

Appendix A Testimony Summary

[This summary is only provided for the convenience of those who wish to have a detailed understanding of the testimony provided at the hearing. Nothing in this summary should be construed as a finding of fact or conclusion of law. Nothing in this summary should be interpreted as assigning any significance to comments made at the hearing. No assurances as to accuracy are made. Persons wishing to have a completely accurate accounting of public testimony may request copies of the hearing recording at City Hall.]

Staff Testimony

Mr. Andy Williamson, City of Black Diamond introduced the City's review team.

Ms. Gillian Zacharias is the consulting planner for the City of Black Diamond. The applicant's request is for subdivision of land within the Villages Master Planned Development approved in 2010. The subject property contains a portion of Parcel E (Lots v28 and v29 and surrounding wetlands and buffers). The entire site is 136 acres and is proposed to be divided into critical areas buffers and 40 acres developable subdivided into 203 single family lots. There are numerous tracts for streets, utilities, parks and future development. Approximately 95 acres of proposed tracks would cover wetlands and buffers. There are internal and perimeter trails. The developer or homeowners association are responsible for maintenance for all tracks except roads. Attachment CV4 contains a list of tracts and ownership and maintenance responsibilities.

Access is across Phase 1A, approved previously, to Roberts drive. The street is currently known as Willow Avenue SE. There will be three public roads (Roads A, B and C) and several private alleys and pedestrian priority streets. Some lots have dual access. Stormwater infiltrated will be either on site or conveyed to a regional stormwater pond on Phase 1A. Water and sewer will be undergrounded in the street and will connect to Willow Avenue SE.

The City issued a MDNS and adoption of existing environmental documents (Ex. 5). The mitigation measures in the MDNS are recommended conditions of approval for the preliminary plat. City staff and consultants representing the City reviewed the application and all subsequent supporting documents. The project as conditioned is consistent with the Comprehensive Plan, the Water Comprehensive Plan, design standards and guidelines, environmental ordinances, the Development Agreement and the conditions of approval for the preliminary plat. There has been a lot of consultation between staff and the applicants. Review comments from City and applicants are tracked as Exhibit 40. Some of the changes occurred over the review period. The City asked for the prevision for an easement over Phase 1A in case Plat 2C is built first. Tract 906 on the south end of the subdivision was initially designed for development, but the City would like to see a community park there. The applicant requested three deviations. One was for the pedestrian oriented streets. Another is for a rain garden to fit in the pedestrian street on Tracts 916 and 917. The stormwater deviation changes the storm water facilities compared to the Development Agreement, zones 2 and 1C. Rather than have the rainwater go toward Rock Creek, the pollutant generating sources will go to the regional stormwater system rather than a local pond. This will rehydrate wetlands in Zone 1C. The applicant submitted a buffer averaging

request on the west side of the development. The result was a net gain of 22,000sf. The reduction was 2,000sf. The replacement ratio was 12:1 which far exceeds the requirements. It reduces the width of the 110 foot buffer by 7%, less than the 15% allowed by code.

Ms. Zacharias stated the proposal met City development standards. The plat meets density requirements. The public use and interest is served by preserving sensitive resource areas, accommodates future growth predictably, provides utility services to support the proposed development, and meets stormwater management requirements. Transportation is consistent with requirements. Utilities are adequate and comply with standards. The plat meets the requirements of the Development Agreement by providing 95 acres of open space. The proposal meets the development standards. Environmental impacts were addressed in the FEIS and the current SEPA checklist. Mitigation measures from the NPD permit are included. Stormwater can be accommodated by on-site infiltration and the regional pond. There is existing sewer capacity. Water supply is sufficient. The treatment capacity requires a chlorine station upgrade which is included as a condition of approval. Off-site transportation requirements as conditioned in the Development Agreement will not be triggered with this plat. Parks meet the Development Agreement minimum. Timing is addressed by the condition requiring an easement to Roberts Drive. The proposal meets the standards for a master plan. Connectivity is provided (Preliminary Plat Sheets RS 1-4). Appropriate provision for public land dedication is made. Safe walking conditions are provided. There will be a sidewalk on Roberts Drive. The applicant will submit a tree inventory to meet tree preservation requirements. Staff recommends approval.

The examiner asked what the pedestrian streets are. Ms. Zacharias stated they are like an alley with no sidewalks, though cars will be there. She said staff did not have a safety concern. Mr. Williamson stated these streets are like an alley with very low speed traffic. Traffic will be slow because the road is narrow. Residents will know each other. The City hasn't seen any studies, but they are very common in Europe.

The examiner asked about phosphorus loading and where stormwater will be directed. Mr. Williamson stated the stormwater will be discussed with appellants. They were required to do additional monitoring. The applicant submitted a hydrologist report.

Ms. Nancy Rogers, the applicant's representative, stated the applicant has done a lot of past work on the overall project. There is an extensive record for PP2C. The staff report is 190 pages long. Ms. Rogers submitted curriculum vitae for the applicant's consultants. Ms. Rogers stated she had no objections to Exhibit 56 and 57. She had an issue with the Bryant letter (Ex. 55) asking for an additional two weeks for additional expert testimony. She objects to the request, though not the exhibit.

Ms. Rogers clarified the preliminary plat version they are requesting approval has an undated cover page. It does include a table called Transfer of Development Rights (TDR) Information. It was admitted as Exhibits 48 and 49. Ms. Rogers stated the staff covered most of the issues. They did bring an illustrative map (Exhibit 69). This is the version staff reviewed. This is a continuation of the Master Plan development of the Villages. There are 203 lots proposed with connecting roads and utilities. The plat is nestled into the existing wetland complexes on the property. The wetlands are protected. They proposed wetland buffer averaging to accommodate

some rear yards. The end result is much more protected buffer than would be required under code. They have also prepared a guide to the PP2C project with a simplified explanation of what's happening (Exhibit 70). The point of the guide is to describe the preliminary plat process, the status of the Master Plan Development citizen committees, the houses, population projections, neighborhood design, transportation mitigation, traffic calming, environmental protection, stormwater and water quality, noise mitigation, fiscal interests and regional infrastructure improvements.

Ms. Kristen Bryant objected to the admittance of Exhibit 70 into the record. Ms. Bryant stated this material is already in the record. This looks like another way of presenting this information as marketing material rather than representing the record. The examiner overruled the objection.

Mr. Brian Durdowski, speaking on behalf of Save Black Diamond, stated the information in the pamphlet is technical. It should be accepted for illustrative purposes only and not be relied upon for the examiner's decision. Mr. Durdowski is concerned there are conditions and statements in the document that appear different from other representations that are in the record. The examiner overruled the objection.

Ms. Rogers stated the applicant has crafted another document, a memorandum responding to public comments (Exhibit 71). Some of the comments are relevant to PP2C, others are not. They're experts have also provided responses. They responded to all of the comments, whether they are relevant to the project at hand or not.

Ms. Rogers requested the plat be approved. She provided a letter describing their request for approval (Exhibit 72). She asked the examiner to focus on PP2C rather than reiterate every condition of approval from every other phase of the Master Plan approval. All of these conditions independently apply without the need for repetition. Ms. Rogers described the content of their request letter including correction of typos, the 300 foot wildlife corridor, expert qualifications, etc. The applicant has several requested revisions to the staff's conditions of approval. Most of these requested changes are clarifications and not substantive changes. The applicant has requested an additional condition of approval to confirm that should soil disturbing activities require review by Washington State Department of Fish and Wildlife or require a Hydraulic Permit Approval, they will apply for the permit. This is just a restatement of state law. They are also open to adding a condition of approval stating the applicant shall be required to use an HSPF continuous simulation model during construction plan preparation and submittal for Plat 2C.

Ms. Rogers also had several additional maps to present. She had a map that showed lots within a quarter mile radius of parks (Exhibit 73). Exhibit 74 is in response to the Covington Water District. This map shows the disputed land area between Covington and Black Diamond's water districts is not near this plat. The final map is a wetland buffer map showing fencing locations. This is a proposed revision to a staff recommended condition of approval. Staff asked for split rail fencing. The applicant wanted to show what that meant (Exhibit 75).

In response to an audience question (*inaudible*), the examiner asked the public to wait until their turn to testify. Mr. Rogers stated she will respond to public testimony during applicant rebuttal.

Public Testimony

Mr. Robert Edelman stated he would like to submit his written testimony for the record (Exhibit 76). Mr. Edelman said he is concerned about the sewer availability. He said the Staff Report incorrectly directs future sewer allocations to all future Villages development. He said that 1,150 additional ERU could be added to the Black Diamond pump station before further capacity improvements are needed. The basis was current service in 2008. Staff references Exhibit 37 that states King County has 1,150 ERU remaining capacity. That is incorrect because there has been development since then and the real number is 1,000 ERU. A capital project to increase regional wastewater capacity is not in the King County 6-year CIP and additional sewer capacity will be needed. There is not enough sewer capacity to accommodate this plat and other existing commitments without additional development of additional capacity. King County has overcommitted. Building permits will be issued on a first come first serve basis. Until KCWTB adds more capacity, the City will have to limit building permits. Concurrency cannot be met. Builders will purchase plats only later to find they can't get permits. Mr. Edelman wants the City to create an accounting of permits and available sewer capacity. He believes King County and YarrowBay should provide a date certain for the provision of additional sewer capacity. The responsibility should be on the master developer.

Mr. Gary Davis presented written materials (Exhibit 77) spoke to funding for schools. He stated the funding commitments for schools have not been formalized and need to be. There is a question about adequate review since the initial surveys were granted. He has a financial impact because his family has over \$5,000 worth of wildlife damage to fruit trees and fences on Lawson Hill. His understanding is that the gradually shrinking habitat due to the Villages development will continue to impact him from shifting wildlife habitat.

Ms. Cindy Proctor stated she wanted to clarify Exhibit 13 does not represent a baseline water monitoring report and that none, in fact, had been submitted despite the deadline and the fact that we're now on a second plat approval. The second issue is that we should not be approving additional plats until the infrastructure agreements from earlier stages have been finalized. The third issue is she has strong concerns about giving deference to the City and SEPA official. She means no disrespect to Mr. Nix, but he does not have enough experience or qualifications to do this work. A rational decision maker should minimize the due deference because of the very high turnover at the City level. None of the original staff or City attorneys are here and the Council has turned over twice since the beginning of this process. This plat review has been handled by three separate staff people.

With respect to schools, the state subdivision act requires the City to adopt findings that the plat has provided for adequate utilities and schools. The City has failed to provide for adequate school facilities. The City has deferred to the original comprehensive school agreement without checking to see if it was adequately implemented. No school related facilities are proposed for this plat. The statute is written in the negative related to the school impacts. The plat cannot be approved until there are adequate provisions for students. The City did not disclose that over 8.6 acres of buildable land is in the Auburn school district. That school district has not approved transfers.

Ms. Rogers asked what the relevance of the testimony was. The examiner overruled the objection. Ms. Proctor stated they had been misled as to the actual buildable area is and where students will be. There needs to be mitigation to the Auburn School District. The Development Agreement was meant to be conceptual with later detail at the preliminary plat procedure. Since then, there have been changes to the unincorporated King County zoning with relation to school locations. The applicant has not modified its plans to account for the King County requests for information for the implementation agreement. There is land that is supposed to be transferred for school land in the Villages that has not been accomplished because the final plat has not been approved. The applicant cannot give a formal and factual assurance that there will be actual school area. Middle School site B has been removed from use. The King County School Siting Task Force has every intention of requiring urban land so rural sites are not used for school sites. The fiscal assumptions in the EIS assumed Tahoma school district will transfer 38 acres of land. The applicant stated these issues are for the future. The applicant tried to have it happen. The Enumclaw School District will not take Tahoma's land. There is not adequate financial concurrency. The applicant cannot circumvent SEPA. The City needs to be tracking whether the school issues are dealt with. The plat cannot be approved until this issue is sorted. This plat should be denied until a plan for the school mitigation is made whole. The applicant's assumption about this issue is not enough to prove concurrency. The voluntary agreement is conjecture and therefore is not a valid mitigation agreement. Ms. Proctor asked for a CD to be admitted into the record (Exhibit 78).

Ms. Rogers objected on the grounds of relevance and because she has not been able to review the CD. The examiner overruled the objection though offered the applicants time to review the content of the CD.

Mr. Tracy Dummitt presented his written comments (Exhibit 79). Mr. Dummitt has seen Covington become a city like Federal Way when it used to be a one store town. Covington is one strip mall after another. Black Diamond was also a tiny town with just a few businesses with a rural feel, with small town value. Lake Sawyer was a wonderful fishing lake with no pollutants. Black Diamond was a safe, small town. The police department kept them safe. Now overnight they will be much larger and more diverse with attendant crime and problems. Lake Sawyer will have pollutants poured into it from its tributary Rock Creek. Phosphorus runoff will bring Lake Sawyer to dangerous levels. The fish will be dangerous to eat. We'll lose wildlife. There will be a huge tax increase. Only a fool will see the need for two elementary schools, a junior high and high school. YarrowBay has offered one school. If you live in old Black Diamond, we'll be paying for those schools. Almost 2/3 of the tax base will be excluded. Who will pay for the increase in police staff? We'll pay for that. We'll pay for improved roads that will be breaking down quickly because of all this construction. We'll be taxed to pay for this. This growth is unnatural. We voted into office people who did not represent our views. We don't want low income housing, crime, or pollution. We are against this type of growth. Enumclaw is controlled in its growth. We want this stopped. He is opposed to the pedestrian roads. He feels the houses and roads are ghettos. Mr. Dummitt asked questions about the maps and specifically were the areas set aside for buffers and areas set aside forever?

Mr. Brian Webber stated his testimony is about Exhibit 43. Section 1 states YarrowBay will record a covenant not to sue the City. Section 3 terminates the covenant if the City obstructs or impedes infrastructure or utility facilities. He is concerned about the ambiguity of the third party language. He wants to know if a citizen complaint is grounds to terminate the covenant. Mr. Webber would like the covenant clarified. Urban services are at the heart of growth management and land use planning. A plat should not be allowed to be conditioned on the action of others. He believes all five future development tracts should be finalized in their design before this one is approved.

Ms. Bonney Scott lives in Ravensdale. She didn't prepare anything in advance. As a bicyclist going past the first phase, they've taken down every single tree. It is so ugly. They didn't preserve trees in plat 1, why would they do so in PP2C? Will there be corridors for wildlife? The entire habitat has been removed. Will there be any tree preservation in this phase?

Ms. Jacqueline Taeschner submitted her written testimony (Exhibit 80). Ms. Taeschner said her father if he'd lived would have been 105 today. He was the son of Italian coal miners. He would be unhappy with the development happening today. She is hoping state law will stop the rushed and arrogant development. The hearing examiner listened to the citizens. Despite the examiner's conditions and the tree preservation laws, we have Plat 1A and there are no trees left. The brochures showed ancient trees. Those are gone now. The water runoff from the clearing of the Plat 1A land is flooding Horseshoe Lake. The development is cheap, with cookie cutter houses on postage stamp lots. We don't need commercial strip malls.

The clear cutting at Plat 1A is shameful. We can't measure the impacts of the first plat before the second is planned. No infrastructure details have been forthcoming. The wetlands and buffers near Rock Creek have been decreased from 225 feet to 110 feet. This is a very small swath and is insufficient habitat for wildlife. Why has YarrowBay not worked with wildlife experts to protect eagles? We have been betrayed. The loss of habitat has already driven wildlife to come to residents' yards. The trees are being blown down by wind now that the land has been cleared. YarrowBay's promises are empty. How will water quality along Green Valley Road be affected? How will traffic be impacted? Where are the funds for schools for the Enumclaw School District? The analysis done thus far is lip service. There needs to be more analyses before the land is clear cut. The plat must not be approved until the impact of Plat 1A's impacts can be analyzed. YarrowBay must pay attention to our comments and respond at every step along the way. This whole process must be slowed down. Also, the maps need legends.

Mr. Max Beers lives on SE Green Valley Road just downhill from the boundaries of Black Diamond. He is speaking for the Green Valley Lake Homeowners Association. He is concerned about their private water systems. They are concerned about the quantity and quality of their water systems. The GMA and the King County and Black Diamond Comprehensive Plans have protections for rural water systems. For example, in the Black Diamond Comprehensive Plan Chapter 2, a UGA policy requires protection and enhancement ground water quality in the drainage basin. His home is outside of Black Diamond but within the water basin and downhill from the development. His HOA has many private wells in this basin used for drinking water and irrigation. The PP2C project is close to our wells and springs. There is at least one instance of a potentially affected well during the PP1A grading project. The owner had white glacial silt in her

well for the first time in 35 years when the PP1A grading project was going on. They can't prove the connection, but the timing suggests there may be causation. He is asking for impartial risk assessments using best available science to determine which wells or springs might be affected. He also asked for monitoring of these water systems before and after the project. He asked for mitigation when impacts are realized such as water purification systems or alternative water systems. Finally, he asked for much more communication with downstream homeowners. Their drinking water systems are critical to the livability of their homes and must be protected. He submitted his written testimony (Exhibit 81).

Mr. Mark Taeschner is a mechanical and electrical engineer. His grandfather and great-grandfather were coal miners. The land they're sitting on is old coal mine property. Mine shafts remain. There is an air shaft behind the police station. The mine goes below Lake Sawyer. It is flooded with water. Call before you dig. The old mines occasionally open up and create sink holes. Lake Sawyer is a drainfield right now that was a wildlife habitat. The trees are gone. The trees were carbon sinks that provided oxygen. The old mines could result in methane, sulfur dioxide and carbon dioxide release. He thinks there needs to be an air quality study. Also, he would like to see more study showing where the mines and shafts are. He disagrees with the plat's internal connection system and feels pedestrian safety is not ensured. He is very concerned about traffic. He used to live in Orting. Traffic there is terrible. It takes 45 minutes to do two miles. He is concerned about wildlife displacement. The YarrowBay development at Snoqualmie Ridge has to have 10 foot tall fences to keep bears out of the trash bins.

Mr. William Lider stated he is a professional civil engineer with 45 years design experience in stormwater. He's worked on numerous agency projects. He is familiar with 1992, 2001, 2005 and 2012 stormwater management manuals. He's reviewed Silvertip Solution's findings in their report. One of the big issues with this design is the use of the SBUH (Exhibit 3G and 20) from Triad. He heard the applicant mention the HSPF program. He is not sure this is the approved version from Department of Ecology. The version of the software they use needs to be the Department of Ecology approved version. He sees the applicant's revised condition as an admission of an incorrect model. The SBUH model is based on 45 year old data. It matches peak but not duration flows. It does not model subsurface flows, which are dominant. The type of storm event they modeled doesn't meet conditions here. A 24 hour storm event doesn't work here. It needs to be 3-7 days.

The SBUH software doesn't model the wetland hydro-period. The applicant cannot demonstrate compliance with SBUH. It is an inappropriate use of the Stormshed software. The City has adopted the 2005 version of the Department of Ecology Stormwater Manual except Volume 1, Chapter 2. In lieu of Chapter 2, they adopted Appendix 1 of the NPDES requirements which mirrors the 2005 Stormwater Manual except for the hydro-period modeling. The applicant's engineer stated the hydro-period modeling was adequate and they averaged out over the year. Mr. Lider stated this does not adequately map wetland hydro-periods and protect flows. Volume 3 of the 2005 Stormwater Manual is applicable to this project. The WWHM software should be used. Input flows must be controlled to allow wetland elevations to be consistent with historical seasonal flows. Bypass stormwater must meet flow control treatments to that waterbody using WWHM elevations. The seasonal hydrology has not been adequately modeled and accounted for. The wetlands are not being protected because the stormwater has not been adequately

modeled for seasonal flow and water elevation. Modeling is difficult and requires monitoring before the project starts and after it has been completed to verify the model is accurate and impacts are minimized or reduced. The Guidesheet of Volume 1 of Appendix D-6 of the 2005 Department of Ecology Manual states that wetlands must match pre-development hydrodynamics (Exhibit 83). This hasn't been shown. The project proposes to route only roof water. However, this system doesn't protect the groundwater flow that supplies the wetlands during the summer because of all the impervious surfaces. The subsurface flows won't be maintained and will not be available to recharge and maintain the wetland during the summer. The stormwater analysis must be reworked with the WWHM.

Using Stormshed, which is outdated and discredited, is no longer allowed by Department of Ecology or the municipal NPDES permit. The City's current permit prohibits diversions of drainage from category I, II, or III wetlands (Page 29, Appendix 1, Western Washington Phase II Municipal Storm Water Permit for the City of Black Diamond) (Exhibit 83). PP2C has category I and II wetlands. Stormwater diversions are being made. Please require all stormwater flowing to the wetlands to be maintained. Diverting to a regional stormwater facility does not maintain natural discharge points. Rain gardens, pervious pavements and the like are usually used on a smaller scale. These must be modeled using the current software. Ten years from now when the infiltration galleries are clogged and the developer is gone, the homeowners will have to pay to fix the systems. Therefore these must be sized using the most current and best science to guarantee they will perform over the lifespan of the project. He has designed many LID projects. It is cost effective to the developer to use LID techniques. In closing, he stated there were a lot of last minute exhibits submitted tonight. He requests the hearing record be open for an additional week so the citizens may review them and provide testimony.

Ms. Kristen Bryant entered her written testimony into the record. Ms. Bryant grew up in Black Diamond. She has a number of submittals related to PP2C. She has a question about Exhibit 43. She has sent a letter from an attorney to the City Clerk (during the hearing). She also submitted testimony from a hydrologist, Silvertip Solutions. The City has failed to document use of appropriate methods for the stormwater and related hydrology. The result is pollution and wetland impacts. The Development Agreement is very clear the applicant must use the 2005 Department of Ecology Manual. The applicant had made it clear they would use the 2005 Department of Ecology Manual. This is a major omission that should require the plat to be remanded back for further study and future public comment.

Ms. Bryant described her concerns regarding the plat. There should be no plat approval before public improvements are complete. The access road to plat PP2C relies on Plat 1A's road being built. There is no reason for plat approval before the road is started. The same is true with the sewer and water hook ups. These should be in place before preliminary plat approval. The project won't be built for years. Locking in approvals early confuses residents and allows staff turnover and conditions of approval to be forgotten. There is critical steelhead habitat in Rock Creek, though there is nothing in the record. The NMFS lists steelhead as threatened and Rock Creek as critical habitat. It would be appropriate for the city to do additional review and apply additional conditions of approval for mitigation. This issue hasn't been dealt with.

The buffer on the north portion of Wetland E1 is incorrect. The buffer width doesn't follow Black Diamond code or Department of Ecology guidelines. There is a trail on the plat that goes across wetland E1, within a few to 30 feet away. The City says this is the edge of the wetland and buffer. The trail doesn't meet the City's code conditions for wetland buffer use (BDMC 19.10.230(E)). Buffers cannot extend across human features that split the buffer from the wetland such as hardened surfaces. Restoration of buffer functions should be subject to permit conditions or public plans. If the disruption could be removed, you should. Cutting off the buffer is adequate. The City wetlands reviewer didn't go on site and see that this area could be restored. They spoke with a wetlands expert who said logging roads cannot be considered a wetland buffer. Logging roads have no positive functional attributes. Yes, this will be a trail, but it is not appropriate for use as a buffer. The buffer needs to be a full 110 feet, not at the road. The applicant has added buffer averaging space on the far side, but this is still not wide enough. The City asked for removal of the trail crossing wetland E1. There is nothing in the record that would allow the trail to stay. That trail should go away. For trails that are built through wetlands, they are limited to Category IV wetlands and used for interpretive uses only.

The wetland drainage basin line has not been properly validated. The applicant shows a drainage break in the wetland, though this is an interconnected wetland with the City's core wetlands connected to Rock Creek. The applicant says there is a drainage break that allows them to treat this as two separate wetlands rather than one larger wetland. The City has not demonstrated that the proper work has been done to allow that drainage basin to be divided. The July 2015 Department of Ecology letter to Perteet (Black Diamond's reviewer), stated this is a single wetland unless detailed, yearlong water monitoring proves otherwise. Monitoring requirements from Department of Ecology are not in the record for this plat. This plat should be remanded until detailed review can be done by an independent third party reviewer. Without the divide, the buffer is 225 feet, not 110 feet. This is a significant difference. The plat would change, but that is what's needed to ensure the proper buffer.

Ms. Bryant couldn't find the City's review from the fire and police chiefs and the City's natural resource director. The staff report shows a second access to Plat 2C because there are more than 150 dwelling units. The applicant has provided only a blocked secondary emergency access. The Comprehensive Plan requires a secondary access that is not just for emergency services. This is about mobility and the access needs to be provided.

The future development tracts are inappropriate because they are undefined and not given proper scrutiny. The applicant has stated they intend them to be single family units. This should either be removed and reviewed later or specified right now. The City stated they would defer review for rockery walls, grading or soil balance near wetland buffers. Given the extensive use of walls and the wetlands, these need to be reviewed right now. Finally, Ms. Bryant is very concerned about the 100 acres already cleared for Plat 1A. This creates a long term problem for erosion control and prematurely removes wildlife habitat. Plat 2C has even more potential for erosion and sediment run off into Rock Creek during clearing. She submitted a Department of Ecology letter with better ways to do this. Plat 1A has created a long term erosion issue. Once sediment and phosphorus is released from construction, this problem stays around long after construction is over. Fish and wildlife suffer for a long time because of the release of these pollutants.

Ms. Bryant stated she submitted additional comments during the SEPA comment period. Her comments are in the record. She spoke there about the Wetland E1 buffer that should be 225 feet. The studies are needed to determine if this really can be divided.

Ms. Bryant requested two additional weeks to allow them to submit additional wetland testimony from an expert. Ms. Rogers objected and stated there was ample time because the hearing was originally scheduled in August. The first notice of application was sent out in July for an August hearing date. The wetlands reports were finalized May 6, 2014. Ms. Bryant stated that as a citizen she doesn't know whether more correspondence was occurring between the City and the applicant. They don't know why the hearing was pushed back. She's had to ask for public disclosure requests. She agreed there were things that could have been reviewed, but they just didn't have enough time. She wasn't sure if she was looking at final documents because there is so much back and forth.

Ms. Gwendolyn Vukich lives in Auburn. Ms. Vukich is concerned about traffic impacts. She appreciates the developer's construction traffic plan to use only the first westerly 1,000 feet on Green Valley Road from SR 169 which is the same as Plat 1A. Green Valley Road is a Category III for King County's maintenance plan. The road is fragile and is deteriorating but may not see repairs for years. The most deteriorated area is in front of Cadman's Sand and Gravel and where the developer is doing work, namely the first 1,000 feet from SR 18. Drivers use the shoulder to avoid the road. A condition of approval should require the developer to provide maintenance for this portion of the road. Mitigation is needed if both Plat 1A and 2C construction occur simultaneously. The current traffic trips on SR 169 and all other haul routes will become less safe. This should happen no matter who the developer is. Hauling should not occur from both projects simultaneously without mitigation for safety and congestion. Since the FEIS studies, traffic in the area has increased including at Green Valley Road and SR 169. There is a medical marijuana business there that increases traffic. Even with construction hauling for only one plat at a time, the left turn queues can form. Green Valley Road has only three intersections in 10 miles. Queue waits for turning can form. There should be conditioning to avoid construction caused traffic delays. Also, construction schedules should be strictly enforced. The hauling route plans should include log transport and construction hauling of only the first westerly 1,000 feet on Green Valley Road from SR 169. She wants SE Green Valley Road to have regular maintenance, and prohibiting traffic impacts from construction or mitigation, and strict construction schedule enforcement. The intersection of 212th and 218th needs to be studied for impacts from this plat. Her comments were entered as Exhibit 84.

Ms. Carol Lynn Harp submitted her written testimony (Exhibit 85). She stated it is too soon to be permitting Plat 2C. Black Diamond has not been able to experience the impact of Plat 1A. There has been no provision for schools. The Tri-Party Agreement is unenforceable. The schools' playfields must be closer to the schools. The city schools should be in the city. There is no realistic traffic study showing the effect of the developments on traffic. There is no way to address impacts on utilities. We don't know the ramifications of the first plat yet. This plat relies on the earlier plat for infrastructure which has not been constructed. We don't know the effects of the first plat on critical areas. The wetland systems are interconnected. The plat should not be approved without better provisions for schools.

Mr. Brian Derdowski thanked the staff and citizens for their efforts. He's done hundreds of these hearings. The intensity, passion and quality of input from Black Diamond are exceptional. He's speaking on behalf of Save Black Diamond. He was brought in as the land use consultant. Forty-three years ago he worked on his first land use project appeal. Forty-one years ago he looked at fiscal, environmental and concurrency impacts in California. He has been providing grass roots support for decades to the Growth Management Act. He's served three terms on the King County Council. He was involved in incorporations of Federal Way, Woodinville, Newcastle, Covington and Maple Valley. When he was on KC Council, he was the prime sponsor for the sensitive areas ordinance. It was the first comprehensive sensitive areas ordinance. He wrote a lot of the language. He was the prime sponsor for the first school impact fees and concurrency ordinance in Washington. He was the first sponsor of the transportation impact fee and concurrency ordinance. He's done subdivision code overhauls. He's been involved in assisting hundreds of land use projects in Washington.

He submitted materials (Exhibits 86 and 87). The first document uses the staff report as the basis for comments. The version was the staff report from the City's website posted on the website. The staff report was revised on December 10, 2014. He couldn't figure out what was changed from one version to the other. Mr. Williamson stated they changed only the cover sheet and exhibit lists. The staff report was a very difficult document to work from at 185 pages. This one is exceptional in its difficulty to understand. It's long and repetitive. Some of the repeated paragraphs are not word for word repetitions but change just a little. The format of the document isn't very good. A better format would have focused on the applicant's submittals. The staff should have systematically applied the code to the applicant's documents including the Master Developer Agreement and City Codes. They didn't do that. Mr. Derdowski systematically reviewed every word and line in the staff report and provided colored font highlights on the document. They used a red highlight on certain lines and provided blue comment. The problem is that the printer did not put colors on. Mr. Derdowski asked to be allowed to submit the material electronically to show the highlights. He would also be happy to show it printed with colors if he could have the time.

Mr. Derdowski edited out comments that were not significant or documentable concerns. They divided their comments into procedural and substantive. The Stormwater Quality document is substantive. The Comprehensive Plan document is procedural. There are page numbers on one and not the other. Both documents are 40 or so pages long. There is some duplication when items from the staff report were both procedural and substantive. They took the 185 page document and created these two documents.

Mr. Derdowski also had additional documents with WAC (Exhibit 88) and RCW (Exhibit 89) codes that they believe are relevant to this subdivision. They highlighted sections of the code they wanted to draw the examiner's attention to. The highlights are part of the foundational documents for their testimony. These, too, are without the highlights. They believe an open record requires the creative application of a level playing field. They went through the Black Diamond municipal code and identified a couple hundred pages that are relevant to this subdivision (Exhibit 90).

The comments about procedural concerns can be summarized as many of the applicable requirements were not addressed. The staff report selectively reviewed portions of the development agreement, the master plan approval and the municipal code rather than review all of the applicable codes. They should have stated which aspects applied and which did not. It was very difficult to argue their points. There are many places that the code was applicable but was not applied. If we prove the City failed to apply the proper codes, the plat should be remanded.

The fundamental issue of this hearing, raised by the City attorney and the City's Master Development Review Team and Save Black Diamond, is relying on facilities that are not yet ready.

The staff proposes to use utility permits to make substantive determinations later rather than doing it now when it's appropriate. Utility permits are not mentioned in the City's municipal code with no adopted conditions of approval. This is unacceptable. In some cases, those delayed determination after plat review, have SEPA implications. There should be public review. The use of utility permits circumvents those requirements.

The next issue is concurrency timing. The timing is applied inconsistently and not in accordance with legal requirements. This matter is well established in law and practice. This concurrency requirement has not been sufficiently addressed or is improperly applied based on speculative, incomplete, irrelevant information. This is a big concern and is related to relying on facilities in Plat 1A.

The staff made incorrect determinations on which Master Plan Development conditions applied to the plat as opposed to the Development Agreement. Certain conditions flow down to the implementation project level. These are vesting issues. A plat is a stand-alone permitting action with many discretionary determinations that must be independently applied at the plat stage. For example, determination of school availability has to be done at plat level. The existence of the Tri Party Agreement does not guarantee that the school availability is there for this plat. Just because four years ago a master development plan approval and a development agreement says if you pay this bill and provide school sites, everything will be fine. That's SEPA mitigation but it is not a determination that there will be schools for kids when they need them at the adopted level of service. That has to be an independent finding. That's not in the staff report or in the record. This is a procedural problem that staff thinks was done at Master Plan Development rather than at the plat level. This is true, too, for wetland boundaries. The BDMC sensitive areas requirements trump conflicting conditions in the development agreement. They have to be consistent with local development regulations. These laws are the foundational legal framework upon which the Master Plan Development and Developer Agreement were based. The sensitive areas ordinance applies in its entirety.

We've highlighted areas of the sensitive areas ordinance that point out various places where the applicant is required to submit to independent review. There are a number of places where delineation is required at the time of plat review. The City must make sure the delineations are field verified.

Ms. Rogers objected stating Mr. Derdowski is collaterally attacking former decisions. The

examiner overruled stating the argument is that no matter what the developer agreement says regulations still apply. This is his interpretation. Mr. Derdowski says state statute requires compliance with the code. State law also says the final subdivision code that applies is that in effect at the time. The examiner stated the development agreement is binding. Mr. Derdowski asked that the examiner allow a legal argument to be let in. His perspective is the Developer Agreement implements the Master Plan Development. The Developer Agreement cannot be challenged in so far as the authority of the Developer Agreement is appropriately applied. If the Developer Agreement had a clause that said that people can drive down the main street naked, we wouldn't be arguing the City's criminal code could not make that illegal because the state authorization for development agreements did not allow inconsistency with code. An implementing permit such as a subdivision is a stand-alone document. The code applies. The Developer Agreement says the code applies. The code doesn't allow wetlands to be filled just because the Developer Agreement puts the location in the wrong place.

The next procedural aspect is that the use of CC&R to apply conditions at the final plat stage is appropriate; however making substantive decisions through the drafting of CC&R after the plat is approved is an illegal delegation of authority that circumvents public input. The plat conditions list quite a few substantive topics that will be covered by CC&R. The staff report only says these issues will be approved as to form by the City Attorney. This provides no staff review or public input. There are a dozen places in the staff report where the CC&R raise substantive issues. For example, in the conditions of approval, a covenant for maintaining sensitive areas will be in the CC&R. However, there is no maintenance or monitoring, as required by code. Another example is restrictions on roof types or treatments. Current best available science questions roof types in common use today. This is not appropriate to give to the City Attorney; it should be part of the plat review.

Mr. Derdowski said that Mr. Taeschner had personal knowledge of the mine shaft locations. The applicant says the mine is a long way away or is very deep so that they aren't an issue.

The next procedural issue is the approach in the staff report of applying important policies and requirements at the building permit level. This is problematic because these are administrative decisions. There are places in the staff report where the staff cite a policy and then say they will be applied at the building permit stage. That's fine, if there is language in the plat to require it. Though it doesn't make sense to place Comprehensive Plan issue review at the building permit stage. If there are strict conditions that are written, these issues won't be addressed.

Another issue is that certain review actions are inconsistent with applicable requirements. There are a series of parallel path reviews including the design review team, the water quality committee, the approvals of the detailed regional infrastructure implementation, the road standards modifications, the surface water modifications, the proposed phasing and wetland field verification. The details of these procedures are not under consideration in the plat but have a bearing on the plat. There are issues that are important to the plat but the record is incomplete and not subject to public review. There is an exhibit in the record about the design review team. The staff says the design review team is not obligated to say how they arrived at a decision. We raise this as a specific issue. The whole idea that the design review team doesn't have to reveal how it made a decision raised due process and show your work sort of issues. This record should

be informed by at least a significant memo describing how each of these was accomplished. The staff report doesn't rise to that.

The next issue is the water availability component. It didn't consider the Water Service Area in the water availability section. The concerns of the Covington Water District were not appropriately considered. The issue of water service to the Master Plan Development is not who provides water to one phase, it is how the entire Master Plan Development is served with water and how the City allocates that resource. The decision between spring water and water piped from Tacoma is a significant issue. This isn't relevant to the plat, but the issue is complicated. Water delivery involves Tacoma Water, the Covington Water District and the use of springs. How these things are phased matters on how the issues are surfaced. Ms. Rogers stated this is not relevant to this plat. The procedural concern is that the Covington Water District concerns are global and can't be parsed phased by phase. The examiner overruled the objection.

The reduction of density approved by the minor Master Plan Development amendment may have future implications for other proposals involving density transfers and density transfer rights. Plat 2C had a higher density approved in the Master Plan Development. They are now proposing fewer units. Phase 2 has a certain number of units. If they keep Phase 2's total, then they are transferring density to other parts of the plat. Those implications have not been considered. Ms. Rogers objected because this issue was approved previously. Mr. Derdowski stated it's relevant because the conditions of approval of the plat state they will not use transfer of development rights. They don't need to use it here, but they may need to use it elsewhere. The issue should be clarified as to where those other units are going, which could be a major amendment.

The next procedural issue is a catch all that there are a number of errors in assumptions and application requirements. These were significant enough to discuss, but there are a lot of minor issues.

Finally, the last procedural issue is also not included in the document. There are certain conditions and recommendations in the applicant's staff submittals that were never translated into conditions on the plat. The developer promised it. The plat and staff rely upon it, but they aren't there. What force and effect do those conditions have on the plat? The staff should have taken the technical documents and identified any relevant conditions and put them in conditions of approval for the plat. The SEPA work was based on those technical documents. If these don't get into the written conditions, SEPA is undermined.

The next category is substantive. There are several bullets he'll address briefly. The stormwater conditions are not sufficient to ensure erosion control will be adequate. On Page 3 of the substantive document, there is underlined language that says the stormwater design was reviewed by the City and approved. The comment they made is that neither Golden nor Triad utilized a wetland scientist to determine wetland affects from the storm drainage. The City does not use best available science for this issue. Mr. Derdowski echoed Mr. Lider's comments.

The second issue is that additional data is required to determine if the proposed facility meets the standards. The wetland delineation plan doesn't protect the wetlands and often do not conform to code. The buffer around E1 doesn't match the Master Plan Development or the code. The developer is relying on a code provision to determine the buffer. They are, too. The code applies.

The wildlife corridors are not appropriate. Regional transportation has been inadequately addressed. They did a statistical analysis of the accident rate and performed a lineal projection. This is not a straight line curve. The methodology the applicant used is not supported by common practice. Tree protection is inadequate. The survey method doesn't meet code. Parks and trails need better conditions. The Master Plan Development standards and guidelines should have been used. The fiscal impacts were not appropriately measured. The two plats should be evaluated separately because they can be built separately. The CC&R have important issues that should be dealt with now.

The people that live in this town are at a terrible disadvantage in a hearing like this. He has heard an enormous respect for the examiner and his conduct of hearing. Fairness is something people respect. If this were an appeal hearing, when it was scheduled, the examiner would ask the parties to put in motions about schedule and expert witnesses. If one party said the wetland expert was not available there would have been accommodation. If somebody submitted an exhibit on the day of the hearing, it would be rejected. He likes the idea of a very transparent record without strict judicial standards. He requested more time for wetlands studies by the citizens.

Mr. Mike Fettig lives in Black Diamond. It seems unreasonable to me to approve this plat when the first 800 units have not been built. He is concerned about traffic on SR 169 and Ravensdale Road near Roberts Drive. Some of the issues during commute times are cars already backed up 25 deep waiting to turn. The intersection itself is unsafe. The angles are odd. Along Ravensdale-Black Diamond Road, there are speeding issues and trucks breaking. We've asked our representative about it, but nothing has been done. It's inappropriate to make this plat while this is happening. Traffic analysis should be done. The city needs to do extra review based on the build out of Phase 1. This project can create real hardships for us without fixing the existing problems. There are already many close calls when people cross this road.

Mr. Judith Carrier lives on Green Valley Road. She is asking for conditioning to protect groundwater. The Villages soil is very permeable. There are sand, gravel and rocks left behind by the ice age. Areas that were once forested were covered with spongy compost. In addition a major part of South King County is a critical aquifer recharge area. There are different categories of recharge areas. We have crucial Category I or II areas that are highly susceptible to groundwater contamination. The King County Code indicates that for Category I, water travels easily to Group A water system. Best Science indicates travel time of water underground can be tracked for direction and speed of travel. The direction of groundwater flow in the Villages goes toward the Green River. The Water Association of South King County sent Black Diamond a letter in 1988 that stated sewers created serious threats to aquifers. She is concerned about the well and spring systems downstream from the Villages. Both quantity and quality are issues. We are concerned about the number of development sites being requested for approval. We request a condition of approval that the future sites be left in their natural states and protected if clearcutting happens near them. She has a YarrowBay future capacity map for 259 ERU's to be constructed at some time. Ms. Carrier is concerned that those future sites will affect groundwater and local water sources. The developer has not done the studies to determine where water is and where it goes. There should be independent third party studies, such as from the Department of Ecology. Wetlands are a part of the groundwater system. The wetlands buffers must be better

studied and protected. There needs to be wellhead and groundwater monitoring with a monitoring plan and city oversight. Occupancy permits and future plat approval should be tied to groundwater quality. Ms. Carrier entered a written statement (Exhibit 92).

Ms. Margaret Ghawley-Hert lives on Lake Sawyer. She was nearly hit by a car that was using her lane as a cut through. She is very concerned about cut through traffic because of traffic congestion. When the high school lets out there is a constant stream of cars. If the population doubles or quadruples, traffic will be scary. She is concerned about the loss of trees. We'll have lots of cars but no trees. Air quality will go down. There is no easy or safe way to cross the street.

Mr. Dave Ambur stated it would be prudent to not allow Plat 2C to be permitted at this time for obvious reasons until we figure out what's going to happen with Plat 1A. This isn't little individual pieces but is instead a huge puzzle that spreads beyond Black Diamond. Part of the agreement includes road mitigation in surrounding cities. All of that needs to be done before the other stuff is vested. Part of the Development Agreement was after a certain number of dwelling units were built then traffic studies would be done. Of course, since none of the units have been built, those traffic studies can't be done. YarrowBay needs to put up and show they are serious about building a quality community by developing this one plat that's already permitted. If they do a quality job, then we can review the next section from there on out. Just giving them all these pieces when they've done nothing but clear-cut is irresponsible.