

## Tracey Redd

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**From:** Kristi Beckham <KBeckham@Cairncross.com>  
**Sent:** Monday, December 29, 2014 4:47 PM  
**To:** Nancy Rogers; MDRT User; Andy Williamson; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2b1 of 3)  
**Attachments:** Pages from Pages from scan\_20141229154717 Reduced File Size Part 2b1.pdf

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We received additional bounce backs so I broke each file into four total parts. Attached is Part 2b1.

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### CH& Kristi Beckham

Legal Assistant

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**From:** Kristi Beckham  
**Sent:** Monday, December 29, 2014 4:45 PM  
**To:** Nancy Rogers; 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2a2 of 3)

We received additional bounce backs so I broke each file into four total parts. Attached is Part 2a2.

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**From:** Kristi Beckham  
**Sent:** Monday, December 29, 2014 4:44 PM  
**To:** Nancy Rogers; 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2a1 of 3)

We received additional bounce backs so I broke each file into four total parts. Attached is Part 2a1.

I'm sorry for the inconvenience.

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**From:** Kristi Beckham  
**Sent:** Monday, December 29, 2014 4:31 PM  
**To:** Nancy Rogers; 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 2a of 3)

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 2a.

Thank you.

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**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

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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 <sup>(5)</sup>; 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 PPIA will create probable significant adverse environmental impacts to wetlands in regards to groundwater impacts. The Appellants must demonstrate that PPIA 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 PP1A 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/216<sup>th</sup> Avenue SE and SE Auburn-Black Diamond Road/Main Street, certain intersection legs are predicted to exceed the 95<sup>th</sup> 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 95<sup>th</sup> percentile queues during the weekday PM peak hour Phase 1A buildout. The 95<sup>th</sup> 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/216<sup>th</sup> 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 95<sup>th</sup> 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 PPIA 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 PPIA 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 200<sup>th</sup> 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 PPIA 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:***