

**BEFORE THE HEARING EXAMINER FOR THE CITY OF BLACK DIAMOND**

Phil Olbrechts, Hearing Examiner

RE: Villages Preliminary Plat Phase 2 Plat C  PLN13-0027	<b>CORRECTED<sup>1</sup> FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</b>
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**INTRODUCTION**

The applicant requests approval of a preliminary plat to subdivide 136 acres into 203 single family lots as part of the Villages Master Plan development, located east of SR 169 in the vicinity of Jones Lake. The project area comprises 135 acres with 40 acres used for the development and 95 acres dedicated to open space, wetlands and wetland buffers. The proposal includes four future development tracts and 31 tracts for utilities (stormwater, sanitary sewer and water supply), access, landscaping, and sensitive areas. The preliminary plat is approved subject to conditions.

As with all Villages and Lawson Hills development, the proposal has been subject to intense public opposition and scrutiny. A major concern was protection Wetland E1, which is a Class I and II wetland connected to the City’s core wetland complex and located to the west of the proposal. Project opponents raised two major issues: (1) that the wetland should not be segregated into two separate wetland classes; and (2) that baseline monitoring should be taken to ascertain pre-development hydrological conditions. The City and applicant experts were the more compelling on the segregation issue. The applicant was able to convincingly demonstrate that Wetland E1 is located in two different drainage basins and its classification can be segregated this basis. As to the second issue, project opponents were able to demonstrate that baseline monitoring is necessary to ensure that the hydrologic conditions of affected wetlands are maintained post-development. The conditions of approval require baseline monitoring or its equivalent. Project opponents also presented a significant amount of argument and evidence contesting a buffer averaging decision made by the mayor. The BDMC assigns decision making

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<sup>1</sup> A final decision dated January 27, 2015 was submitted by the Examiner that inadvertently included a draft COA, former COA No. 85, that required well monitoring. The examiner’s intent had been to strike former COA No. 85 from the final decision because the findings of fact had concluded that PP2C did not pose a threat to the water quality of wells. This “Corrected” decision removes former COA No. 85 as intended. All parties of record will be provided notice of this “Corrected” final decision and the issuance date for purposes of appeal should be based upon the issuance of this “Corrected” final decision.

responsibility on increases or decreases in buffer width to the mayor. That examiner has no jurisdiction to review decisions made by the mayor unless those decisions are appealed to the examiner, if such administrative appeals are authorized by the BDMC.

Another major point of contention was whether the proposal will be served by appropriate sewer. As proposed, the applicant has not established that there is adequate existing sewer capacity to serve PP2C. Using highly optimistic numbers supplied by the applicant and City, only 26 ERUs of capacity remain after deduction of existing capacity for PP1A and PP2C. There is nothing in the record to remotely suggest that development outside the master plan implementing projects will not use up this 26 ERUs well before PP1A and PP2C are developed. Project opponents were also able to demonstrate that the capacity figures relied upon by the applicant and City are 150 ERUs short of current capacity. For these reasons, a COA has been imposed requiring a study that determines when existing sewer capacity will be used, based upon the build-out rates of PP1A and PP2C and the development rate of projects outside the Villages and Lawson Hills master plans. PP2C will only be allowed to be approved in self-contained final plat phases, where no phase may be approved until adequate capacity is demonstrated to exist to last through final build-out.

Brian Derdowski and others contested the applicability of Villages DA provisions that restricted the assessment of project impacts at the subdivision level. To the extent that some of those provisions may have exceeded the allowed scope of DA provisions, Mr. Derdowski may have a valid point that they may not validly apply. However, even if Mr. Derdowski is correct, the examiner has no authority to overrule or invalidate ordinances adopted by the City Council. Further, given that statutory provisions expressly authorize DAs to address project mitigation, it is likely that most if not all DA provisions addressing mitigation do validly apply to PP2C.

## ACRONYMS

BDMC:	Black Diamond Municipal Code
BDEDCS	Black Diamond Engineering Design and Construction Standards
COA:	Condition of Approval
COL:	Conclusion of Law
CSMA:	Comprehensive School Mitigation Agreement
ERU:	Equivalent Residential Unit
FEIS:	Final Environmental Impact Statement
FOF:	Finding of Fact
HPA:	Hydraulic Permit Approval
MDNS:	Mitigated Determination of Non-significance
MDRT:	Master Development Review Team
PP1A:	Villages Preliminary Plat 1A

PP2C:	Villages Preliminary Plat Phase 2 Plat C
QAPP:	Quality Assurance Project Plan
RCW:	Revised Code of Washington
SAO:	Sensitive Areas Ordinance, used interchangeably with Critical Areas Ordinance
SEPA:	Washington State Environmental Policy Act, Chapter 43.21C RCW
Villages DA:	Villages Development Agreement
Villages MPD:	Villages Master Plan Development.
Villages MPD COA:	Villages MPD Condition of Approval
Villages MPD COL:	Villages MPD Conclusion of Law
Villages MPD FOF:	Villages MPD Finding of Fact
WAC:	Washington Administrative Code

### **ORAL TESTIMONY**

A summary of the hearing testimony is attached as Appendix A.

### **EXHIBITS**

A summary of the exhibits is attached as Appendix B.

### **FINDINGS OF FACT<sup>2</sup>**

#### **Procedural:**

1. Applicant. B.D. Village Partners, LP  
10220 NE Points Drive  
Suite 310 Kirkland WA 98033

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<sup>2</sup> Legal determinations made in the FOFs should be considered COLs and vice-versa. All reasonable efforts have been made to appropriate segregate factual determinations from legal conclusions, but sometimes for the sake of efficiency or ease of reference the determinations and conclusions are intertwined in one finding or conclusion.

2. Hearing. A hearing was held December 11, 2014. After the close of the hearing, the record was left open through January 9, 2015 to allow for the applicant to object to admissions of Exhibits 78 (Proctor), 90 (Save Black Diamond's BDMC Excerpts) and 94 (Reynolds); for citizens and the City to provide written rebuttal to the Applicant's hearing exhibits; to allow Save Black Diamond to provide wetlands expert testimony; and wetland rebuttal from the applicant.

Substantive:

3. Site/Proposal Description. The Applicant requests approval of a preliminary plat to subdivide 136 acres into 203 single family lots on approximately 40 acres. In addition, about 95 acres of land will be dedicated to protected tracts of open space, wetlands, and wetland buffers. Five future development tracts for future residential subdivision, and 31 tracts for utilities (stormwater, sanitary sewer and water supply), access, landscaping, and sensitive areas and buffers are proposed, consistent with the approved Villages Master Planned Development (MPD) and the Villages MPD Development Agreement. Phase 1A is designed to provide utility and street connections between PP2C and the existing utility and road network in Roberts Drive. The applicant also proposes to record a Temporary Access and Utility Easement on Phase 1A that would allow construction of roads and utilities to connect PP2C directly to the City's existing road and utility networks in Roberts Drive.

The site has an undulating topography with alternating swaths of uplands and lowlands and generally trends toward an eastern aspect. Most of the site and surrounding land contains managed forest plantations in use for decades and last logged in the late 1970s or early 1980s. The forest management activities have created an even-aged stand of Douglas fir and a low-lying, native understory. There are six wetlands on the PP2C property. Wetland E1 is a Category II wetland with a 100foot buffer in its northern basin and a 225foot buffer in its southern basin. Wetlands E7, E8, and E10 are Category III wetlands with 110foot buffers. Wetland TOS is part of the Core Wetland Complex identified within BDMC 19.10.230 and is therefore a Category I wetland with a designated 225foot protective buffer. Wetland 213 is a Category IV wetland with a 40-foot designated buffer. Rock Creek is the only other sensitive area on the site. Trees within the boundaries of the proposed development on parcels V28 and V29 will be removed.

4. Surrounding 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), and to the southeast of approved preliminary plat 1A which extends from its intersection with Lake Sawyer Road west to the western city limits and generally ½ mile to the south, within the NW ¼, the SW ¼ and the SE ¼ of Section 15, Township 21 North, Range 6 East, Willamette Meridian, King County, WA.

5. Adverse Impacts. As conditioned, the proposal will create no significant adverse impacts. In conjunction with SEPA mitigation measures, PP2C has been conditioned to the maximum extent allowed by law as consistent with prior City Council findings of adequate mitigation. Specific issues of concern are discussed below.

*a. Wetlands Impacts.*

Adequate provision is made for the protection of wetlands and buffers. No adverse impacts to wetlands and buffers are anticipated. As determined in the staff report, the proposal is consistent with all applicable SAO requirements and project opponents have not provided any evidence that compliance with the SAO is insufficient to protect the wetlands. Two major issues of concern raised by project opponents are the segregation of Wetland E1 into two different wetland classes and the post-development maintenance of wetland hydrology. As addressed in more detail below, the applicant was able to successfully defend the segregation of Wetland E1 into Class I and II wetlands by establishing through a topographical survey and site visit observations where in Wetland E1 the dividing line between two drainage basins is located. As to maintenance of wetland hydrology, the applicant proposes to maintain pre-development hydrology by directing rooftop drainage (which is considered unpolluted) to wetlands to replenish wetland hydrology while directing stormwater that needs to be treated to a regional treatment facility located in PP1C. These diversions of stormwater can disrupt the existing hydrology of PP2C wetlands, which can damage their function. Project opponents did make a convincing case that baseline monitoring of wetland hydrology or its equivalent is necessary in order to ensure that wetland hydrology is not adversely affected by the proposal. A COA has been added to require baseline monitoring or an equivalent methodology of assuring maintenance of hydrology as approved by staff.

(1) Overview. Part of Rock Creek and six wetlands are on the subject site. The boundaries of the wetlands TOS, E1, E7, E8, E10, and 213 were determined during development of the Villages DA and are fixed by that document. The applicant has designed all proposed development to avoid substantial modification of wetland buffers and avoid all direct impacts to wetlands in PP2C.

The applicant submitted a Sensitive Areas Study, Buffer Averaging Plan and Wildlife Analysis for PP2C (SAS) (WRI, December 24, 2013 and revised versions February 24 and May 6, 2014 (Exhibits 28, 28a, 28b). The SAS documents further work to classify the wetlands and evaluate wetland recharge/water balance. The applicant's wetland scientist, Wetland Resources, Inc. (WRI) and Perteet, the City's consulting scientist, established the wetland buffer depths based on each wetland's classification. The Cowardin and the Washington Department of Ecology (adopted by Black Diamond) classification systems were used.

Wetlands TOS and E1 have the highest ratings for hydrologic function and habitat value. Wetland TOS is part of the Core Wetland Complex identified by BDMC 19.10.230 and is a Category I wetland with a designated 225-foot protective buffer. Wetland E1 is a Category II wetland with a 110-foot buffer in the northern portion and a 225-foot buffer in the southern basin. Wetlands E7, E8 and E10 are Category III wetlands with 100-foot designated buffers. Wetland 213 is a Category IV wetland with a 40-foot designated buffer. The table below lists the wetlands, their City classification and buffer widths and the tract number on the plat associated with the wetlands and their buffers. The tracts will be owned and maintained by the Master Developer.

(2) Buffer Averaging Will Not Adversely Affect Wetlands. Buffer averaging was approved by the mayor pursuant to Ex. 30a for several small areas for development, as follows: the buffer is reduced 182sf for Lots 156 and 157; at 373sf for Lots 147 and 140; 1,366sf for Lots 134-141; and 196sf for Lots 129-131. The total buffer reduction at these locations is 2,117sf. The total buffer area added in compensation is 26,222sf. Numerous public comments contested the validity of this decision, in particular where a buffer was reduced to accommodate a logging road. As concluded in COL No. 16, the examiner has no jurisdiction to evaluate the validity of the mayor's decision. The mayor's determination under the averaging criteria that the averaging will not reduce wetland functions or functional performance must be taken as a verity.

(3) Applicant Properly Segregated Wetland E1 into Category I and II Wetlands. The applicant properly segregated Wetland E1 into Category I and II buffers based upon the dividing line between the two drainage basins in which the Wetland E1 is located.

In Ex. 10, Ex. 50, 54, 55, and 84, Ms. Bryant, Mr. Bortelson and Ms. Taeschner all argue and present a significant amount of expert testimony asserting that Wetland E1 should not have been segregated into Category I and Category II classifications.

The applicant's rationale for the change in classifications is based upon the fact that the wetland is located in two separate drainage basins, with water flowing in different directions in each basin. Ms. Bryant references a July 5, 2012 email from a wetland scientist at DOE, Dr. Tom Hruby, who notes that it is possible to segregate the classifications on this basis. Dr. Hruby references DOE wetland rating guidelines which provide that a wetland can be separated into different classification units by boundaries based upon abrupt changes in water volume, flow or velocity. However, in that email Dr. Hruby notes that practically speaking it may not be possible to delineate the boundary with sufficient accuracy, which should have a margin of error limited to 5-10 feet. Dr. Hruby notes that this level of accuracy may necessitate a detailed topographical survey, LIDAR, or some other measurements such as piezometer readings across the boundary. Dr. Hruby noted that Wetland E1 is similar to the problem faced in wetlands with different hydro geomorphic ("HGM") classes, where monitoring of water levels for at least a year would be necessary to accurately delineate the boundary between the two classes of wetlands. In Ex. 94, Diane Brewster, Ms. Bryant's wetland expert, agreed with the comments of Dr. Hruby and opined that there was no abrupt change in water volume, flow or velocity. Ms. Brewster noted that the change in slope at the diving line between wetland classifications in E1 was only 2 to 2.25 percent in magnitude and that this was not of sufficient magnitude to qualify as an abrupt change in water hydrology. Ms. Brewster also noted that the evidence supporting the dividing line should be documented with photographs and a formal topographic survey.

The preponderance of evidence establishes that the boundaries separating the Class I portion of Wetland E1 from its Class II portion is sufficiently accurate. Dr. Hruby did note that as a practical matter it is difficult to map an accurate "abrupt" change in the hydrologic regime to segregate one wetland into two wetland classes. However, there are

a couple of distinguishing features that have made it feasible to map such a boundary in this case. First, a very detailed topographic and sub-basin analysis was prepared by Triad and Associates for the master plans. As noted in the Perteeet analysis of Ex. 92, written by Jason Walker, the City response to public comments, the second distinguishing feature of Wetland E1 is that segregation of classification is not based upon the differentiation of several HGM classes, but rather only one, specifically depressional. Dr. Hruby's comments regarding the need for extended monitoring were based upon experience he has in trying to separate wetlands with more than one HGM class.

Having to decide between the opinions of Ms. Brewster and Mr. Walker, it is determined that Mr. Walker's testimony is the most compelling. As noted in his analysis, the boundary line between the two classifications is a highpoint in a ravine that serves as the dividing line between two drainage basins. The waters flowing into the sensitive Core Complex Wetlands are in the Category I portion of the wetlands and the waters flowing towards the southeast in a less sensitive area are in the Category II wetland. The higher classification for the wetland associated with the Core Complex wetlands is consistent with Ms. Bryant's arguments that the Wetland E1 should be categorized as a Class I wetland, or be subject to Class I buffers, because of its association with the Core Complex Wetlands. The fact that the surface waters of the Category II wetlands don't flow into the Core Complex Wetlands is a compelling reason for a lower classification. As also noted by Mr. Walker, the direction of the surface flows was verified by multiple site visits in addition to the topographical work, which does appear to be a relatively straightforward analysis that as previously stated is distinguishable from the multi-HGM wetlands analogized to by Dr. Hruby.

The applicant also makes the argument that the classification of Wetland E1 cannot be collaterally attacked in the review of PP1C because it was an issue resolved in PP1A. The applicant might be correct, but the issue is too legally uncertain to serve as the sole reason to rule against Ms. Bryant. Unlike buffer averaging and buffer increasing decisions, the BDMC does not assign wetland classification to the administrative level. Wetland classifications are consolidated with preliminary plat review as required by BDMC 19.10.120(A)<sup>3</sup>. Consequently, the delegation of final classification authority to

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<sup>3</sup> One could also argue that BDMC 19.10.120(A) also integrates decisions to increase or decrease buffer widths with preliminary plat review. However, unlike wetland classification decisions, the BDMC is very specific that the mayor is to make decisions on increasing or decreasing buffer widths. See BDMC 19.10.230(H). If BDMC 19.10.230(H) were intended to only grant the mayor approval authority when there was no other permit decision maker involved in the project, there would have been no need to identify the mayor as decision maker since BDMC 19.10.120(A) already assigns that role to the mayor in the absence of any other decision maker. Given the rules of construction that all code provisions must have meaning and that specific provisions supersede more general requirements, it is concluded that the mayor retains decision making authority over buffer width modifications governed by BDMC 19.10.120(G) and (H) even when the impacted project involves other permit decision makers.

staff in the PP1A decision arguably did not create a binding final decision, especially given the direct impact that PP2C has on Wetland E1.

(4) Functional Relationship of Wetland Core Complex Does Not Justify Higher Classification for Wetland E1. The relationship of Wetland E1 to the City's wetland cope complex does not justify a Category I classification for the entire wetland. Ms. Bryant also argued in Ex. 50 that the classification of E1 should not be segregated because it is all connected to city's core wetland complex. She notes that the wetlands associated with Rock Creek, Black Diamond Lake and Black Diamond Creek were assigned local significance in the City of Black Diamond Sensitive Areas Ordinance Best Available Science Review and Recommendations. Ms. Bryant does not explain how this added local significance undermines the classification proposed by the applicant. Ms. Bryant notes that the wetland rating form provides that if a wetland does have "local significance" that the wetland will need to be protected "according the regulations regarding the special characteristics found in the wetland." However, Ms. Bryant does not then identify any regulation that requires added protection. Further, as noted by the applicant's wetland expert in Ex. 70, att. 2, Wetland E1 is separate and distinct from the wetland core complex and an added 115 foot buffer would not provide any added protection to the core complex. Ms. Bryant provided no evidence to the contrary.

(5) The Proposal's Density Will Not Adversely Affect Wetlands. In Ex. 50, Ms. Bryant asserts that the density adjacent to the wetlands of the proposal is too high. Ms. Bryant does not identify any code provision that is violated by the proposed densities and does not submit any evidence that this density would harm adjoining wetlands. In the absence of this information, compliance with the City's wetland regulations is determinative as to the adequacy of wetland protection and it is found that the proposed densities of the proposal will not adversely affect wetlands.

(6) Wetlands E8, E10 and 213 Are Not Connected. In Ex. 50, Ms. Bryant asserts that wetlands E8, E10 and 213 may be connected, apparently due to their proximity to each other. Applicant and City wetland experts have found no such connection. In Ex. 71, the applicant's expert, Scott Brainard, noted that the wetlands are not connected and that they are located in shallow depressions with distinct boundaries defined by vegetation, soils and hydrology that change dramatically from wetland and the surrounding non-wetland conditions. In Ex. 97 the City's expert, Jason Walker, stated that based upon March 13, 2014 site visit, the three wetlands were found to be in distinct topographic depressions with no hydrologic connections or other contiguous wetland indicators. Ms. Bryant presented no expert opinion or other evidence to the contrary. It is determined that the wetlands are not connected.

(7) Stream Does Not Exist. In Ex. 50, Ms. Bryant points out that a stream identified in the City's "Best Available Science Critical Areas Map" and on Google maps that is not delineated on the project drawings for PP2C. City wetland experts and the applicant's experts have done several site visits and have concluded that no such stream exists. In Ex. 71, Scott Brainard, the applicant's wetland expert, noted that the stream would have to

flow uphill in order to run the course depicted in the Best Available Science map. In Ex. 97, the City's expert, Jason Walker, noted that the stream was not evident from any of his site visits to the area and that King County IMAP LIDAR/GIS information also did not reveal any stream. Also, the Villages DA doesn't delineate the stream. It appears that the City's Critical Areas Map is in error. These maps are at a more global scale and often depict approximate locations that must later be field verified for accuracy. The preponderance of evidence from field verification performed by both the applicant and city's experts suggest that the stream shown in this location on the City's Critical Areas Map does not, in fact exist.

(8) Wetland Trails Do Not Adversely Affect Wetlands. It is determined wetland trails will not adversely affect wetlands. In Ex. 55, Ms. Bryant argues that a wetland trail that bisects Wetland E1 should be eliminated. COA No. 39 recommended in the staff report and adopted by this decision eliminates the trail as requested by Ms. Bryant and eliminates the need for further study of the issue as requested by Mr. Bortelson.

Mr. Bortelson expressed concern that use of the wetland buffer for recreational use would impair the use of the same area as a wildlife corridor and he requested further study. In a couple places in Ex. 87, Mr. Derdowski argues that trails affect wetland hydrology and/or suggests that a COA be added that to require investigation of hydrology impacts to trail construction. The City's critical area regulations expressly authorize trails in wetland buffers subject to several design constraints. Mr. Derdowski has not demonstrated that the critical area regulations are insufficient to address hydrology impacts. In the absence of any evidence to the contrary, it is determined that the City's critical area regulations adequately protect wetlands from the applicant's proposed trails.

In Ex. 87 Mr. Derdowski asserts that critical area regulation requirements pertaining to trails should be addressed during preliminary plat review. The applicant has identified the location of its trails in its plat drawings and SAO trail standards are specific and ministerial. Staff has appropriately deferred final design review to engineering<sup>4</sup> review. A COA will be added to clarify that staff shall enforce compliance with SAO trail standards during engineering review.

(9) Future Impact of Development Tracts Adequately Addressed. Ms. Bryant (Ex. 55) and Mr. Bortleson (Ex. 10 and 54) assert that a condition should be added to PP2C requiring that the wetland impacts from the development of development tracts be assessed in subsequent review. This is required by adopted COA No. 47 as recommended in the staff report.

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<sup>4</sup> References throughout this decision are made to engineering, construction and utility permit review. These terms are largely synonymous, denoting the administrative review conducted by City staff for final plat approval and the construction permits (such as clearing and grading permits) necessary for the improvements that have to be constructed or bonded for final plat approval.

(10) Maintaining Wetland Hydrology is Required. Stormwater measures to maintain wetland hydrology identified in the staff report are not sufficient. Project opponents have established that additional conditions are necessary to maintain wetland hydrology. These measures will be imposed with another COA.

It is determined that maintaining wetland hydrology is very important in protecting wetland functions and values. It is a concern voiced by many citizens including Bortleson (Ex. 10), Ostgard and Bryant. As noted by two of Kristen Bryant's wetland experts, the maintenance of wetland hydrology is necessary to maintain wetland function. See Ex. 55, Nicoleta Cristea letter dated December 11, 2014; Ex. 96, December 19, 2014 letter from Diane Brewster. In Ex. 96, Diane Brewster notes that changes to wetland hydrology caused by development "*severely impacts biological communities in wetlands and; thus, the wetlands' functional performance for water quality improvement, flood attenuation, and wildlife habitat.*" Citing the 2005 DOE stormwater manual, Ms. Brewster notes that as runoff is increased from development, there is decreased time for runoff to reach natural receiving waters, runoff peaks are higher, there is reduced groundwater recharge, and there is increased frequency and duration of high stream flows and wetland inundation during and after rain events, along with reduced stream flows and wetland water levels during the dry season. The Villages DA recognizes the importance of maintaining wetland hydrology, requiring at Section 7.4.3(G) that the applicant maintain hydrology for onsite wetlands by recharging with approximately the same volume of stormwater as would occur under predevelopment conditions.

Citing a 1993 EPA study, Ms. Brewster notes that water velocity, water quality, and hydroperiod control (the depth, duration, frequency and pattern of wetland inundation) are issues in maintaining the health of wetlands when the stormwater drainage upstream in the upstream watershed changes. Ms. Brewster notes that a wetland hydrology study is necessary to establish pre-construction hydroperiod conditions in order to determine floodwater depth and duration and frequency of occurrences. Without this information, Ms. Brewster believes it is unlikely that a stormwater plan can be designed that will not modify existing wetland conditions. William Lider, a stormwater expert retained by Ms. Bryant, wrote in a December 17, 2014 letter that it is extremely difficult, if not impossible, to divert stormwater and not disrupt a wetland's hydroperiod.

The City's consultants essentially agree that more work needs to be done on maintaining wetland hydrology. They noted that "the city recognized that the information presented by the applicant was not sufficient for design of the stormwater system and applied three conditions in order to ensure code compliance during construction." See Ex. 97, December 15, 2014 letter from Dan Ervin. It is important to recognize that Mr. Ervin found the amount of information sufficient for preliminary plat review and that he just concluded that more detailed information and review was appropriately differed to engineering review for final plat approval.

The applicant's expert, Scott Brainard, does not dispute the significance of maintaining wetland hydrology. His only response to Ms. Brewster's analysis is that "*there will be no significant adverse impact to the wetland hydrology of the on-site wetlands,*" without any explanation as to why. See 1/6/15 Brainard letter, Ex. 98. Mr. Brainard did a detailed review of the applicant's water balancing plan in the applicant's Sensitive Area Study, Ex. 28(a), but there was no explanation in the study or any responsive comments to the letters from Diane Brewster as to how the multiple factors that affect wetland hydrology were adequately addressed in the applicant's water balancing plan, largely based upon simple annual rainfall calculations without any monitoring to assess baseline conditions.

The applicant's civil engineer, Alan Fure, provided a detailed explanation of why baseline monitoring for maintaining wetland hydrology is not required by the City's stormwater regulations. See Ex. 98, December 3, 2014 letter from Alan Fure. Notably, Mr. Fure also provided no explanation as to why baseline monitoring was not necessary (as opposed to not required) for the applicant's water balancing plan.

In comparing the expert testimony from the applicant and project opponents, the opponent testimony is clearly more compelling. Opponent testimony provides detailed reasons, based on scientific studies, as to why baseline monitoring and other measures are necessary to maintain wetland hydrology. The applicant's experts make conclusory and completely unsupported statements that their simplified water balancing measures are adequate. Almost their entire case against baseline monitoring is on the basis that the City's stormwater standards don't require it. The City's stormwater standards are normally determinative on the adequacy of stormwater controls. However, when significant environmental values are at jeopardy as demonstrated by compelling scientific evidence, the applicant needs to be able to provide credible scientific evidence to the contrary. That hasn't been done here. The wetland hydrology at stake involves the City's core wetland complex as well as other highly classified wetlands. All reasonable measures need to be taken to protect them.

Although the applicant has failed to establish that it will adequately protect wetland hydrology, this does not necessarily mean that a year of baseline monitoring is necessary as advocated by project opponents. It is recognized that a year of baseline monitoring could be a major burden on the applicant if it prevents all clearing and grading for that year long period. As recognized by staff, the details of maintaining wetland hydrology can be appropriately delegated to engineering review. There is nothing in the record to suggest that overall plat design will be affected by the decisions that still have to be made during engineering review. COAs will be imposed encouraging the use of baseline monitoring, but authorizing computer modeling or other alternative measures if City experts determine that those alternative measures will adequately account for all of the factors cited by Ms. Brewster in Ex. 96. The COAs will also require City experts to consider the measures recommended by William Lider in Ex. 96 and to impose them as necessary to ensure that wetland hydrology is maintained.

(11) Refined Hydrologic Modeling Necessary to Maintain Wetland Hydrology. It is determined that a refined hydrologic model is required to maintain wetland hydrology. Another issue pertaining to wetland hydrology was the modeling employed to date by the applicant to model hydrological impacts. In Ex. 55, Nicoleta Cristea, a stormwater expert retained by Ms. Bryant, opines that the proposal does not comply with the 2005 Stormwater Manual for Western Washington because it uses hydrologic modeling based upon annual average values as opposed to a continuous simulation model. Mr. Lider, also a stormwater expert though speaking as a private citizen, echoed this concern in his testimony as did Mr. Bortelson (Ex. 10). The yearly averages were in fact only used for preliminary stormwater facility design. The applicant's expert agrees in Ex. 98 that a more refined approach will be necessary for final engineering design. More refined hydrologic modeling is necessary to maintain wetland hydrology. The applicant has proposed a COA for more refined hydrology modeling to be done during engineering review and the COA will be imposed by this decision.

(12) Vegetation Management Plan Provides for Adequate Density but Fails to Address Invasive Species. The Vegetation Management Plan must address invasive species. In Ex. 87, Brian Derdowski asserts that the applicant's vegetation management plan, Ex. 27, does not comply with BDMC 19.10.230(F). He asserts that tree plantings are required because the wetland buffers do not meet the minimum tree density requirements of BDMC 19.10.230(F)(1). He notes that the vegetative management plan identifies tree density as 15 while BDMC 19.10.230(F)(1) has a minimum density of 20. The "twenty" figure in BDMC 19.10.230(F)(1) is a maximum of 20 foot separation between trees. Consequently, the 15 foot value determined in the vegetation management plan is denser than the minimum density required by BDMC 19.10.230(F)(1). Given the high density of the buffer area, there is no need for the planting of additional trees as specified in other parts of BDMC 19.10.230(F)(1). Mr. Derdowski does correctly note that the staff report doesn't address the invasive species requirements of BDMC 19.10.230(F), specifically BDMC 19.10.230(F)(2) and (4). The COAs will require that the vegetation management plan be updated to address the existence and control of invasive species in the wetland buffers.

(13) Wetland Buffers Do Not Need to be Extended for Wildlife Habitat. It is determined wildlife habitat is protected by wetland buffers. BDMC 19.10.230(E) requires that wetland buffers be extended to include adjoining wildlife habitat buffers. As noted in the staff report, city wetland consultants evaluated the applicant's proposed wetland buffers and found them to be compliant with BDMC 19.10.230(E). In Ex. 87 Mr. Derdowski asserts that the buffers have not been extended into adjoining wildlife habitat as required by BDMC 19.10.230(e). However, Mr. Derdowski does not identify where this hasn't been done. Given the absence of any evidence provided by Mr. Derdowski, it is determined that City's wetland consultants properly delineated wetland buffers pursuant to the requirements of BDMC 19.10.230(E).

(14) Wetland Buffers and Other Project Mitigation Adequately Protect Wetlands. It is determined that the wetland buffers required for this project in conjunction with other

development standards and conditions are sufficient to protect the wetlands from significant adverse impacts generated by the proposal. The buffers imposed by the City's critical areas ordinance have been legislatively determined by the City Council to be adequate to protect wetlands using best available science as required by the Growth Management Act, Chapter 36.70A RCW. Additional mitigation measures may sometimes be necessary for project specific impacts not anticipated in the critical areas ordinance, but in order to justify these mitigation measures there must be a showing made that a specific impact is not adequately mitigated. No such showing has been made in this application.

(15) Wetland Delineations are Determinative. The Villages DA is determinative on wetland boundaries. In Ex. 86, p. 13 and 14, Mr. Derdowski asserts that wetland boundaries fixed by the Villages DA must be re-evaluated during preliminary plat review. As determined in COL No. 4 and 16, the DA is determinative on wetland boundaries and cannot be revisited during preliminary plat review.

(16) Slopes Adjacent to Wetlands Accurately Assessed. It is determined there are not steep slopes along project wetlands. In Ex. 87, Mr. Derdowski asserts that the applicant as opposed to staff should have evaluated whether there are any steep slopes along the wetlands that could be affected by stormwater movement. Mr. Derdowski also questions whether the existence of steep slopes has been adequately assessed. The BDMC does not require the applicant to be the sole or initial source of all information on code compliance issues and Mr. Derdowski has not identified any code provision that requires the applicant to provide the initial information on slopes along wetlands. Mr. Derdowski also does not present any evidence that staff was in error in concluding that there are no steep (greater than 15%) slopes along the wetlands. It is determined that staff appropriately and accurately determined that there are no steep slopes along project wetlands.

(17) Applicant's Wetland Expert is Qualified. In Ex. 87, Mr. Derdowski concurs with the staff report that the applicant needs to submit information validating the expertise of the applicant's wetland reports (Ex. 28, 28a and 28b). The reports were written by Scott Brainard of Wetland Resources Inc. The applicant submitted his resume as Ex. 63. Mr. Brainard received a BS in Environmental Policy and Impact Assessment in 1993 and has undertaken extensive advanced training on wetland assessment since. He is clearly qualified to evaluate wetland impacts as an expert witness.

(18) Wetland Buffer Protection During Construction. It is determined wetland buffers will be protected during construction. In Ex. 87 Mr. Derdowski asserts that conditions should be imposed protecting wetland buffers during construction. Staff recommended COA 72, adopted into this decision, does impose measures to protect wetland buffers during construction and the measures are adequate to assure protection.

#### ***b. Stream Impacts***

Adequate provision is made for the protection of streams and buffers. No adverse impacts to streams and buffers are anticipated. As determined in the staff report, the proposal is consistent with all applicable SAO requirements and project opponents have not provided any evidence that compliance with the SAO is insufficient to protect streams. Two issues of concern raised by project opponents are the measurement of stream buffers and the use of archaeological shovel probes. Those concerns are addressed below:

(1) Measurement of Stream Buffers is Adequate. It is determined stream buffer measurement is adequate to protect streams. In Ex. 87, Mr. Derdowski claims that the staff report states that staff measured stream buffers are measured from the centerline of Rock Creek. Apparently Mr. Derdowski arrived at this conclusion from the staff report comment that “*the applicant has approximately located the centerline of the stream and provided a 225-foot buffer for Rock Creek...*” The fact that the applicant identified the center line and provided a 225-foot buffer does not mean that the buffer was measured from the centerline.

In Ex. 87 Mr. Derdowski also takes issue with the fact that a buffer has not been surveyed for the west side of Rock Creek. The staff report noted that no survey was necessary because the adjoining wetlands extended the protected area out 450 feet from the centerline of the stream, almost twice as far as the 225 foot buffer required for the stream. Mr. Derdowski does not identify what regulation requires a survey. At any rate, BDMC 19.10.325 only grants authority to the mayor to determine when stream buffers are required. The hearing examiner has no authority to consider stream buffer requirements under these circumstances.

(2) Archaeological Shovel Probes Will Not Create Impacts. Archaeological shovel probes required by the MDNS conditions will not create adverse phosphorous and endangered steelhead impacts as mitigated by this decision. Ex. 7 is a SEPA comment from Cindy Wheeler expressing concern that shovel probes required by the MDNS near Rock Creek will release phosphorous into Lake Sawyer and that this phosphorous could also harm endangered steelhead trout habitat in Rock Creek. Ms. Wheeler also noted that the MDNS should identify that hydraulic permit and/or WDFW review may be required for the shovel probes. In Ex. 71 the applicant has agreed to place a note on the plat identifying the potential need for hydraulic permit and WDFW review. This note will be made a COA.

As concluded by the applicant’s expert in attachment 1 to Ex. 71, Best Management Practice (BMP) measures imposed by Villages MPD COA No. 71 will assure that no phosphorous from the shovel probes will enter Rock Creek. To remove any doubt as to the applicability of COA No. 71, a COA will be added to this condition expressly

requiring the implementation of the BMP. With these BMP measures in place it is determined that the archaeological shovel probes will not result in the release of phosphorous. The applicant also had its wetland consultant investigate the impacts of the shovel probes on the endangered steelhead of Rock Creek. The consultant concluded in Ex. 71, attachment 2 there would be no adverse impact. Given the absence of any expert opinion or evidence to the contrary, it is concluded that the shovel probes will not adversely affect endangered steelhead.

***c. Wildlife Habitat:***

No adverse impacts to wildlife habitat are anticipated. A wildlife habitat assessment was submitted to the city with the Sensitive Area Study (Ex. 28, 28a, and 28b). The purpose of the assessment was to identify any Wildlife Habitat Conservation Areas or Wildlife Habitat Networks designated by the City's Sensitive Areas Ordinance (BDMC 19.10). Three general habitats were found: a ponded wetland in the northeastern corner of the property, an area dominated by Douglas fir and western hemlock, and a linear open wetland with ponded water. The Washington Department of Fish and Wildlife maintains a list of Priority Habitat types that are considered priorities for conservation and management. Five Priority Habitat types are located among the regulated sensitive areas and would be protected by the governing regulations on BDMC 19.10. No indication of active breeding sites or evidence of breeding or nesting use by any federal state special-status wildlife species were found within the subject property during the assessment. Specific issues raised by public testimony are addressed below.

(1) Spotted Owl, Lynx and Fisher Habitat Not Present at PP2C Project Site. It is determined PP2C does not have habitat for spotted owl, lynx or fishers. Erika Morgan (Ex. 8) and Gil Bortleson (Ex. 54) assert the presence of several protected species at the project site, specifically spotted owl, lynx, and fishers. The preponderance and substantial evidence in the record establishes that the project site does not contain any habitat for these protected species.

In Ex 8 Ms. Morgan provided some observations on why she believes several protected species to have habitat at the PP2C project site. Ms. Morgan has raised a spotted owl hatchling she found in the City and has heard their hoots on several occasions coming from the PP2C project area. She has observed Lynx and Fisher on Abrams Avenue, which is located close to the PP2C project site to the northwest. Beyond this, Ms. Morgan has not made any direct observations of the spotted owl, lynx or fishers on the PP2C project site.

The applicant's wildlife expert, Scott Sooner, acknowledges that spotted owl, lynx, fishers and Puget Sound DPS steelhead trout are protected by BDMC 19.10.310(B),

which protects state or federally designated endangered, threatened and sensitive species. (Ex. 71, att. 3.) In response to the Morgan and Bryant wildlife comments, Mr. Spooner, conducted a site visit and submitted an analysis, Ex. 71, attachment 3. He determined that there is no spotted owl, lynx or fishers at the PP2C project site because the site does not contain the habitat characteristics necessary for those species. Mr. Spooner corroborated his findings with WDFW maps, which did not identify any habitat for the protected species at the project site. On balance, there is no reason to doubt the accuracy of Ms. Morgan's observations. It appears fairly clear that spotted owl, lynx and fisher have been observed near the project site and that spotted owls have at least passed through the project site. However, none of Ms. Morgan's observations establish any connection of protected species with the project site that is sufficient to show the project site serves as habitat for the species. Mr. Spooner is a qualified wildlife expert and he has determined that the PP2C site does not contain any the habitat characteristics to serve as habitat for the spotted owl, lynx and fisher. There is no evidence in the record that contradicts Mr. Spooner's conclusions on the characteristics necessary to provide habitat for spotted owl, lynx and fisher. For these reasons, it is determined that the PP2C site does not provide habitat for spotted owl, lynx and fisher that is protected by BCMC 19.10.310(B).

(2) Endangered Steelhead Adequately Protected. It is determined PP2C will adequately protect endangered species. In Ex. 50, Ms. Bryant notes that the City's 2008 "Best Available Science" document, Section 5.2, identifies Rock Creek as a spawning and/or rearing habitat for winter steelhead, a listed or threatened species under the ESA. In Ex. 55, Ms. Bryant adds that the City further recognized the Rock Creek system as critical steelhead habitat in its comments on the John Henry Mine Permit Renewal. Ms. Bryant asserts that the applicant's habitat wildlife review doesn't adequately protect this species. Ms. Bryant does not provide any expert opinion or any evidence that the proposal would adversely affect the endangered steelhead. In Ex. 71, att. 3, the applicant's wildlife expert, Scott Spooner, concluded that the proposal wouldn't adversely affect the steelhead. He noted that Rock Creek is protected as part of the City's Core Stream and Wetland Complex, fully regulated and protected by the City's critical areas ordinance. Given the steelhead's and Complex's protection under the City's critical areas ordinance, Mr. Spooner's expert opinion and the absence of any evidence that the steelhead are adversely affected by the proposal, it is determined that the proposal does not adversely affect endangered steelhead.

(3) Sufficient Wildlife Habitat Reserved at PP2C Project Site. Mr. Davis (Ex. 77), Mr. Dummitt (Ex. 79), Ms. Teaschner (Ex. 80), Ms. Scodt, Mr. Taeschner, and Mr. Ostgard expressed concern that PP2C left insufficient wildlife habitat in corridors that were too small. The Villages DA (Exhibit 15) has a mapped wildlife corridor. There are also 98 acres of proposed open space and parks, the vast majority of this is wetland and

buffer space that is connected in green corridors along Rock Creek and the City's Core Wetland Complex. As noted above in FOF 5a13, BDMC 19.10.230(E) requires that wetland buffers be extended to include adjoining wildlife habitat buffers. As noted in the staff report, city wetland consultants evaluated the applicant's proposed wetland buffers and found them to be compliant with BDMC 19.10.230(E). As noted below in FOF 6c1, Village DA 9.1 requires about 75.58 acres of open space in Parcel E, which includes PP2C. PP2C will exceed this total by over 22 acres. Given that the applicant is providing more than the required open space and nothing in the record suggests the City's wetland buffers are inadequate to protect wildlife, it is deemed the wetland buffers and wildlife corridor required by the Villages DA are adequate to protect and support wildlife.

***d. Water Quality:***

Adequate provision is made to ensure water quality. Environmental impacts and mitigation were addressed for The Villages MPD in the FEIS. The FEIS notes that impacts on stormwater come from addition of impervious surface to stormwater basins, which can cause changes in local hydrology, erosion, increased surface water temperatures, increased contaminants entering surface waters, and more concentrated flows infiltrating very permeable soils. The FEIS listed potential mitigation measures to preserve stormwater volumes in wetlands, require use of native plants and reduce lawn planting where practical, reduce pavement widths, treat stormwater in accordance with the 2005 Stormwater Management Manual for Western Washington (2005 SMMWW) and construct stormwater treatment and storage improvements as presented in the City Comprehensive Plan. The SEPA checklist for PP2C notes in part 3(a), surface water, that there are wetlands and Rock Creek on the site. All vegetation within the residential portion of the site would be removed. The applicant proposes to manage surface water runoff in compliance with the 2005 SMMWW.

On June 17, 2014, the City issued a Mitigated Determination of Non-significance (MDNS) and Adoption of Existing Environmental Document Notice (Exhibit 5). There was one mitigation measure for stormwater:

- During final engineering review of the plat, an update to the preliminary drainage analysis shall be conducted by the proponent and submitted to the City for review, to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings.

This is included as a condition of approval (#14) for the preliminary plat for PP2C.

Specific issues raised by public testimony are addressed below. Additional information related to the stormwater utility is located below in FOF 6a.

- (1) Baseline Phosphorous Monitoring. Mr. Dummitt (Ex. 79) and Ms. Harp (Ex. 85) expressed concern for water quality in Lake Sawyer, which is fed by Rock Creek (Ex. 79). Ms. Proctor and Mr. Bortleson (Ex. 10) also testified to her concerns about the lack

of a baseline monitoring report. In Ex. 53, Cindy Wheeler expresses numerous concerns over the phosphorous loading monitoring program for Lake Sawyer. She expressed frustration that a baseline phosphorous load level has not yet been set for Lake Sawyer and also questioned whether the City had offered the SEPA appellants an opportunity to consult with the applicant and City on phosphorous monitoring methodology as required by MDNS Condition No. 6 for PP1A. Brian Derdwoski also alleges in Ex. 86 that monitoring should be completed prior to preliminary plat approval. The issues raised by Ms. Wheeler and Mr. Derdowski do not identify any inappropriate or inadequate stormwater treatment as required by BDMC 14.04.

As to the issue of the timing of setting a baseline phosphorous load level, Ex. O to the Villages DA requires that this level be established “[p]rior to construction of the first implementing project within the Lake Sawyer drainage basin...” Section 7.4.5 of the Village DA and Ex. O to the DA provides a detailed methodology for deriving baseline values, including the timing of when the final baseline value is to be formulated. Consequently, the timing deadline of Ex. O is construed to be determinative on the issue of when a final value is to be determined. The preponderance of evidence in the record establishes that no construction has yet occurred in the Lake Sawyer drainage basin. Until construction commences within the Lake Sawyer drainage basin for PP2C or construction commences for the SR 169 drainage improvements for PP1A<sup>5</sup>, the baseline levels are not required.

As to the consultation issue, the preponderance of evidence establishes that consultation did occur as required by MDNS Condition No. 6 to PP1A. At the outset, it should be made clear that it is legally ambiguous whether the requirements of Condition No. 6 can be addressed in this decision. Condition No. 6 was issued for another plat; however it did modify a DA condition that applies to this plat. Perhaps more significant is the fact that the City issued a written decision, included in Ex. 53, that approved the expanded baseline monitoring methodology required by Condition No. 6. If this qualified as a final land use decision, which is not entirely clear from applicable case law, then that decision could not be re-evaluated at this stage of review since it was not appealed. At any rate, even if the consultation requirement could be evaluated, it is determined that the preponderance of evidence establishes that consultation did occur. As noted in materials submitted by Ms. Wheeler in Ex. 53, “consultation” involves a discussion and exchange of ideas. Ms. Wheeler’s experts did have an opportunity to provide written comment and to meet with the City and applicant. It appears that the City adopted the applicant’s expanded monitoring plan without modification, but this doesn’t mean that no consultation occurred. The good faith of the City and applicant would have been more persuasive had they made some modifications in response to the consultation, but it also cannot be ignored that the issues raised by Mr. Zissette that lead to the Condition No. 6 requirement were already fairly detailed and the applicant was able to use those

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<sup>5</sup> As noted in the PP1A decision, the SR 169 improvements required of that project are the only portions of PP1A that will be located within the Lake Sawyer drainage basin.

comments to put together an improved monitoring plan before acquiring any further input from the appellants. In short, many of the issues raised by project opponents were already integrated into the monitoring plan before consultation occurred.

Ms. Wheeler also included a letter from Mr. Zissette in Ex. 53 where he cited a couple concerns with the expanded monitoring plan, most notably that groundwater phosphorous inputs would not be measured during and after construction. Ex. O contained detailed standards as to how construction and post-construction phosphorous levels would be measured and there was no requirement for monitoring groundwater input. As previously mentioned, in the absence of a SEPA appeal Ex. O is determinative on phosphorous monitoring methodology. In the absence of argument from Ms. Wheeler as to how groundwater impacts could be assessed in a manner that is consistent with the requirements of Ex. O, groundwater impacts cannot be considered in this decision.

(2) New Phosphorous Treatment Technologies. MPD Villages MPD COA No. 76 requires that “*all known available, and reasonable methods of prevent, control and treatment*” (“AKART”) be used to treat stormwater for phosphorous. As noted in Ex. 86 by Brian Derdowski, the staff report does not directly address AKART, instead only noting that COA No. 76 is implemented in the Villages DA and that DOE has not certified any new treatment technologies. A COA will require that staff determine whether any new AKART mitigation is available to treat phosphorous and require it accordingly.

(3) NPDES Permit Compliance. Villages DA 7.4.4.(A)(1) and 7.4.4.(A)(2) require the applicant to comply with NPDES permit requirements. In Ex. 86, Mr. Derdowski asserts that compliance should be made a condition of PP2C. A COA has been added requiring compliance with all Villages DA provisions to the extent they apply to PP2C.

(4) Impacts to Off-Site Wells. In Ex. 52, Erika Morgan states her well had glacial silt in it from Friday, September 26, 2014 to October 18, 2014, a condition that has not occurred in the 35 years since the well was drilled. Ms. Morgan states the contamination of her well coincided with grading and re-contouring activities at PP1A. Ms. Morgan (Ex. 52) and Ms. Carrier (Ex. 92) both spoke to the high permeability of the soils under PP2C. Ms. Morgan stated PP2C is within a principle aquifer recharge area which is part of the same aquifer her well connects to. Ms. Carrier (Ex. 92) noted Black Diamond is listed as Category 1 and 2 on the 2008 King County Critical Aquifer Recharge Areas Map, areas that are moderately or highly “susceptible to groundwater contamination” and are or may be “located within a sole source aquifer or a wellhead protection area” (KCC 21A.24.313).

Ms. Morgan is concerned the seeming hydro-connectivity of the groundwater under the PP2C will result in contamination to her well water and to other private wells downstream, particularly if proposed wastewater utilities should fail. This sentiment was also echoed by Max Beers of the Green Valley/Lake Holm Association who presented the Greater Black Diamond Well and Spring Sites map (Ex. 81) which depicts dozens of

Group A, B and E well sites downstream and to the south and west of Black Diamond. Mr. Beers asked for several conditions of approval including provision of a third party risk assessment using best available science to determine which wells or springs could be affected by PP2C, a monitoring plan to determine impacts to the downstream wells, and mitigation for impacts. Ms. Carrier further asked that the “future development sites” be left in a natural, vegetated state until such time as construction is ready to begin there.

Several groundwater and geology studies were performed by the applicant including: a 2008 Technical Report on Geology, Soils, and Groundwater plus supplemental memoranda (Appendix D of the FEIS (pp 7-8 through 7-12)), a PP2C Geotechnical Report by Golder Associates (Ex. 23), and response to Ms. Morgan’s concerns (Ex. 71, att. 8). It is important to note, the initial Golder report (Ex. 23) focuses on the constructability of the site from an engineering perspective and was not prepared to address potential groundwater impacts. The second Golder Report (Ex. 71, att. 8) was prepared to address the potential impact to Ms. Morgan’s well.

In Ex. 71, att. 8, Golder Associates investigated Ms. Morgan’s well. Golder found PP2C it be a Category II Moderate Sensitivity Aquifer, rather than the more sensitive Category I suggested by Ms. Carrier (Ex. 92). Golder noted PP1A was cleared in June and July 2014 with grading continuing through September 2014. Golder determined the silt in Ms. Morgan’s well was not attributable to the clearing and grading at PP1A because the clearing and grading work was completed during the dry season and therefore little to no groundwater recharge was occurring at the time; the Morgan well appears to be upgradient of the activity at the Villages site; and shallow groundwater flow at PP1A is either towards Black Diamond Lake or Rock Creek based on the Associated Earth Sciences study (FEIS, Appendix D). Golder concluded PP1A could not have caused the silt in Ms. Morgan’s well because the water would have to flow uphill.

The Green Valley/Lake Holm Association represented by Mr. Beers is a group of homeowners on private wells and springs located to the south and west of PP2C. The Golder report found the groundwater under PP2C flows to the south and west towards the Green River. In the PP1A areas, “shallow groundwater flow is complex because of the undulating surface of the till underlying the recessional outwash. In the area of the former gravel borrow pit, shallow groundwater flow is to the south ((Ex. 71, att. 8, page 3). This would suggest groundwater flows tend toward the Green River Valley from PP2C.

In addition to the Golder study specifically conducted to address Ms. Morgan’s comments, potential well impacts have been addressed in prior stages of development review. Finding of Fact 19 of the Villages MPD approval expressly stated the MPD would avoid any risk of adverse impact to private wells and springs. The FEIS found no significant impact to water systems, including private wells and springs. MPD Permit condition No. 60, the DA Sections 7.4.3(B) and 7.4.4(A), and BDMC 14.04.020 all require that the standards of the 2005 Stormwater Management Manual for Western Washington (SMMWW) be met to maintain surface water and groundwater quality. The applicant provided a Preliminary Drainage Analysis report for PP2C (Triad Associates,

November 8, 2013) and its proposed plan for treating stormwater. PP2C will meet rigorous stormwater quality standards designed to protect groundwater. Nothing in the record suggests PP2C will present a risk of well contamination for downstream users. The well problems encountered by Ms. Morgan are troublesome, but that is the only evidence in the record that suggests any potential for contamination and that evidence is fairly circumstantial. The preponderance of evidence and substantial evidence, based upon the opinions and observations of qualified experts, establish that PP2C will not jeopardize the water quality of surrounding wells.

(5) Water Quality Review Committee. In Ex. 86 Brian Derdowski asserts that the Water Quality Review Committee should have had the opportunity to review the stormwater design deviations approved by staff in Ex. 28. DA 7.4.4 assigns that role to staff. Although Villages MPD COA No. 85 grants the Committee with the authority to review MPD compliance with applicable stormwater standards, the more specific authority granted to staff by the DA to approve deviations supersedes the more general mandate of the Committee. Mr. Derdowski also asserts that the Committee should have had an opportunity to review “the required monitoring report”, but it is unclear to what report he is referring.

***e. Tree Preservation:***

Adequate provision is made to ensure tree preservation. The applicant’s tree inventory (Exhibit 3m) estimates that the density of significant trees on the PP2C proposed developable area is 192 trees per acre. This does not include “non-significant species” as defined by BDMC. Specific concerns raised during public testimony are addressed below.

(1) Tree Inventory. In Ex. 87 Mr. Derdowski asserts that use of survey techniques to do a tree inventory does not comply with MPD Villages COA No. 120, which requires a tree inventory be required prior to development of implementing projects. Mr. Bortleson also expressed this concern and pointed to the inadequacy of sampling rather than a full survey (Ex. 10). Given the conceptual nature of preliminary plat review and the fact that COA No. 71 requires an exact count of trees for the issuance of any tree permit, it is determined that the tree survey provided the applicant is a sufficient inventory for purposes of MPD Villages COA No. 120.

(2) Preservation of Large Strands of Trees. In Ex. 87 Mr. Derdowski asserts that the proposal does not comply with Design Guideline for Master Development 3(B), which requires that MPDs “should” incorporate the preservation of larger rather than smaller stands of trees. Staff finds that compliance with this guideline is not feasible due to site constraints and this determination is found to be correct for the same reasons as outlined in COL No. 41. It is further noted that the clustered development and significant amount of surrounding open space does preserve large stands of trees as contemplated by the

guideline. The guideline is a “should” as opposed to “shall” requirement and the applicant has complied the “should” to the extent that could be reasonably required.

(3) Consolidation of Tree Permit. In Ex. 87, Mr. Derdowski asserts that review of tree retention permits required for the project site should be consolidated with preliminary plat review. This is not required by the BDMC. BDMC 19.30.060(E) provides that tree retention permits are to be issued by the mayor or the mayor’s designee. BDMC 19.30.060(E) further provides that if a tree retention permit is submitted in conjunction with another permit application, the decision maker for the higher classified permit shall issue the decision on the tree retention permit. It is clear from this language that consolidation of the tree permit is optional. Further, BDMC 19.30.060(A) only requires tree permit approvals to be acquired prior to removal of the trees, not at any earlier stage of development review. Related to this issue, Mr. Derdowski also asserts in Ex. 87 that a Level II tree plan should be submitted for preliminary plat review. BDMC 19.30.060 only requires a Level II tree plan to be submitted as part of a tree retention permit, which as previously concluded does not have to be consolidated with preliminary plat review.

(4) Plat Note on Tree Retention. In Ex. 87 Mr. Derdowski requests that a plat note be revised to provide that “*Areas outside of sensitive areas and their buffers may be cleared if a tree removal permit is obtained that is consistent with the Black Diamond Municipal Code and other conditions that may require selective tree retention.*” A COA will require this language.

(5) Tree Removal. Several members of the public expressed concern about tree removal (Ms. Scodt, Ms. Taeschner (Ex. 80), Mr. Taeschner and Ms. Ghawley-Hert). The City notes trees will be maintained in wetlands buffers ranging from 40 feet to 225 feet wide. The applicant’s Wetland Buffer Vegetation Management Plan for The Villages Phase 2 Plat C (WRI, December 19, 2013 and revised May 6, 2014) establishes a baseline of vegetation density and contains methods for monitoring and enhancing disturbed areas to protect the wetlands and their functions (Exhibit 27). The MDNS mitigation measures for PP2C require mapping of root protection zones to protect significant trees on clearing and grading plans, per the tree removal permit requirements of BDMC 19.30.030 and 060. Approximately 98 acres of open space on 20 separate tracts has been provided in PP2C in a variety of ways, including parks, trails, landscape, pedestrian access and sensitive areas and buffers. The proposal provides ample protection for trees.

***f. Land Use and Process Issues:***

A variety of issues related to land use and to the process or timing was raised during the hearing or in exhibits admitted into the record. Each of these issues is addressed below.

(1) Compliance with Master Planned Development Framework Design Standards and Guidelines. In Ex. 87 Mr. Derdowski asserts that the staff report has not assessed compliance with the MPD Framework Design Standards and Guidelines as required by Villages MPD COA No. 135. Staff determined that the project specific Design Standards are implemented through Exhibit H of the DA and assessed compliance through the Exhibit H standards. Mr. Derdowski has not identified any applicable Framework standards that have not been assessed under the staff's analysis and none are apparent from the record.

(2) Coal Mine Hazards are Minimal. Mark Taeschner testified the entire area around Lake Sawyer is filled with old mine shafts and air shafts. Staff note (Ex. 2, page 70) that none of the PP2C site is underlain by abandoned coal mines. The closest underground mine workings lie offsite to the east of PP2C and consist of deep workings on the No. 11 mine. The mine workings at No. 11 are nearly 1,500 feet below ground and pose no risk of subsidence or collapse to PP2C (Exhibit 23). Coal mine risks were evaluated in the Villages FEIS and found to be low. The preponderance and substantial evidence establish that coal mines are not a significant hazard in PP2C.

(3) Infrastructure Timing Adequately Addressed. In Ex. 55, Ms. Bryant asserts that PP2C should not be approved until infrastructure improvements necessary to serve it from other Villages implementing projects are completed. This concern was also expressed by Ms. Taeschner (Ex. 80), Ms. Harp (Ex. 85), Ms. Proctor, and Mr. Ambur. COA No. 1 addresses this issue by requiring all public utilities and streets necessary to serve the development to be in place prior to final plat approval.

**g. *Transportation Impacts:***

No adverse impacts to traffic are anticipated. Several members of the public expressed general concerns about the validity of traffic modeling and increased regional traffic (Mr. Davis (Ex. 77), Ms. Harp (Ex. 85), Ms. Taeschner (Ex. 80), Mr. Taeschner, Mr. Fettig, Ms. Ghawley-Hert, and Mr. Ambur). Traffic impacts were analyzed in the Villages FEIS. A detailed schedule of mitigation measures was proposed as discussed more fully in FOF 6B7. Phasing and Construction of Regional Improvements are dictated by Sections 11.4 and 11.6 of the Villages DA. On June 17, 2014, the City issued a Mitigated Determination of Non-significance (MDNS) and Adoption of Existing Environmental Document Notice (Exhibit 5). There was one mitigation measure for transportation improvements:

- Compliance with the Detailed Implementation Schedule Phase 2 Regional Infrastructure Improvements construction thresholds and improvement details, dated January 28, 2014 and approved on June 13, 2014, is required.

Specific issues raised during public testimony are discussed below.

(1) Construction Management Plan. Ms. Vukich testified that a construction management plan should be prepared that routes construction traffic away from Green Valley Road, with the exception of within 1,000 feet of the intersection with SR 169. The applicant provided a Construction Traffic Management Plan (Exhibits 48 and 49) that routes construction truck traffic away from Green Valley Road except as necessary to access the Cadman gravel pit

(2) Intersection of SR 169 and Ravensdale Road. Mr. Fettig testified traffic at this intersection is already backed up and dangerous and questioned the approval of PP2C until regional infrastructure improvements have been made. As noted in FOF 6B7, traffic from PP1A and PP2C together do not trigger the threshold for regional improvements under the Villages Section 11.4 and 11.6 Phasing and Construction of Regional Infrastructure Improvements (Ex. 24). As the applicant noted, the PP2C Traffic Report assumed full build out and occupancy of both phases and accounted for additional background traffic (Ex. 98).

***h. Noise Impacts:***

No adverse impacts related to noise are anticipated. The applicant submitted a short term construction noise mitigation plan that contains best practices for reducing noise (Exhibit 26). Conditions of approval Nos. 48, 49 and 51 will ensure that the short term construction noise mitigation plan for the PP2C plat is implemented during construction.

6. Adequacy of Infrastructure and Public Services. The City has made written findings in their Staff Report dated November 25, 2014 on pages 17- 166 that, assuming their recommended conditions of plat approval are imposed on PP2C, appropriate provisions are made by PP2C 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 PP2C. As conditioned by staff and the applicant, adequate infrastructure will serve development as follows:

***a. Stormwater Management and Water Quality:***

(1) Overview. With the conditions noted below, PP2C makes appropriate provision for storm drainage. All stormwater facilities that accept run-off from the public right-of-

way will be owned and maintained by the City. The other stormwater facilities (e.g., roof drains and flow dispersal trenches) that accept run-off exclusively from private property will be owned by the HOA and must be operated under a valid franchise. As conditioned, all privately owned stormwater pipelines crossing City right-of-way must be owned and maintained by the HOA or the Master Developer and be accompanied by a valid franchise for repair and replacement. These conditions will be enforced during utility permit review.

Stormwater runoff from rooftops and pervious surfaces will be used to recharge the wetlands on the east side of the development, primarily wetland TOS. Flow will be attenuated by the use of flow dispersal trenches at regular intervals between the development and the wetlands. Runoff not needed for wetland recharge will be infiltrated through bioretention cells and roof top infiltration. Runoff from pollution-generating surfaces will be routed through a new storm drainage system to the stormwater pond and infiltration facility in Phase 1A to the west. The Phase 1A facilities must be operational prior to the completion of impervious surfaces in PP2C that discharge to the Phase 1A regional stormwater pond. As conditioned, all Phase 1A and 2C stormwater systems will be constructed, inspected and approved for operation prior to issuance of building permits for homes in Phase 2C.

(2) Rain Gardens. In addition to the bioretention cells and small scale infiltration facilities (flow dispersal trenches), the applicant proposes two rain gardens as another low impact development (LID) measure next to Woonerf A, as shown on Sheet SSWA1 of the preliminary plat (Exhibit 2).

(3) Stormwater Management Zones. The Villages DA identifies several different stormwater management zones. The PP2C site is within Stormwater Management Zones 1C and 2 (Exhibit 15, Figure 7.4). Zone 1C drains to the southwest, cross-gradient to Horseshoe Lake. Zone 2 drains to Rock Creek and is within the Lake Sawyer basin. A discharge point within PP2C is shown on the Conceptual Stormwater Plan in the Villages DA (Exhibit 15, Figure 7.4).

The revised drainage plan is a refinement to the more conceptual level planning and the DA and was proposed to improve stormwater management and minimize the potential for phosphorus discharge to Rock Creek and Horseshoe Lake. The applicant submitted the Preliminary Drainage Analysis report (Triad Associates, November 8, 2013, Exhibit 20). The proposed drainage plan redirects flows from pollution-generating surfaces (roads and parking areas) within Zone 2 into Zone 1C. Zone 1C is less sensitive to phosphorus whereas Zone 2 is more sensitive to phosphorus as it drains to Rock Creek. Stormwater within Zone 1C is used to recharge wetlands and all excess stormwater is discharged to the regional stormwater facility.

A similar volume of stormwater from non-pollution-generating (rooftop) surfaces in Zone 1C will be redirected into Zone 2. In this way the volume of runoff from each Zone will be maintained. But whereas in the original configuration some treatment would be

required in Zone 2 to remove phosphorus from the stormwater, the revision directs only clean stormwater into Zone 2 (without the need to remove phosphorus). In other words, all of the stormwater in Zone 2 is from non-pollution generating surfaces and does not contain any phosphorus-laden stormwater from pollution-generating impervious surfaces (Exhibit 2, Sheets SSWA1-4).

Plats 1A and 2C share an area of "adaptive management" that allows the applicant 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. According to the Staff Report, Stormwater from PP2C will discharge into the Plat 1A stormwater system and will, therefore, become compliant with Villages MPD Permit COA No. 74 (Exhibit 58, page 25).

(4) Water Quality. The applicant proposed a revision to the conceptual drainage plan and facilities as approved in the Villages Development Agreement. This change is a refinement to the more conceptual level planning and the DA and was proposed to improve stormwater management and minimize the potential for phosphorus discharge to Rock Creek and Horseshoe Lake. The applicant submitted the Preliminary Drainage Analysis report (Triad Associates, November 8, 2013, Exhibit 20) which analyzed and modeled the revised changes. The applicant requested approval of a revised stormwater zone delineation in connection with design of the Phase 1A regional stormwater pond. The deviation was reviewed by City staff and the City's consulting engineer. The Public Works Director as Designated Official and the City's consulting engineer approved the deviation with conditions on August 12, 2014 (Exhibit 20c). The City's consulting engineer also reviewed the revised plan for compliance with the 2005 Stormwater Management Manual for Western Washington (SWMMWW), the Black Diamond Engineering Design and Construction Standards (BDEDCS), and generally accepted engineering practices. On June 17, 2014, the City issued a Mitigated Determination of Non-significance (MDNS) and Adoption of Existing Environmental Document Notice (Exhibit 5). There was one mitigation measure for stormwater which stated, "*During final engineering review of the plat, an update to the preliminary drainage analysis shall be conducted by the proponent and submitted to the City for review, to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings.*" As conditioned, the facilities shown on the preliminary plat comply with applicable standards. (See Exhibit 45.)

(5) Enhanced Stormwater Treatment for PP1A. In Ex. 87 Brian Derdowski asserts that stormwater will not be subjected to enhanced water quality treatment as required by Villages MPD COA No. 82. All stormwater from pollution generating surfaces will be discharged to stormwater treatment facilities in PP1A. The staff report notes that the treatment facilities in PP1A will be subject to the enhanced stormwater treatment requirement. A COA will be added to ensure that this requirement is implemented. The imposition of DA requirements in COAs should not be viewed as a waiver of those requirements not identified.

(6) Stormwater Deviations. In Ex. 86, Mr. Derdowski questioned whether staff had the authority to approve deviations to DA stormwater design standards in Ex. 28. DA 7.4.4 authorizes deviations to the standards and is determinative on that issue.

(7) Stormwater Monitoring. In Ex. 86 Brian Derdowski asserts that the staff report doesn't assess compliance with monitoring of stormwater temperature, turbidity, conductivity, pH and dissolved oxygen. All of these parameters are included in the applicant's proposed stormwater monitoring plan, approved by the City Council as Ex. O to the Villages DA. Mr. Derdowski does not identify any provision in the monitoring plan that requires testing of these parameters prior to approval of PP2C and none are immediately apparent from Ex. O or any other stormwater standards applicable to PP2C.

(8) Rooftop Runoff Will Not Contain Phosphorous. In Ex. 87, Brian Derdowski disputes the assumption that stormwater runoff diverted from rooftops into drainage basin Zone 2 will not contain phosphorous. DA Villages Section 7.4.4(A)(3) provides that “[S]tormwater from non-copper or non-galvanized rooftops do not require water quality treatment prior to infiltration or discharge unless combined with stormwater from pollution generating surfaces”. As determined in COL No. 4, the findings of the Villages DA are determinative in their application to this preliminary plat application. COA No. 2 requires covenants that prohibit copper or galvanized rooftops. Consequently, it must be determined from the DA that rooftop run-off will not adversely affect water quality in the Zone 2 drainage basin.

In Ex. 86, Mr. Derdowski asserts that compliance with Villages DA 7.4.4(A)(3) restrictions on roofing materials to prevent degradation of stormwater run-off quality should be assessed during preliminary plat review as opposed to building permit review and inclusion in CCRs as stated in the staff report. The standards of 7.4.4(A)(3) are sufficiently detailed, specific and ministerial to be addressed during building permit review, when information on exact roof material composition will be more readily available.

(9) Record Does Not Establish Most Current Phosphorous Treatment Proposed. In Ex. 87, Mr. Derdowski asserts that the staff report fails to address whether stormwater facilities will incorporate the most recent technologies and practices available to treat stormwater for phosphorous as required by MPD Villages Condition No. 76 and DA Villages Section 7.4.4(A). The staff report takes the position that these provisions are inapplicable because there are no stormwater ponds proposed for PP2C. However, Mr. Derdowski is correct that infiltration is proposed and these would be considered stormwater facilities subject to the MPD and DA provisions. Given that any technologies or practices are unlikely to create any significant alteration to project design, this is an issue that can be addressing during final engineering review and a COA will be added to require that the infiltration facilities be reviewed for compliance with MPD Villages Condition No. 76 and DA Villages Section 7.4.4(A).

(10) Dispersal Trenches Appropriately Located Within Wetland Buffers and Will Not Adversely Affect Wetlands. In Ex 87, Mr. Derdowski asserts that proposed dispersal trenches used to dissipate stormwater outflow to wetlands does not comply with Villages MPD COA No. 119, which requires that stormwater outfalls be located to avoid impacts to wetlands and streams and also requires mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. Staff has determined that the dispersal trenches proposed by the applicant will dissipate stormwater in the surrounding wetlands as required by COA No. 119. Mr. Derdowski asserts that more study is needed to determine whether these dispersal trenches will function as anticipated, but provides no evidence that staff's conclusions are deficient on this issue. It is determined that the proposed dispersal trenches satisfy the requirements of COA No. 119.

In Ex. 87, Mr. Derdowski asserts that stormwater dispersion trenches should not be located within wetland buffers because they fail to meet the requirement of BDMC 19.10.220(5)(a) that trenches may only be placed within wetland buffers when it is not feasible to locate them outside the buffers. Staff concluded that locations outside the buffers are not feasible due to site constraints caused by the wetlands. Staff is correct in this position. Trenches probably could be placed outside of the wetland buffers if the applicant reduced the number of lots of its subdivision. However, 95 of the 135 acres of the project site are already dedicated to open space, wetland and wetland buffers. Under these severe development restrictions any additional reduction in developable space should not be considered feasible, especially when the trenches serve to benefit wetland functions by maintaining wetland hydrology and the dispersed stormwater will be generated by nonpolluting surfaces. In Ex. 86, p. 15, Mr. Derdowski further asserts that ponds may be necessary if infiltration ponds are not feasible. BDMC 19.10.220(5)(a) does not require ponds under these circumstances.

***b. Traffic and Transportation:***

(1) Overview. As conditioned, PP2C makes appropriate provision for streets, alleys and other public ways. PP2C has accounted for the roadways, alleys, access tracts and easements necessary for safe and viable mobility throughout the project boundary as indicated on PP2C Sheets RS1-RS4 (Staff Report Ex. 2). Off-site connections are proposed to Willow Avenue in PP1A to the north and Tract 907 to the south. The Villages DA Section 6.3 provides the standards for roadways within the project. The standards apply equally to public and private streets with no distinction made for function or appearance, except that pervious roads may be used for stormwater control and if used, pervious roadways must remain privately owned and maintained. Unless specifically noted otherwise, details of the street design comply with adopted City street standards. The City's traffic consultant reviewed the Traffic Monitoring Report and the Traffic Impact Study for PP2C and determined that no road improvements will be required beyond what is required to serve the lots on PP2C. PP2C itself will not trigger any roadway concurrency-related improvements. Off-site frontage concurrency

improvements will be constructed by either PP1A or PP2C, whichever causes the 200<sup>th</sup> dwelling unit threshold to be triggered first.

(2) Proposed Street Network. Three local streets, four alleys, and three ‘woonerfs’ are proposed to provide internal circulation and access. All three local streets (Roads A, B and C) will be two lanes, with 5 foot wide sidewalks, a planting strip, 7 feet of pavement for on-street parking, and 10 foot wide vehicle travel lanes. The total width of pavement (curb-to-curb) will be 34 feet. The width narrows to 22 feet at the intersections, as the sidewalks bulb out for safer, pedestrian-friendly crossings. The City will assume ownership of Roads A, B, and C after the project is constructed. The public roads will provide access to the majority of the lots.

PP2C proposes a connected network of roads and trails, shown on PP2C Sheets RS1-RS4 (Staff Report Exhibit 2). The only non-connecting streets end at connection points to future development plats. The trail and streets will connect with the major road network on Phase 1A.

A major off-street trail will loop around the development. The narrower alleys will be private, and minimize the amount of pavement needed to provide access to the lots. As noted in Deviations below, the proposed woonerfs do not comply with Villages DA Section 6.3 and must be redesigned to comply with minimum sidewalk and planter strip requirements.

(3) Woonerfs. The applicant proposes a “Woonerf” for the northern portion of PP2C. The applicant described a woonerf as “special use streets” that are synergistically designed to form integrated, intimate space for vehicles and pedestrians. “*Woonerfs streets are as narrow as possible to provide emergency vehicle access while still narrow enough to form intimate and memorable spaces to create character and convey the pedestrian priority of the space.*” (See Exhibit 17). City staff approved a deviation request with conditions, Ex. 17a, authorizing the waiver of sidewalk and planter strip requirements so that the Woonerfs would be able to integrate vehicular and pedestrian circulation on the same paved surface. This request is consistent with DA 6.2.

(4) Rain Gardens. The applicant submitted a deviation request to use an alternative width configuration for rain gardens when within or adjacent to the right-of-way. This request is consistent with Villages DA 7.4.4.A.6. Staff approved the deviation request on August 12, 2014 with conditions requiring the width to complement or enhance adjacent features or uses, a requirement for private ownership and maintenance and prohibiting an overall change in the width of the roadway section except for the deviation for rain gardens (Exhibit 21).

(5) Traffic Calming. Traffic calming measures on Roads A, B, and C are proposed in the form of curb bulb-outs at intersections and mid-block locations and on-street parking on both sides. Parked cars and bulb-outs have the effect of narrowing the apparent width of streets, and thus tend to slow or ‘calm’ the traffic. (See Exhibit 24b)

(6) Calculation of Trip Rates and ERU. The methodology for Calculation of Trip Rates and ERU has bearing on concurrency requirements for transportation infrastructure. The concurrency finding itself is addressed below. Villages DA Section 6.2 specifies the methodology for estimating trip generation, but authorizes alternative methods as supported by trip generation studies. The applicant has chosen to use alternative methods that are somewhat questionable. However, as noted below in subsection (7), under the methodology specified by Villages DA Section 6.2 and the alternative methodology used by the applicant, the trips generated by PP1A and PP2C will not exceed the concurrency threshold level set by Villages DA Tables 11-5-1 and 11-5-2 and Ex. Q and R.

The Villages DA Section 6.2 defines the assumed quantity of PM Peak Hour trips by land use. Specifically, single family residential units are assumed to produce 1.01 trips/dwelling unit. This is defined as the Single Family housing rate. Multi-family housing is assumed to be 0.57 trips/dwelling unit. General commercial is 1.49 trips/1,000sf of Floor Area (General Office Rate) while campus style commercial is 1.48 trips/1,000sf of Floor Area (Office Park Rate). Retail is assumed to be 3.73 trips/1,000sf of Floor Area (Shopping Center Rate). The DA states, “unless an alternative, which is supported by a traffic impact analysis report, is proposed by the Master Developer, the number of trips shall be multiplied by the appropriate number of units to determine the number of lanes that much be provided to serve each area of the Project Site.” (Villages DA, Section 6.2).

The applicant chose to provide for an “alternative” trip generation analysis as authorized by DA Section 6.2. The applicant supplied a memorandum from Transpo that was accepted by the City as a traffic impact analysis report (Exhibit 24). Instead of the DA 6.2 trip generation assumptions, Transpo utilized the Institute of Transportation Engineers (ITE) rates without providing any comment on why it chose not to comply with the Villages DA. The City and its consultant, Parametrix, also failed to provide comment on this issue (Exhibit 24a). Similarly, the applicant’s consultant did not provide an estimate of the traffic generated by PP2C in the absence of plat PP1A, though this approval request is for PP2C as a stand-alone project that may or may not be built in conjunction with PP1A. In fact, PP2C can be built whether or not PP1A is ever constructed. The applicant did not provide an estimate of trips generated by PP2C by itself.

PP2C is a single family residential development with 203 proposed lots. Utilizing the Single Family housing trip generation rate specified in the Villages DA, the total number of PM Peak hour trips is expected to be 205 trips (203 du x 1.01 trips/du). The applicant and City suggest PP2C will instead produce 137 PM Peak Hour trips.

Transpo came to this figure by first determining the entire expected PM Peak Hour trips generated by both PP1A and PP2C and then subtracting out PP1A to get the trips for PP2C. As noted above, PP2C’s total trips were never calculated for the plat by itself in the absence of PP1A’s contributions. This is significant for two reasons. First, PP1A is

proposed to be a mixed use development with residential, retail and office uses. Therefore, it is reasonable to assume that some of the development's traffic will stay within the development to work or shop rather than exit the development to perform those functions elsewhere. And, some of the trips originating from outside the development will come into the development to do the same things. Consequently, Transpo was able to apply two factors to the development: an internal trip capture rate and a pass-by rate. The internal trip capture rate accounts for trips that begin and end inside the development. The pass-by rate accounts for trips that come from outside the development and rather than continuing by, enter the development to access the shopping or employment opportunities. Both the internal trips and the pass by trips *reduce* the total number of PM Peak Hour trips attributable to the development. It is perfectly reasonable to assume that some of the PP2C trips will, in fact, stay in the Villages development; unless of course, PP1A is never built. In that case, no internal trips or pass by trips may be deducted from the PP2C PM Peak Hour Trips because there are no mixed uses to service these trips.

The second reason using PP1A to determine the number of PP2C's trips is significant is related to the trips/dwelling unit rate Transpo actually used. Transpo did not use the Villages DA trip rates. Instead, Transpo used standard ITE trip rates. Therefore, instead of using 1.01 trips/du, Transpo utilized two other rates for the same figure. Transpo used 0.87 trips/du to calculate both PP1A and PP2C together. Then, Transpo calculated PP1A by itself using a trip rate of 0.91 trips/du. The reason for this, as described by Transpo in Exhibit 24, is that the ITE assumes the number of trips decrease as the development size increases. Therefore, Transpo assumed a smaller trip rate for the two developments together than it did for PP1A alone. Utilizing these two rates for single family homes, Transpo determined the two projects together would result in 563 single family trips. PP1A would contribute 404 trips. By subtracting one from the other (and accounting for rounding), Transpo determined PP2C would result in 160 trips from single family homes during the PM Peak Hour. As noted above, utilizing the Villages DA Single Family housing rate for the 203 residential units would result in 205 PM Peak Hour Trips.

Transpo further reduced the PP2C PM Peak Hour trips by employing an internal trip capture of 23 trips in the assumption that PP1A will be constructed and occupied as planned. The final estimated PM Peak Hour trips are 137 trips. In the absence of PP1A, and utilizing the ITE rate of 0.91 trips/du, PP2C would create 185 PM Peak Hour trips (203 du x 0.91 trips/du with no reduction for internal trips or pass by trips). Under either the Villages DA rate or the ITE Rate, by failing to analyze PP2C in isolation, the applicant likely understated the total PM Peak Hour trips for PP2C.

It should be noted, and to the applicant's credit, Transpo utilized ITE rates across every land use category, even when those rates were significantly higher than those described in the Villages DA. For example, the Villages DA retail rate is 3.73 trips/1,000sf of floor area. Transpo used 5.45 trips/1,000sf of retail floor area. With the exception of the single family housing trip rate, all of the trip rates Transpo used were higher than those specified in the Villages DA. As a result, Transpo estimated PP1A and PP2C together

would generate 1,352 PM Peak Hour trips. All things being equal, using the Villages DA rates would result in just 1,150 PM Peak Hour trips.

Transpo directly translated the 137 PM Peak Hour Trips into Equivalent Residential Units (ERU) on a 1:1 basis, such that the concurrency calculations reflect 137 ERU from PP2C. As noted below, while the applicant's PM Peak Trip Hour calculations do not reflect the methodology of the Villages DA, they also do not result in a change to the concurrency threshold determination, partially because even at the highest trip generation estimates, PP2C will not trigger concurrency requirements by itself in the absence of PP1A and neither will the two development together.

(7) Concurrency for Off-Site Transportation Infrastructure. Villages MPD FOF 5(B, C, H, J, and K(v)) and Villages MPD COL 23(A) and 30(F) discussed off-site regional infrastructure improvements required by the Applicant. The Villages MPD COA required an extensive list of transportation improvements required by the Applicant for the entire Villages MPD build out (Villages MPD COA No. 10, 15, 16, 18, 19, 20, and 25). The Villages DA Section 11.5 provides for the timing, construction and funding of off-site regional infrastructure improvements including transportation improvements for the entire Villages MPD build out (Villages DA Tables 11-5-1 and 11-5-2 and Ex. Q and R). The timing and requirements for off-site improvements are governed by the Regional Facility Implementation Plan, the Traffic Monitoring Report, and a traffic study geared to the specific preliminary plat proposal. The applicant submitted a Traffic Monitoring Report (Exhibit 25), a Phase 2 Plat C Traffic Impact Study (Exhibit 24) and the Regional Facility Implementation Plan (Exhibit 29). A schedule for implementing the transportation improvement projects has been established for Phase 2.

Concurrency improvements are triggered when 1,393 Equivalent Residential Units (ERU) are approved. One ERU is based on the average number of trips generated by a detached single-family dwelling unit, which is approximately one (1.01) weekday PM peak hour trip. The approval of Phase 1A established trips equal to 1,190 ERU. The Traffic Impact Study estimates that PP2C would generate 137 net new ERU. The combined Phase 1 and Phase 2 trips equal 1,327 ERU, which is less than the 1,393 ERU threshold required to trigger concurrency improvements.

As noted in the discussion above, the applicant did not provide a separate estimate for PP2C ERU in the absence of PP1A. However, this is not necessary, because in the absence of PP1A, PP2C will not come close to triggering the concurrency improvement threshold.

The next question is whether the use of the Villages DA trip rates would trigger threshold requirements. As noted above, it will not because the total number of trips using the Villages DA rates is actually less than those predicted by the developer because the Villages DA rates, with the exception of the single family housing rate, are all lower than those utilized by Transpo in its analysis.

Finally, it should be noted that should only the residential portions of PP1A and PP2C be developed, the concurrency threshold will not be reached under either methodology. The residential portions of PP1A and PP2C together with the proposed school use (PP1A) but without the retail and office portions (PP1A) would result in a total of 833 trips (Transpo methodology) or 914 trips (Villages DA methodology).

Once the 1,393 ERU threshold is reached, concurrency improvements will be required at six intersections. The City's traffic consultant reviewed the Traffic Monitoring Report and the Traffic Impact Study for PP2C and determined that no road improvements will be required beyond what is required to serve the lots on PP2C. PP2C itself will not trigger any concurrency-related improvements.

(8) Pipeline Road. The Villages DA established a separate condition the for design, alignment and right-of-way dedication for Pipeline Road prior to the construction of the 1,200th dwelling unit in all of The Villages. This activity for planning Pipeline Road is not related to concurrency timing for PP2C. The combined dwelling unit total for both Plat 1A and PP2C is 985 units, which is less than the 1,200 dwelling unit threshold.

(9) Off-site Frontage Improvements. Villages MPD COA No. 32 required the applicant to provide a connecting sidewalk and safe pedestrian connection from the frontage improvements along parcel V13 to the northeast corner of the Guidetti Parcel along Roberts Drive prior to the City issuing a certificate of occupancy for the 200<sup>th</sup> dwelling unit in all of The Villages. A total of 782 dwelling units were approved as part of Plat 1A. This plat will create another 203 dwelling units. Either of the two plats individually meets the threshold for the required off-site frontage improvements. As either project could be built first, a condition of approval for this plat will require installation of the off-site frontage improvements prior to issuance of a certificate of occupancy for the 200<sup>th</sup> dwelling unit.

(10) Intersection Safety. The Traffic Impact Study (Exhibit 24) reviewed collision data for the study intersections of the Traffic Monitoring Report and found that all study intersections had rates well below one collision per one million entering vehicles, indicating no safety issues and no additional analysis is required. The authors found that new traffic from PP2C would likely result in a proportionate increase in the probability of traffic accidents but the new traffic would be unlikely to create a safety hazard. In Ex. 87, Brian Derdowski claims that the Traffic Impact Study conclusions on traffic safety are not compelling because it is limited to straight-line collision projections. The Traffic Impact Study was written by an expert and reviewed by the City's traffic consultants. Mr. Derdowski offers no expert opinion to support his position and he has not identified any problem with the traffic safety analysis that appears to be unreasonable or illogical. For these reasons, the conclusions of the applicant's traffic expert are taken as a verity.

The applicant's traffic modeling work and conclusions were reviewed by the City's transportation consultant, Parametrix (Exhibit 24a, 24c, 25b, and 25c). The email memorandum from Parametrix on June 11, 2014 confirmed that the updated Traffic

Monitoring Report and the Traffic Impact Study provided information sufficient for a concurrency determination and consistency with the DA and MPD conditions of approval.

In summary, the updated analysis of the traffic monitoring report indicated that PP2C would generate traffic representative of approximately 137 ERUs. Intersection improvements are not triggered until the 1,393rd occupancy permit within either Phase 1A or Phase 2. Since this ERU threshold cannot be reached with approval of PP2C, no intersection improvements are required.

(11) Access Points. In Ex. 87 Mr. Derdowski notes that Comprehensive Plan Policy T-6 requires that a standard be established setting a maximum number of dwelling units that can be constructed before a second access point is required. Villages MPD COA 27 and 36 set this number at 150 units, though up to 300 units may be allowed on an interim basis, provided that a secondary point of access is provided. PP2C will build out 203 units. Until a road connection is completed to new development to the south, staff finds that COA 36 is met by the combination of one access road (connecting to PP1A) and one emergency access road. PP2C has 203 dwelling units and will provide two routes of ingress and egress when constructed, and a third route to future development on an adjacent plat to the south. The two initial access points will be between Willow Avenue SE on Phase 1A and Road A and between Willow Avenue SE and Woonerf A. The latter connection will be for emergency vehicles only. There are no dead-end streets. Given that the primary purpose of two access point requirements is to provide for effective emergency access, it is concluded that staff's interpretation on this issue is correct.

Roads A, B, and C provide the main NW to SW access while the alleys and woonerfs connect them in a modified grid. The internal roadways follow the topography of the site and conform to the natural resource constraints of the adjacent wetlands, Rock Creek, slopes and sensitive area buffers.

(12) Infrastructure Timing. Roads, alleys, and woonerfs will provide access to all of the proposed residential lots from Willow Avenue SE in Phase 1A. Willow Avenue SE in Phase 1A is intended to connect Road A and Woonerf A and the lots in the PP2C subdivision to the existing Roberts Drive. Phase 1A may not be constructed prior to the present plat, though construction of the road network in Phase 1A has begun. Therefore, prior to approval of the building permits for PP2C, the applicant is required to make a connection between Road A in PP2C and Roberts Drive, within the temporary access and utility easement on Phase 1A (Exhibit 44). Also, a condition of approval will ensure that Willow Avenue SE must be in operation before final plat approval of PP2C will be granted, or the applicant must provide a bond for completion in lieu of construction. As conditioned, the applicant provided sufficient information for the City to determine that the proposed roads meet the standards approved in the DA and other applicable city standards.

(13) Multi-modal connectivity. As shown in Ex. 2 and on PP1A Sheets RS1-4, the proposed sidewalks, bike lanes, trails and roadways are designed to provide an interconnected network of multi-modal motorized and non-motorized transportation routes within and surrounding PP2C including connection to non-motorized routes and sidewalks in PP1A. No transit service is expected on the streets in PP2C because it is a relatively small area. Transit service could be provided in the future on the major roads within the Phase 1A development. PP2C will be connected to, and within walking distance of the major road in Phase 1A, Willow Avenue SE.

(14) New Traffic Demand Model. In Ex. 87, Mr. Derdowski recognizes that Villages MPD Conditions No. 11 through 14 require a new traffic demand model after 850 building permits have been issued. Mr. Derdowski inquires about what would happen if the new demand model determines that traffic was not being adequately addressed. The 850 threshold was based upon an extensive off-site traffic mitigation analysis prepared in the FEIS and incorporated into the Villages DA and MPD COAs. (See Villages MPD Finding of Fact No. 5.) In Finding of Fact No. 5, the City Council determined that the traffic demand model used to project traffic up until the 850 building permit threshold would accurately project traffic generation. Mr. Derdowski has not presented any evidence that use of the model for PP2C would not provide an accurate assessment of traffic impacts. There is always the possibility that traffic generation estimates may not be 100% accurate, but that possibility exists with any methodology used to estimate trip generation in preliminary plat review.

(15) Roadway Capacity. In Ex. 87 Mr. Derdowski disagrees with staff's determination that the internal roadways of PP2C have an am and pm peak hour capacity of 600 trips per lane of roadway. This capacity figure is mandated by Section 6.2 of the Villages DA and cannot be collaterally attacked during preliminary plat review as concluded in COL No. 4.

(16) Bicycle Friendly. In Ex. 87, Mr. Derdowski asserts that streets are not designed to be "bicycle friendly" as required by Design Guidelines for Master Development, Policy A7a Circulation. The staff report concludes that the streets are bicycle friendly due to traffic calming measures such as narrow roads and on-street parking that will reduce automobile speed. An opinion from a traffic expert on this issue would have been helpful. Also, the staff report notes that bicycles can also use the trails proposed for the project, which is doubtful given that most of these trails are in wetland and stream buffers, where trail width is limited to four feet and trail surfaces must be made of wood chips or other types of pervious materials. (See BDMC 19.10.220(B)(3).) Nonetheless, given the narrow widths of the streets and associated on-street parking, it is fairly clear that the roads will not be used for high speed travel as concluded by City staff. For this reason, the preponderance of evidence and substantial evidence establishes that the traffic calming features of the PP2C circulation system provide for bicycle friendly streets.

(17) Concurrency of Alternate Access. In Ex. 87, Mr. Derdowski asserts that a concurrency analysis needs to be done for the alternate road connection to Roberts Road

that is proposed if PP1A road connections are not completed prior to issuance of building permits for PP2C. The alternate connection will meet applicable concurrency requirements. Villages DA 6.2 provides that each lane of travel within the project site will have a capacity of 600 vehicle trips in the AM and PM peak hour. The alternate access will have at least two lanes of travel, providing for 1,200 peak hour trips. The applicant's traffic monitoring study estimates 735 weekday PM peak hour vehicle trips. The COAs will be clarified to require that the alternate connection is in place prior to the issuance of any building permits. For internal roadways not subject to adopted LOS standards, staff defines concurrency as adequate facilities in place prior to development or a financial commitment within six years of time of development as defined in RCW 36.70A.070(6)(b). This is an appropriate standard in the absence of a code definition.

Concurrency is met. The proposed alternate road connection is found to be adequate under the capacity standard set by the Villages DA and will be in place prior to the completion of development.

(18) Tract 907 Connection. In Ex. 87 Mr. Derdowski asserts that the use of Tract 907 for a future road connection to MPD development in the south should be evaluated during this preliminary plat to identify and preserve other options that would have fewer impacts. It is clear from the sensitive area maps that a road through Tract 907 would involve the smallest amount of sensitive area buffer encroachment to provide for a direct connection to MPD development to the south. As noted in the staff report, the overall PP2C design does leave large areas of wetlands and buffers intact, which should be a primary consideration in the mapping of road connections. There should have been some expert analysis included in the record on the overall suitability of Tract 907 for this purpose, but in the absence of any evidence from Mr. Derdowski to the contrary, the minimization of sensitive area and buffer encroachment in the PP2A design establishes by substantial and a preponderance of evidence that Tract 907 is the most environmentally compatible location for the access needs of the project.

(19) Consistency with Road Standards. In Ex. 86, p. 9, Mr. Derdowski asserts that compliance with DA road standards doesn't establish compliance with all applicable road standards as required by BDMC 17.15.020(A)(5). In its response in Ex. 97, City staff clarified that staff and their traffic experts had reviewed all proposed streets for consistency with the DA in addition to the BDEDCS. Mr. Derdowski does not identify any inconsistencies with applicable standards and none are apparent from the administrative record, so it is determined that the proposal is consistent with all applicable road standards.

***c. Parks and Open Space:***

(1) General Overview. PP2C makes adequate provision for parks and open space. The proposal incorporates an extensive amount of open space and trails that is readily accessible to all PP2C residents and that also provides a ready connection to surrounding

areas. As determined in the Conclusions of Law, PP2C satisfies all legislative standards for open space as well. Approximately 98 acres of open space on 20 separate tracts has been provided in PP2C in a variety of ways, including parks, trails, landscape, pedestrian access and sensitive areas and buffers. Public spaces within PP2C include developed parks from small common greens or pocket parks, pedestrian trails, and natural open space. Sheet CV4 of Ex. 2 provides a site plan of the open space and trails of the proposal. Each dwelling unit will be within ¼ mile of a park (Exhibit 73). Section 9.5.1 of the Villages DA requires at least 100sf of parks space per dwelling unit, or 20,300sf (0.46 acres) for PP2C. The developer has proposed 2.65 acres of park space. Village DA 9.1 requires about 75.58 acres of open space in Parcel E, which includes PP2C. PP2C will exceed this total by over 22 acres.

Pocket parks, which are parks one half acre or less in size, are intended to serve the informal needs of the immediately adjacent residents and may provide tot-lots, small open areas to play, seating areas, etc. These pocket parks can also be found throughout PP2C, for example, Tracts 909, 911 and 921, which can be found on PP2C Sheet CV4 in Ex. 2. The plat does not propose any neighborhood parks. The largest of the parks, community parks, are generally one acre or greater in size and are destinations that serve the recreational, social, and civic needs of the community as a whole. Community parks are focal points within the community and include amenities such as larger play fields, tot lots, civic gathering areas, sports courts, etc. The applicant has proposed Tract 906 (1.35 acres) as a community park (Exhibit 48). A total of 2.65 acres of parks space is proposed, which meets the parks level of service standard.

The remaining 6 tracts are proposed primarily as part of the pedestrian access and trail system. In addition to the two acres of parks, a trail is proposed around the residential area and at the outside western edge of the E1 wetland buffer. As conditioned, on-site trails must be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. The most extensive open space (95 acres) is found in the utility tracts and critical areas and buffers. The entire plat is surrounded by critical areas. Total open space required for the plat under the Villages DA is 75 acres.

PP2C exceeds the DA's minimum standards for overall open space (Section 9.1) and for parks within implementing projects (Section 9.5.1). However, pursuant to the Parks, Recreation and Open Space Plan, there is a deficiency of community parks within all of The Villages implementing projects to date, which was not addressed specifically in the DA. The applicant has submitted plans showing a community park on Tract 906 pursuant to the Villages MPD Permit Application.

The proposed park tracts combined with the proposed soft-surface trail and ownership and maintenance responsibilities by the Master Developer or homeowners' association are consistent with the City's 2008 Parks, Recreation and Open Space Plan.

(2) Active Recreation Facilities. Mr. Bortleson (Ex. 54) expressed concern the active recreational facilities need to be constructed. Villages DA Table 9-5 requires that a

number of active recreation facilities (basketball court, soccer field, tennis court, and baseball or softball field) be built as certain thresholds for residential construction occur. The first trigger for development is 800 dwelling units. The approval of PP1A's 782 dwelling units did not trigger the recreation facility construction requirements in Villages DA Table 9-5. PP1A and PP2C have a combined 985 dwelling units. A condition of approval will ensure no certificate of occupancy for the 800th dwelling unit on any Phase will be issued until the required recreation facilities in Table 9-5 are constructed.

(3) Connectivity of Parks and Open Space. The parks and open space of PP2C are well connected with the proposed housing. The open space is linked through a network of sidewalks, trails and pathways. See PP2C Sheets RS1–RS4 (Exhibit 2) for a depiction of the numerous sidewalks, trails and pathways that provide multiple links to adjacent open space.

(4) Trails. A trail is proposed around the subdivision, generally between the rear boundary of the single family lots and the outer edge of the wetland buffers. Pedestrian access is identified as one of the primary uses for Tracts 902, 904, 909, 911, 913, 914, 921, 923, 924, and 925 on Sheet CV4 (Exhibit 2) in the plat drawing and in the Open Space Tract table. A soft-surface trail that is intended to implement the DA Figure 9.2—Park and Trail Plan—is also depicted on Sheet CV4. The soft surface trail, pedestrian access tract and sidewalks will ensure that the open spaces that surround the residential development will be connected.

The applicant has proposed that wetlands and buffers be protected with fencing and signage. The trail would cross some parts of the outer edge of the buffers. The trail will be constructed up to the boundaries of PP2C. The trail is consistent with the trail connection depicted in the Park and Trail Plan, Villages DA Figure 9.2. A number of internal connections are proposed by the applicant as well. The applicant will be designing the details of the trail section and its specific location during the clearing and grading and utility permits phases. In Ex. 86 Mr. Derdowski asserts that there is no clear code direction or review standards as to how staff would review compliance of trail design with applicable design standards during what the staff report identifies as “utility permit” review. A COA will be added clarifying that trail design shall be reviewed against all applicable design standards during clearing and grading permit review.

(5) Parks and Trails Adequate for Preliminary Review. In Ex. 87 Mr. Derdowski asserts that more detail on the applicant's proposed parks and trails is necessary for preliminary plat review. The applicant has provided sufficient information to establish that the plat can accommodate the parks and trails required by applicable development standard. Additional detail is only necessary to demonstrate compliance with the ministerial requirements of applicable regulations, which is appropriately addressed during final plat engineering review. Section 9.2 of the Villages DA requires proposed park and trail improvements to be completed or bonded prior to final plat review. COA 32 requires submission of detailed trail plans prior to the issuance of any clearing and grading permits. Pursuant to the request of Mr. Derdowski, COA No. 68 will be modified

to require trail and park compliance to also comply with the SAO and the more restrictive standards shall apply in case of any conflict.

(6) Public Spaces, Viewsheds and Scenic Areas. In Ex. 87, Mr. Derdowski asserts that the staff report failed to address impacts to view sheds, scenic areas and public places as required by the Design Guidelines for Master Development, specifically Policy 5 under the “Environmentally Sustainable” category. The proposal is completely surrounded by treed open space and critical area tracts and beyond that the adjoining properties are large forested tracts of land. Given these site features, there is nothing in the record to remotely suggest any impacts to view sheds or scenic areas. As to useable public spaces, the applicant is proposing a trail system that encompasses the entire plat as well as Wetland E. In addition, the applicant is proposing 115,623sf of park space, spread out over a community park, two common greens and a pocket park. The proposal provides for ample usable public spaces as contemplated by the design guideline.

(7) Ownership and Maintenance. Preliminary Plat Sheet CV4 (Exhibit 2) proposes ownership and maintenance of all open space tracts including the buffers and wetlands by the HOA, except that maintenance on tract 916 (with a stormwater feature) is proposed to be the responsibility of the Master Developer. Conditions of approval will stipulate ownership responsibility, require bonding, and dictate construction scheduling for proposed parks and the trail.

***d. Water:***

(1) Overview. There is adequate provision for water. Water service will be provided by the City of Black Diamond. As indicated by Section 7.2.1 of The Villages DA and the water availability letter from the City dated August 9, 2014, Ex. 35, adequate water is available to serve the PP2C.

The existing City water system is supplied by springs near the Green River. The distribution system operates with three pressure zones, 965, 850, and 750. Equalizing, fire flow, and standby storage are provided by the 850-zone reservoir and delivered to the 750-zone through existing pressure reducing stations. According to the City’s Public Works Director, there is overall water system capacity for full build-out of all of both the Villages and Lawson Hills MPDs, including PP2C, with improvements (Exhibit 35). While there is sufficient capacity in the 850 reservoir and in the city-wide supply water distribution system to support the 203 residences proposed in this application (203 ERU), the existing chlorine disinfection system at the Springs will need to be upgraded prior to issuance of the first building permit at the Villages. The City, or the City with the applicant, or the applicant alone, plans to upgrade the chlorine system in 2015 (also listed as a 2014-2017 project on Figure 9.1a of the Water System Comprehensive Plan). After that upgrade, the next limitation on the system is peak day supply or pumping capacity.

The City's existing spring source and pumping system has capacity for an additional 561 new water supply connections (using supply criteria in the Comp Water Plan). The City intends to make improvements in the Spring source within the next three years that will increase the capacity to an additional 1,100 ERU. The City will supply the additional water demands for this application from either the Spring source (if it is available) or from the Tacoma intertie which has sufficient capacity for full build-out of the Villages development.

In Ex. 86, p. 20-22 Mr. Derdowski disputes staff findings on the adequacy of water and asserts that a certificate of water availability should be provided. The subdivision statutes make no express requirements for certificates of water availability and none is needed in this case because the preponderance and substantial evidence establishes that the City has adequate water capacity to provide needed water, either through its own system or in conjunction with agreements it has with the City of Tacoma.

As conditioned, there is adequate provision of potable water service to ensure that facilities will be in place to serve this application prior to Final Plat. The applicant has provided schematic plans for providing potable water to and within PP2C. The preliminary plat application is located within the 750-pressure zone confirmed by Figure 7.2A of the DA, Conceptual Water System Plan.

(2) On-Site Improvements. The on-site water distribution system is generally composed of loops of 12-inch diameter pipe proposed to be located within the completed rights-of-way. The pipes are looped for redundancy and reliability and are equipped with strategically located valves and inter-connections so that short-term failures can be isolated and repaired with a minimum of service disruptions.

Because the City expects that future phases will need service from higher pressure pipelines (the 850-zone), the City requested an additional 850 water main. Therefore, both a low pressure and high pressure pipeline may be constructed side-by-side in Road A right-of-way. This is a common practice and consistent with the City's Comprehensive Water System Plan. Where possible, future 850-zone mains should be interconnected to the 750-zone mains to improve service to the PP2C customers and to prevent stagnation of water in unused pipelines. These mains may be isolated from the 750-zone in the future when buildings are constructed in the 850-zone.

The remaining Roads B and C and Woonerf A that serve the residential lots will each have one 12-inch 750 pressure water main. Connections to water supply in Phase 1A will occur in two places, one at Road A and SW Willow Avenue and the other at Woonerf A. Pressures at the water meters (for properties within the 750 pressure zone) will range from 75 to 90 psi.

(3) Off-Site Water Infrastructure through PP1A. Water service will be available from off-site water mains that will be completed in conjunction with the Phase 1A Preliminary Plat which will connect to the existing city-owned water mains that are off-site. The

Phase 1A mains have been approved for construction but have not yet been completed; the off-site Phase 1A mains have not been designed or approved for construction. This project will use water lines constructed as a part of Phase 1A to connect proposed facilities in PP2C to existing City water lines. If Phase 1A infrastructure is not constructed by the time connection to PP2C is needed, the applicant will construct the needed connection to Roberts Drive across the temporary access and utility easement on Phase 1A (Exhibit 44). As conditioned, one of those two options to be in-service prior to final plat approval.

(4) Emergency Services. The water conveyance system as designed is consistent with City standards and requirements. All elevations within the project can be served, including the highest anticipated finished floor elevations within future structures, without booster pump stations. Water mains are sized to provide the required flow rates during maximum fire flow conditions, while meeting the minimum pressure criteria. All water mains are public and are to be located in public rights of way or within utility easements that provide a minimum of 15 feet of unobstructed space for access and maintenance.

Required fire flows are estimated to be 1,500 gpm, although Tracts 905 and 907 could be developed with higher fire flow requirements (multi-family or commercial/retail). The mains have been sized and configured to allow 3,500 gpm fireflow rates in these future development areas. Fire hydrants will be provided in rights-of-way. Additional hydrants may be required around some buildings as determined by Fire Department review and approval of building permits. Sprinklers will be provided in buildings according to the requirements of the International Fire Code.

(5) Location of Meters. All water meters will be located within the rights-of-way or in public utility easements. The meter locations must be compatible with the design standards contained within Exhibits “H” of Villages DA. All water meters must be located such that they can be accessed with the City’s drive-by meter reading system.

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

The City approved the Detailed Regional Infrastructure Improvements in June 2014. These improvements are developer funded as required by the Villages DA. In addition, the MPD Funding Agreement (Exhibit “N” of The Villages MPD DA) requires the applicant to pay the costs for City staff to review and implement the projects in the Villages. The applicant will also be paying a general government facilities mitigation fee and/or dedication of land and/or construction of general government facilities. All water system facilities will be publically owned and operated. Because the applicant is

constructing capital facilities that will be adding to the City's network, no capital facilities charges are imposed, in accordance with the Villages DA.

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

The Villages DA, Figure 7.2A, shows conceptual water supply lines to provide water service to parcels V28 and V29. The PP2C drawings, Sheets SSWA1-4 are the initial phase of design for the water facilities. General Note 5 on Sheet CV4 indicates that the applicant intends to construct the water mains in compliance with the Black Diamond Engineering Design and Construction Standards (BDEDCS) and the Villages DA (including Table 9.3 and Figure 9-4 of Exhibit "K"). Staff and technical consultants reviewed the schematic drawings for preliminary compliance BDEDCS and the Villages DA. Further along in the design process, the applicant will be required to submit construction level drawings for water lines in order to obtain construction permits for the water utilities.

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

The Villages Water Conservation Plan was approved in the MPD and Condition of Approval No. 53 required it to be part of the DA. The plan has the goal of reducing water consumption by 23 gallons per day or 10 percent of the existing City use standard of 187 gallons per person, per day. Monitoring of water use is required on completion of each implementing project, and if the reduction is not achieved, a new mitigation plan would be drafted. The Villages Water Conservation Plan applies to PP2C as an implementing project. Since the methods to achieve the reduction would consist largely of water-saving fixtures, consistency will be met during review of the utility or building permits.

*e. Sewer:*

As currently proposed, the applicant has not demonstrated that appropriate provisions have been made for sewer. Even under the highly optimistic projections employed by the applicant and City, there is no substantial evidence in the record to support a finding that the facilities proposed to serve the development will have adequate capacity through build-out. Under the applicant's highly dubious numbers, only 26 ERUs of capacity remain after the ERU demand for PP2C and PP1A are taken into account. Currently, new developments outside the master

plans are consuming 6 ERU per year. This means that unless PP1A and PP2C are fully built out within a little over four years, there will not be sufficient sewer capacity to serve remaining PP2C and PP1A development. There is nothing in the record to reasonably suggest that all 616 single-family dwellings proposed for PP1A and PP2C, plus the other development proposed for PP1A, will be completed in a little over four years. In point of fact, in the absence of any evidence to the contrary, it is very unlikely that this will happen. Consequently, PP2C will be conditioned to be approved in phases, with each phase only to be approved upon a demonstration that adequate sewer capacity will exist through build out.

(1) Overview of Sewer Proposal. Development in the Villages is to be served by the city's wastewater system, which comprises primarily gravity mains and three lift stations. All wastewater is directed to the existing Black Diamond Pump Station, which belongs to King County Wastewater Treatment Division (KCWTD). From there, flows are directed through the County's system to the treatment plant in Renton.

Sewer service to PP2C will be available via connections to the sewer mains that have been approved for Preliminary Plat Phase 1 Plat A (Phase 1A), which will connect to existing City sewer lines in Roberts Road. In addition, a temporary lift station is required to be constructed by Phase 1A Preliminary Plat conditions of approval. Construction permits have been issued for Phase 1A and the infrastructure will need to be in place prior to the approval of the final plat for PP2C. If Phase 1A infrastructure is not constructed by the time connection to PP2C is needed, the applicant will construct the needed connection to Roberts Drive across the temporary access and utility easement on Phase 1A (Exhibit 44). As conditioned, one of those two options to be in-service prior to final plat approval.

Sheets SSWA1-4 of PP2C, Ex. 2, show schematic locations of the proposed sewer gravity mains. Villages DA Figure 7.3 shows a gravity drain sewer extending from the interior of parcel V29 into the system in Willow Avenue SE (Phase 1A). No force mains or pump stations are required to serve PP2C and none are proposed. The eight-inch sewer lines are proposed to be installed in Roads A, B, and C, and Woonerf A. The schematics are considered only representative of the general location and configuration of the sanitary sewer collection system. The construction drawings are expected to provide the final location, pipe sizes and the details of construction during review at utility permit stage. While the final construction drawings sometimes differ from the schematic configuration shown in this application, all 203 lots would be served by sewer lines that will connect to the existing Black Diamond sewer system. City staff has verified compliance of preliminary design with applicable sewer design requirements. More detailed review will occur during engineering review.

(2) Sewer Capacity. As noted in the introductory comments on this subsection, the applicant has failed to establish appropriate provision for sewer because of deficits in sewer capacity. The staff report notes that King County advised that it only had wastewater storage capacity for 1,150 more ERUs for Black Diamond and that PP1A and PP2C will need 1,124 of these ERUs. These limitations were caused by limitations on the storage capacity of the Black Diamond Pumping station, which as previously identified is

owned by King County. There is enough flow capacity in the pipes to accommodate 208 gallons per minute, but there is not enough storage capacity in the system. Once the current capacity limit is reached, the KCWTD will need to add a 750,000 gallon storage facility (Ex. 37). As noted by Robert Edelman in Ex. 76, King County does not identify any improvements to the pump station or any other wastewater storage capacity improvements for Black Diamond in its 6-year capital facilities plan. Though the Master Developer is obligated to pay for the Wastewater storage facility (See Villages DA Table 11-4-1), construction responsibility may be either the Master Developer or the KCWTD. KCWTD requires the project to be listed on their 6-year Capital Improvement Program. The project is not currently listed on the CIP.

In Ex. 97, RH2, a city consultant, notes in Ex. 97 that in the past two years development in the City outside of the master plans has consumed 12 ERUs. If this current rate continues, it would only take a little over four years for outside development to consume the 26 excess ERUs. As noted in the introductory comments, there is nothing in the record to reasonably suggest that PP1A and PP2C will be fully built out in a little over four years.

The introductory comments characterize the existing 1,150 ERU capacity as highly optimistic. As noted previously, the finding of inadequate capacity can be made using the figures relied upon by the City and County. However, the information provided by Mr. Edelman in Ex. 76 reveals that at best, the 1,150 figure used by the applicant and City is highly dubious. As noted by Mr. Edelman, the 1,150 figure can be traced back to a capacity that was computed in a 2008 study. In contrast, a 2013 letter from the King County Wastewater Treatment Division (“WTD”), Ex. 37, reveals that WTD only believes that the pump station currently has a capacity of 1,000 ERUs.

The City states the King County Wastewater Treatment Division (WTD) has confirmed an existing trunk line and pump station capacity of 1,150 ERU based on Ex. 37. However, Ex. 37 does not state there are 1,150 ERU available. Ex. 37 is a letter from WTC to the City of Black Diamond which states, *“As the City and WTD have discussed previously, WTD will need to make investments in the regional wastewater conveyance system in order to accommodate greater than 1,000 additional Equivalent Residential Units in Black Diamond. Because WTD does not have a detailed schedule for the proposed Master Planned Developments (MPDs) in Black Diamond, a capital project to increase regional wastewater capacity is not included in the current WTD 6-year Capital Improvement Plan (CIP).”* Since the City bases its 1,150 ERU capacity figure on Ex. 37, the City’s figure is clearly erroneous. Due to this inaccuracy in the staff report and the fact that the 1,150 ERU figure appears to be seven years old, it is determined that sewer capacity is at most 1,000 ERUs. Since Ex. 37 was written on December 16, 2013, it is likely that capacity is even below 1,000 ERUs at this point in time. Consequently, it is clear that there is insufficient sewer capacity for full PP1A and PP2C build out with or without development outside the MPDs.

The applicant notes that Table 11-4-1 of the Villages DA sets a construction threshold for a wastewater storage facility. They also claim Section 7.3.1 of the DA constitutes the Certificate of Sewer Availability for PP2C (Ex. 98, pages 5-6) and that the City issued an independent letter certifying the availability of sewer service. Nothing in Ex. 47 provides any assurance that the City has adequate sewer capacity to serve PP2C. Ex. 47 merely states that the PP2C sewer connection will be to the system in PP1A. Table 11-4-1 also likewise does not provide any assurance of sufficient sewer capacity. While Table 11-4-1 may set the applicant's obligation to pay for sewer improvements, it does not provide that the timing of these improvements will provide for adequate sewer facilities, as required by preliminary plat review standards. Section 7.3.1 also does not dictate that existing sewer capacity must be found adequate, only that if a certificate of sewer availability is called for in a review process, that requirement will be considered satisfied by the DA. No certificate of sewer availability is being "called for" in this review process.

The tenuousness of the City's sewer capacity analysis is exposed by the City's negotiation of a covenant not to sue that will prohibit the applicant from suing the City if building permits are denied because of lack of sewer capacity. See Ex. 43. Although the need for the covenant is probably primarily attributable to the fact that the City won't be issuing a certificate of sewer availability, the covenant is not indicative of a very high City confidence level in the ability to provide sewer for the full build out of the project.

(3) Mitigation. The sewer capacity problems created by PP2C could easily be addressed by a condition requiring a certificate of sewer availability prior to any clearing or grading. That option is not available here. For unspecified reasons, the City and/or King County WTD won't issue certificates of sewer availability, though the KCWTD has laid out a process for phasing the project and providing progress reports in order to justify the need for the larger capacity improvements (Ex. 47). More importantly, the Villages DA precludes that requirement as an option. Section 7.3.1 provides that "*any implementing project that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement.*" There are no subdivision standards that expressly require a certificate of sewer availability. A certificate of sewer availability would only be "called out" if required by this decision, and at that point the requirement would be nullified by Section 7.3.1. Given the clear deficiencies in sewer capacity, it cannot be determined that "appropriate" provision for sewer service, as required by preliminary plat criteria, is provided for under these circumstances. Resort must be left to working with projections on sewer demand as recommended by City staff.

In order to assure adequate sewer capacity, the COAs will require the applicant to prepare a study approved by staff that estimates sewer capacity by the time that construction is completed for PP1A and PP2C. The study will be based upon a capacity figure acquired from King County after the date of his decision. Capacity demand from future projects outside the MPDs will be based upon known projects in the review pipeline as well as building permit projections based on historical data over the last 10 years in the service area and population projections from Black Diamond. The applicant shall modify PP2C such that it may be completed in phases and only those phases that avoid a deficit in ERU

capacity at the time of approval will be approved for final plat. No clearing or grading may occur in a phase unless the improvements are necessary for a phase that will have sufficient capacity upon final plat approval. Each final plat phase will be a “stand-alone” phase, meaning that each phase must be fully compliant with all applicable development standards if the rest of the master plan development were to be completely abandoned. Capacity will be based upon existing capacity or a financial commitment to make capacity within the next six years, which may include an amendment to the WTD six year capital facilities plan to fund capacity improvements.

(4) Regional Sewer Capacity. With the exception of the wastewater storage capacity limitations previously addressed, after completion of the sewer system improvements in Phase 1A there will be sufficient capacity in the local and regional sewer systems for sewage flow up to 208 additional gallons per minute, which is the amount allowed by King County (Exhibit 37).

Applications that cause the 208 gpm threshold to be exceeded will be permitted after regional sewer capacity improvements are completed. KCWTD acknowledges and it is determined that sufficient capacity exists in the regional system for additional flows generated by PP2C.

*f. Schools:*

(1) Adequate provision is made for schools. As noted in the staff report, an elementary school site that will serve both PP1A and PP2C has been approved for PP2C. School impact fees will be assessed to assure that sufficient funding exists to provide needed school services. Finally, Section 13.3 of the Villages DA provides that school mitigation is accomplished through the Comprehensive School Mitigation Agreement (“CSMA”) and Villages MPD COA 98 provides that the approval of the CSMA “provides adequate mitigation of impacts to school facilities.” So long as the applicant follows through on its obligations under the CSMA, MPD COA 98 dictates that school mitigation is adequate, which is synonymous with the requirement of subdivision statute and ordinance provisions that require a finding that appropriate provision is made for schools. As determined in COL No. II(B)(1) of the PP1A Decision, issues resolved in one permitting decision cannot be re-visited in another. The adequacy of school mitigation cannot be revisited during this plat review.

Mr. Gary Davis (Ex. 77), Mr. Tracy Dummitt (Ex. 79), Ms. Jacqueline Taeschner (Ex. 80), Ms. Carol Lynn Harp (Ex. 85), Mr. Doug Ostgard (Ex. 93) and Mr. Brian Derdowski all spoke to the inadequacy of school locations, availability and/or funding. Mr. Davis and Ms. Taeschner felt funding commitments or schools should be formalized. Ms. Harp stated the Tri-Party Agreement (the Comprehensive School Mitigation Agreement) is unenforceable. Mr. Derdowski argued a determination of school availability should be performed at the plat level, regardless of the overarching agreements. In Exhibit 9 and 78, Ms. Proctor asserts that there is not appropriate provision made for schools. Mr.

Derdowski reflects these concerns in Ex. 86, p. 25 and 26. Ms. Proctor raises the point that conditions have changed since the adoption of the CSMA. Due to the preclusive language of MPD COA 98, this change in conditions cannot be considered since the finding of adequacy in COA 98 cannot be disturbed.

School mitigation issues may become relevant to plat review if it is shown that the applicant is not following through on its obligations in the CSMA. In adopting MPD COA 98, the City Council obviously only considered the CSMA to adequately address school impacts only if the agreement was performed as agreed. A finding of “appropriate” provision for schools could not seriously be made if the applicant weren’t following through on its CSMA obligations. The issue of CSMA compliance puts the examiner in a difficult position, because the examiner has no jurisdiction to resolve breach of contract claims, but at the same time a finding of appropriate school facilities is required. Ultimately, this legal problem does not have to be addressed because Ms. Proctor does not expressly allege any noncompliance issues in her written argument. Ms. Proctor identifies reasons why some of the options for school siting are no longer viable, but at no point does she assert that the loss of these options would prevent the applicant from complying with the CSMA.

(2) Walking Conditions to and From School. In Ex. 87, Mr. Derdowski inquires about whether there would be safe walking conditions to and from school if the schools on PP1A are not built. From the City’s comprehensive plan it does not appear that any schools are within walking distance if the schools on PP1A are not built. However, since this scenario should have been addressed by the applicant and it is not entirely clear whether all schools are beyond walking distance, a COA will imposed that requires that the applicant provide for walking paths and/or sidewalks to and from school if PP1A schools are not built prior to issuance of building permits and children will have to walk to school.

***g. Fire Protection:***

(1) There is Adequate Provision for Fire Protection and Paramedic Services. There is adequate provision for fire protection and paramedic services. Fire and paramedic services will be provided by the Mountain View Fire and Rescue, also known as King County District No. 44. PP2C is within 1.5 miles travel distance upon built roads of Station 99 located at 25313 Baker Street. In addition, Station 98 is located at 22015 SE 296th Street.

Fire Department staff reviewed the access roads proposed for PP2C and found that the roads can meet International Fire Code (IFC) requirements (Exhibit 40), with conditions of approval #30 and #31 to prohibit parking on all 20-foot alleys or woonerfs and any main access roads that are 20 to 26 feet wide.

(2) Construction of Fire Station/DA Enforcement COA. A site and design for a satellite fire station must to be completed no later than the time of issuance of a

Certificate of Occupancy for the 250th dwelling unit. Phase 1A Preliminary Plat was conditioned to make provisions for the satellite fire station in accordance with Section 13.4, Fire Mitigation, of the DA. Section 13.4 of the Villages DA requires construction of a fire station prior to issuance of the 500th certificate of occupancy for the Villages if a community facilities district (“CFD”) is formed and prior to issuance of the 750th certificate of occupancy if a CFD is not formed. Consequently, the timing of fire station construction is dependent upon factors external to PP2C, specifically whether or not a CFD is formed and also how many certificates of occupancy are issued in other parts of Villages MPD development.

In Ex. 87 Mr. Derdowski asserts that preliminary plat review should address the DA requirement for construction of a fire station. In order to enhance the enforceability of Section 13.4 and similar provisions, a COA will be imposed requiring compliance with the DA provisions that apply to PP2C, including any provisions regarding the provision of infrastructure necessary to serve PP2C. Further, as requested by Mr. Derdowski (with no objections made by the applicant), the COA will further provide that no clearing and grading, utility or building permits will be issued if the applicant fails to follow through on obligations imposed by the Detailed Implementation Schedule for Phase 2 Regional Infrastructure Improvements, Ex. 29.

(3) Fire Impact Fees. Section 13.4 of the Villages DA comprehensively addresses fire mitigation, including requirements that pertain to the design and construction of a satellite fire station that are triggered by the certificate of occupancy for the 250th dwelling unit for the Villages MPD. These Villages DA requirements are referenced in the conditions of approval for this decision. On September 20, 2012 the City also adopted fire impact fees, which will take the place of the fire mitigation fees required in Section 13.4.

(4) Water Supply and Access. As indicated in the City’s staff Report dated November 25, 2014 on page 166, the Fire Department reviewed the proposed subdivision for adequacy of water supply and access for fire protection and medical aid purposes and provided comments and recommended conditions. Those recommended conditions have been adopted for this decision.

***h. Police Protection:***

Mr. Dummitt (Ex. 79) expressed concern about the level of police protection. The Staff Report did not directly address police protection, though it did note the City commissioned a study of general government facilities and proposed impact fees to mitigate for the effects of future development on those facilities as required by Villages DA Section 13.9 General Government Facilities Mitigation, (Ex. 2, Page 173). General government facilities include police protection. The study and fees were to be adopted within three years of the adoption of the Villages DA. The Villages DA was adopted on December 12, 2011. A minor amendment (No. 4) to the Villages DA extended the

deadline by eleven months from the 3 year deadline of December 12, 2014. A City-wide general government mitigation fee is expected to be completed by November 12, 2015.

***i. Fiscal Impacts:***

(1) Overview. Fiscal impacts are adequately by the Villages DA. Section 13.2 of the Villages DA requires a fiscal impact analysis that sets the obligation of the developer to pay for any demands on City services that are not funded by the tax and other revenues generated by PP2C. The applicant's fiscal impact analysis is Ex. 32. The impact analysis was subject to third party review in Ex. 32b and City staff approved the impact analysis in Ex. 32c.

(2) Financial Impact Obligations. In Ex. 87, Mr. Derdowski asserts that a COA should be added to the preliminary plat that provides that building permits will not be issued if the proposal does not comply with the financial impact requirements of Villages MPD COA No. 156, which is focused upon assuring that the Villages MPD will have no adverse financial impact upon the City of Black Diamond. The applicant has proposed a condition that prohibits the issuance of building permits if it fails to pay for any deficits caused by Villages MPD development, which assures compliance with MPD COA No. 156 as requested by Mr. Derdowski. The applicant's proposed condition will be imposed by this decision, with a modification to provide that payment will be made in the year that the deficit is created, instead of just a mutually agreed upon payment schedule.

(3) General Government Facilities Mitigation Fee. In Ex. 87, Mr. Derdowski states that the preliminary plat COAs should require payment of General Government Facilities Mitigation fees, which have not yet been adopted by the City Council as noted above in FOF 6h. The means of enforcement for collection of the fees will be left to the City Council in the formulation of the ordinance imposing the fee. It will not be addressed in the COAs of this preliminary plat.

## CONCLUSIONS OF LAW

**Procedural:**

1. Authority of Hearing Examiner: BDMC 18.08.030 provides that preliminary plat applications are classified as Type 3 applications. BDMC 18.08.060 provides that the Hearing Examiner shall make final decisions on preliminary plat applications after holding an open record hearing.

**Substantive:**

2. Zoning Designation: MPD, Master Planned Development

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

4. Collateral Attacks on Villages Development Agreement. Many of Mr. Derdowski's comments are focused on the inadequacy of DA provisions to address preliminary plat impacts. Mr. Derdowski asserts in several of his comments that the DA cannot be the final word on preliminary plat mitigation, even though the DA itself expressly states it is the final word on various types of implementing project impacts. DA COL II(B)(1), (2) and (3) have already addressed the preclusive effect of the DA and determined that the DA findings on mitigation adequacy cannot be collaterally attacked during preliminary plat review. Those COLs are equally applicable to PP2C.

During the hearing Mr. Derdowski raised a new point on the preclusive effect of the DAs. Mr. Derdowski argued that DAs are not preclusive on issues beyond their scope. He asserts that it is beyond the scope of a DA to restrict the application of preliminary plat criteria. Mr. Derdowski's point hasn't been directly addressed by the case law on collateral attack. However, even if Mr. Derdowski were correct on his point, the examiner has no jurisdiction to invalidate ordinances adopted by the City Council. See *LeJeune v. Clallam County*, 64 Wn. App. 257 (1992); *Chaussee v. Snohomish County Council*, 38 Wn. App. 630 (1984); *Exendine v. City of Sammamish* 127 Wn. App. 574 (2005). It is recognized that in PP1A it was determined that SEPA could be used to supplement the requirements imposed by the DA. This determination was based upon the unique role of SEPA as a source of supplementary permitting authority. However, if the DA provisions addressing exclusive mitigation are ignored in all implementing project review as advocated by Mr. Derdowski, the exclusivity of those provisions would be rendered completely meaningless. The examiner does not have the authority to nullify those provisions in that manner.

It is also highly questionable whether the DA provisions to which Mr. Derdowski objects actually do exceed the scope of DA authority. RCW 36.70B.170(1) provides that a development agreement must set forth the development standards and other provisions that shall apply to the development and its mitigation. RCW 36.70B.170(3) defines "development standards" to include mitigation measures and development conditions. As pointed out by Dennis Reynolds in Ex. 94, RCW 36.70B.170(1) further provides that a development agreement must be consistent with GMA adopted development standards. COL No. 5 of the ordinance adopting the Villages DA is a City Council conclusion that the Villages DA complies with applicable GMA development standards as required by RCW 36.70B.170(3). From all of these provisions is clear that DAs can address mitigation and that the City Council has determined in COL No. 5 of its Villages DA ordinance that setting mitigation in advance of implementing projects is consistent with its implementing project development standards. There is no implementing project regulation that directly precludes the setting of mitigation in advance of an implementing project application. This is not to say that such "advance" mitigation is in keeping with the intent of these implementing regulations. There are good arguments on either side. A determinative factor for a court will likely be that if the "advance" mitigation is not consistent with implementing project regulations, this should have been addressed in an appeal to the Villages DA.

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

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

5. PP2C is Consistent with Applicable Zoning Regulations. Bulk, dimensional and use standards typically associated with “zoning regulations” are set in the MPD zoning district by the required MPD ordinance and development agreement. The Staff Report contains a detailed assessment of compliance with MPD standards as well as the Villages MPD COAs and Villages Development Agreement at p. 21-39, 48-61, 68-75, 88-90, 92-97, 103-109, 114-115, 118-126, 128-130, 132-160, 166, and 168-173. The review and analysis, including any Findings of Fact and Conclusions of Law included therein, are incorporated by this reference as if set forth in full to the extent the staff report doesn’t conflict with the findings and conclusions of this decision.

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

6. PP2C is Consistent with Comprehensive Plan. The Comprehensive Plan designation of the properties is Low Density Residential and Master Planned Development Overlay. Regarding the MPD Overlay, the BDCP states, “*Areas with an MPD overlay designation are intended to develop only subsequent to approval of an MPD permit pursuant to Black Diamond Municipal Code.*” The Villages Phase 2C Preliminary Plat is an implementing project of the approved Villages MPD. It is therefore consistent with the “*Master Planned Development Overlay*” Comprehensive Plan map designation. The proposal also implicates other Comprehensive Plan policies. Those policies are identified and applied at pages 20, 45-48, 64, 88, 91, 103, 114, 117, and 131, of the staff Report, which with the exception of CF-27 are adopted and incorporated by this reference as if set forth in full, including all findings of fact and conclusions of law therein to the extent the staff report doesn’t conflict with this decision.

7. PP2C Inconsistent with Comprehensive Plan Policy CF-27 as Originally Proposed. As originally proposed, PP2C fails to comply with Comprehensive Plan Policy CF-27 as asserted by Brian Derdowski in Ex. 86, p. 16 and 18. Policy CF-27 requires that prior to approving development, the City must ensure that “*the sanitary sewer system necessary to support development meets City requirements and adequate to serve the development at the time the development is available for occupancy and use.*” As determined in FOF No. 6e2, as currently proposed, there is insufficient sewer capacity to serve PP2C. COA No. 89 is designed to remedy this situation by requiring phased final plat approval, with phases only allowed to proceed upon an adequate showing of sewer capacity. As conditioned, PP2C is consistent with Policy CF-27.

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

8. PP2C Is Consistent with Applicable Design Guidelines. The proposal is consistent with applicable design standards as assessed in the staff report, including pages 40-41, 59-63, 77, 111, 117, 128, 130, 149-162 and 172 of the staff report. This analysis establishes compliance with all applicable design regulations and provides the public an opportunity for review and input as to design standard consistency.

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

9. The Density of PP2C is Consistent with Applicable Zoning Code and Other Standards. PP2C is equal to or higher than the minimum allowable density and less than the allowable maximum density established by BDMC 18.98.120(F). Several density standards apply. The applicable minimum density requirement is specified in BDMC Section 18.98.120(E), which is the base density designated in any applicable pre-annexation agreement or development agreement and in the absence of any such agreement, the minimum density designated in the comprehensive plan. The base density specified in the Black Diamond Comprehensive Plan for MPD properties is 4 units per gross acre; the density specified in the Black Diamond Urban Growth Area agreement is also 4 units per acre. The allowable maximum density for MPD properties is set forth in BDMC 18.98.120(F), is 18 units per gross acres. Therefore, the minimum density is 4 units/gross acre and the maximum density is 18 units/gross acre. MPD COA No. 131 of The Villages MPD establishes a minimum density requirement of 4 units/net acre for residential development and requires a separate calculation for each development parcel of an implementing phase (using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010)). This essentially refines the minimum density to 4 units/net acre and maintains the maximum of 18 units/gross acre.

MPD COA No. 128 of The Villages Table 4-1 establishes the residential density range for parcels V28 (25-203) and V29 (54-127). The notes to Table 4-1 establish the category of MPD-L (low density residential) with a density range of from 4 to 8 units per acre. As shown on Sheet CV3 of Ex. 2, "Land Use Capacity Table," the PP2C proposes a gross residential density of 5.13 units per acre and a net density of 6.49 units per acre, which meets the definition of low density.

Sheet CV3 of PP2C (Exhibit 2) contains a section entitled "Land Use Capacity Table" which denotes Parcel V28 has a net development area of 18.63 acres and 140 lots are proposed. Table 4-1 authorizes 25 to 203 units. Net density would be 7.51 units/acre, within the density range of 4 to 8 net units/acre.

Parcel V29 has a net development area of 12.63 acres and 63 lots are proposed. Table 4-1 authorizes 16 to 127 lots. Net density proposed is 4.99 units per acre, within the allowable range of 4 to 8 net units/acre. Therefore, the proposal is consistent with Table 4-1 and the net density requirements.

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

10. PP2C Provides Appropriate Infrastructure and Provisions for Public Health, Safety and Welfare and is in the Public Use and Interest. As conditioned and as determined in Finding of

Fact No. 6, the subdivision provides for appropriate infrastructure as required by the standard quoted above. As determined in Finding of Fact No. 5, there are no significant adverse impacts associated with the proposal. The proposal serves to accommodate urban growth within an urban growth area in furtherance of the goals and policies of the Washington State Growth Management Act and also serves to implement the Villages Master Plan Ordinance and Development Agreement as intended by the City Council that approved those documents. For all these reasons, the proposal makes appropriate provision for public health, safety and welfare and is in the public interest.

11. Examiner Does Not Have Authority to Require SEPA Review of Detailed Regional Infrastructure Improvements. In Ex. 86, p. 16, Mr. Derdowski asserts that compliance with the Detailed Regional Infrastructure Improvements, Ex. 28, should be subject to a COA. Staff has already recommended compliance with Ex. 28 in COA No. 5, adopted into this decision. Mr. Derdowski also asserted that SEPA review should have been conducted for the list. The examiner only has authority to consider SEPA appeals of SEPA threshold determinations and EIS adequacy. Any other assertions of SEPA inadequacy are beyond the examiner's jurisdiction.

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

12. Flood Potential. No development in the floodplain associated with Rock Creek is proposed and the residential subdivision is well outside the floodplain. The wetlands and full stream and wetland buffer tracts will protect the Core wetlands. As a result, those areas will maintain the rainwater absorption function of the wetlands and reduce the chance of future flooding.

13. As determined in Finding of Fact No. V(6)(a), the storm drainage design of PP2C routes stormwater to several places. Rain gardens will infiltrate storm water locally. Non-polluted runoff from roof drains will be routed to recharge wetlands. Water from pollution generating sources will be routed to the storm drainage facilities in PP1A. As required by COA 86 and 87 the applicant will be required to perform baseline monitoring of all adjacent wetlands and shall be required to submit the design for infiltration facilities for review and approval. PP2C utilizes appropriate storm water facilities designed in accordance with the 2005 SWMWW. As conditioned, the proposal will not increase the risk of flood or inundation, either on-site or off-site (except for storms larger than 100-year event, which are not required to be regulated).

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

14. Consistency with Development Standards. The proposed subdivision has been reviewed by staff for consistency with applicable portions of Title 17 (Divisions of Land), Title 18 (Zoning), and Title 19 (Environment). As determined in the staff report, to the extent not in conflict with this decision, the proposal is consistent with all applicable development standards.

15. SEPA Designated Official Did Not Have to Approve Wetland EI Classification. In Ex. 50 Ms. Bryant asserts that it was unclear whether the segregation of the classification of Wetland E1 was approved by the SEPA Responsible Official, since the approval document, an August 22,

2013 memorandum, was signed by two different people holding the title of SEPA responsible official. The classification of Wetland E1 was done in response to a SEPA condition imposed by the PP1A decision, PP1A COA 87. This condition required the City's MDRT team to re-evaluate the Class II designation for Wetland E1. The City's SEPA requirements and the condition did not require the SEPA official to approve the reclassification.

16. The Examiner Has No Jurisdiction to Require Increases in Buffer Width. In Ex. 50, Ms. Bryant asserts that even if Wetland E1 retains its Class II classification as proposed by the applicant, its buffer should be increased to 225 feet since it is part of a wetland system protected by 225 foot buffers. Ms. Bryant cites to BDMC 19.10.230(G), which provides that the Mayor or his/her designee has the authority to require increased wetland buffers, when a larger buffer is needed to protect other sensitive areas. The examiner has no authority to require increased buffers under this provision, since he is not acting as the designee of the mayor to make this type of decision. The mayor has retained the authority to make this decision to himself, as evidenced by the fact that he authorized a reduction in the buffer width along the northern part of Wetland E1 via buffer averaging as authorized by BDMC 19.10.230(H).

17. Examiner Has No Jurisdiction Over Alleged Federal Wetland Violations. In Ex. 50, Ms. Bryant asserts that the Army Corps needs to verify the wetland boundaries. As acknowledged by Ms. Bryant, Section 8.2.1 of the Villages DA sets the wetland boundaries for the proposal. The hearing examiner only has the authority granted to it by city ordinances. (See *LeJeune v. Clallam County*, 64 Wn. App. 257 (1992); *Chaussee v. Snohomish County Council*, 38 Wn. App. 630 (1984); *Exendine v. City of Sammamish* 127 Wn. App. 574 (2005).) The Villages DA, adopted by ordinance, doesn't authorize the reconsideration of the wetland boundaries set by it. Further, the criteria for approval of the preliminary plat do not include compliance with federal wetland regulations. For these reasons, the examiner has no jurisdiction to consider compliance with Army Corps wetland standards.

18. Trails and Hiking in Wetland Buffers. In Ex. 87 Mr. Derdowski asserts that trails and hiking aren't allowed in wetland buffers. BDMC 19.10.220(B)(3) authorizes trails in the locations proposed by the applicant. BDMC 19.10.060(A)(3) authorizes hiking within wetland buffers.

19. PP2C Wetlands Classified as Headwater Wetlands. In Ex. 87, Mr. Derdowski claims that the staff report is incorrect in concluding that the PP2C wetlands are not headwater wetlands. Mr. Derdowski states that the wetlands should be classified as headwater wetland because they are hydrologically connected to Rock Creek. This position is incorrect. BDMC 19.10.210(B)(2) limits the headwater wetland classification to wetlands associated with Grinder, Lawson and Ravensdale Creek. All the wetland experts involved in this case, including Mr. Derdowski's own wetlands expert, classify the PP2C wetlands as one of Category I-IV wetlands, as governed by BDMC 19.10.210(B)(3).

20. No Additional Wetland Mitigation Required. In Ex. 87, Mr. Derdowski asserts that the staff report is incorrect in concluding that no wetland mitigation is required pursuant to BDMC 19.10.140(A). As determined in FOF No. 5a, the proposal will not adversely affect wetlands. No additional mitigation is necessary.

21. Low Impact Development Applied to Maximum Extent Feasible. In Ex. 87, Mr. Derdowski asserts that low impact development measures are not being applied to the maximum extent feasible as required by BDMC 19.10.220(D)(4)(b). As the only example, Mr. Derdowski asserts that utility corridors are proposed within wetland buffers, contrary to the objectives of BDMC 19.10.220(D)(4)(b)(iv), which encourages utility corridors to be located within roadway and driveway corridors to avoid unnecessary clearing. As staff noted on this requirement in the staff report, utility corridors, except for stormwater dispersion trenches, are located within roadways. The staff's position on this is consistent with the plat drawings of the proposal, Ex. 2. Given the numerous low impact measures identified in the staff report and the absence of any information on how additional measures could be incorporated, it is concluded that the proposal low impact measures are incorporated to the maximum extent feasible as required by BDMC 19.10.220(D)(4)(b).

22. Building Design Review. In Ex. 87 Mr. Derdowski notes that since the applicant submitted photographs and illustrations of the different types of house design it intends to employ, these photographs and illustrations should be reviewed for compliance with applicable designs standards during preliminary plat review. There are no code provisions that require this level of design review during preliminary plat review. Staff has assessed design review to the extent necessary to assure that the proposed lot layout will not interfere with design standard compliance. Beyond this, design review for specific building design is appropriately addressed during building permit review. A COA will be added to ensure that lot specific building design is addressed during building permit review.

23. Approval of CCRs. In Ex. 87 and p. 15 of Ex. 86 Mr. Derdowski argues that the covenants, conditions and restrictions (CCRs) required by applicable development standards for PP2C should be subject to more than just approval as to form by the City Attorney. Preliminary plat requirements pertaining to CCR provisions are specific and ministerial enough to be addressed by administrative review. The COAs will require approval by staff in addition to City Attorney review.

24. Conceptual Utility Plans are Adequate for Preliminary Plat Review. In Ex. 86, p. 17, Mr. Derdowski disputes compliance with DA Villages Section 7.1.2, which requires that the applicant construct utilities in conformance to the BDEDCS. Staff concluded that the utility plans sufficiently establish compliance for preliminary plat review. Mr. Derdowski believes the plans are too conceptual. The utility plans only need to be detailed sufficiently to show that proposed preliminary plat design can accommodate required utilities in a manner consistent with applicable development and design standards as determined during engineering review. Mr. Derdowski has offered no evidence or explanation as to how or why the staff's judgment on the adequacy of the plans is in error. Given the expertise of staff in reviewing preliminary plats and the absence of any evidence undermining staff's conclusions, it is determined that the submitted utility plans are sufficiently detailed for preliminary plat review.

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

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

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

26. As determined in Finding of Fact No. 6, appropriate provision was made for all necessary infrastructure, which is based in part upon a determination that concurrency is met for all the facilities. Concurrency is more specifically addressed in the staff report, which provided as follows (all factual determinations herein, as in all other COLs, are to be taken as findings of fact):

- Stormwater. The proposed stormwater facilities can be constructed on site to manage the amount of projected runoff from impervious and pervious surfaces as stated in the Preliminary Drainage Analysis report and as reviewed by staff and the consulting engineer. Stormwater flows from 17.1 acres of pollution-generating impervious surfaces in PP2C will be directed to the existing Phase 1A regional stormwater pond which has capacity to accept flows from 167 acres of impervious surfaces. Phase 1A is expected to drain from 27.7 acres of impervious surfaces. Therefore, there is a finding of concurrency for stormwater systems for PP2C.
- Water supply. The City provided evidence in a memorandum that there is sufficient source supply from the Spring Field and from the Tacoma Intertie for total build-out of the MPD and flows in the area of PP2C would be able to meet the demand. Improvements will be needed to the chlorine treatment facility prior to any building permits being issued and a temporary lift station will also be needed after 561 units have received permits. With conditions of approval to implement these requirements, there will be adequate capacity at the time of development.
- Sanitary sewer. As noted in the Findings of Fact, the proposal does not provide for adequate sewer capacity as originally proposed. In order to remedy this deficiency, the COAs require final plat review to be phased and phases are only to be approved upon a demonstration of adequate sewer capacity.
- Transportation. The Traffic Monitoring Report (Exhibit 25) evaluated concurrency of the off-site transportation system for Phase 2. Table 1 of the report summarizes the intersection improvements and construction timing needed to meet demand. No improvements would be required to be constructed by any implementing project of Phase 2 until certificates of occupancy are issued for the 1,393rd ERU. Since PP2C build-out would be 137 ERUs, and Phase 1A is 1,190 ERUs, no improvements will be triggered by the 1,327 ERUs for the combined plats. The road capacity for the on-site road network meets the standards of the DA, which is one lane per 600 peak hour strips, once it connects to the existing

road network through construction of roads in Phase 1A. There will be sufficient transportation capacity for PP2C at that point.

The water, sanitary sewer, and transportation facilities for PP2C are dependent on construction of facilities in Phase 1A (PLN11-0001, approved). While these systems are planned to connect to facilities not yet built in Phase 1A, construction of those facilities has begun. The dependency is as follows:

- Pipes to drain stormwater from PP2C to the regional pond in Phase 1A will need to be constructed.
- Phase 1A water mains in the future Willow Avenue SE need to be built to Road A of PP2C to provide a connection to the existing lines in Roberts Drive.
- Phase 1A sanitary sewer lines in the future Willow Avenue SE need to be built to proposed gravity lines in Road A of PP2C.
- Willow Avenue SE in Phase 1A needs to be constructed to connect Road A and Woonerf A and the lots in the PP2C subdivision to the existing Roberts Drive.

The applicant has indicated the intent to provide the facilities in Phase 1A to serve PP2C. A general note on the Preliminary Plat (Sheet No. CV4) states that the water, sewer, and stormwater systems necessary to serve the plat must be completed or bonded to be completed prior to final plat approval. The phasing plan in Exhibit “K” of the DA recognizes that development is tiered on previous, approved phases as follows:

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

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

Notwithstanding the phasing plan of The Villages MPD, the applicant must demonstrate that the facilities necessary to serve the lots in PP2C will be available at the time the building permit applications are submitted for homes in PP2C.

To provide additional assurance of concurrency, the applicant recorded a temporary access and utility easement over Phase 1A (Exhibit 44) that is sufficient to provide a connection for all essential facilities between PP2C and existing city facilities in Roberts Drive. Therefore, should the Phase 1A facilities be unavailable by the time of final plat approval for PP2C, the applicant will have the requirement to construct and connect those facilities. For these reasons, staff find there is concurrency for public facilities.

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

27. Consistency with MPD Requirements. As outlined in the staff report, the proposal is consistent with all applicable Villages MPD and DA requirements. Specific areas of concern are addressed in the following COL.

28. Examiner has no Jurisdiction to Assess Adequacy of Fiscal Impact Analysis. In Ex. 87, Mr. Derdowski asserts that the fiscal impact analysis submitted by the applicant is deficient because it doesn't address the impacts of PP2C independently of PP1A. Section 13.2 of the Villages DA provides that the fiscal impact analysis is subject to the approval of the "designated official". This approval was issued in Ex. 32c. The examiner has no jurisdiction to re-evaluate this approval absent an appeal to the examiner authorized by the BDMC.

29. Use of Native Species for Landscaping Required. In Ex. 51, Judith Carrier notes neither the applicant nor staff addressed MPD COA 64 which requires the primary use of native plants in lawns and streetscape landscaping while minimizing the use of lawns whenever possible. The applicant's response is simply to state this is an MPD COA that requires no further discussion (Ex. 71). The staff's response is that this will be enforced with utility or building permit applications (Ex. 2, page 22). Mr. Derdowski notes that a COA should be added to the preliminary plat approval to require compliance with General Principles and Site Planning A(3) of the Design Guidelines for Master Development, which requires restoration of pre-development hydrology conditions and the use of native species for landscaping. A COA will be added requiring the CCRs to require native species for landscaping. Restoration of pre-development hydrology is addressed in FOF No. 5A10.

30. Applicant Must Follow Design Guideline Restrictions on Grading Plans. Mr. Bortleson expressed concern that there appeared to be no provision for effective barriers to ensure clearing and grading did not intrude into wetland buffers (Ex. 10). Mr. Derdowski notes that a COA should be added to the preliminary plat approval to require compliance with General Principles and Site Planning A(6) of the Design Guidelines for Master Development, which provides that grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain natural contours. Since this policy does not appear to be fully integrated into the City's clearing and grading permit standards, it will be added as a COA, including a provision that requires measures be taken to prevent interference with wetland buffers.

31. DA Phasing Requirements Met. In Ex. 86 Mr. Derdowski asserts that staff has not adequately addressed the phasing requirements of Villages DA 11.7. Pages 56-58 of the staff report provide a detailed description of staff's phasing analysis and demonstrate compliance with DA 11.7.

32. Review Process Does Not Require Written Findings and Conclusions. In Ex. 86, p. 27-29, Mr. Derdowski asserts that DRC design review approvals required by Villages DA 5.1 must

be supported by written findings and conclusions. There is no code provision that requires findings and conclusions. The DRC approval process complied with the Villages DA.

33. No Certificate of Sewer Availability Required. In Ex. 86, p. 19 Mr. Derdowski asserts that certificates of sewer availability cannot be substituted by the Villages DA, even though the Villages DA 7.3.1 provides that “any implementing project application process that calls for a certificate of sewer availability shall be satisfied by reference to this Agreement.” There is no express requirement for certificates of sewer availability in preliminary plat review. Consequently, 7.3.1 is not construed as applicable to this preliminary plat review.

34. Cut and Fill Balanced as Required by MPD COA No. 110. In Ex. 87, Mr. Derdowski alleges noncompliance with Villages MPD COA No. 110, which requires the “prior to the approval of the first implementing project or site development permit within a phase, the applicant shall submit an overall grading plan that will balance cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.” The applicant has submitted an overall grading plan that demonstrates compliance with the 20% requirement for all of Phase 2. Mr. Derdowski asserts that the 20% requirement applies to each individual implementing project. The language of COA No. 110 does not support this interpretation. If COA No. 110 applied to each implementing project, it would simply state that all implementing projects must meet the 20% requirement and there would be no need to use the “overall” or make any reference to phases. Since the COA does require an “overall” plan in the context of a master plan phase, it is concluded that the 20% requirement only applies to an entire MPD phase and that the overall grading plan submitted by the applicant complies with this requirement.

35. Mitigation Facilities Appropriately Located. In Ex. 86, Mr. Derdowski asserts that staff has incorrectly assessed compliance with Villages MPD COA 63, which requires that mitigation facilities be within project limits or that the City have an agreement for long term ownership and maintenance for facilities outside city limits. The staff report noted that all mitigation facilities are located within PP2C. Mr. Derdowski noted that PP2C will use PP1A stormwater pond. In response to Mr. Derdowski’s comments, staff as amended its staff report analysis of Villages MPD COA 63 to reflect this fact. As amended the staff report analysis is correct and PP2C complies with MPD COA 63.

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

36. Connectivity. As determined in Finding of Fact No. V(6)(b)(11), (13) and (16), the proposed trails, sidewalks, bike routes and roadways provides an interconnected, multi-modal network within PP2C and to the surrounding area and also provides for connectivity to adjoining properties.

The connectivity of wildlife corridors for large animals has been fully addressed in the FEIS and no major wildlife corridors are designated for PP2C. However, the FEIS also recognizes a benefit to connecting more minor wildlife corridors between wetlands.

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

37. Cul-de-sac. No cul-de-sacs are proposed at full build-out of the PP2C.

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

38. Dedications. Numerous tracts are proposed for access and utilities; see the Tract Table on Sheet CV4 (Exhibit 2). Sheet CV4 clearly identifies property that is to be publicly owned. Per Section 6.5 of Villages DA, all street right-of-way will be dedicated to, owned and maintained by the City except for private streets which include alleys, auto courts serving less than 20 dwelling units and Main Street (Villages Pl. SE). A recommended condition of approval will require all dedications to be shown on the final plats within PP2C.

PP1A provided a 12.5 acre elementary school site (lots 1L and 2L) pursuant to the CSMA dated January 24, 2011 (recorded under King County recording no. 20110624001156). The CSMA provides for the timing of conveyance of the school site to the Enumclaw School District. Per Section 13.3 of Villages DA, additional school mitigation is accomplished through the CSMA, which includes payment of a school mitigation fee. No further school improvements are required.

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

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

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

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

39. Compatible Streetscape and Open Space. PP2C is the second implementing project for The Villages MPD. Its street system is designed to connect and complement that of PP1A. **BDMC 17.15.020(A)(13):** The proposed subdivision provides safe walking conditions for students who walk to and from school; and

40. Safe Walking Conditions for School Children. As determined in Finding of Fact V(6)(g), the proposal provides for safe walking conditions to and from school. The preliminary plat for PP2C provides sidewalks on all streets, which will connect with streets in Phase 1A, where the schools will be developed. In addition, development of PP2C could trigger the requirement for constructing pedestrian facilities along Roberts Drive per MPD permit condition #32 and the requirement is included as a condition of approval for the PP2C preliminary plat. The criterion is met.

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

41. MPD Permit condition #120 requires tree inventories to be completed for implementing projects. The applicant commissioned a tree inventory based on 42 plots sampled over 41 acres covering the area proposed to be cleared for the residential subdivision. Although not every tree was counted, the inventory revealed that the tree density likely meets the minimum standards for health of the adjacent buffers. The applicant has not provided information on tree preservation consistent with chapter 19.30 but this is not required to be submitted until the applicant requests a clearing and grading permit. The applicant has stated in the plat notes that areas outside of sensitive areas and buffers are expected to be cleared and that provisions will be made for compliance with the tree ordinance in Exhibit “E” of The Villages MPD.

The applicant has agreed to a condition of approval that, concurrent with submittal of utility permits for PP2C, they will submit a report with the exact number of significant trees to be removed, and identify mitigation per BDMC 19.30.070 (e.g., planting of replacement trees or payment to the City tree mitigation fund). Trees proposed for replanting shall be native trees per condition of approval #45. Staff finds that the proposal complies with this criterion.

Recommended conditions of approval related to tree removal:

- a. Concurrent with submittal of Utility Permits for any final plat, the Applicant shall submit a report with the exact number of significant trees to be removed in that plat and identify mitigation per BDMC 19.30.070 (e.g., planting of replacement trees or payment into the City tree mitigation fund).
- b. Trees proposed for replanting shall be native trees per Villages MPD COA 122.

## **DECISION**

PP2C is approved as depicted in the plat drawings in Ex. 2, subject to the following conditions of approval:

### GENERAL

1. All on-site public utilities (water, sewer, and stormwater pipes and facilities) and streets necessary to serve PP2C must be completed or bonded prior to final plat approval.

Maintenance responsibility assigned to private property owners are to be indicated on the plat for PP2C. These conditions will be reviewed at the final plat stage.

2. Prior to final plat approval of Plat2C, the Applicant shall submit Covenants, Conditions and Restrictions (CCRs) for such division for review and approval by the Designated Official as defined in The Villages MPD Development Agreement. The Designated Official's review and approval shall be limited to the CCRs compliance with (i) the Conditions of Approval of The Villages MPD Permit (Black Diamond Ord. No. 10-946); (ii) the provisions of The Villages MPD Development Agreement dated December 12, 2011 (Black Diamond Ord. No. 11-970); and (iii) the inclusion of the specific items described, in general, below. The City Attorney shall approve the CCR as to form. Provided, if CCRs have already been submitted and approved by the Designated Official that bind a certain plat division, this condition shall be deemed satisfied for purposes of such division. The CCRs shall contain:
  - a. A covenant stating the property owners' or HOA's specific responsibilities for stormwater facility maintenance (including rain gardens) and which will be included on the face of the plat and recorded against each lot in the subdivision.
  - b. A covenant stating the property owners' or HOA's specific responsibilities for maintaining and ensuring public access to the public trail and parks tracts within PP2C. Covenant to include maintenance of pet waste stations.
  - c. A covenant stating the property owners' or HOA's specific responsibilities for maintaining and protecting the sensitive areas within designated tracts.
  - d. A statement that all alleys shall be privately owned and maintained by the applicant and/or the owners of property in the plat.
  - e. A statement that the applicant or future Homeowners Association shall be required to maintain all street side landscaping, (pursuant to MPD Permit condition of approval No. 23).
  - f. A statement of the property owners' or HOA's specific responsibilities, if any, for maintaining signage prohibiting parking on private streets and any enforcement responsibilities.
  - g. An integrated pest management system to limit the use of fertilizers, herbicides and pesticides within twenty-five feet of the buffer of wetlands E7, E8, and E10, within fifty feet of the buffer of wetland E1 and within one hundred feet of the buffer of wetland TOS.
  - h. Restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc.) that are known to adversely impact water quality of runoff.
  - i. A prohibition on exterior light intrusion into, or direct lighting of, the buffer areas.
  - j. A provision allowing the use of green technologies such as solar panels.

- k. The property owners' or HOA shall comply with the General Principles and Site Planning A(3) of the Design Guidelines for Master Development, which requires restoration of pre-development hydrology conditions and the use of native species for landscaping.
- l. The following two paragraphs related to street maintenance:
  - i. Master Developer agrees to maintain all private streets, alleys and autocourts serving 20 units or less as constructed in accordance with each approved implementing project, for a period of three years from final plat recording or other implementing approval, unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners' Association), the Master Developer's street maintenance obligation, as set forth herein, shall automatically renew for an additional two year period, and continue every two years thereafter. The Master Developer, in its sole discretion, may elect to transfer the private street maintenance obligation to a homeowners' association or other acceptable entity following its initial three year obligation. The Master Developer's failure to adequately maintain private streets in accordance with this agreement will result in result in written notice from the City to the Master Developer requiring compliance. If a private street is not maintained in a manner adequate to maintain safe passage, in the reasonable determination of the Designated Official within ten (10) days of delivery of the written notice the City may perform the required maintenance with the reasonable costs associated therewith charged to the Master Developer. In the event of an emergency, the applicable notice period shall be reduced to twenty-four (24) hours and the City may provide notice via a phone call to the Master Developer's designated representative.
  - ii. Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City's total costs arising from its performance of the maintenance shall be paid by the Master Developer or Homeowners' Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended.
3. In order to ensure compliance with The Villages MPD Condition of Approval No. 156, the Master Developer's annual Total Funding Obligation for a given year shall be equal to or greater than the Net Annual General Fund Deficit for such year (as set forth in Table 2 of the Villages PP2C Fiscal Impact Analysis dated April 28, 2014 and approved June 16, 2014),

provided a deficit is shown in such table, until a new fiscal analysis is prepared and approved by the City's Designated Official pursuant to the terms of The Villages MPD Development Agreement Section 13.6, which shall be no later than the earlier of (1) June 16, 2019; (2) prior to the start of the next phase of The Villages and/or Lawson Hills MPDs; or (3) during Annual Review if the Master Developer elects to have a new targeted fiscal analysis prepared in its sole discretion for the next calendar year. At such time, the Master Developer's annual Total Funding Obligation to ensure compliance with Condition of Approval No. 156 shall be re-evaluated. No implementing permits or building permits shall be issued by the City of Black Diamond for PP2C of The Villages MPD if the Master Developer fails to make an annual Total Funding Obligation payment as described herein within the calendar year the deficit is created as part of the Annual Review. All capitalized terms not otherwise defined in this condition shall be as defined in the MPD Funding Agreement (Exhibit "N" of The Villages MPD Development Agreement).

4. All easements assigned to private property owners shall be shown on the face of the final plat.
5. Compliance with the terms and conditions of the Detailed Implementation Schedule for Phase 2 Regional Infrastructure Improvements (Exhibit 29, dated January 28, 2014 and approved on June 13, 2014) is required. This condition will be enforced during utility permit approval. [Note: MDNS Mitigation Measure]

#### STORMWATER

6. All stormwater management for quality and quantity shall comply with the 2005 Stormwater Management Manual for Western Washington (SWMMWW).
7. Prior to approval of the first utility Permit for PP2C which enables impervious surface construction all off-site utilities and improvements necessary to convey, treat and detain stormwater (as shown for PP2C on Sheets RS1 through RS4 and as described in the Preliminary Drainage Report for PP2C and Phase 1A [Exhibit 20]) shall be in place and operational. The applicant shall provide certification from the Master Developer that all off-site utilities and improvements necessary to meet this condition are complete and in compliance with the conditions of approval for Phase 1 Plat A. This condition will be enforced with utility permits.
8. The stormwater design for the PP2C plat must not modify the predevelopment hydrology for the adjacent receiving wetlands. The approved stormwater deviation triggers the applicable requirements for development within the Lake Sawyer drainage basin and the phosphorus monitoring requirements in Exhibit "O" of the Development Agreement. Storm drainage design for PP2C shall utilize an HSPF based continuous runoff model (such as WWHM). For drainage facility design receiving runoff from drainage basins 320 acres and larger in total area, a calibrated model should be considered. [Note: Part this is a condition of approval of the Stormwater Deviation Determination and required by DA Section 7.4.3.]
9. The HOA or Master Developer must obtain a franchise for private stormwater systems that are in rights-of-way. This condition will be enforced during utility permit review.
10. Maintaining the private stormwater drainage system in PP2C will be the financial responsibility of the applicant, and/or an HOA.

11. As a condition of the City's approval of the first utility permit, the applicant shall provide sufficient information for the City to ensure that MPD permit conditions of approval Nos. 67, 68, 70, 73, 75, 77, 79, 81, 82, and 85 (Exhibit 14) have been satisfied. Prior to the approval of the first utility permit that allows construction of impervious surfaces that will drain to Lake Sawyer, the applicant shall comply with MPD Condition Nos. 81 and 85 including: establishing a pre-construction baseline phosphorus load from the project prior to the construction of impervious surfaces; identifying any AKART opportunities related to phosphorus reduction, including monitoring capabilities in the stormwater utility system; and a program for approval of an end-of-water-year comparison of actual and base-load phosphorus discharge, after impervious surfaces have been constructed. (These items may not be deferred through surety.) This condition must be satisfied before the City will issue the first utility permit that allows impervious surface construction.
12. The applicant shall submit for review and approval the phosphorus baseline monitoring referenced in the Development Agreement, Exhibit O, of which the most recent update is Exhibit 13c. The City shall not approve any permits allowing construction of any impervious surfaces until the monitoring report is submitted and approved. This condition will be enforced with utility permits.
13. The Preliminary Drainage Analysis (Exhibit 20) must be updated during final engineering review of PP2C to account for any subtle design changes from the preliminary plat design to the final engineering construction drawings. [Note: MDNS Mitigation Measure].
14. As the first subdivision in Phase 2, PP2C must comply with the conditions of the current NPDES permits (issued to the City by the Washington State Department of Ecology) in effect on November 8, 2013.

#### TRAFFIC AND TRANSPORTATION

15. Prior to the approval of the final plat for PP2C, all off-site transportation improvements required in Preliminary Plat 1A necessary to provide service to PP2C (including Roberts Road frontage improvements, Willow Drive and Villages Parkway, and the applicable off-site Phase 2 Implementation Projects), must be completed and accepted by the City or bonded with an appropriate surety.
16. The transportation facilities in PP2C shall comply with the terms and conditions set forth in the Traffic Impact Study prepared by Transpo Group dated December 19, 2013. (Exhibit 24) The terms and conditions include, but are not limited to, provision of three, two-lane public roadways with on-street parking, curb bulb-outs at 13 intersections and at two mid-block locations (page 5 of the Traffic Impact Study), four private alleys and three woonerfs. Roads A, B, and C shall be dedicated to the City following their acceptance by the City.
17. All alleys and woonerfs in PP2C will be private and maintained by the applicant or future Homeowners' Association.
18. The applicant or future Homeowners' Association shall be required to maintain all street side landscaping and this shall be a condition on the face of the final plat.
19. The deviation from road standards for woonerfs is limited to Woonerf A, B, and C on PP2C.

20. Woonerfs A, B and C shall be designed to have unique paving (asphalt is not allowed) and to have distinct patterns or textures integral with the paving system. [Note: this is a condition of approval of the deviation of road standards for woonerfs.]
21. Houses adjacent to a woonerf, including lots 165 through 184, must address the woonerf with entrance doors and pathways that form a direct connection between the door and the woonerf. The houses on these lots must be designed so that the woonerf-side of the house does not appear to be the ‘back’ of the house and must be articulated and detailed in a manner similar to the front of the house. [Note: this is a condition of approval of the deviation of road standards for woonerfs.]
22. The alternative width configuration for rain gardens (Exhibit 21) within or adjacent to the right-of-way must comply with the Alternative Road Section Deviation approval.
23. Changes to the width of the rain gardens must not change other components of the roadway section. [Note: this is a condition of approval of the alternative width configuration for rain gardens.]
24. The rain gardens in PP2C must be privately owned and maintained by the HOA. [Note: this is a condition of approval of the alternative width configuration for rain gardens.]
25. Master Developer agrees to maintain all private streets, alleys and autocourts serving 20 units or less as constructed in accordance with each approved implementing project, for a period of three years from final plat recording or other implementing approval, unless otherwise agreed upon by the City and the Master Developer (or applicable Homeowners’ Association), the Master Developer’s street maintenance obligation, as set forth herein, shall automatically renew for an additional two year period, and continue every two years thereafter. The Master Developer, in its sole discretion, may elect to transfer the private street maintenance obligation to a homeowners’ association or other acceptable entity following its initial three year obligation. The Master Developer’s failure to adequately maintain private streets in accordance with this agreement will result in result in written notice from the City to the Master Developer requiring compliance. If a private street is not maintained in a manner adequate to maintain safe passage, in the reasonable determination of the Designated Official within ten (10) days of delivery of the written notice the City may perform the required maintenance with the reasonable costs associated therewith charged to the Master Developer. In the event of an emergency, the applicable notice period shall be reduced to twenty-four (24) hours and the City may provide notice via a phone call to the Master Developer’s designated representative.
26. Pursuant to Condition of Approval No. 22 of the MPD Permit Approval, if the Master Developer fails to perform such maintenance as required herein and, as a result, the City performs such required maintenance, the City’s total costs arising from its performance of the maintenance shall be paid by the Master Developer or Homeowners’ Association, as applicable within thirty (30) days of the date of invoicing by the City. Any costs not paid within thirty (30) days of invoicing by the City shall be delinquent, shall have added to them a penalty of ten (10) percent plus interest accruing at the rate of twelve (12) percent per annum from the date of delinquency until paid. Delinquent costs, penalties added thereto and the interest on such costs and penalties shall be a lien against all property within the Implementing Project in which the private street, alley or autocourt is located, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer

rates and charges set forth in RCW 35.67.220 – 280, as amended. The following note language shall be added to the face of each recorded plat or binding site plan:

- a. In the event that the Owners' Association/Homeowners' Association fails to perform any maintenance of private street, alley or auto court as required by Section 6.5 of the Villages Development Agreement recorded under recording No. 20120130000655 and, as a result, the City of Black Diamond performs said required maintenance, the lot owners of the pla acknowledge and agree on behalf of themselves and all successors and assigns that, if not paid within thirty (30) days of invoicing by the City, the City's total cost arising from the City's performance of said required private street maintenance plus any penalties and interest thereon as provided by The Villages MPD Development Agreement shall be a lien against all property, including individual lots, within this plat, and said lien may be foreclosed in the same manner provided for the foreclosure of liens for unpaid sewer rates and charges set forth in RCW 35.67.220 – 280, as amended.
27. Pursuant to MPD Permit Condition #32, prior to issuance of the Certificate of Occupancy for The Village MPD's 200th dwelling unit, the applicant shall comply with the Roberts Drive sidewalk and pedestrian connection requirement under Section 11.6 of The Villages Development Agreement, as updated by Condition 30 of the Black Diamond Hearing Examiner's decision for Preliminary Plat 1A, PLN11-0001, dated December 10, 2012. This will be to provide a connecting sidewalk and safe pedestrian connection from the frontage improvements along parcel V13 to the northeast corner of the Guidetti Parcel along Roberts Drive.
  28. The Master Developer shall comply with Exhibit "Q" of The Villages MPD Development Agreement.
  29. The Master Developer shall comply with Exhibit "R" of The Villages MPD Development Agreement.
  30. All alleys shall be posted "No Parking" in accordance with the International Fire Code (IFC); and provisions for enforcement of these no parking zones shall be defined and accepted by the Designated Official prior to final plat approval.
  31. All roads shall maintain a minimum 20 foot unobstructed driving surface per the IFC.
  32. The fire hydrant and water supply system shall meet IFC requirements, and shall be installed prior to the beginning of combustible construction materials being placed on site. Construction materials refers to the lumber (framing) packages and not to a job shack.
  33. At the time of building permit application, structures will be required to either have fire flow available or to have a fire sprinkler system installed to allow for a reduction in required fire flow.
  34. As part of compliance with Condition 15, the City will not issue final plat approval for the Preliminary Plat for Phase 2 Plat C until one of the following conditions has occurred:
    - a. Phase 1A connecting road (currently named Willow Avenue SE) is constructed by the applicant and accepted by the City, or bonded for construction; or

- b. A road connecting Roberts Drive to Road A of PP2C and meeting the standards and requirements of the BDEDCS and The Villages Development Agreement has been:
  - i. built within the Temporary Access and Utility Easement in Phase 1A (Exhibit 44) and accepted by the City; or
  - ii. bonded for construction.

#### SENSITIVE AREAS

- 35. The applicant will conserve the identified open space tracts (Sheet CV4, Exhibit 2) on Preliminary Plat Phase 2 Plat C and ensure that all sensitive areas and buffers are in separate protection tracts pursuant to BDMC 19.10.150(B), for purposes of conveyance or dedication to appropriate entities on the face of the final plat. [Note: MDNS Mitigation Measure]
- 36. The area quantifications and locations describing the buffer averaging proposal identified in the plat drawings and May 14, 2014 letter (Exhibit 30) shall supersede any conflicting information contained in the Sensitive Area Study and Wildlife Analysis (Exhibit 28).
- 37. Clearing and grading activities are prohibited in the buffer areas, inclusive of areas added for the averaging approval, EXCEPT for temporary disturbances that are required for grading and construction as described in the averaging proposal, and EXCEPT for temporary disturbances that are required to install utilities and construct the soft-surface trail, and EXCEPT for areas of existing buffer that will be permanently impacted via conversion to development area in exchange for protected buffer addition area elsewhere. Buffer averaging is limited to those areas shown on The Villages MPD Phase 2 Plat C Preliminary Plat as shown on plat set sheets PP1-PP4 (letter dated June 5, 2014 to BD Villages Partners, LP, Exhibit 30a).
- 38. Prior to issuance of a clearing/grading permit for any portion of the plat, the applicant must submit a tree plan pursuant to Chapter 19.30 BDMC that delineates root protection zones for all significant trees retained, relocated, or planted for the division under the plan. The applicant must also submit concurrently a site plan for the portions of the multi-use trail that will cross wetland buffers, identifying the location, typical section, construction methods, trail surface, and grade. [Note: MDNS Mitigation Measure] The City will, in the course of its review of the materials, determine whether mitigation for unavoidable adverse impacts to the buffer (i.e., sensitive area per BDMC 19.10.240) is required.
- 39. Pursuant to BDMC 19.10.220(B)(3) [and MDNS Mitigation Measures]:
  - a. Trail alignments within wetland buffers shall be field located by the applicant and observed by a representative of the City, to avoid clearing of significant trees. Downed woody debris that is removed for the trail must be placed in naturalistic locations, similar to what exists on the site for ground contact, instead of making slash piles, and culverts must be provided when the trail bisects surface or groundwater drainages.
  - b. Trail alignments within wetland buffers shall be combined with the infiltration trenches, wherever feasible, subject to final design work to be reviewed by the City.

- c. The portion of the proposed soft surface trail shown on the plans bisecting Wetland E1 shall be eliminated.
40. Pursuant to the City of Black Diamond Engineering Design & Construction Standards, Section 1.17, a construction management plan shall be developed by the applicant for review and approval by the City before the clearing and grading permit is issued. Location of construction fencing to protect wetland buffers at the limits of disturbance shall be shown on all applications for construction permits and installed prior to any work on the site. [Note: MDNS Mitigation Measure]
41. The plat will show that pet waste stations will be provided along the trail between the development and the wetlands and maintained by the Master Developer or HOA.
42. The applicant shall comply with the Wetland Buffer Vegetation Management Plan for The Villages Phase 2 Plat C (Exhibit 27) including: when clearing adjacent to a wetland buffer, the developer shall conduct monitoring which includes: (i) initial compliance/as-built report of post-development tree density in the wetland and adjacent buffer; (ii) Annual site inspections in the autumn to document that the minimum tree density (20) and weedy/invasive plant coverages are maintained in the wetland and its buffer; (iii) annual reports on the monitoring results to document the tree and invasive species density and general conditions of the wetland and buffer observed. The Vegetation Management Plan shall be updated to address the existence and control of invasive species in the wetland buffers as required by BDMC 19.10.230(F).
43. All trails proposed to affect wetland buffers shall be confined to the outer edges of buffers consistent with BDMC 19.10.220(B)(3c). Trail design for all proposed trails shall be reviewed against all applicable design standards during clearing and grading permit review.
44. Pursuant to BDMC 19.10.220(D), wetland buffer boundaries adjacent to lots and other areas within this plat that are readily accessible to people as shown on Exhibit 75 shall be permanently delineated by fencing and identification signs, as approved by the City. Fencing shall be installed prior to final plat. [Note: MDNS Mitigation Measure]
45. Pursuant to MPD Permit condition of approval No. 124, mast-producing and other native vegetation will be incorporated into the landscaping in areas next to wetlands and buffers.
46. A revegetation plan will be required in the clearing and grading permit application, to restore or enhance disturbed areas following construction. Restoration of disturbed areas in the wetland buffers shall implement the requirements of the Wetland Buffer Revegetation Plan.
47. To ensure compliance with BDMC Chapter 19.10, subsequent review of development activities in future development tracts adjacent to Wetlands E7, E8 and E10 is required.[Note: MDNS Mitigation Measure]

## NOISE

48. During construction, the measures stipulated in “The Villages MPD Phase 2 Preliminary Plat C PLN13-0027 Short –Term Construction Noise Mitigation Plan” dated March 13, 2014 (Exhibit 26) and approved on May 21, 2014, will be implemented. [Note: MDNS Mitigation Measure]
49. The noise hotline shall remain open until further notice from the City.

50. The applicant will continue to convene the Phase 1A Noise Review Committee through construction of PP2C.

#### SANITARY SEWER

51. All existing sewer mains shall remain in service during utility construction.
52. Prior to the issuance of the first building permit for any structure that might discharge wastewater into the utility system, the Master Developer will build the interim sanitary sewer lift station and it shall be complete, operational and accepted by the City. The condition will be applied during building permit review and approval.
53. Prior to the approval of the final plat for PP2C, the off-site sewer system in Preliminary Plat 1A must be both completed and accepted by the City or bonded with an appropriate surety approved by the Designated Official.
54. Sanitary sewer flows shall be discharged to the existing City collection system, unless King County approves direct discharge into the regional King County collection system.
55. Any sewerage pipelines (whether gravity or force-main) that are designed with excess capacity shall include provisions to minimize potential operational impacts due to the oversizing. This condition will be applied during utility permit review and approval.
56. The applicant and/or DRC shall identify, on the face of each plan set for utility and building permit applications, the following sewage flow information, as applicable: the total building square footage included in that application, the number of fixture units, the Average Dry Weather Flow (ADWF), and the Peak Wet Weather Flow (PWWF) associated with the improvements in that application. The information must be in tabular form.

#### WATER DISTRIBUTION AND SUPPLY

57. All existing water mains shall remain in service during utility construction.
58. Prior to the approval of the final plat for PP2C, all off-site water supply and distribution improvements required in Preliminary Plat 1A necessary to provide service to PP2C (including regional mains in Pipeline Road (or Roberts Drive), pipelines in Willows Drive and Villages Parkway, and upgrades to the chlorine disinfection system), must be completed and accepted by the City or bonded with an appropriate surety.
59. Prior to approval of the 500th ERU [combined Phase 1A and PP2C], the applicant shall complete a Water Conservation Check-up to identify if the water conservation strategies are compliant with the Development Agreement. This condition will be enforced with building permits.
60. On Road A, between Road B and Road C, the water lines must be separated to the maximum extent feasible to maintain redundancy. This condition will be enforced with utility permits.
61. All water mains must be located within public rights of way or on dedicated utility easements that provide a minimum of 15 feet of unobstructed width for access and maintenance. The easements will be shown on construction drawings and submitted to the City for approval prior to issuance of utility permits.

62. The water meters shall be in public rights-of-way or easements and be compatible with the design standards within Exhibit "H" of the DA. Water meters must be accessible to the City's drive-by meter-reading system.
63. Where possible, 850 zone mains for service to future areas of the project shall be interconnected to the 750 zone to improve service to the PP2C customers and to prevent stagnation of water in unused pipelines. These mains may be isolated from the 750 zone in the future when buildings are constructed in the 850 zone. This condition will be applied during utility permit review and approval.
64. Pursuant to MPD condition of approval #49, should the applicant desire new water distribution alternatives that are not consistent with the City's Water Comprehensive Plan in effect as of the date of The Villages MPD Permit Approval, the applicant shall be responsible for the cost of updating the plan, if needed.

#### PARKS, RECREATION AND OPEN SPACE

65. The parks on tracts 906, 909, 911, and 921 shall be constructed or bonded prior to occupancy or issuance of final inspections for 60% of the dwelling units located within ¼ mile of the tracts in PP2C.
66. The trails shown on PP2C shall be constructed by the Master Developer and maintained by the HOA. The segment of the trail on PP2C that corresponds to the trail shown on Figure 9.2 of the DA must extend to the boundary of PP2C at the future Willow Avenue SE and through tract 902. All trails will be constructed or bonded prior to final plat approval.
67. Table 9-5 of the Villages Development Agreement sets triggers for providing recreational facilities. One trigger is at issuance of a building permit for the 800<sup>th</sup> dwelling unit in any phase of the Villages. The City will not issue certificates of occupancy for more than 799 dwelling units cumulative in all phases of the Villages until the recreation facilities required at the 800 dwelling unit trigger point in Table 9-5 of the Villages Development Agreement are constructed.
68. The design of the trail shall meet the standards Section 9.7.1 of the DA and the requirements of the Black Diamond Sensitive Areas Ordinance and be shown as part of the clearing and grading, utility, or other engineering plans. In the event of a conflict, the more restrictive standards shall apply.
69. The pocket parks, common greens, and trails in Preliminary PP2C will be owned and maintained by the homeowners' association (HOA) or Master Developer pursuant to the provisions of Subsection 5.5.7 of the DA.
70. Pursuant to MPD Permit condition of approval No. 94, and Section 9.9.3 of the Villages Development Agreement, public access is authorized to all parks and trails in PP2C, unless otherwise determined by the Designated Official for reasons of public safety, welfare and convenience, or for maintenance reasons. The face of the plat shall contain a note to guarantee public access to the parks tracts and tracts containing trails.

#### TREE PRESERVATION

71. The applicant will submit a report with the exact number of significant trees to be removed, and identify mitigation per BDMC 19.30.070 (e.g., planting of replacement trees or payment to the City tree mitigation fund). Trees proposed for replanting shall be native trees per the MPD Permit Condition No. 122.
72. Prior to any clearing or grading activities within Preliminary PP2C, clearing limits shall be marked in the field with continuous ribbon, silt fence, or orange construction fences where appropriate to clearly indicate clearing limits. Trees within or near clearing limits to be saved shall be clearly marked. Orange construction fencing shall be installed as a tree protection measure outside of drip lines of trees to be saved, prior to the start of clearing and grading operations.

## LAND USE

73. Sheet CV1, the cover sheet of the Preliminary Plat for PP2C, shall have a table that shows the ratio of base density to planned density for Phase 2 and how PP2C units affect the totals for base and planned densities and the TDRs required (if any) for each plat or division within Phase 2.
74. Pursuant to the requirements of Exhibit “H” of The Villages Development Agreement, a note on the final plat shall state:

THE SAME COMBINATION OF ELEVATION STYLE AND FLOOR PLAN FOR DWELLING UNITS OR BUILDINGS SHALL NOT BE PLACED BESIDE EACH OTHER. DWELLING UNITS OR BUILDINGS THAT MAKE USE OF THE SAME FLOOR PLAN AND ARE SITED DIRECTLY ACROSS THE STREET FROM ONE ANOTHER SHALL INCORPORATE A DIFFERENT ELEVATION WHENEVER POSSIBLE AND SHALL USE A DIFFERENT EXTERIOR COLOR/MATERIAL PALETTE. ON A LIMITED BASIS, SPECIFIC LOCATIONS WITHIN NEIGHBORHOODS MAY VARY FROM THIS REQUIREMENT.
75. The on-street parking locations shown in the application shall be considered the minimum acceptable number of parking spaces. To the extent that additional stormwater facilities are required (namely rain gardens) these facilities shall be located outside the right-of-way and shall not displace or eliminate any on-street parking spaces. This condition will be applied during utility permit review and approval for rain garden and/or street construction.
76. Required street trees will be counted on a block-by-block basis for compliance, whether spaced on-centers or placed in groves. This condition will be reviewed during utility permit application.
77. The following mechanisms shall be used in PP2C, where feasible, to integrate Low Impact Development (LID) techniques: reduced roadway widths, infiltration wells, rain gardens, bioswales, media filter strips, reduced driveway lengths, pervious asphalt and concrete, pervious pavers, and installation of pet waste stations in common areas.
78. Pursuant to Figure 6.3 of the DA, Bike Route and Future Connection Plan, the applicant shall identify a location on the plat at a point between Tract 901 and Tract 902 on Road A where a future connection to the north of the boundary of parcels V28 and V29 shall be constructed as development occurs there in the future.

## EMERGENCY SERVICES

79. Pursuant to Section 13.4, Fire Mitigation, of the DA, the siting and design of the satellite fire station shall be provided by the applicant and agreed to by the City no later than the time of issuance of a Certificate of Occupancy for the 250th dwelling unit within The Villages (i.e., combined dwelling units on Phase 1A and PP2C).
80. Parking is prohibited on any section of roadway that is 20 feet wide or narrower, consistent with IFC standards.

## CONSTRUCTION

81. Prior to submittal of the first clearing/grading permit for any portion of PP2C, the proponent shall place additional archaeological shovel probes on lands near Rock Creek (Parcel E) and provide a report to the City prepared by a qualified professional summarizing the results and any recommended actions. Those recommended actions from the report shall be conditions of any clearing and grading permit issued by the City for PP2C. [Note: MDNS Mitigation Measure]

## CONDITIONS ADDED BY EXAMINER BEYOND THOSE RECOMMENDED IN STAFF REPORT

82. As concluded by the applicant's expert in attachment 1 to Ex. 71, Best Management Practice (BMP) measures imposed by Villages MPD COA No. 71 will assure that no phosphorous from the archaeological shovel probes will enter Rock Creek. Best Management Practices shall be implemented in the use of shovel probes.
83. Should soil disturbing activities associated with PP2C in the Rock Creek basin require review by the Washington State Department of Fish and Wildlife and/or a Hydraulic Permit Approval, the Master Developer shall secure such review and/or permit, as necessary.
84. The Master Developer shall develop each lot, parcel and tract in accordance with MPD COA 64 which requires the use of native plant species in lawns and landscaping and the minimization of lawns.
85. The applicant must perform baseline monitoring to determine the water velocity, water quality, and hydroperiod control (the depth, duration, frequency and pattern of wetland inundation) in all adjacent wetlands as approved by qualified City experts. However, computer modeling or other alternative measures may be applied if City experts determine that those alternative measures will accurately account for all of the hydrologic factors cited by Ms. Brewster in Ex. 96 to the extent necessary to ensure that predevelopment hydrology will be maintained. The City must consider the measures recommended by William Lider in Ex. 96 and impose them as necessary to ensure that wetland hydrology is maintained.
86. Infiltration facilities shall be reviewed and approved for compliance with MPD Villages Condition No. 76 and DA Villages Section 7.4.4(A) prior to final plat approval.
87. The applicant shall provide for walking paths and/or sidewalks to and from all applicable schools if PP1A schools are not built prior to issuance of building permits and children will have to walk to school.

88. The Applicant shall prepare a study approved by City staff that estimates how many sewer ERUs will be required from development with the City by the time that construction is completed for PP1A and PP2C. The study will project total City ERU demand through PP2C and PP1A based upon known development projects in the City review pipeline, historical trends on ERU demand and estimates of future development activity. Current sewer capacity shall be based upon King County capacity figures supplied after the date of this decision. The applicant shall modify PP2C such that it may be completed in phases and only those phases that avoid a deficit in current ERU capacity will be approved for final plat. No clearing or grading will be permitted in any phase unless the applicant demonstrates that the clearing and grading is necessary for a phase that can acquire final plat approval at a time when adequate sewer capacity can serve the projected build out of the phase. Each final plat phase will be a “stand-alone” phase, meaning that each phase must be fully compliant with all applicable development standards if the rest of the master plan development were to be completely abandoned. Capacity will be based upon existing capacity or a financial commitment to make capacity within the next six years, which may include an amendment to the WTD six year capital facilities plan to fund capacity improvements.
89. A note on the face of the final plat shall state: *“Areas outside of sensitive areas and their buffers may be cleared of trees if a tree removal permit is obtained that is consistent with the Black Diamond Municipal Code and other conditions that may require selective tree retention.”*
90. Compliance with the General Principles and Site Planning A(6) of the Design Guidelines for Master Development, which provides that grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain natural contours is required.
91. No clearing and grading, utility or building permits will be issued if the applicant fails to follow through on obligations imposed by the Detailed Implementation Schedule for Phase 2 Regional Infrastructure Improvements, Ex. 29 and Section 13.4 and similar provisions.
92. Lot specific building design shall be addressed during building permit review.
93. In the event State level permits are required, those permits will be obtained.

Dated this 28<sup>th</sup> day of January, 2015.



Phil A. Olbrechts

Hearing Examiner  
City of Black Diamond

## **Appeal Right and Valuation Notices**

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

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