary to address any impacts identified by WDFW. Except for WDFW comment and response, this condition shall not be construed as re-opening the SEPA review process.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); Comprehensive Plan Goal 8 (protect fisheries), Goal 9 (conserve fish and wildlife habitat); UGA Policy NE 5 (maintain natural stream processes), Objective NE-3 (promote preservation of fish and wildlife habitats), Policy NE-10 (avoid disturbance of valuable fish and wildlife habitat).

8. Prior to any clearing or grading within a final plat division, the tree plan required by Chapter 19.30 BDMC shall delineate the root protection zones for all significant trees retained, relocated or planted for the division under the plan.

Applicable SEPA Policies: BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare); BDMC 19.30.010(reduce tree loss, trees important); BDMC 19.30.080(B)(1)(identify root protection zones prior to construction); Villages MPD Design Standard B(3)(protect large stands of trees).

9. Prior to any clearing or grading of Parcels 34B, 27C, 1L or the area between 1L and 27C, the Applicant shall prepare and have approved an analysis by a qualified expert assessing whether any wildlife corridor connections between wetlands S, T, D4 and E1 have any significant environmental benefit and identify any measures to connect those wetlands that are reasonably feasible. The Applicant’s analysis shall be subject to peer review by the City’s MDRT team. The SEPA Responsible Official shall be responsible for approving the connectivity analysis and is authorized to impose reasonable mitigation measures to the extent necessary to prevent probable significant adverse environmental impacts.

Applicable SEPA Policies: BDMC 17.15.020(A)(9)(connectivity of wildlife corridor); BDMC 17.15.020(A)(3)(public use and interest; public health safety and welfare).

PRELIMINARY PLAT

V. FINDINGS OF FACT

Procedural:

1. Applicant. B.D. Village Partners, LP

10220 NE Points Drive

Suite 310 Kirkland WA 98033

2. Hearing. A prehearing conference with the SEPA Appellants, Applicant and City was held on October 5, 2012. A consolidated hearing on the application and SEPA appeal was commenced on 11/1/12 and was continued through 11/2/12 and 11/3/12. After the close of the hearing on 11/3/12 the record was left open for written comment from all members of the public on the plat through 11/5/12. The record was left open through The Hearing Examiner conducted a hearing on the application at 10:00 AM at the Black Diamond City Council Meeting Chambers on November 3, 2012. The record was left open for until November 21, 2012 for the Applicant, Appellants and City to provide written comment on several issues. The Applicant agreed to extend the deadline for this decision from December 7, 2012 to December 10, 2012

Substantive:

3. Site/Proposal Description. The Applicant has requested preliminary plat approval for a subdivision of 127.3 acres into 413 lots and 98 tracts, consistent with the approved Villages Master Planned Development (MPD) and the Villages MPD Development Agreement. The project will feature 393 residential lots, a 12.5 acre elementary school site (two lots) and 18 lots totaling 14.28 acres for commercial/mixed use. Approximately 22.48 acres of open space will be set aside in parks, trails and landscape tracts. Tract uses include landscaping, natural landscape, parks, sensitive areas and buffers, utilities and access. The project includes off-site street and utility improvements in order to serve the plat and associated site preparation and grading.

4. Characteristics of the Area. The existing site area consists primarily of undeveloped forest land and wetlands. The site is located on the south side of Auburn-Black Diamond Road (Roberts Drive), extending from its intersection with Lake Sawyer Road west to the western city limits and generally ½ mile to the south, within the NW ¼ and the SW ¼ of Section 15, Township 21 North, Range 6 East, Willamette Meridian, King County, WA.

5. Adverse Impacts. There are no significant adverse impacts associated with the proposal that can legally be addressed in permit review. The proposal has been subject to another round of intense SEPA review and scrutiny from the SEPA Appellants. As determined in the decision on the SEPA appeal, as conditioned the proposal has no probable significant adverse environmental impacts. It is recognized that the burden of proof is higher for establishing adverse impacts

under the SEPA appeal than it is under plat review. This has resulted in a finding of some adverse impacts for the plat that were not found for the SEPA appeal. Those impacts have been mitigated through preliminary plat conditions, as discussed in the SEPA appeal decision. In conjunction with SEPA mitigation measures, PP1A has been conditioned to the maximum extent allowed by law as consistent with prior City Council findings of adequate mitigation.

The most significant impacts that cannot be addressed are concerns expressed over the scale of the project, beyond design considerations already incorporated into the project. Erika Morgan, Peter Rimbo, Robert Taeschner, Rich Ostrowski, Kristen Bryant, Karen Watling and Glen Parker all commented that the project is too large and too dense for Black Diamond and that it would ruin their quality of life. The scale and density of the project has been addressed at length in the Villages MPD, FEIS and DA decisions. As outlined in those decisions, the Growth Management Act ("GMA"), Chapter 36.70A RCW, requires urban densities within city limits. RCW 36.70B.030 prohibits a city from re-evaluating those densities once they've been set by local code. In short, once the City Council decided to expand Black Diamond City limits to include the MPD area, it irrevocably committed the City to urban density development, at least so far as the property owner wants to build at urban densities. All that the City can do is ensure that those urban densities are fully mitigated and compatible in design with rural character. Black Diamond has benefitted in that it has had the opportunity to address this urban development in a comprehensive and coordinated fashion via the master plan development process. Of course, the downside is that the development will occur much more quickly than it would occur under multiple separate ownerships.

Concerns were also raised about higher taxes. The Applicant has volunteered a condition that requires it to cover any budget shortfalls estimated in the fiscal impact analysis for the project, Ex. 40. No more can be asked of the Applicant. Further, beyond school levies, there is no indication in the record that the proposal would increase taxes for Black Diamond residents. Indeed one former City Council member testified that approval of PP1A is essential to the financial security of the City.

The Muckleshoot Tribe raised several concerns over environmental impacts in Ex. 105. Most of these concerns were addressed in the SEPA Appeal. The Tribe asserted that the SEPA responsible official had not reviewed sufficient information to assess environmental impacts. As discussed in the SEPA Appeal decision, the standard for adequacy of review sets a low threshold and the SEPA responsible official did in fact consider a large amount of information prepared by several qualified experts in issuing his threshold determination. The Tribe identified concerns over wetland impacts, all of which were raised by the SEPA Appellants and addressed in their Appeal. The Tribe advocated water conservation. Section 7.5 of the Villages DA adopts a water conservation plan. The Tribe asserted that the water needed to serve the project would divert flows from the Green River and adversely affect fish populations in that river. As noted by the Tribe, the issue was addressed in the FEIS responses, where it was stated that the issue had already been studied, and the Tribe has not presented any evidence that would justify further study. In order to provide some basis for a project condition, the Tribe would have to provide some scientific study or well-founded expert opinion that adverse impacts will result from the proposed water use. In the absence of any such evidence, there is no basis to depart from the position taken in the FEIS response. Finally, the Tribe requested stormwater monitoring. Appendix O to the Villages Development Agreement contains a monitoring plan that the City Council has found sufficient for monitoring purposes and the Tribe has not alleged any specific

deficiencies in that plan. The Tribe also advocates enhanced stormwater treatment to reduce dissolved metals. The Applicant asserts in Ex. 148 that it is using enhanced treatment. At any rate, at a minimum the project is subject to the City's stormwater regulations and Villages MPD and DA conditions regarding water quality controls, which serve as a legislative determination of adequacy. The Tribe has not identified anything unique about PP1A that would justify a higher standard. Similarly, the City Council's adopted stormwater controls will address impacts to the widening of Black Diamond and Lake Sawyer Roads and there is nothing to suggest that they are insufficient for that purpose.

David Vournas raised several concerns in Ex. 7(a) and 7(b) to the staff report. His primary issue appears to be that the PP1A includes property that he claims to own. The Examiner does not have jurisdiction to resolve property disputes. Mr. Vournas is also concerned that the Applicant's stormwater infiltration pond would qualify as a wetland with buffers that encroach upon his property and he is requesting that utilities that serve PP1A be designed to connect to his property as well. Mr. Vournas addressed his comments to staff in April 2011 when he noted that he intended to discuss his issues with the Applicant. There is no information in the record as to whether he was able to work out any of his issues with staff or the Applicant. The Applicant cannot be required to design its utilities for the benefit of Mr. Vournas unless necessary to mitigate a project impact. There is also insufficient information in the record to determine whether the infiltration pond would qualify as a wetland. If he hasn't done so already, Mr. Vournas should share his concerns with the Applicant as they are in the best position to accommodate his concerns.

6. Adequacy of Infrastructure and Public Services.

The City has made written findings in their staff Report dated October 12, 2012 on pages 27- 35 that, assuming their recommended conditions of plat approval are imposed on PP1A, appropriate provisions are made by PP1A for the public health, safety and general welfare (through provisions for water, sewer, stormwater, streets, fire, parks/open space, schools and safe walking conditions for students) and therefore, that the public use and interest will be served by PP1A. As conditioned by staff and the Applicant, adequate infrastructure will serve development as follows:

a. Stormwater Drainage and Water Quality:

(1) Overview. With the conditions noted below, PP1A also makes appropriate provision for storm drainage.

Under existing conditions, all stormwater from the plat site infiltrates into outwash soils. The overall flow trend for groundwater in the area of PP1A is to the southwest away from Lake Sawyer. A portion of the site is tributary to Horseshoe Lake; however, groundwater from Horseshoe Lake also ultimately flows to the southwest.

The management of stormwater within PP1A is accomplished entirely through infiltration. Low impact designed rain gardens and a water quality and infiltration pond will be provided for stormwater management. Where necessary, catch basins and underground pipe will be used to transport water to a water quality facility prior to infiltration. In several instances, curb inlets will allow stormwater to flow directly into a rain garden with infiltration occurring in the immediate vicinity. The physical

characteristics of PP1A do not increase the risk of flood or inundation conditions on- or off-site. An adaptive management area for fine tuning infiltration has also been incorporated in street design as shown on PP1A Sheet UA1 (Exhibit 2). In addition to the items noted above, a stormwater overflow route has been incorporated to provide safe transport of stormwater in an unlikely flooding event as shown on PP1A Sheet UA1 (Exhibit 2).

The PP1A Drainage Report prepared by Triad Associates dated January 26, 2011 (City's staff Report, Exhibit 42) and Addendum 1 to the Phase 1A Preliminary Plat Drainage Report dated June 28, 2012 (City's staff Report, Exhibit 43) evaluate the proposal for stormwater facilities, provide the preliminary sizing of the facilities and specify the facilities necessary to meet the standards in the Black Diamond Engineering Design and Construction Standards (Exhibit "E") and Section 7.4.1 of The Villages MPD DA (City's staff Report, Exhibit 1).

Sheets RS1-9 (Exhibit 2) propose how storm drainage facilities will be constructed as part of the plat. A temporary infiltration facility that is 40% oversized will be located just to the southeast of the Plat. The Villages MPD COA require this temporary facility to be sized to accommodate all future phases of Villages MPD development and that prior to permitting of any future phases the Applicant shall demonstrate that the facility is operating as intended and has sufficient capacity for the future phase. At full build-out of the Villages MPD, this temporary facility will be removed, and drainage from the Phase 1A Plat formerly discharging to the temporary pond will be routed to a regional detention facility located to the southwest of the Phase 1A Plat, as set forth in Section 7.4 of the Villages DA. If that facility is located outside of the City, the requirements of MPD Permit Condition No. 63 for an agreement with King County regarding ownership and maintenance of the off-site facility will be applied and enforced as part of future permit applications for construction of the regional facility and/or as part of permit applications for discharge of stormwater to it.

The interim stormwater pond and infiltration facility will be designed to provide both an aesthetically pleasing facility and an area for recreation and other outdoor activities. Because a significant portion of the facility will be designed for infiltration and to appropriately manage up to a 100-year storm event, the potential for significant excess area that can be used for recreation a majority of the time is being considered. During the City's final engineering review, the potential for utilizing a significant portion of the infiltration area for recreation will be further analyzed. At a minimum, a meandering trail/ access way has been proposed by the Applicant around the water quality pond and infiltration area as shown on PP1A plat sheets RS8 and RS9 in Exhibit 2.

(2) Rain Gardens. Stormwater runoff from Auburn-Black Diamond Road (Roberts Drive) will be directed to rain gardens within the Auburn-Black Diamond Road right-of-way. Additional rain gardens are proposed along portions of Villages Parkway SE, Willow Avenue SE, SE Fir Street, Madrona Avenue SE, Pine Avenue SE, Maple Avenue SE and Alder Lane SE, draining either within the right-of-way or in adjacent open space. The Applicant anticipates that rain gardens will be used within the parking lots of the plat's mixed use areas. Pervious paving is also proposed in Alleys A, B, C, D, E, F, H, I, J, Q, R, S, T, U, V, W, and X and Tract 931 (Cedar Lane) of PP1A. Finally, reduced

roadway widths are proposed in numerous locations throughout PP1A, including the elimination of parking on one or both sides of the road where rain gardens are proposed within the right-of-ways, at pedestrian crossings, at alley and street intersections, and in areas where parking is not needed on one or both sides of the road. See PP1A Sheets RS1-RS9 in Exhibit 2 for extent of LID techniques and locations. In order to ensure that additional rain gardens or other facilities do not further reduce parking, as recommended by staff and concurred by the Applicant, a condition shall be added providing that parking may not be further reduced to accommodate stormwater facilities.

(3) Stormwater Management Zones. The Villages DA identifies several different stormwater management zones, and three of those zones exist within PP1A: Zone 1A and Zone 1B and Zone 1C. The boundaries of each zone are shown on sheet UA1 of Ex. 2.

According to the Staff Report, presumably as required by the project's stormwater plan, stormwater within Zone 1A must be fully infiltrated on-site within the boundaries of the zone. This infiltrated stormwater is used to match predevelopment recharge to Horseshoe Lake. Stormwater from pollution generating surfaces in Zone 1A (roadways, for example) may be infiltrated after enhanced water quality treatment or it can be infiltrated within Zone 1B with basic water quality treatment. Stormwater from non-pollution generating surfaces in Zone 1B may be infiltrated in Zone 1A after basic water quality treatment. It is therefore possible to "trade" stormwater between Zone 1A and Zone 1B to minimize the cost of treatment facilities. In other words, for every gallon of dirty stormwater diverted from Zone 1A into Zone 1B, a companion gallon of clean stormwater can be diverted from Zone 1B to Zone 1A (with basic water quality treatment requirements).

Stormwater within Zone 1B is used to recharge wetlands and is infiltrated to match predevelopment recharge to Horseshoe Lake (provided the recharge requirements have not been met within the Zone 1A boundaries). Any excess stormwater, i.e. stormwater that is not needed to recharge wetlands or Horseshoe Lake, may be discharged to the regional stormwater facility.

Stormwater within Zone 1C is used to recharge wetlands and all excess stormwater is discharged to the regional stormwater facility.

Previous studies have analyzed and estimated the average annual recharge required in Zone 1A to match predevelopment hydrology and minimize impacts to Horseshoe Lake. The boundary of Zone 1A has been selected, based on the land use plan, to provide sufficient recharge to meet Villages DA requirements. It may be possible, however, that changing weather patterns and/or unanticipated development impacts may have an impact on the post-development hydrology of Horseshoe Lake. Because the grading within this project is relatively flat, especially within Zone 1B, the stormwater facilities within Zone 1B could be configured to drain to either Zone 1A or Zone 1C through strategically located valves and piping. Sheet UA1 shows an area of "adaptive management" that will be designed and built with the capability to route clean stormwater from rooftops to either discharge in Zone 1A or Zone 1C. The Applicant is responsible for monitoring and maintaining the water balance within the adaptive management zone until all stormwater facilities within the zone are complete and accepted by the City.

In Ex. 48, Michael Irrgang expressed concern over flooding impacts to Horseshoe Lake. Villages MPD No. 62 requires that the project to match total runoff discharges via surface and subsurface conveyance routes to Horseshoe Lake. According to a declaration of Alan Fure, an expert in stormwater impacts, this should prevent the proposal from creating any flooding impacts to Horseshoe Lake.

(4) Water Quality. PP1A proposes to use a combination of rain gardens, pervious pavement, and an offsite stormwater treatment and infiltration facility to meet the water quality requirements of the 2005 DOE Manual pursuant to Section 7.4.3.B of The Villages MPD Development Agreement. See PP1A Sheets RS1-RS9 in Exhibit 2 for the location of stormwater facilities. PP1A is not tributary to Lake Sawyer or any other phosphorous sensitive water body. Although not tributary to Lake Sawyer, the Applicant has proposed a stormwater facility for PP1A that consists of basic treatment prior to infiltrating stormwater in soils more than one-quarter mile from a fish bearing water body. This proposal is considered by the 2005 DOE Manual to provide an acceptable method of phosphorous treatment. Additionally, pursuant to The Villages MPD COA No. 9, PP1A Homeowners Association(s) conditions, covenants and restrictions (CCRs) will include provisions, to be enforced by the HOA, prohibiting washing of cars in driveways or other paved surfaces, except for commercial car washes, and limiting the use of phosphorous fertilizers in common areas, so as to limit phosphorous loading in stormwater. The CCRs will be reviewed by the MDRT for compliance with Villages MPD COA No. 9 pursuant to Plat Condition #29 proposed in the City's staff Report for PP1A. These CCRs, along with the proposed water quality facilities mentioned above, will provide a reduction in phosphorous in onsite stormwater from PP1A.

The proposal also triggers phosphorous monitoring requirements both because it is the first Villages MPD implementing project and because some off-site improvements will be constructed in the drainage basin to Lake Sawyer. The phosphorous monitoring is addressed in the SEPA Appeal. Mitigation measures addressing phosphorous monitoring should also be considered conditions of approval for PP1A. In order to further protect Lake Sawyer from phosphorous impacts, the Applicant has volunteered a condition requiring that the Lake Sawyer off-site improvements to the "then current, applicable phosphorous treatment standard". This will be made a condition of approval.

The Applicant has coordinated with the Department of Ecology and states it has received an exemption from the state mandated NPDES requirements due to the fact that all of the stormwater from this project will be infiltrated and will not leave the site. A condition of approval requires that, prior to approval for the first clearing or grading permit, the Applicant shall provide written confirmation, from the Department of Ecology, that an NPDES permit is not required for any phase of this Preliminary Plat, including utility installation and building construction. In the alternative, the Applicant may obtain the applicable NPDES Permit, if required.

b. Transportation:

Overview. With the conditions noted below, PP1A also makes appropriate provision for streets, alleys and other public ways. PP1A has accounted for the roadways, alleys, access tracts and easements necessary for safe and viable mobility throughout the project boundary as indicated on PP1A Sheets RS1-RD1 (staff Report Ex. 2). The Villages DA Section 6.3 provides the standards for roadways within the project. The standards apply equally to public and private streets with no distinction made for function or appearance, except that pervious roads may be used for stormwater control and if used, pervious roadways must remain privately owned and maintained. Unless specifically noted otherwise, details of the street design comply with adopted City street standards.

The street network generally consists of a ring or perimeter road that interconnects with an interior gridded street pattern providing auto and pedestrian access to all of the lots and tracts in the project. Some changes will be made to Roberts Drive to accommodate the new development (see staff Report Ex. 37). Those changes must be complete and accepted by the City as detailed in staff Report Ex. 37 regional infrastructure plan. Extensions from the perimeter road to the south and east are anticipated with future phases of development in The Villages.

(1) Deviations. Pursuant to Section 6.2 of The Villages DA, the Applicant requested consideration and approval of three deviations to alley sections: (1) to allow alleys to be constructed within a 20-foot wide tract instead of a 20-foot wide ROW, (2) to allow the use of alternative cross sections instead of relying on the single slope cross section with a curb and gutter on one side, and (3) to allow the drive isle width to be increased from 16-foot wide to 20-feet in isolated locations.

The Applicant has requested that a new element, a stormwater rain garden, be added to the allowable roadway elements. The proposed rain garden is 11.5 feet wide and would displace portions of the landscape strip and on-street parking where applied. Specifically, the Applicant requested consideration and approval of two deviations to road sections: (1) to allow a wider planter strip for the purpose of installing a rain garden within the ROW between the curb and sidewalk and (2) to allow the use of a single slope road cross section as opposed to a crowned road cross section for PP1A.

These alley and road section deviation requests were approved on July 27, 2012 (staff Report Ex. 17 and 18). Conditions of approval will be added to address improvements to Roberts Drive, on-street parking locations, bike lanes on Ash Avenue SE, street trees, and alleys (specifically Alleys I and F).

(2) Proposed Street Network. The Applicant proposes to create two main roads, the Villages Parkway SE (also known as the Villages Community Connector) and Willow Avenue SE/SE Dogwood Street (also known as the Ring Road). Villages Parkway SE is proposed as a two-way, two lane roadway with a center landscape island. Sidewalks on each side of the roadway are separated from the travel lane by landscaping and meander through adjacent landscape tracts. This roadway includes bike lanes on each side. In some locations, where necessary for traffic capacity, additional through lanes and turn lanes are provided. The Villages Parkway SE will be the primary access to PP1A. This segment through PP1A will bisect the center of PP1A and provide a centralized corridor for pedestrians, bikes and vehicles. The road will have a park-like appearance with views

of Mt. Rainier and landscape, park and pedestrian tracts ranging from 25 feet wide to over 100 feet wide lining both sides of the roadway. The road is adjacent to the westerly boundary of a 1.63 acre park and encircles another 1.17 acre park within an elongated roundabout. The road will have a 5-foot meandering walkway on the west side and an 8-foot wide paved trail on the east side.

Willow Avenue SE/SE Dogwood Street will consist of a single lane in each direction with bike lanes, rain gardens, landscaping, sidewalks and on-street parking on both sides. Rain gardens will break up the line of on-street parking. There will be no direct driveway access from this roadway and the design of PPIA provides for several open spaces fronting onto the roadway. The northernmost terminus of Willow Ave SE, in conjunction with the re-alignment of the Lake Sawyer Road/SE Auburn Black Diamond Road intersection, will include a roundabout.

(3) Access Points. In his testimony, Peter Rimbos expressed concern that PPIA violates Villages MPD COA 27 which states that no more than 150 residential units shall be permitted with a single point of access, though up to 300 units may be allowed on an interim basis, provided that a secondary point of access is provided. The Applicant's response in its Closing Remarks (11/9/2012) is that the requirement is not an access capacity requirement, but a circulation and safety requirement. The Applicant states they are not required to provide one access for every 150 units but are instead required to make sure that PPIA has more than one once the 150 unit threshold is met. The Applicant argues the purpose of the requirement is to allow fire and emergency service alternative access routes in the event one access road is blocked. The Applicant states three access points are more than enough to ensure emergency operations work well and that there are multiple circulation routes for emergency access.

(4) Transportation Model. In his testimony, Peter Rimbos discussed his concerns regarding the adequacy of the transportation model and some of its underlying assumptions. This issue was discussed in the SEPA Appeal Decision under SEPA Appeal Issues Section III(D). The Applicant argues any discussion of the transportation model as part of the PPIA is a collateral attack on prior decisions, namely the Villages MPD Permit Approval. However, they do note in their Closing Remarks (11/9/2012) that one of the modeling assumptions Mr. Rimbos is concerned about, Peak Hour Factor, has been updated to include current data at most of the study intersections (see Declaration of Dan McKinney Ex. 42) as part of the PPIA *Traffic Impact Study* (Ex. 16)).

(5) On-Site Intersection Improvements. The Applicant has proposed to construct a single lane roundabout at SE Auburn-Black Diamond Road (Roberts Drive) and Village Parkway SE. This roundabout will eventually serve as the western terminus of the future Pipeline Road extension. The roundabout design provides for future expansion to a dual lane roundabout if warranted by future vehicle volumes. The roundabout will be landscaped and will serve as a gateway for those vehicles traveling from the west as they transition from the County into the City of Black Diamond.

The Applicant has proposed to realign the intersection of Lake Sawyer Road/SE Auburn-Black Diamond Road and construct a single lane roundabout with the goal of improving traffic safety and improve efficiency for vehicular traffic over existing conditions. Like

the roundabout at Villages Parkway SE, this roundabout design has also provided for future expansion to a dual lane roundabout if warranted by future vehicle volumes.

The project proposes to construct a traffic signal at SR 169 and Main Street.

(6) Frontage Improvements. Frontage improvements along SE Auburn-Black Diamond Road (Roberts Drive) will provide over 2,700 lineal feet of sidewalks and 5 foot bike lanes on both sides of the road. The southern side will include landscaped areas ranging from 25 feet wide to over 50 feet in width. A meandering walkway will be provided westerly of the Villages Parkway SE and a more formal sidewalk will be provided easterly of the Parkway. In addition, there will be left and right turn lanes in conjunction with the proposed roundabouts at Villages Parkway SE and Willow Avenue SE, and at the signal controlled intersection of SE Auburn-Black Diamond Road (Roberts Drive) and Village Parkway SE.

(7) On-Street Parking. On-street parking is provided on most streets in accordance with the applicable street standard. Some parking is displaced by rain gardens where those facilities are proposed to meet the stormwater treatment and discharge requirements. Rain garden locations shown might change depending on site soil suitability. The quantity of on-street parking shown in the application is the minimum acceptable amount and supersedes the location and placement of rain gardens or other utility systems. A condition of approval sets the minimum amount of on-street parking and defines the relationship of on-street parking to rain gardens and utility placement.

(8) Bike Lanes. Bike Lanes are generally consistent with the bike lanes shown and required in Section 6.3 and Figure 6.3 of Villages DA. The bike lanes end near the intersection (conversion) of Ash Ave SE and SE Dogwood Street, without an apparent extension of the bike facility to other destinations. A condition of approval requires the bike lane to be extended to Tract 984 to connect to the Cross Community Trail.

(9) Street Trees. Street trees are not required but not adequately demonstrated on the PP1A drawings. The Villages DA allows the trees to be placed in groves where other roadside facilities (such as rain gardens) compromise an even spacing. A condition of approval will require the Applicant to show street trees and to demonstrate that the number of trees required within a single block are placed within that same block, although they may be placed in groves instead of uniformly spaced along the roadway.

(10) Street Lighting. Street lighting is required on all streets consistent with City standards, including spacing, pole height, and fixture type. Street lighting will be reviewed as part of the Utility Permit review.

(11) Alleys. Alley I and Alley F within the application are used for Fire Department access to several properties in PP1A. In order to meet the emergency access requirements, these alleys will be as wide as the travel way of adjacent local streets. It may be possible; therefore, that these alleys may be used by residents as "cut-through" streets. In order to prevent this, and ensure that these alleys function as direct lot access only, a condition of approval will require these alleys to be designed and constructed with traffic calming features to prevent cut-through traffic.

(12) Future Connection and Access Points. PP1A provides four connection points to future implementing projects within The Villages MPD. These include right of way dedication/roadway construction of Pine Avenue SE south, Willow Avenue SE/SE Dogwood Street, as well as three curb radius returns along the south side of Willow Avenue SE/SE Dogwood Street that depict where future roads will connect to PP1A. Except for these four points of access provided along Auburn/Black-Diamond Road, no street stubs to off-site abutting properties are provided in PP1A. Street stubs to future implementing projects within the Villages MPD that include potential connection points to adjacent properties are provided. See PP1A Sheets RS6 through RS8 (staff Report Ex. 2).

(13) Off-Site Transportation Infrastructure. Villages MPD FOF 5(B, C, H, J, and K(v)) and Villages MPD COL 23(A) and 30(F) discussed off-site regional infrastructure improvements required by the Applicant. The Villages MPD COA required an extensive list of transportation improvements required by the Applicant for the entire Villages MPD build out (Villages MPD COA No. 10, 15, 16, 18, 19, 20, and 25). The Villages DA Section 11.5 provides for the timing, construction and funding of off-site regional infrastructure improvements including transportation improvements for the entire Villages MPD build out (Villages DA Tables 11-5-1 and 11-5-2 and Ex. Q and R).

A detailed implementation schedule for the PP1A regional infrastructure improvements was approved by the Designated Official in August 2012 (Ex. 37). Villages DA Ex. K incorporated the Phasing Plan from the Villages MPD COA. The Applicant will be constructing all improvements depicted in the table, with the exception of the regional wastewater storage facility which is not required at this time because the number of ERUs contained within the PP1A does not trigger the need for the facility to be built. The number of dwelling units per Ex. K anticipated to be built in Phase 1A is 850; PP1A proposes 782 units.

(14) Rock Creek Bridge. As addressed in Finding of Fact 6(g) below, several citizens including Mr. Edelman, Ms. Wheeler and Mr. Rimbo expressed concern about children walking to school or to the commercial centers of the Villages from Morganville and across the Rock Creek Bridge on SR 169. The record is unclear as to whether children will be walking across this bridge to school. This issue was discussed in the SEPA Appeal Decision under SEPA Appeal Issues Section III(A)(6). The SEPA MDNS found that the pedestrian safety issue at the Rock Creek Bridge represented a probable significant adverse impact. The MDNS mitigation measure require the Applicant to either (1) commit to doing the pedestrian improvements, or (2) the threshold determination is reversed and the SEPA responsible official is directed to do a limited scope EIS on the pedestrian safety impacts arising from increased pedestrian traffic over the Rock Creek Bridge.

(15) Multi-modal connectivity. As shown in Ex. 2 and on PP1A Sheets RS1-9, the proposed sidewalks, bike lanes, trails and roadways are designed to provide an interconnected network of multi-modal motorized and non-motorized transportation routes within and surrounding PP1A.

c. Parks and Open Space:

PP1A makes adequate provision for parks and open space. The proposal incorporates an extensive amount of open space and trails that is readily accessible to all PP1A residents and that also provides a ready connection to surrounding areas. As determined in the Conclusions of Law, PP1A satisfies all legislative standards for open space as well.

(1) General Overview. Approximately 22.84 acres of open space has been provided in PP1A in a variety of ways, including parks, trails, landscape, pedestrian access and sensitive areas and buffers. Public spaces within PP1A include developed parks ranging in size from small common greens to pocket parks to larger community parks, plazas, pedestrian trails, and natural open space. Sheet CV5 of Ex. 2 provides a site plan of the open space and trails of the proposal.

The smallest of the parks, known as common greens, serve as small, intimate open spaces directly in front of homes that do not front a street. These spaces allow for pedestrian access and serve as a collective front yard for children to play in. Common greens can be found throughout PP1A, for example, Tract 958, which can be found on PP1A Sheet PP6 in Ex. 2. Pocket parks, which are parks one half acre or less in size, are intended to serve the informal needs of the immediately adjacent residents and may provide tot-lots, small open areas to play, seating areas, etc. These pocket parks can also be found throughout PP1A, for example, Tract 948, which can be found on PP1A Sheet PP4 in Ex. 2. Neighborhood parks, generally one half to one acre in size, are less frequently found in PP1A. Neighborhood parks meet the social and recreational needs of neighborhoods and include a variety of amenities and activities including tot lots, small playfields, seating areas, pea patches, etc. An example of a Neighborhood Park is Tract 932, which can be found on PP1A Sheet PP4 included in Ex. 2.

The largest of the parks, community parks, are generally one acre or greater in size and are destinations that serve the recreational, social, and civic needs of the community as a whole. Community parks are focal points within the community and include amenities such as larger play fields, tot lots, civic gathering areas, sports courts, etc. The framework of PP1A is built around the community parks located in Tracts 916 and 917. See PP1A Sheets PP1 and PP4 included in Ex. 2 for locations.

There are locations within PP1A that are areas shown as natural open space in the figure on Page 5-7 of the Villages MPD application. The first area is the 100' trail corridor along the western boundary of the plat (Tracts 944 and 946) and the second area is along the south side of Roberts Drive from the western boundary of the plat extending east to Villages Parkway SE (Tract 990). The tract table on PP1A Sheets CV5 and CV6 (Exhibit 2) show Tracts 944 and 946 as open space tracts, with natural landscape (NL) and pedestrian access (PA) uses, and Tract 990 is shown as an open space tract with landscape use (LA). In order to enhance the natural landscape features of PP1A, staff has recommended and this decision adopts a condition that would Tract 990 shall be designated for natural landscape use.

Trail plans meeting City standards will be provided to the City as part of the landscape plans that will be submitted on a division-by-division basis, when the Applicant seeks

final engineering plan review and approval. To further provide guidance on the timing of trail construction, the Applicant has proposed a condition in Ex. 91, to require that trails be constructed or bonded prior to final plat approval. This condition will be adopted into the PP1A conditions of approval to provide a clear standard on timing of trail improvements.

(2) Connectivity of Parks and Open Space. The parks and open space of PP1A are well connected with the proposed housing and other land uses. The open space is linked through a network of sidewalks, trails and pathways. See PP1A Sheets RS1–RS9 (Exhibit 2) for a depiction of the numerous sidewalks, trails and pathways that provide multiple links to adjacent open space. As shown on PP1A Sheet CV5 (Exhibit 2), PP1A is designed with clusters of compact residential lots that are in close proximity to shared open space, rather than suburban-style large lots with little common open space.

(3) Maintenance. The Applicant has also sought to clarify responsibilities by a proposed condition in Ex. 91, Condition 10, making the Villages Master Developer or Homeowner’s Association responsible for the maintenance of neighborhood parks, trails and community parks. This condition has been adopted into the PP1A COAs.

(4) Staff and Citizen Concerns. Page 50 of the Staff Report notes that several parks identified on Sheet CV5 are incorrectly identified as Neighborhood Parks and Pocket Parks. The Applicant has proposed a condition, Ex. 91, Condition 14, that has been adopted with some modification to resolve the discrepancy by requiring that the proper terms are substituted, as approved by staff.

In public testimony, Cindy Wheeler Rich Ostrowski expressed concern that one of the planned open space parks is within a roundabout and is identified as a community park. Although this is not usually the most appropriate place for a park facility, the open space area within this roundabout is 51,000 square feet in size and serves as a dramatic visual focal point for the residents of PP1A as they daily commute through their neighborhood. A legitimate concern inherent in these comments is that there are dangers involved in children crossing the roads to get to this park as well as children chasing balls and the like out of the park into traffic. The conditions of approval will require the Applicant to acquire approval from staff for a plan for Tract 917 park use that assures that use of the park will not present a danger to pedestrians or children due to the proximity of the surrounding roads.

d. Water:

There is adequate provision for water. Water service will be provided by the City of Black Diamond. As indicated by Section 7.2.1 of The Villages DA and the water availability letter from the City dated June 11, 2012, Ex. 45, adequate water is available to serve the PP1A. An approximately 98 acre portion of PP1A is currently subject to a water service area dispute with the Covington Water District, but as discussed in the conclusions of law the conditions of approval will ensure that the proposal will be served by adequate water while the dispute runs its course.

In general, the new water system will consist of looped water mains that are located in city-owned rights-of-way and easements and served from an extension of the City's existing 750 pressure zone. The general lay out of the new water system is depicted in Sheets SSWA1-8 of Ex. 2. The pipes are looped for redundancy and reliability and are equipped with strategically located valves and inter-connections so that short-term failures can be isolated and repaired with a minimum of service disruptions. In some portions of the project there are dual water mains as it is anticipated that future phases will need service from higher pressure pipelines (the 850-zone). Therefore, both a low pressure and high pressure pipeline may be constructed side-by-side or one above the other. The Villages MPD COA require that where possible, future 850-zone mains should be interconnected to the 750-zone to improve service to the Phase 1A customers and to prevent stagnation of water in unused pipelines. These mains may be isolated from the 750-zone in the future when buildings are constructed in the 850 zone.

The City can provide needed water to the project through its existing water rights and future connections to a City of Tacoma supply pipeline. The existing water mains are supplied by the City's existing springs near the Green River. Equalizing, fire flow, and standby storage are provided by the 850-zone reservoir and delivered to the 750-zone through existing pressure reducing stations. There is sufficient capacity in the 850 reservoir and in the city-wide supply water distribution system to support the uses shown in this application; namely 921 ERU.

The on-site water distribution system is generally composed of loops of 12-inch diameter pipe proposed to be located within the completed rights-of-way. According to the Staff Report, the water conveyance system as designed is consistent with City standards and requirements. All elevations within the project can be served, including the highest anticipated finished floor elevations within future structures, without booster pump stations. Water mains are sized to provide the required flow rates during maximum fire flow conditions, while meeting the minimum pressure criteria. The conditions of approval require all water mains to be located in public rights of way or within utility easements that provide a minimum of 15' of unobstructed space for access and maintenance.

The Villages MPD Permit Condition #58, and Villages DA Section 7.2.5, set forth water conservation and monitoring requirements. The water conservation plan requirements applicable to water fixtures will be applied during future building permit review and approval; the monitoring requirements will be implemented by the Designated Official, per Section 7.2.5 of Villages DA.

e. Sewer:

Sewer service is available through off-site connections to either the City or King County collection system. Under either connection, sewer will ultimately be discharged into the Metro Treatment Plant in Renton, Washington.

As outlined in FOF(III)(E)(2) of the SEPA appeal decision, the Renton treatment plant has adequate capacity to accommodate PP1A wastewater. PP1A will generate demand

for 921 ERUs and the treatment plant can accommodate 1,150 ERUs from Black Diamond. To assure that concerns about the adequacy of capacity of the existing sewer system are satisfied, the City in its closing preliminary plat comments, Ex. 149, has requested that the Hearing Examiner require an additional condition with preliminary plat approval. The new condition would require the Applicant to conduct a wet season inspection of the existing collection system to determine 'that there are no root intrusions, blockage, breakage, or other deficiency that would render the City's existing sewer system downstream of the proposed point of connection insufficient to convey the sanitary sewer flows anticipated from the PP1A.' Given that the PP1A wastewater discharges are close to the 1,150 ERU treatment capacity, the condition is reasonably necessary to ensure that sewer can be adequately treated and will be imposed.

The sewer plan for the proposal is located at SSWA1-8 of Ex. 2. The actual location, pipe sizes and the details of construction will be specified in subsequent Utility Permits and may differ from the schematic configuration shown in this application. The Applicant will construct the lines identified in those plans and then either (1) connect them to the City's collection system at a manhole located near the intersection of Union Drive and Robert's Drive; or (2) connect to the County's collection system to the Black Diamond Trunk Line located on Lake Sawyer Road. The conditions of approval require a connection to the City's collection system unless King County approves a connection to its system.

The Applicant proposes an interim pumping station to be located directly adjacent to PP1A and just north of the interim stormwater pond. The pump station will pump wastewater to the two connection points referenced in the preceding paragraph by force main. The pump station will serve all of PP1A and portion of future phases of the Villages MPD that drain to this location. It will likely be removed in the future as a permanent wastewater pump station is located further to the south in several years. A recommended condition of approval is for the lift station to be complete and operational before the first building permit (for a building or structure that may generate sewage) is issued. The temporary lift station will pump the collected sewage to the City or County connection points referenced above.

From the City connection point near Union and Robert's Drive, the wastewater would flow by gravity to the City's Morganville Lift Station. From the Morganville Lift Station, the sewage would then be pumped to a gravity line within Morgan Street. From this Morgan Street gravity line, the PP1A effluent would flow by gravity to the Metro Lift Station by Jones Lake. From this Metro Lift Station, the sewage is pumped through a force main back along Morgan Street and Roberts Drive eventually discharging to the Black Diamond Trunk Line in Lake Sawyer Road. Ultimately, under both the City and County connections, the wastewater will enter the Black Diamond Trunk Line. Although the trunk line is called the "Black Diamond Trunk Line", it is important to understand that it is a county facility.

The Black Diamond Trunk Line is a gravity system and flows north and west out of the City of Black Diamond, through Soos Creek Sewer and eventually to a Metro trunk line, which ties into its Renton Treatment Plant.

Extensions to the sewer system, within the project, will be in accordance with Villages DA and adopted codes and standards. In general, the new sewer system will consist of gravity sewer pipes that are installed within public rights-of-way and easements. The pipes direct flow toward the south and generally converge at a point near the regional stormwater pond, where the sewage is collected and discharged to the wet well of the temporary lift station. In the future, the gravity piping system will be extended further to the south through future projects, where sewage will be collected in a future permanent lift station.

It is anticipated that future phases of development may flow through the pipelines constructed as part of PP1A, toward a permanent lift station that is located to the south of PP1A. Therefore, some oversizing of pipelines in the PP1A is anticipated (both in the gravity collection system and in the force main) to accommodate future capacity. Excess sewage capacity, both in gravity pipelines and force mains, can present operational and maintenance impacts as residence times increase or velocities are reduced. A condition of approval requires that for any pipelines that are designed with excess capacity to include provisions to minimize the operational impacts due to the oversizing.

Citizen and Staff Concerns. Ms. Cindy Proctor and Ms. Cindy Wheeler gave oral testimony during the preliminary plat portion of the hearing. Mr. Jack Sperry submitted written testimony for the hearing record. Issues raised or concerns expressed were:

- Lack of adequate system capacity
- Overflow at lift station or blockages in existing system
- No King County approval
- Proposed collection system is conceptual only
- Location of the proposed large storage facility will impact the decision on where the PP1A collection system will discharge

System capacity is adequate as determined in the SEPA appeal. There is no evidence in the record that City and County development standards are inadequate to prevent overflow. As discussed in the SEPA Appeal, King County raised concerns about overflow and blockages in Ex. 90, but these concerns were for wastewater flows that exceed current system capacity. PP1A will not exceed current capacity. Further, Mr. Ervin, a registered professional engineer with expertise in wastewater system design, testified that there are no concerns about environmental impacts from any overflow at the lift station or from blockages in the existing system.

In order to address concerns over required County approvals for the sewer system, County approval will be required prior to final plat approval of the first division of PP1A. In any event, given that PP1A will be discharging within existing treatment capacity, there is no reasonable basis to conclude that County approval will not be forthcoming.

The proposed sewer collection system at pages SSWA1-8 of Ex. 2 is indeed conceptual and as noted in the Conclusions of Law to this decision no more detail is required. Ex. 2 provides sufficient information to evaluate the proposed sewer system and there is nothing in the record to suggest that on-site conditions would require any major alteration

to the final layout of the sewer lines that would necessitate any significant changes in project design.

The location of the proposed large storage facility identified in Ex. 90 does not need to be determined at this time due to any design issues with the PP1A sewer system. As noted in the second declaration of Alan Fure, Ex. 95, the storage facility alternatives can be served by either extending a force main up Lake Sawyer Road or using the existing City collection system.

f. Schools:

The proposal provides adequate provision for school sites. Lots 1L and 2L within PP1A have been provided for dedication to the Enumclaw School District for an elementary school site. PP1A provides a 12.5 acre elementary school site (lots 1L and 2L) pursuant to the Comprehensive School Mitigation Agreement (CSMA) dated January 24, 2011 (recorded under King County recording no. 20110624001156). The site will be of sufficient size to accommodate necessary school buildings, parking and typical sports fields and playgrounds associated with an elementary school use. The elementary school site is located within one-half mile of residential areas within PP1A, consistent with Villages MPD COA No. 98. In addition, Per Section 13.3 of Villages DA, school mitigation is accomplished through the CSMA, which requires payment of a school mitigation fee. The mitigation fee is based on the Enumclaw School District's calculations concerning the expected student generation rate of The Villages MPD and the anticipated cost of new school facilities. Section 3.1 of the CSMA provides 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."

The Enumclaw School District ultimately determines when it will start construction of the elementary school for PP1A. The Applicant, however, will transfer ownership of the elementary school site within PP1A soon after it receives final plat approval for Division 1L, within which the school site is located. The Enumclaw School District has been notified of the PP1A. As of the date of this report, no comments have been received.

Ms. Proctor suggested a condition of approval in which quarterly reports be made to the Enumclaw School District with project infrastructure and timeline updates. She further asserted that the District needed more than 30 days to approve CC&Rs. She requested that the Applicant make a yearly report to the District, that the Applicant advise the District when the 180 day contingency of the CSMA is triggered, that the District be given more than 30 days to review CC&Rs as provided in the CSMA, that the Applicant help fund school levies and that divisional approval of PP1A not be allowed because that would impair the Applicant's obligations to provide for school mitigation. In its written closing comments, Ex. 148, the Applicant stated it had no objection to providing quarterly updates to the school district and that it would make yearly reports to the District if requested by the District.

Ms. Wheeler testified that Enumclaw School district taxpayers are not aware of the impacts to their school system because no public hearings have been held on the issue. If

school levies are not passed within a 12-month period, the school sites are deeded back to the developer.

Mr. Ostrowski testified that there was no adequate school preparation for the plat, and that if the school sites are not in place for this first plat, then the next ones will not be adequate either. According to the school agreement, no schools will be sited outside the UGA; however, two middle schools are sited in that area.

g. Sidewalks to and from School:

All of the streets within PP1A will have sidewalks, along with an extensive trail network as discussed in the open space/park findings of this decision. This network of sidewalks and trails provides for adequate walking conditions to and from school within PP1A. Offsite there are potential problems with children walking to school within PP1A from Morganville. Mr. Edelman and Ms. Wheeler both expressed concerns about this issue during the preliminary plat portion of the hearing. It's unclear from the record whether Morganville residents would go to school in PP1A and whether they would be bussed as opposed to walk. Nonetheless, any impacts to school children are adequately addressed in the SEPA Appeal decision. Under the SEPA conditions, the Applicant will have to construct pedestrian improvements that safely connect Morganville to PP1A if reasonably feasible. If not reasonably feasible, the Applicant will either have to complete a limited scope EIS to assess the issue or complete the improvements anyway. This is the most that can be legally required of the Applicant to address off-site walking conditions for school children.

h. Fire Protection:

There is adequate provision for fire protection and paramedic services. Fire and paramedic services will be provided by the Mountain View Fire and Rescue, also known as King County District No. 44. PP1A is within 1.5 miles travel distance upon built roads of Station 99 located at 25313 Baker Street. In addition, Station 98 is located at 22015 SE 296th Street.

Required fire flows are estimated to range from 2,500 gpm to 3,500 gpm. The Fire Marshall will establish actual requirements during building permit review. Fire hydrants will be provided in rights-of-way. Additional hydrants may be required around some buildings as determined by Fire Department review and approval of building permits. Sprinklers will be provided in buildings according to the requirements of the International Fire Code.

Section 13.4 of the Villages DA comprehensively addresses fire mitigation, including requirements that pertain to the design and construction of a satellite fire station that are triggered by the certificate of occupancy for the 250th dwelling unit for the Villages

MPD. These Villages DA requirements are referenced in the conditions of approval for this decision. On September 20, 2012 the City also adopted fire impact fees, which will take the place of the fire mitigation fees required in Section 13.4.

As indicated in the City's staff Report dated October 12, 2012 on page 34, the Fire Department reviewed the proposed subdivision for adequacy of water supply and access for fire protection and medical aid purposes and provided comments and recommended conditions. Those recommended conditions have been adopted for this decision.

VI. CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner: BDMC 18.08.030 provides that preliminary plat applications are classified as Type 3 applications. BDMC 18.08.060 provides that the Hearing Examiner shall make final decisions on preliminary plat applications after holding an open record hearing. BDMC 19.04.250 requires the Examiner to hear SEPA Appeals and also requires that the appeals be consolidated with the hearing on the underlying permit application.

Substantive:

2. Zoning Designation: MPD, Master Planned Development

3. Review Criteria and Application. BDMC 17.15.020 governs the criteria for preliminary plat approval. Those criteria are quoted in italics below and applied to the proposal under corresponding Conclusions of Law.

BDMC 17.15.020(A)(1): *The proposed subdivision meets all city zoning regulations and is consistent with the city's comprehensive plan maps and policies, and with the Black Diamond design standards and guidelines where applicable;*

BDMC 17.15.020(A)(1)(a): *The proposed subdivision meets all city zoning regulations.*

4. Consistency with Zoning Regulations. Bulk, dimensional and use standards typically associated with "zoning regulations" are set in the MPD zoning district by the required MPD ordinance and development agreement. The Staff Report contains a detailed assessment of compliance with MPD standards as well as the Villages MPD COAs and Villages Development Agreement at p. 29-58. The review and analysis, including any Findings of Fact and Conclusions of Law included therein, are incorporated by this reference as if set forth in full. Zoning requirements are also addressed in Finding of Fact 28 and 29 of the Staff Report, which are also incorporated by this reference as if set forth in full.

Added SEPA condition No. 8 will also be imposed as a PP1A condition in order to comply with BDMC 19.30.080(B)(1), which requires the delineation of tree root protection zones prior to construction.

BDMC 17.15.020(A)(1)(b): *The proposed subdivision is consistent with the City's comprehensive plan maps and policies*

5. Consistency with Comprehensive Plan. The Comprehensive Plan designation of the properties is Low Density Residential, Mixed Use and Master Planned Development Overlay. Regarding the MPD Overlay, the BDCP states, "Areas with an MPD overlay designation are intended to develop only subsequent to approval of an MPD permit pursuant to Black Diamond Municipal Code." The Villages Phase 1A Preliminary Plat is an implementing project of the approved Villages MPD. It is therefore consistent with the "Master Planned Development Overlay" Comprehensive Plan map designation. The proposal also implicates other Comprehensive Plan policies. Those policies are identified and applied at pages 9-15 of the staff Report, which are adopted and incorporated by this reference as if set forth in full, including all findings of fact and conclusions of law therein.

6. SEPA/Plat Conditions Implementing Comprehensive Plan Policies. As noted in BDMC 19.04.240, the Comprehensive Plan serves as a part of the City's SEPA policies in addition to a source of regulatory authority for subdivision approval under the criterion quoted above. Consequently, the following SEPA mitigation measures added by the SEPA appeal are imposed both as SEPA mitigation measures via the comprehensive plan SEPA policies and as conditions of the preliminary plat in order to assure compliance with BDMC 17.15.020(A)(1)(b):

- a. Added SEPA Mitigation Measure No. 2 (King County Approval of Sewer): Policy CF-27 (ensure adequate sewer available prior to development).
- b. Added SEPA Mitigation Measure No. 4 (Verify Wetland E1 Classification). Policy LU-4 (preserve and protect wetlands).
- c. Added SEPA Mitigation Measure No. 5 (Rock Creek Baseline Monitoring): Goal 10 (protect and enhance water quality); UGA Policy NE 3 (protect surface water quality).
- d. Added SEPA Mitigation Measure No. 7 (HPA in checklist): Goal 8 (protect fisheries); Goal 9 (conserve fish and wildlife habitat); UGA Policy NE 5 (maintain natural stream processes); Objective NE-3 (promote preservation of fish and wildlife habitats); Policy NE-10 (avoid disturbance of valuable fish and wildlife habitat).

BDMC 17.15.020(A)(1)(c): *The proposed subdivision is consistent with the Black Diamond Design Guidelines, where applicable*

7. The City of Black Diamond Design Guidelines consist of the following different sets of guidelines: MPD Framework Design Standards & Guidelines; Residential Uses in the Historic Village Core; Multi-Family Development; Business Park / Industrial Areas; Commercial Zones; and The Historic Town Center. Of these different sets of guidelines, only the MPD Framework Design Standards & Guidelines are applicable to the Phase 1A Preliminary Plat.

The Multi-Family Development and Commercial Zones Design Guidelines, along with Exhibits H and I of Villages DA, will be applied to certain specific Implementing Approvals within the

PP1A, specifically, at the site plan review and building permit stage, after building and site plan details are known.

The proposal is consistent with the MPD Framework Design Standards and Guidelines. The Design Review Committee (DRC) has reviewed project design and has issued a letter stating it is compliant. See Ex. 20. The Staff Report also contains a detailed application of the applicable design standards and has found the project to be consistent with them. The analysis in the Staff Report, at pages 16-26, is adopted and incorporated by this reference as if forth in full, including any findings or conclusions therein.

In order to enhance the ability to protect large stands of trees as required by MPD Design Standard B(3), added SEPA mitigation measure no. 8 will be added to the PP1A conditions of approval in order to require the delineation of root protection zones prior to the removal of any trees.

BDMC 17.15.020(A)(2): *The proposed subdivision results in a net density that is equal to or less than the allowable maximum density established by the zoning regulations, and is greater than or equal to any applicable minimum density requirement;*

8. Compliant Density. The allowable maximum density for MPD properties is set forth in BDMC 18.98.120(F), which allows a density of 18 units per gross acres, with multi-family housing at up to 30 units per gross acre. Sheet CV4 of PP1A (Exhibit 2) contains a section entitled "Land Use Capacity Table" which denotes an overall Phase 1A gross residential parcel density of 10.65 units/acre and an overall Phase 1A net residential parcel density of 12.48 units/acre for the project. PP1A is equal to or less than the allowable maximum density established by BDMC 18.98.120(F).

The applicable minimum density requirement is specified in BDMC Section 18.98.120(E), which is the base density designated in any applicable pre-annexation agreement or development agreement and in the absence of any such agreement, the minimum density designated in the comprehensive plan. The base density specified in the Black Diamond Comprehensive Plan for MPD properties is 4 units per gross acre; the density specified in the Black Diamond Urban Growth Area agreement is 4 units per acre. In addition, the Villages MPD COA #131 (Exhibit C of Villages DA) states that a minimum density of 4 du/per net acre for residential development shall be required for implementing projects, and shall be calculated for each development parcel using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010).

As shown on Sheet CV4, "Land Use Capacity Table," the PP1A proposes a gross residential density of 10.65 units per acre, and a net density of 12.48 units per acre, which is equal to or greater than the applicable minimum density requirements specified in the BDUGAA, the Comprehensive Plan, and Villages MPD Permit Condition No. 131.

BDMC 17.15.020(A)(3): *The public use and interest is served by the establishment of the subdivision and dedication. In considering this criteria, it shall be determined if appropriate provisions are made for all relevant matters, including, but not limited to, the public health, safety and general welfare, open spaces, storm drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds;*

9. Adequate Infrastructure. As determined in Finding of Fact No. 6, the subdivision provides for adequate infrastructure as contemplated in the standard quoted above. There are also no probable significant adverse environmental impacts associated with the proposal, as determined by the SEPA responsible official and sustained on administrative appeal in this consolidated proceeding. No other significant adverse impacts are related to the project, as determined in Finding of Fact No. 5. The proposal serves to accommodate urban growth within an urban growth area in furtherance of the goals and policies of the Washington State Growth Management Act and also serves to implement the Villages Master Plan Ordinance and Development Agreement as intended by the City Council that approved those documents. For all these reasons, the proposal makes appropriate provision for public health, safety and welfare and is in the public interest.

In order to provide for adequate sanitary waste, SEPA added condition no. 2 will be added to the PP1A conditions in order to require all necessary King County approvals prior to final plat approval of the first PP1A division for the connection and/or discharge of all PP1A wastewater into the King County sewer system. In order to ensure that PP1A is constructed in the public interest and consistent with public health and welfare, SEPA added mitigation measure no. 3 will be added to the PP1A conditions in order to require that the Applicant prepares a detailed noise mitigation plan as required by Villages MPD No. 35. In order to ensure that wetlands are adequately protected in furtherance of the public interest and public health and welfare, SEPA added mitigation measure no. 4 is added as a PP1A condition of approval in order to require the re-evaluation of the classification of Wetland E1. In order to ensure that water quality is adequately protected in furtherance of the public interest and public health, safety and welfare, SEPA added mitigation measure no. 5 is added to the PP1A conditions of approval. In order to ensure that trees are adequately protected in the public interest and public safety and welfare, SEPA added mitigation measure no. 8 will be added to the PP1A conditions of approval to require delineation of root zones for trees prior to any clearing. In order to ensure that wildlife are protected in the public interest and welfare, SEPA added mitigation measure no. 9 will be added to the PP1A conditions of approval in order to require an assessment of potential wildlife corridors between wetlands.

10. Multiple Access. During his plat comments, Mr. Rimbo asserted that the proposal fails to comply with the access requirements of Villages MPD COA No. 27. As discussed in Finding of Fact 6(a), MPD COA No. 27 prohibits more than 150 residential units to be accessed via a single access point, except that up to 300 units may be permitted on an interim basis provided a secondary access point is eventually constructed. The Applicant is correct in its assertion that it is not required to provide an access point for every 150 units, but is instead only required to provide more than one access point once the 150 unit threshold is met. The PP1A, as proposed, provides adequate access for circulation and emergency vehicles.

11. Covington Water District Service Area Dispute. In Ex. 66 and at hearing, the Covington Water District ("CWD") disputes the adequacy of water provision because it lays claim to 98 acres of the water service area for PP1A. The City maintains it has rights to serve this area. The conditions of approval assures that all uses within PP1A will be served with adequate water in full conformance with all applicable development standards.

As noted by the Applicant's briefing on the issue, the Applicant need only make a threshold showing at the preliminary plat stage that the completed development is able to comply with applicable zoning ordinances and health regulations and that the plat can only be denied on the basis of inconsistency with matters specified by regulation or ordinance if infirmities or conditions exist that would preclude any possibility of plat approval. *Knight v. City of Yelm*, 173 Wn.2d 325, 343-44 (2011); *Topping v. Pierce County Board of Commissioners*, 29 Wn. App. 781, 783-85 (1981).

The proposal clearly makes a threshold showing for adequacy of water. The proposal has adequate water availability as determined in Section 7.2.1 of the DA. The preliminary plat COAs require that any waterlines or other water utility facilities constructed prior to resolution of the water service area dispute shall comply with the design and development standards of both the CWD and the City of Black Diamond. The COAs also require a connection plan to be built into the water system plan that allows for the connection to the legally entitled service provider should a court or other decision maker of competent jurisdiction determine that PPIA is served by the incorrect water service provider. These conditions will guarantee adequate water service according to the development and design standards of whichever provider is entitled to serve the disputed area. As conditioned, there are no infirmities or conditions that exist that would preclude any possibility of plat approval. Consequently, denial of the plat is not justified under *Knight* and there is no need for the examiner to impose more stringent conditions as requested by CWD in Ex. 66.

In its legal argument, Ex. 66, CWD also asserts that the proposal fails to comply with BDMC 17.12.010(B), which requires a plat application to contain "utility plans showing proposed location, sizing and alignment", as well as BDMC 17.12.020(J) and (N), which require preliminary plan documents that have generalized plans of proposed water distribution systems and that show utility connections to adjacent Villages MPD properties. It is doubtful that compliance with application requirements is within the scope of review for compliance with preliminary plat criteria, although the failure to provide required information will certainly be used against an applicant if the information is necessary to ascertain permit criteria. Beyond this, the Applicant has complied with these requirements as outlined in the findings of fact in that its plat drawings do show the general lay out of water lines. The exact connection points to the City or CWD system is not currently known, but the COAs ensure that a connection point will be designated prior to final plat approval. In sum, the utility information required for a preliminary plat application is satisfied to the extent necessary to meet the "threshold" standard for preliminary plat review discussed under the *Knight* and *Topping* decisions.

In crafting the COAs addressing the service area dispute, the Examiner has declined to incorporate the COA suggested by the Applicant in its written closing comments, Ex. 148. The COA suggested by the Applicant would preclude final plat approval for the affected service areas until the water service dispute is resolved. This condition could lead to a situation where land is cleared, improvements installed and then no further development occurs for years as protracted litigation over the service area between the City and CWD extend for years. Such partially developed land can serve as a visual blight to the Black Diamond community. PPIA COA 99 enables the full development of the PPIA as the service area dispute continues. Should the Applicant determine it legally cannot connect to the City or CWD prior to resolution of the water

service area dispute it will be in the same position as it would be under its proposed COA, i.e. no final plat approval until the dispute is resolved. .

12. Conceptual Sewer Plans. In his written comments Jack Sperry asserted that the sewer plans submitted by the Applicant could not be conceptual. BDMC 17.12.020(1) only requires “generalized” plans of proposed sewerage systems. The sewer plans in Ex. 2 satisfy this requirement.

13. School Mitigation. Ms. Wheeler, Ms. Proctor and Mr. Ostrowski made several comments and/or requests regarding school mitigation. Villages MPD 98 provides that the CSMA provides for “adequate mitigation of impacts to school facilities” and the CSMA itself provides that it serves as complete mitigation for all school impacts. Villages MPD COA 98 precludes any further mitigation through PP1A as discussed in II(B)(1) of the SEPA appeal decision. Further, many of Ms. Proctor’s requests amounted to renegotiating terms of the CSMA, which presumably was found satisfactory to the Enumclaw School District. The District itself would be expected to have a better understanding than Ms. Proctor of what CSMA terms it needs to mitigate school impacts. Nonetheless, in its written PP1A closing, Ex. 148, the Applicant has volunteered to provide quarterly reports to the District as requested by Ms. Proctor and also to meet yearly with the District if requested by the District. The conditions of approval will require that these reports identify when the 180 day contingency period was initiated if this information had not already been transmitted to the District prior to submittal of the report. Further, the conditions will require the Applicant to meet yearly with the District to discuss construction progress as it relates to school impacts, if requested by the District. Finally, a condition of approval will require staff to consider the impacts of dividing final plat approval into divisions and condition the divisions as necessary to ensure that the connectivity of all infrastructure requirements is not adversely affected and that the sequencing will not adversely affect school mitigation. It is not immediately apparent how dividing final plat approval will impair the Applicant’s obligations to provide mitigation under the CSMA, but if the SEPA Appellants or the District have any specific concerns they can relay them to staff for their review of any proposed divisions.

BDMC 17.15.020(A)(4): *The physical characteristics of the proposed subdivision site, as conditioned, do not increase the risk of flood or inundation conditions on- or off-site;*

14. Flood Potential. As determined in Finding of Fact No. V(6)(a), the physical characteristics of the PP1A utilizes appropriate storm water facilities designed in accordance with the 2005 SWMWW, and infiltrate stormwater via LID rain gardens and a temporary water quality pond and infiltration facility. As conditioned, the proposal will not increase the risk of flood or inundation, either on-site or off-site (except for storms larger than 100-year event, which are not required to be regulated).

BDMC 17.15.020(A)(5): *Applicable city development standards are met or exceeded;*

15. Consistency with Development Standards. The proposed subdivision has been reviewed by staff for consistency with applicable portions of Title 17 (Divisions of Land), Title 18 (Zoning), and Title 19 (Environment), plus Villages DA and Villages MPD COA. With the

exception of the allowable deviations described in staff Report Findings of Fact #21-24, all other development standards or permit or Villages DA conditions are met or exceeded.

BDMC 17.15.020(A)(6): *All environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies;*

16. No Significant Adverse Environmental Impacts. As determined in Finding of Fact No 5, there are no significant adverse impacts associated with the proposal, including significant adverse environmental impacts.

BDMC 17.15.020(A)(7): *Concurrency exists for all utilities and transportation system improvements prior to occupancy of any structures;*

17. The staff report concludes that following completion of the improvements listed in the PP1A application and in accordance with the conditions of approval in the Staff Report, concurrency exists for the City's water, sewer and stormwater systems. There is no evidence to the contrary.

BDMC 17.15.020(A)(8): *If the proposal is in an approved MPD, the proposed subdivision shall be consistent with the approved MPD, the MPD conditions of approval, the MPD design standards, and the MPD development agreement;*

18. Consistency with MPD Requirements. As determined in Conclusion of Law No. 4, the proposal is consistent with the Villages MPD and Villages DA as well as the MPD design standards.

In order to provide for consistency with Villages MPD COA No. 35, SEPA added mitigation measure no. 3 is added as a condition of approval to PP1A to require stormwater baseline phosphorous monitoring be completed prior to construction as required in Appendix O to the Villages DA.

BDMC 17.15.020(A)(9): *There shall be connectivity of motorized and nonmotorized transportation routes, open spaces and wildlife corridors with existing or proposed routes or corridors on adjacent properties;*

19. Connectivity. As determined in Finding of Fact No. V(6)(b)(12) and (14), the proposed trails, sidewalks, bike routes and roadways provides an interconnected, multi-modal network within PP1A and to the surrounding area and also provides for connectivity to adjoining properties.

The connectivity of wildlife corridors for large animals has been fully addressed in the FEIS and no major wildlife corridors are designated for PP1A. However, the FEIS also recognizes a benefit to connecting more minor wildlife corridors between wetlands. Further study of that issue has been required via a new SEPA mitigation measure (added condition no. 9) resulting from the SEPA Appeal of this proposal. This SEPA mitigation measure will be added as a PP1A

condition to implement the criteria quoted above. Implementation of this condition may result in connecting some wetlands located to the south of the proposal.

BDMC 17.15.020(A)(10): *The use of cul-de-sacs and other dead-end streets shall be minimized to the fullest extent possible;*

20. Cul-de-sac. No cul-de-sacs are proposed at full build-out of the PP1A. However, final platting is proposed to occur in phases; the proposed divisions are shown on Sheet CV3 of PP1A (Exhibit 2). Portions of roads within the preliminary plat will be built in conjunction with final plats, necessitating the use of temporary turnarounds (to accommodate emergency access). As divisions within PP1A receive final plat approval, the roads will be extended and connected and the temporary turnarounds will be eliminated.

BDMC 17.15.020(A)(11): *Appropriate provision has been made for the dedication of land to any public body, and provision of public improvements has been made as necessary to serve the subdivision. This shall include appropriate provision for payment of any impact fees imposed in accordance with the provisions of RCW 82.02.050 through 82.02.090, and applicable city codes and regulations. Dedications shall clearly be shown on the final plat;*

21. Dedications. Numerous tracts are proposed for access and utilities; see the Tract Table on Sheet CV6 (Exhibit 2). Sheet CV5 and 6 clearly identify property that is to be publicly owned. Per Section 6.5 of Villages DA, all street right-of-way will be dedicated to, owned and maintained by the City except for private streets which include alleys, auto courts serving less than 20 dwelling units and Main Street (Village Pl. SE). A recommended condition of approval will require all dedications to be shown on the final plats within PP1A.

The subdivision provides a 12.5 acre elementary school site (lots 1L and 2L) pursuant to the CSMA dated January 24, 2011 (recorded under King County recording no. 20110624001156). The CSMA provides for the timing of conveyance of the school site to the Enumclaw School District. Per Section 13.3 of Villages DA, additional school mitigation is accomplished through the CSMA, which includes payment of a school mitigation fee.

Villages DA 13.4 requires the Applicant to pay fire impact fees when adopted by the City Council. As determined in FOF No. V(6)(h), the City adopted fire impact fees in September, 2012. The Applicant will have to pay these fees per the terms of the impact fee ordinance. DA 13.4 further requires the Applicant to design and construct a satellite fire station. This requirement is triggered by the certificate of occupancy for the 250th dwelling unit for the Villages MPD. These DA requirements are referenced in the conditions of approval for this decision.

Section 13.9 of the Villages DA addresses general government facilities mitigation, which includes payment of a general government facilities mitigation fee and/or dedication of land and/or construction of general government facilities. A recommended condition of approval will require payment of the general government facilities mitigation fee pursuant to Section 13.9 of the Villages DA.

Given the above, and subject to the recommended conditions of approval, this code requirement is met.

BDMC 17.15.020(A)(12): *The streetscape and public open space amenities shall be compatible with any adjacent project that has been developed or approved for development as an MPD;*

22. Compatible Streetscape and Open Space. PP1A is the first implementing plat for The Villages MPD. No adjacent properties have been developed as an MPD.

BDMC 17.15.020(A)(13): *The proposed subdivision provides safe walking conditions for students who walk to and from school; and*

23. Safe Walking Conditions for School Children. As determined in Finding of Fact V(6)(g), the proposal provides for safe walking conditions to and from school.

BDMC 17.15.020(A)(14): *The proposed subdivision provides for tree preservation consistent with the provisions of chapter 19.30.*

24. A significant tree report for PP1A was prepared by International Forestry Consultants, Inc. on January 31, 2011 and was submitted with the initial preliminary plat application. Since that report did not address the area of the proposed off-site storm drainage facility, staff requested supplemental information. A second report, prepared by S.A. Newman, dated March 14, 2011, was provided on July 3, 2012. The two reports along with a Significant Tree Inventory Exhibit address all areas of The Villages MPD proposed for disturbance as a result of PP1A (Exhibits 12-14).

Given the size of the preliminary plat site, significant tree coverage densities were determined based upon modeling work, with “ground truthing” being conducted by the two consultants. Summary tables are provided in the reports; they indicate that a large number of significant trees will be removed as a result of site development. Since these figures are based upon modeling (as opposed to a precise inventory), staff finds it is more appropriate to address tree removal and compliance with BDMC 19.30 (Tree Preservation) more specifically as each division of the plat is proposed for actual physical development.

Recommended conditions of approval related to tree removal:

a. Concurrent with submittal of Utility Permits for any final plat, the Applicant shall submit a report with the exact number of significant trees to be removed in that plat and identify mitigation per BDMC 19.30.070 (e.g., planting of replacement trees or payment into the City tree mitigation fund).

b. Trees proposed for replanting shall be native trees per Villages MPD COA 122.

A new SEPA condition imposed as a result of the SEPA Appeal also requires that the tree report identified in the preceding paragraph shall delineate root protection zones.

DECISION

The proposed subdivision is approved if the Applicant commits to constructing Rock Creek Bridge pedestrian improvements as outlined in SEPA mitigation measure No. 1, identified in Section IV(1) of this decision, subject to the following conditions:

1. The Master Developer shall execute the drainage easement for the off-site stormwater pond shown on Sheets RS7-9 (Exhibit 2) prior to final plat approval of any division within PP1A.
2. Pursuant to BDMC 19.10.220.D, wetland buffer boundaries adjacent to land within this plat shall be permanently delineated by split-rail fencing and identification signs, as approved by the City. Fencing shall be installed prior to final plat approval of any plat division adjacent to wetland buffers.
3. The proponent shall submit a wetland buffer vegetation management plan prepared in accordance with BDMC 19.10.230.F for review and approval prior to the issuance of any site development permits for lands adjacent to wetland buffers.
4. Wetlands and all required wetland buffers shall be defined as separate tracts in the final plat (BDMC 19.10.150.B). These tracts shall be as shown on the proposed preliminary plat drawings, except as may be modified pursuant to BDMC 19.10.230 prior to final plat approval.
5. Prior to final plat approval of any division within PP1A, the proponent shall re-channelize the south leg of the intersection of SE 288th St. and 216th Ave. SE to provide a refuge/merge area for westbound left-turning vehicles.
6. Stationary construction equipment shall be located distant from sensitive receiving properties wherever possible. Where this is infeasible, or where noise impacts would still be likely to occur, portable noise barriers shall be placed around the equipment (pumps, compressors, welding machines, etc.), with the opening directed away from sensitive receiving properties.
7. All equipment required to use backup alarms shall utilize ambient-sensing alarms that broadcast a warning sound loud enough to be heard over background noise, but without having to use a preset, maximum volume. Alternatively, use broadband backup alarms instead of typical pure tone alarms.
8. Operators shall be required to lift, rather than drag materials wherever feasible.
9. Electric pumps shall be used whenever pumps are required.
10. The proponent shall establish a noise control "hotline" to allow neighbors affected by noise to contact both the City and the construction contractor to ask questions or to complain about violations of the noise reduction program per Condition of Approval #41 of The Villages MPD permit.
11. The proponent shall provide construction noise attenuation for existing residents adjoining development parcels Villages V10, V13 and V15 as set forth in Villages MPD COA #44 of The Villages MPD permit.
12. Work hours of operation shall be limited to 7:00 a.m. and 7:00 p.m. on weekdays, 9:00 a.m. and 5:00 p.m. on Saturday, and shall be prohibited on Sundays and City holidays, subject to emergency construction and repair needs as set forth in BDMC 8.12.040.C.
13. The Master Developer shall ensure that the short term construction noise mitigation plan for the PP1A is implemented during construction.

14. The Master Developer shall establish the noise control hotline prior to commencement of any development activity on the PP1A site.
15. The Master Developer shall form The Villages MPD Noise Review Committee no later than one week after commencement of any development activity on the Phase 1A site.
16. The Master Developer shall notify the City in writing of the status of their compliance with Section 13.7 (Noise Attenuation) of Villages DA with regard to The Villages development parcels V10, V13 and V15 at the time of submittal of Utility Permits for those development parcels.
17. Prior to issuance of certificates of occupancy for the 726th ERU (equivalent residential unit), the proponent shall construct a single-lane roundabout at the realigned intersection of Lake Sawyer Rd. SE and SE Auburn-Black Diamond Rd. (Roberts Dr.)
18. Prior to issuance of certificates of occupancy for the 327th ERU (equivalent residential unit), the proponent shall install a traffic signal at the intersection of SE Auburn-Black Diamond Rd. (Roberts Dr.) and Village Pl. SE (aka Main St.).
19. Prior to the issuance of certificates of occupancy for the 1,128th ERU (equivalent residential unit), the proponent shall construct a single-lane roundabout at the intersection of SE Auburn-Black Diamond Rd. (Roberts Dr.) and Villages Parkway SE (aka Community Connector "A").
20. The proponent shall model and monitor traffic at the midpoint of occupancy of Phase 1A (596th equivalent residential unit) and determine what additional requirements may be necessary to comply with the transportation concurrency requirements of the Comprehensive Plan.
21. In addition to the applicable owners association, the Master Developer shall also be responsible for maintenance of Tract 901 (Village Pl SE).
22. All road grades shall not exceed 15%.
23. At the time of building permit application, structures will be required to either have required fire flow available or to have a fire sprinkler system installed to allow for a reduction in required fire flow.
24. All alleys shall be posted "No-Parking" with signage according to the International Fire Code; provisions for enforcement of these no parking zones shall be defined and accepted by the Designated Official prior to final plat approval of any plat division in which alleys are provided.
25. If the final design length of Alley A from its intersection with Alley B exceeds 150 feet, an approved Fire Department turnaround shall be provided at its end, per the IFC.
26. All ways-of-travel shall maintain a minimum 20 foot unobstructed driving surface per the IFC. Bike lanes may be a component of this 20 foot width. The fire hydrant and water supply system shall meet IFC Requirements, and shall be installed prior to the beginning of combustible construction materials being placed on site. Construction materials refers to the lumber (framing) packages and not to a job shack.
27. All dedications shall be shown on the final plat.

28. The Applicant shall make provision for a satellite fire station in accordance with the requirements of Section 13.4 of the Villages DA.
29. Prior to final plat approval of any plat division, the Applicant shall submit Covenants, Conditions and Restrictions (CCRs) for such division for review and approval by the Designated Official as defined in The Villages MPD Development Agreement. The Designated Official's review and approval shall be limited to the CCRs compliance with the Conditions of Approval of The Villages MPD Permit (Black Diamond Ord. No. 10-946) and the provisions of The Villages MPD Development Agreement dated December 12, 2011 (Black Diamond Ord. No. 11-970). Provided, if CCRs have already been submitted and approved by the Designated Official that bind a certain plat division, this condition shall be deemed satisfied for purposes of such division.
30. The Applicant shall comply with the Roberts Dr. sidewalk and pedestrian connection in accordance with the requirements of Section 11.6 of the Villages DA. In addition, the Applicant has voluntarily agreed that, subject to the requirements of Section 11.6 of the Villages DA, it shall submit a permit application for the sidewalk and pedestrian connection prior to issuance of the Certificate of Occupancy for The Villages Phase 1A Preliminary Plat's 1st Dwelling Unit and such connection shall be substantially complete prior to issuance of the Certificate of Occupancy for The Villages Phase 1A Preliminary Plat's 200th Dwelling Unit."
31. Tract 990 (as shown on Sheets CV5 and CV6 of Exhibit 2) shall be designated for natural landscape (NL) use.
32. Any division of a final plat requiring TDRs will not be processed or approved until the Master Developer has acquired title to the needed TDRs and they have been assigned by the Master Developer to the applicable division of the final plat.
33. Prior to final plat approval, the Master Developer shall either comply with Villages MPD COA #69 and obtain the Directors' approval, or dedicate more open space as may be necessary to minimum standards.
34. The Master Developer shall comply with Exhibit Q of Villages DA.
35. The Master Developer shall comply with Exhibit R of Villages DA.
36. Prior to final plat approval of the last division of PP1A, the Master Developer shall submit a status report to the Designated Official verifying compliance with Exhibit P of Villages DA.
37. Tracts 908 and 954-956 shall be maintained by the Master Developer (M.D.)/Applicable Owners Association (A.O.A.).
38. All existing water mains within public rights of way shall remain in-service during construction. This condition will be enforced during Utility Permit review and approval.
39. Water connections will be required to both the 750 and the 850 pressure zones in order to meet fireflow requirements and provide proper pressures to future development areas.

40. All water mains shall be located in public rights of way or within utility easements that provide a minimum of 15' of unobstructed width for access and maintenance. This condition will be applied during Utility Permit review and approval.
41. If the Applicant builds off-site improvements to the City's springs water source as a sole-source project, then those improvements shall be completed or bonded prior to the first Final Plat Approval within PP1A. In addition, the improvements shall be in-service and accepted by the City before the first building permit is issued. If the Applicant elects to use the terms of the WSFFA to complete the off-site springs water source improvements, then the Applicant shall notify the City, in writing, of this decision prior to the first Final Plat approval. In addition, a Final Plat within PP1A may not be approved until the City has designed and bid the necessary improvements. Building permits shall not be issued until the improvements are complete and in-service.
42. Where possible, 850 zone mains for service to future areas of the project shall be interconnected to the 750 zone to improve service to the Phase 1A customers and to prevent stagnation of water in unused pipelines. These mains may be isolated from the 750 zone in the future when buildings are constructed in the 850 zone. This condition will be applied during Utility Permit review and approval.
43. If the Coordinated Water Service Area Boundary dispute has not been resolved prior to Final Plat approval of any final plat that includes building lots within the disputed area, then the water system that is designed for service to areas within the disputed boundary for this area shall be designed to be compatible with both the Covington Water District Standards and the City of Black Diamond Standards. The City will be the permitting agency for water system improvements in the disputed area, even if the area is served by the Covington Water District. This condition will be enforced during Utility Permit review.
44. Prior to Final Plat approval of any final plat that includes building lots within the disputed area, a metes and bounds description of the line that is graphically shown on Sheet CV2 and labeled "Coordinated Water Service Area Boundary" in the application will be provided by the Applicant and this description will be used as the actual location of the boundary.
45. If, as part of a final plat within the PP1A, some properties straddle the Coordinated Water Service Area Boundary, and if the disputed area is served by the Covington Water District, service to the properties straddling the line will be from the City's water system.
46. Sanitary sewer shall be discharged to the existing City collection system, unless King County approves direct discharge into the regional King County collection system.
47. All existing sewer mains shall remain in-service during construction of any new sanitary sewer facilities. This condition will be applied during Utility Permit review and approval.
48. Prior to issuing the first building permit for any structure that might discharge sanitary sewer into the utility system, the temporary sanitary sewer lift station shall be complete, operational and accepted by the City. This condition will be applied during building permit review and approval.

49. Prior to issuing the first building permit for any structure that might discharge sanitary sewer into the utility system, the off-site pipelines connecting the temporary lift station to the point of discharge shall be completed and accepted by the City. This condition will be applied during building permit review and approval.
50. Any sewage pipelines (either gravity or force-main) that are designed with excess capacity shall include provisions to minimize potential operational impacts due to the oversizing. This condition will be applied during Utility Permit review and approval.
51. On the face of each plan set for building and Utility permits in PP1A, the DRC (in conjunction with their notification of approval to the City) shall include the following sewage flow information as applicable; the total building square footage included in that application, the number of fixture units, the Average Dry Weather Flow (ADWF), and the Peak Wet Weather Flow (PWWF) associated with the improvements in that application. The information shall be in tabular form.
52. Stormwater from the rooftops in the area labeled "adaptive management" shall be configured, through valves and piping, with the option of discharging into either the Zone 1A infiltration facilities or into the Zone 1C stormwater facility located south of PP1A and designed and managed to meet the target recharge flow rates and volumes to Horseshoe Lake. The Applicant shall be responsible for monitoring and maintaining the water balance within the adaptive management zone until all stormwater facilities within the zone are complete and accepted by the City. The default position will set for Zone 1A. This condition will be enforced during Utility Permits.
53. The stormwater facility located to the south of the PP1A and shown on plat sheets RS7 through RS9 dated 8/23/2012 shall be designed and built at this time to accommodate all future phases of The Villages MPD that may potentially drain to it. This condition will be applied during Utility Permit review and approval.
54. Prior to permitting for any future Villages MPD phase that may discharge to the stormwater facility shown on PP1A sheets RS7 through RS9 dated 8/23/2012, the Applicant shall demonstrate, through on-site real-time monitoring, that the infiltration system located to the south of the Phase 1A Plat is operating as-designed and has sufficient capacity for those future phases. This condition will be applied during preliminary plat, final plat and/or Utility Permit review for Villages MPD phases subsequent to Phase 1A.
55. Prior to approval of the first clearing or grading permit, the Applicant shall provide written confirmation, from the Department of Ecology, that an NPDES permit is not required for any division of PP1A, including utility installation and building construction. Alternatively, the Applicant shall obtain any required NPDES permit. This condition will be applied during grading and/or clearing permit review and approval.
56. Improvements to Roberts Drive, as necessary to provide suitable access to the Project, shall be completed and accepted by the City as detailed in Exhibit 37 regional infrastructure plan. This condition will be applied during subsequent permit review and approval.

57. The on-street parking locations shown in the application shall be considered the minimum acceptable number of parking spaces. To the extent that additional stormwater facilities are required (namely rain gardens), these facilities shall be located outside the right-of-way and shall not displace or eliminate any on-street parking spaces. This condition will be applied during Utility Permit review and approval for rain garden and/or street construction.
58. Extend the bike lanes on Ash Ave SE to Tract 984 (or as necessary) to connect to the Cross Community Trail so that bikes may access the regional trail network. This condition will be applied during Utility Permit review and approval.
59. Street trees may be placed in groves, but shall be counted on a block-by-block basis. In other words, the number of trees required within a single block shall be placed within that same block, although they may be placed in groves instead of uniformly spaced along the roadway. This condition will be applied during Utility Permit review and approval for street construction.
60. Alley I and Alley F shall be designed and constructed with traffic calming features to prevent cut-through traffic, as acceptable to the Designated Official. This condition will be enforced during Utility Permit review and approval for Alley I and F construction.
61. All implementing projects and permits for PP1A shall comply with the terms and conditions set forth in the Traffic Impact Study prepared by Transpo Group dated February 2011, updated on May 15, 2012, and approved by the City on August 30, 2012.”
62. All implementing projects and permits for PP1A shall comply with the terms and conditions set forth in the Detailed Implementation Schedule of Phase 1A Regional Infrastructure Improvements dated August 25, 2012 and approved by the City on August 27, 2012.
63. The Master Developer shall implement the following strategies to further reduce PP1A’s construction traffic: (1) Adjust PP1A’s site grading to achieve an approximate earthwork balance notwithstanding limited import of the following: (i) topsoil of approximately 7,000 CY; and (ii) import approximately 7,000 CY of material for rain garden materials (estimated at 52 rain gardens of average size 11.5’ W x 75’ L x 4.5’D); (2) Screen PP1A strippings onsite to obtain topsoil for re-use onsite; (3) Rocks obtained through the screening of topsoil on PP1A should be used as fill or crushed for use as base material onsite; (4) Sticks obtained through the screening of topsoil on PP1A should be “chipped” and used for soft surface trails or erosion protection onsite; and (5) Limit deliveries via trucks larger than Single Unit (SU) trucks to before 3:30 p.m. Monday – Friday.
64. All implementing projects and permits for PP1A shall be reasonably consistent, as determined by City staff, with the terms and conditions set forth in the Overall Grading Plan dated June 25, 2012 and the Triad memorandum dated September 28, 2012 re: The Villages PP1A Construction Trips.
65. Prior to any clearing or grading activities within a division of PP1A, clearing limits shall be marked in the field with continuous ribbon, silt fence or orange construction fence where appropriate to clearly indicate clearing limits. Trees within or near clearing limits

to be saved shall be clearly marked. Orange construction fence shall be installed as a tree protection fence outside of drip lines of trees to be saved prior to the start of clearing and grading operations.

66. In order to ensure that The Villages MPD will not have an adverse financial impact upon the City after Phase 1A, the Master Developer shall pay to the City an amount for each year that, when combined with the Master Developer's Total Funding Obligation paid for that year pursuant to the Funding Agreement, will be at least equal to the Net Annual General Fund Deficit (if any) shown for that year in Table 2 of The Villages Phase 1A Fiscal Impact Analysis dated September 20, 2012. The Master Developer shall make this payment each year until the earlier of: (1) a new fiscal analysis is prepared pursuant to Section 13.6 of the Villages MPD Development Agreement and approved by the Designated Official, demonstrating that there is further no Net Annual General Fund Deficit; (2) the City and Master Developer mutually agree to amend the Funding Agreement to include the amounts of any payments needed to offset any Net Annual General Fund Deficit for Phase 1A within the Total Funding Obligation required to be paid under the Funding Agreement; or (3) pursuant to Villages MPD COA 156, the Master Developer identifies mechanisms other than interim funding to address projected shortfalls. No implementing permits or building permits shall be issued by the City of Black Diamond for Phase 1A of The Villages MPD if the Master Developer fails to make the payment required 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).
67. The following mechanisms shall be utilized in PP1A where feasible so as to integrate Low Impact Development techniques into The Villages MPD build-out: (1) reduced roadway widths, (2) infiltration wells, (3) rain gardens, (4) bioswales, (5) media filter strips, (6) reduced driveway lengths, (7) pervious asphalt and concrete in alleys, (8) pervious pavers, and (9) install pet waste stations in common areas.
68. Trails within a Division of PP1A shall be constructed or bonded prior to issuance of a certificate of occupancy, final site plan approval or final plat approval (whichever occurs first) for that Division within PP1A.
69. All Neighborhood Parks, trails and Community Parks in PP1A will be owned and maintained by the applicable Owners' Association (OA) or Master Developer pursuant to the provisions of Subsection 5.5.7 of The Villages MPD Development Agreement, except for any owned by a school district.
70. Required open spaces identified with the PP1A sheets will be conserved or conveyed to the City on a division-by-division basis during the final plat process.
71. The westerly boundary of Tract 953 shall be modified prior to final plat submittal and approval for Division 1L to include all portions of the 60-foot buffer of Wetland S as indicated on PP1A Sheet PP7. Such boundary modification shall be exempt from the plat alteration process set forth in BDMC §17.20.090(B) because it is required by a preliminary plat condition of approval.

72. Prior to final plat approval of the Division in which such lot is located and in order to ensure compliance with the first bullet under "Lot Sizes and Front Yard Setbacks (Single Family Detached)" of Chapter 4 of the MPD Project Specific Design Standards and Guidelines (Exhibit "H" of The Villages MPD Development Agreement), which reads "Corner lots side yard setback on the street side shall be at least 5 feet wider than interior lots" (emphasis added), the Master Developer shall either: (i) amend the lot lines of Lots 25I and 25K, as shown on PP1A sheets dated 8/23/2012, to accommodate 5 feet wider side yard setbacks; or (ii) require smaller residential building footprints such that 5 feet wider side yard setbacks can be accommodated on Lots 25I and 25K.
73. Prior to final plat submittal of any Division within PP1A, the park types in Open Space Tract Table on PP1A CV5 shall be amended as follows: (i) Tract 910 is too small to be a Neighborhood Park; (ii) Tract 918 is too small to be a Neighborhood Park; and (iii) Tract 941 is too large to be a Pocket Park per the park type definitions in Section 14 of The Villages MPD Development Agreement. Correct park types shall be substituted as approved and determined necessary by City staff.
74. Prior to final plat submittal of any Division within PP1A, the Master Developer shall correct PP1A Sheet CV3 as follows: (i) Roberts Drive is incorrectly labeled as Richards Drive; and (ii) the Lot Summary table incorrectly gives unit values for Division 1A Lots 1A-10A, Division 1F Lots 1F-3F, Division 1L and Division 1M; these lots are intended for mixed use commercial development and a school site.
75. To the extent that PP1A requires construction of off-site improvements to roads that currently drain to Lake Sawyer, the Applicant will be required to treat the runoff from the improvements and the right-of-way in the immediate vicinity of the improvements to the then current, applicable phosphorous treatment standard. This condition will be applied during the review and approval of any Utility Permits for design and/or construction of any such off-site road improvements.
76. Concurrent with submittal of Utility Permits for any Division of PP1A, the Applicant shall submit a report with the exact number of significant trees to be removed in such Division and identify mitigation per BDMC 19.30.070 (e.g., planting of replacement trees or payment to the City tree mitigation fund). Trees proposed for replanting shall be native trees per The Villages MPD COA 122.
77. Pursuant to Villages MPD COA No. 52, should new water distribution alternatives be desired by the Applicant 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 be responsible for the cost of updating the Plan, if needed..
78. The Applicant shall make payment of the general government facilities mitigation fee pursuant to Section 13.9 of the Villages DA.
79. Prior to the approval of the first utility permit for construction of sanitary sewer utilities, the Applicant shall conduct wet season inspection and/or monitoring sufficient to confirm to the City's satisfaction that there no root intrusion, blockage, breakage or other deficiency that would render the City's existing sewer system downstream of the proposed point of connection insufficient to convey the sanitary sewer flows anticipated

from PP1A. If inspection/monitoring identifies any condition indicating there is not sufficient capacity to convey such flows, the Applicant shall provide any improvements the City deems necessary to remedy the deficiency prior to issuance of the first certificate of occupancy for the first division of the Phase 1A plat.

80. The Applicant may seek approval of PP1A final plat by division, as depicted at CV3 of Ex. 2. However, no division shall be approved unless the Applicant demonstrates to the satisfaction of staff that there is no reasonable possibility that piecemeal approval will adversely impact the continuity of required infrastructure and other mitigation. Every approved division should be able to stand on its own in terms of connections to infrastructure networks. staff is authorized to impose mitigation, such as requiring the posting of security devices, to the extent necessary to ensure that the continuity of required improvements is not permanently impaired if remaining un-built divisions are never completed. Final plat approval by division also may not impair any other mitigation requirements, specifically including any required school mitigation.
81. If requested by the Enumclaw School Board, the Applicant shall meet with the Board on a yearly basis to discuss construction activities and activities conducted to mitigate school impacts.
82. Unless waived by the Enumclaw School Board, the Applicant shall prepare a written quarterly report addressed to the Board identifying progress in construction of the Villages MPD as well as any school mitigation required for the MPD. The report shall specifically identify if the 180 day contingency period of the CSMA has been triggered, if this information has not already been provided to the Enumclaw School District by the Applicant.
83. The comparable city used in the fiscal impact analysis, Ex. 40, shall be revised to use a city other than the City of Black Diamond for purposes of estimating police service costs. The Applicant may opt to continue to be subjected to its funding obligation under the current fiscal impact analysis should its funding obligation be more than the funding obligation resulting from the revisions required by this condition. The revisions shall be approved by City staff prior to the issuance of any certificates of occupancy for PP1A.
84. Off-site improvements required for PP1A within the Lake Sawyer Drainage basin shall be construed as the "first implementing project" as referenced in the September 19, 2011 memo from Alan Fure in Ex. O to the Villages Development Agreement. "Baseline monitoring", as referenced in that Fure memo, shall be completed within the timeframes required by Ex. O.
85. Prior to final plat approval of the first division, the Applicant shall acquire all required approvals from King County for the connection and/or discharge of all of PP1A wastewater into King County's wastewater collection and treatment system.
86. The Applicant shall prepare a detailed noise control plan as required by Villages MPD COA 35 that does more than just repeat noise reduction measures already required for the project. The Applicant shall present the plan to the Noise Review Committee created by Villages MPD COA 45 for input. Notice of the Committee meeting shall be mailed to all

property owners within 500 feet of PP1A at least ten days in advance. The plan shall be approved by staff prior to the initiation of any on-site construction activities.

87. As discussed in Finding of Fact No. III(M)(3), the City's MDRT team shall re-evaluate the Class II designation for Wetland E1 on the basis of whether Wetland E1 was properly segregated under the guidelines of the City's adopted and applicable wetland classification manual. The re-evaluation shall be completed prior to conducting any activities within Wetland E1 or its buffers that would be prohibited in a Class I wetland and no later than issuance of the first certificate of occupancy for a PP1A dwelling unit.
88. Prior to any clearing or grading within a final plat division, the tree plan required by Chapter 19.30 BDMC shall delineate the root protection zones for all significant trees retained, relocated or planted for the division under the plan.
89. Prior to any clearing or grading of Parcels 34B, 27C, 1L or the area between 1L and 27C, the Applicant shall prepare and have approved an analysis by a qualified expert assessing whether any wildlife corridor connections between wetlands S, T, D4 and E1 have any significant environmental benefit and identify any measures to connect those wetlands that are reasonably feasible. The Applicant's analysis shall be subject to peer review by the City's MDRT team. The SEPA Responsible Official shall be responsible for approving the connectivity analysis and is authorized to impose reasonable mitigation measures to the extent necessary to prevent probable significant adverse environmental impacts.
90. In the disputed water service area between the City and CWD, see Ex. 66, the Applicant shall be responsible for selecting the appropriate water service provider. If the Applicant chooses to designate a water provider prior to resolution of the water service dispute, the design of the water system will include a plan for connecting to the other service provider should the City and CWD subsequently agree that the Applicant has selected the incorrect water service provider or a court or other tribunal of competent jurisdiction rules that the service provider selected by the Applicant is not entitled to provide service to the disputed area. The alternate connection plan shall ensure that an alternate connection can be achieved with minimal disruption of completed plat improvements, no disruption in water service and no impacts to environmentally sensitive areas. The alternate connection plan shall be subject to the approval of the alternate water service provider, provided that approval is not unreasonably withheld. The alternate connection plan shall be deemed approved if no response is provided the alternate provider within ten working days of receipt. No final plat approval shall be provided for areas that need water service within the disputed water service area until either the Applicant has secured an approved connection plan or the water service area dispute for the area in question has been resolved.
91. Prior to final plat approval of Division 1A, the Applicant shall acquire approval from City staff for a park use and design of Tract 917 that assures that children and other Tract 917 users will not be endangered by the proximity of adjoining roads.

Dated this 10th day of December, 2012.



Phil Olbrechts
Hearing Examiner
City of Black Diamond

Appeal Right and Valuation Notices

This land use decision is final and subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short and procedures strictly construed. Anyone wishing to file a judicial appeal of this decision should consult with an attorney to ensure that all procedural requirements are satisfied.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.