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8 BEFORE THE HEARING EXAMINER FOR
9 THE CITY OF BLACK DIAMOND

10 RE: Ten Trails Parcel Phase 2 Plat A
11
12 PLN18-0008

SECOND REVISED PRE-HEARING ORDER

13
14 INTRODUCTION

15 The schedule and procedural rules outlined below apply to the MDNS SEPA Appeal and to a
16 limited extent, the preliminary plat application of the above-captioned matter.

17 I. Evidence Relied Upon

18 This original prehearing order was based upon email communications between the hearing examiner
19 and the parties to the SEPA appeal as identified in Section IIB below. The email communications
20 commenced on February 13, 2019 and ended on February 15, 2019. This revised prehearing order
21 is based upon additional emails from the City and Applicant received on February 20, 2019. The
Second Revised Prehearing Order is based upon emails from the SEPA parties dated 2/20/19-2/22/19.

22 II. Rulings

23 A. Consolidation. The SEPA appeal will be consolidated with the preliminary plat hearing
as required by WAC 197-11-680.

24 B. Email Distribution. Given the tight timeframes involved in this proceeding, emails are
25 the easiest and most efficient form of communication for all parties involved. The email addresses
26 the Examiner has to this point are listed below. All documents required by this Order should be

1 emailed to all the email addresses below. Documents will be considered timely submitted if emailed
2 by 11:59 pm on the date required.

3 Hearing Examiner's Office

4 Phil Olbrechts: olbrechtslaw@gmail.com

5 City of Black Diamond

6 Barbara Kincaid: bkinaid@blackdiamondwa.gov

7 David Linehan: david@kenyondisend.com

8 Andy Williamson: awilliamson@blackdiamondwa.gov

9 Alex Campbell: acampbell@blackdiamondwa.gov

10 Mary Maughan marym@kenyondisend.com

11 Applicant

12 Nancy Rogers: NRogers@Cairncross.com

13 Nicole De Leon: NDeLeon@cairncross.com

14 Chris Lund: clund@oakpointe.com

15 Appellant

16 William Bryant¹: saveblackdiamond@gmail.com

17 Robin Buxton: robinb411@comcast.net

18 Gary Davis: g.davis001@q

19 Doug Ostgard: dougostgard@gmail.com

20 Michael Primm: Mprimm@q.com

21 Michael Irrgang: Mike@irrgang.net

22 Kristen Bryant: kristenbry@gmail.com

23 C. Hearing Date. The consolidated SEPA Appeal and Preliminary Plat hearing will
24 commence on March 11, 2019 at 5:30 pm and will be continued to March 13, 2019 at 5:30 pm. SEPA
25 testimony will be held on the continued hearing date. Parties may present their SEPA witnesses on
26 March 11, 2019 to the extent disclosed in their witness and exhibit lists.

D. Rules of Procedure. The City of Black Diamond Hearing Examiner Rules of Practice
and Procedure found at the City's website will apply to this proceeding. Rule 2.05 of the Rules is
modified to provide that service of all documents will be deemed complete upon the receipt of the
document by the City as opposed to the date the document is deposited in US mail facilities. All
documents and correspondence served by fax or email must be submitted by 11:59 pm of required
deadlines.

¹ In the multiple SEPA appeals filed for this project, William Bryant listed his email address as
saveblackdiamond.com. However, in an email dated February 14, 2019, the appellants identified Kristen Bryant as
their designated representative and her email address as saveblackdiamond.com.

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2 E. Time Limits. In the SEPA appeal portion of the hearing, the Applicant, Appellants
3 and staff will each have a half hour to make initial presentations and a half hour each to make
4 rebuttal/closing presentations. These time limits do not include the presentation of evidence.

5 F. Exhibit and Witness Lists. Witness lists should include a summary of the testimony to
6 be provided by each witness along with a general estimate on the length of the testimony. The time
7 estimates are just for scheduling purposes. Witnesses will not be bound to the estimates. No
8 witnesses other than those identified on witness lists will be allowed to testify at the appeal hearings.
9 Only exhibits identified in the exhibit lists will be admitted into the administrative record except
10 those submitted in response to exhibits identified in the exhibit lists. Expert witness exhibits will be
11 submitted in writing as opposed to audio recordings or video. Proposed exhibits shall be distributed
12 at the same time as the exhibit lists, except that the exhibits identified in the preliminary plat staff
13 report do not need to be distributed.

14 Any exhibits containing expert testimony will be admitted without cross-examination unless
15 an objection is emailed to all SEPA parties by March 11, 2018.

16 G. Hearing Format. The City will make a presentation on the preliminary plat
17 application, followed by comments from the Applicant, then the general public. Staff and finally the
18 Applicant will then present rebuttal evidence.

19 Following preliminary plat rebuttal evidence, the SEPA Appellants will present their SEPA
20 evidence, followed by the Applicant, then the City. The Applicant and then the SEPA Appellants
21 will then present rebuttal SEPA evidence. Closing SEPA argument shall be in the order of City,
22 Applicant and Appellants.

23 Subsequent to the SEPA presentations, the City and Applicant will be given a final
24 opportunity to provide rebuttal evidence to the extent that SEPA evidence is pertinent to preliminary
25 plat criteria and will also have the opportunity to make closing arguments on the preliminary plat
26 applications.

Kristen Bryant shall serve as designated representative for the Appellants for purposes of presenting
argument and presenting and questioning witnesses, however she is authorized to delegate that task
to other Appellants for purposes of efficiency during the hearing.


20 H. Cross-Examination. During the SEPA appeal portion of the hearing only all witnesses
21 will be subject to cross-examination, including lay witnesses. During the preliminary plat portion of
22 the hearing expert witnesses will also be subject to cross-examination.

23 I. Schedule. The following schedule applies:
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February 25, 2019	Pre-Hearing motions due.
March 1, 2019	Responses to Pre-Hearing Motions.
March 5, 2019	Replies to Pre-Hearing Motions
March 8, 2019	Witness and Exhibit Lists due along with exhibits n identified in staff report.
March 6, 2017	Optional SEPA Pre-Hearing Briefs
March 11, 2019	Objections to Exhibits: Optional Responses to SEPA Pre-Hearing Briefs
March 11, 2019, 5:30 pm	Hearing
March 13, 2019, 5:30 pm	Continued hearing including all SEPA testimony.

ORDERED this 23rd day of February, 2019.


Phil A. Olbrechts
City of Black Diamond Hearing Examiner