

No. 69418-9-I

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COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

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TOWARD RESPONSIBLE DEVELOPMENT,

Appellant,

v.

CITY OF BLACK DIAMOND, et al.,

Respondent.

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RESPONDENTS' BRIEF

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## I. INTRODUCTION

Petitioner Toward Responsible Development (“TRD”) challenges Yarrow Bay’s<sup>1</sup> two Master Planned Development (“MPD”) Permits, and challenges the adequacy of the City’s Environmental Impact Statements (“EISs”) evaluating the probable adverse environmental impacts of each MPD Permit. The two MPD Permits are for projects known as The Villages and Lawson Hills. In September 2010, the MPD Permits were approved by a unanimous vote of the City Council. The Council’s MPD Permit approval ordinances relied on the lengthy administrative record and include extensive findings of fact and conclusions of law confirming that the MPD Permits were consistent with the City’s development standards set by the City’s Code as well as the City’s Comprehensive Plan. EIS adequacy was reviewed by the City’s Hearing Examiner, who presided over a contested appeal hearing which included the testimony of many expert witnesses. The Hearing Examiner issued detailed narrative decisions finding both EISs adequate. All of the City’s decisions were affirmed by Judge Oishi of the King County Superior Court.

TRD bears a heavy burden to overturn the City’s decisions, using the administrative record developed in the hearings below. As to the EISs, TRD must overcome the substantial weight this Court must accord to the City’s determination of EIS adequacy. And as to both the EISs and the

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<sup>1</sup> Throughout these proceedings, Respondents BD Lawson Partners, LP and BD Village Partners, LP have been referred to collectively as “Yarrow Bay.” *See, e.g.*, AR 0005152 (SEPA Processing Agreement: “‘Yarrow Bay’ shall mean BD Lawson Partners, LP and BD Village Partners LP, collectively”).

MPD Permits themselves, TRD must establish that the City's determination of EIS adequacy and decision to approve the MPD Permits was based on procedural error that was not harmless, or is an erroneous interpretation of the law (after granting deference to the City's interpretation of local law), or is not supported by evidence that is substantial when viewed in light of the whole record before the court, or is a clearly erroneous application of the law to the facts.

The Opening Brief of TRD ("TRD Brief") is replete with passionate assertions and hypothetical questions, but rarely articulates an argument applying an applicable legal standard to the facts developed in the administrative record. Instead, TRD's arguments express the displeasure of some community members toward the size of the MPD projects. But community displeasure cannot be the basis for rejecting development permits that meet all applicable standards. *Maranatha Mining Inc. v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990). Moreover, the lands at issue have been "destined for development" for decades. *King County v. Boundary Review Board*, 122 Wn.2d 648, 665, 860 P.2d 1024 (1993) (upholding annexation of 783 acres of land to the City of Black Diamond, subject to preparation of an environmental impact statement). The size of the MPD projects was set by the City's 2009 Comprehensive Plan and Municipal Code requiring master planned development on these lands, with residential densities -- appropriate for the urban growth area -- of four dwelling units per acre.

The administrative record reflects that the MPD Permits authorize environmentally sensitive residential and commercial development and protect thousands of acres of open space, consistent with adopted City standards, including the City's previously adopted target to quadruple its population, and requirements to design the new communities to replicate the small town character of Black Diamond's coal mining history. The record further reflects that the EISs met the legal standard of adequacy, which does not require perfection, and that all of the issues raised by TRD were either not supported by evidence or were relatively minor, rendering them "unfortunate, but not fatal" under Washington law. This Court should affirm the City Hearing Examiner's EIS adequacy decisions, should affirm the City Council's approvals of the MPD Permits for The Villages and Lawson Hills, and because Yarrow Bay prevailed before the City and the Superior Court, the Court should award Yarrow Bay its attorneys' fees pursuant to RCW 4.84.370.

## **II. RESTATEMENT OF ASSIGNMENTS OF ERROR**

TRD states three Assignments of Error: (A) "[t]he Black Diamond City Council erred when it approved Ordinance No. 10-946 (The Villages) and Ordinance No. 10-947 (Lawson Hills). . .," (B) "[t]he Black Diamond Hearing Examiner erred when he denied the appeal of the EISs. . .," and (C) "[t]he trial court erred in entering the Findings of Fact, Conclusions of Law, and Order Denying Land Use Petition (Aug. 27, 2012) dismissing the case." TRD Brief, p. 5. There are no issues for review related to the alleged error of the trial court because the appellate court stands in the

shoes of the superior court, such that the superior court's findings and conclusions are "surplusage." *Wellington River Hollow, LLC v. King County*, 121 Wn. App. 224, 230 n.3, 54 P.3d 213 (2002).

Yarrow Bay restates the issues pertaining to the remaining assignments of error as follows:

1. Applying the "rule of reason," did the City Hearing Examiner properly determine that the EISs were adequate?
2. According appropriate deference to the City Council's actions, were the Council's MPD Permit approval ordinances consistent with the Council's previously adopted Comprehensive Plan policies and code requirements related to protection of Black Diamond's small town character and preservation of the town's natural setting?
3. According appropriate deference to the City Council's action, were the Council's findings and conclusions regarding consistency with the Comprehensive Plan sufficient for judicial review?
4. According appropriate deference to the City Council's action, did the Council correctly determine that the approved MPD Permits are consistent with the protection of Lake Sawyer water quality?
5. According appropriate deference to the City Council's action, did the Council correctly determine that the approved MPD Permits appropriately mitigated transportation impacts?
6. According appropriate deference to the City Council's action, did the Council correctly determine that the approved MPD Permits appropriately mitigated noise impacts?

7. According appropriate deference to the City Council’s action, did the Council correctly determine that the approved MPD Permits would help meet the City’s employment targets described in the Council’s previously adopted Comprehensive Plan policies and code requirements?

8. According appropriate deference to the City Council’s action, did the Council correctly determine that the approved MPD Permits would meet the City’s desire for walkable school sites as described in the Council’s previously adopted Comprehensive Plan policies and code?

### III. RESPONSE TO STATEMENT OF FACTS AND PROCEEDINGS BELOW

A. **The City approved Yarrow Bay’s MPD Permits, finding the MPDs were consistent with the City’s 2009 Comprehensive Plan and Development Regulations.**

The Villages MPD Permit approves a residential and commercial development encompassing 1,196 acres of land and the Lawson Hills MPD Permit approves a residential and commercial development encompassing 371 acres of land (the “MPD Permits”).<sup>2</sup> All of the land within The Villages and Lawson Hills MPDs is inside the City of Black Diamond and, therefore, is within the City’s Urban Growth Area.<sup>3</sup> The

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<sup>2</sup> All citations to the Administrative Record are designated herein as AR \_\_. The Villages MPD was approved by City Ord. No. 10-946, AR 0027155-326, including AR 0027509 the Land Use Map referenced at AR 0027518, Section 3. The Lawson Hills MPD was approved by City Ord. No. 10-947, AR 0027327-503, including AR 0027508, the Land Use Map referenced at AR 0027330, Section 3. *See also*, AR 0027160-61, AR 0027332-33 (Finding of Fact 2). Generally, citations herein are to portions of the record addressing both The Villages and Lawson Hills, however, at times, record citations are provided to materials for only one of the projects, because the reference is identical or nearly identical for the other project.

<sup>3</sup> RCW 36.70A.110(1) (a “City...shall be included within an urban growth area.”).

MPD Permits include the City Council's extensive analysis determining that The Villages and Lawson Hills MPDs each met the City's development regulations, including the MPD Framework Design Standards and Guidelines, which regulations and guidelines implement the City's Comprehensive Plan.<sup>4</sup>

The 2009 Comprehensive Plan<sup>5</sup> policies and the 2009 development regulations established the framework for the City's review of Yarrow Bay's MPD Permits and were the result of almost 20 years of legislative decisions.<sup>6</sup> In 1996, the City, King County, and prior property owners Plum Creek Timber and Palmer Coking Coal, entered into the Black Diamond Urban Growth Area Agreement ("BDUGAA"), authorizing annexation of additional lands now included within each MPD site for purposes of future urban development, and protecting vast tracts of land as open space.<sup>7</sup>

The Future Land Use Map in the 2009 Comprehensive Plan designated large areas of the City for Master Planned Developments by

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<sup>4</sup> See e.g., AR 0027242-96 (Council Conclusions of Law, Villages MPD) and AR 0027413-64 (Council Conclusions of Law, Lawson Hills MPD). Complete copies of each MPD Permit Approval are filed herewith as Appendices A and B.

<sup>5</sup> TRD submitted only excerpts of the Comprehensive Plan ("Comp. Plan") as Appendix K to its brief. A complete copy of the City's 2009 Comp. Plan, including the policies related to MPD development, is included as Appendix C to this brief.

<sup>6</sup> In the early 1990s, the first legislative decisions were litigated all the way to the Washington State Supreme Court. *King County v. Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993) (upholding annexation of 783 acres of land to the City of Black Diamond, subject to preparation and review of an environmental impact statement).

<sup>7</sup> See AR 0027184-85 (Ordinance 10-946, Exhibit A, pp. 25-26, Finding 18.B), AR 0027424 (Lawson Hills, Conclusion No. 20), AR 0024136 (describing the 2005 West Annexation, and the 2009 South Annexation), AR 0023757-58 (describing the 2005 West Annexation, and the later 2009 East Annexation).

mapping lands with an “MPD Overlay.”<sup>8</sup> Contrary to TRD’s assertion (TRD Brief, p. 18) the “intensity and types of uses” for the MPDs were defined in the Comprehensive Plan which revealed the significant future growth anticipated for the City by providing for mixed use commercial and residential development, including urban residential densities of a minimum of four dwelling units per gross acre on lands mapped MPD Overlay.<sup>9</sup> The Comprehensive Plan also includes the City’s specific target for a population increase from the existing approximately 4,000 people to 17,000 people by the year 2025.<sup>10</sup>

In 2009, the City amended and re-adopted chapter 18.98 of the Black Diamond Municipal Code (“BDMC”)<sup>11</sup> which created an “MPD Permit,” and set the standards for that permit so as to implement the adopted Comprehensive Plan MPD policies.<sup>12</sup> Under BDMC 18.98.120.A, an MPD “shall include a mix of residential and nonresidential use[;] [r]esidential uses shall include a variety of housing types and densities.” In 2009, the City also adopted MPD Framework Design Standards and

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<sup>8</sup> Comp. Plan at 5-25, Future Land Use Map. All of the land within The Villages and Lawson Hills project sites is designated MPD Overlay on the Future Land Use Map (“FLUM”). Lands designated MPD Overlay on the FLUM can only be developed with “[a]n MPD permit.” Accordingly, Yarrow Bay applied for MPD Permits, just as other landowners controlling the remaining 160+ acres of MPD Overlay lands may do in the future.

<sup>9</sup> Comp. Plan at 5-13 to 5-26, Figure 5-1 (“Densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process.”).

<sup>10</sup> Comp. Plan, pp. 3-1 to 3-8.

<sup>11</sup> AR 0021268-91 (Ordinance 09-897). All subsequent citations are to the code chapter itself, a copy of which is Appendix A to TRD’s Brief.

<sup>12</sup> See BDMC 18.98.020 – .100.

Guidelines (“MPDFDSG”).<sup>13</sup> The MPDFDSG set additional standards to be met by any proposed MPD project.<sup>14</sup> In addition, the MPDs are required to comply with -- among many other codes -- the City’s Tree Preservation Ordinance and grading codes.<sup>15</sup> Additional discussion of the MPD Permits’ compliance and consistency with the City’s Comprehensive Plan and codes is in Sections V.B through V.H, below.

**B. The MPD Permits and EISs underwent extensive review by the City of Black Diamond.**

Yarrow Bay’s MPD Permit applications for The Villages and the Lawson Hills projects were subjected to many City reviews under BDMC 18.98.060. The City completed a Draft EIS for each MPD project, collected public comments, and in December 2009, published a Final EIS for The Villages MPD and a Final EIS for the Lawson Hills MPD.<sup>16</sup> City Staff Reports were published in February of 2010.<sup>17</sup> Over the course of more than five months, more than 100 hours of public hearings were held before the City’s Hearing Examiner and then the City Council.<sup>18</sup> In April and May 2010, the City’s Hearing Examiner issued the Examiner’s EIS

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<sup>13</sup> AR 0021139-56.

<sup>14</sup> *See e.g.*, AR 0021145 (requiring an MPD to include multiple types of housing, and a variety of densities for housing development).

<sup>15</sup> *See* AR 0027186; AR 0027357 (tree removal).

<sup>16</sup> The Draft EISs are at AR 0015587-0015939 (Villages) and 0015839-0016093 (Lawson Hills). The Final EISs are at AR 0020584-0020859 (Villages) and AR 0020860-0021135 (Lawson Hills). Unless expressly noted otherwise, all references to an EIS or both EISs are references to the Final EISs, including the Technical Appendices found at AR 0016094-0018037 (Villages) and AR 0021136-0023734 (Lawson Hills).

<sup>17</sup> The Staff Reports are at AR 0013508-0013745 (Villages) and AR 0013329-0013507 (Lawson Hills).

<sup>18</sup> AR 0027157.

Adequacy Determinations.<sup>19</sup> Contrary to a recurring theme in TRD's Brief, the Examiner's EIS Adequacy Determinations were written in narrative format, in which the Examiner discussed matters alleged, the evidence presented, the contents of the EISs, concluded that there were a few "deficiencies," each of which were "minor" and "unfortunate, but not fatal," and that each EIS was adequate under Washington law. Next, the Hearing Examiner sent to the Council recommendations of approval for each MPD.<sup>20</sup> On September 20, 2010, a unanimous Council approved the MPD Permits.

Another theme of TRD's brief is that the City simply approved everything Yarrow Bay desired, instead of evaluating Yarrow Bay's requests and imposing limits. *See, e.g.*, TRD Brief, pp. 4-5, 10-12. TRD quotes Section 3 of each MPD Permit as support for its assertion that the Council approved everything Yarrow Bay wanted "as set forth in the application" and as "delineated on the revised Land Use Plan map." TRD Brief, p. 10. The concluding clause of Section 3 states each approval is "subject to the conditions of approval set forth in Exhibit C [to each MPD Permit]." AR 0027158, 0027330.

Condition No. 1 of each MPD Permit provides that "[a]pproval of the MPD is limited to the terms and conditions set forth in the City

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<sup>19</sup> The Examiner's EIS Adequacy Determinations are at AR 0024575-0024642 (Villages) and AR 0024646-0024711. Complete copies of the Examiner's EIS Adequacy Determinations are attached to this brief as Appendices D and E.

<sup>20</sup> The Examiner's MPD recommendations are at AR 0024765-0024988 (Villages) and AR 0024989-0025065 (Lawson Hills). The Lawson Hills recommendation incorporates sections from The Villages.

Council’s written decision, and does not include approval of any other portion of the MPD set forth in the application.” AR 0027297, AR 0027465. Consistent with that restriction, other Conditions substantially limit what the Council approved; for example, Condition No. 3 of each MPD Permit approves only limited parts of each phasing plan for the MPDs as set forth in Chapter 9 of each MPD application (the “MPD Phasing Plan”).<sup>21</sup> AR 0027297, AR 0027465. The Council also imposed over 150 conditions further limiting the MPD Permits.<sup>22</sup> TRD’s assertion that the City gave wholesale approval of the MPDs proposed by Yarrow Bay is plainly incorrect.

Next, although WAC 197-11-420(2) allowed the EISs to be prepared by Yarrow Bay because the City “may have an EIS prepared by agency staff, an applicant or its agent, or by an outside consultant retained

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<sup>21</sup> TRD’s position is particularly perplexing in light of the Court of Appeals clear statement that the record on the MPD Permits was clear that only portions of the Applications were approved. *BD Lawson Partners v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 165 Wn. App. 677, 690, 269 P.3d 300 (2011).

<sup>22</sup> Examples include: requirements to limit phosphorus producing fertilizers and activities (The Villages, Condition No. 9, AR 0027298), requirements that Yarrow Bay build planned City roads (The Villages, Condition No. 10, AR 0027298), requirements that Yarrow Bay pay for the modeling, testing and re-testing of transportation impacts at regular intervals as each MPD builds out over time to assure adequate mitigation over time (The Villages, Condition Nos. 11 - 14, and 17, AR 0027298-0027299 and 0027303-0027306), requirements that Yarrow Bay provide its neighbors extensive mitigation for construction noise (The Villages, Condition No. 44, AR 0027310-0027311), requirements that water and sewer infrastructure are provided (The Villages, Condition Nos. 46 - 59, AR 0027311-27312), requirements to collect, treat, manage, and limit the volumes of stormwater flows, including a condition mandating that if ever a silver bullet is discovered that can treat phosphorus in stormwater to reduce impact, Yarrow Bay must incorporate that new technology (The Villages, Condition Nos. 60 - 85, particularly No. 76, AR 0027312-0027316). Other conditions imposed by the City Council address everything from aesthetics, to protection of plants, wetlands, fish and wildlife, to conditions assuring competent project administration (The Villages, Condition Nos. 86 - 164, AR 0027316-0027325).

by either an applicant or the lead agency;” here, each EIS was prepared for the City by Parametrix, a consulting firm hired by the City. AR 0020585-86, AR 0015840. With the exception of transportation issues, Yarrow Bay’s consultants prepared extensive technical reports on each environmental discipline addressed in the EIS, for example, wetlands and water quality. Parametrix peer reviewed those technical reports and prepared the EISs as a “summary of the technical analysis that was done and peer reviewed by Parametrix and in some cases supplemented and replaced by Parametrix.” AR 0000805 (Testimony of S. Graham, Parametrix).

TRD expresses discontent that each MPD is subject to the vesting clause of BDMC 18.98.195. TRD Brief, p. 12. Vested rights, which derive from the Constitutional principle of due process of law, are recognized as critically important under Washington law. *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 637, 733 P.2d 182 (1987) (the doctrine ensures “that new land use ordinances do not unduly oppress development rights, thereby denying a property owner’s right to due process under the law”). BDMC 18.98.195 plainly states that “MPD permit approval vests [Yarrow Bay] for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.” This vesting grants Yarrow Bay -- and the community -- the certainty that there is a cap on the total amount of development that will be allowed, and the certainty of knowing that the City’s carefully adopted codes will be met. Most importantly, the vested status of the MPD

Permits does not preclude extensive additional permit and environmental review of all implementing projects within the MPDs in the future.

**C. The Proceedings following City approval of the MPD permits and EIS adequacy.**

After the City Council approved the MPD Permits, TRD, a nonprofit corporation, was formed.<sup>23</sup> TRD, together with a group of objecting neighbors, filed two appeals of the MPD Permits and the Examiner's EIS Adequacy Determinations. First, an appeal was filed in Superior Court under the Land Use Petition Act, Ch. 36.70C RCW ("LUPA"). Second, a Petition for Review to the Growth Management Hearings Board ("GMHB") was filed, alleging that the MPD Permits were not permits but instead were development regulations. That second GMHB appeal subsequently was disposed of by the Court of Appeals. *BD Lawson Partners v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 165 Wn. App. 677, 269 P.3d 300 (2011), *rev. denied* (April 25, 2012) (No. 86993-6) (holding that "the 2010 MPD ordinances adopted by Black Diamond were project permit approvals."). TRD's LUPA appeal then was briefed and argued and, on August 27, 2012, the Superior Court upheld the City's decision to approve the MPD Permits, upheld the adequacy of the EISs, and dismissed the TRD's LUPA Petition with prejudice.<sup>24</sup> On

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<sup>23</sup> See First Declaration of Nancy Bainbridge Rogers in Support of Yarrow Bay's Motion to Dismiss Appellant's Appeal at Appendix E (TRD Corporation's Certificate of Formation dated Sept. 30, 2010, showing formation after approval of the MPD Permits by the City Council).

<sup>24</sup> CP 101-108 (Findings of Fact, Conclusions of Law, and Order Denying Land Use Petition).

September 20, 2012, only TRD Corporation filed an appeal of the Superior Court's decision.<sup>25</sup>

Yarrow Bay separately filed a Motion to Dismiss Appellant's Appeal, which argues that TRD, a nonprofit corporation that did not exist at the time of the administrative proceedings, has no standing. TRD did not participate in the MPD Permit hearings, did not file any of the administrative SEPA appeals, and does not even appear to include as "members" all persons who did file those SEPA appeals. While nothing in this brief should be construed as an abandonment of Yarrow Bay's arguments in its Motion to Dismiss, TRD's standing necessarily is assumed for purposes of Yarrow Bay's arguments in this brief.

#### IV. STANDARDS OF REVIEW AND BURDEN OF PROOF

##### A. TRD bears the Burden to Meet the Statutory Standards of Review Set by LUPA.

When SEPA claims are pursued through LUPA, as in this case where TRD is challenging the MPD Permits together with the Examiner's EIS Adequacy Determinations, the requirements of LUPA must be met. *Moss v. City of Bellingham*, 109 Wn. App. 6, 13 n. 3, 26-27 n. 42, 31 P.3d 703 (2001). Thus, LUPA's standards of review apply to both TRD's challenge to the City's land use decisions (approval of the MPD Permits) and the City's SEPA decisions (determination of EIS Adequacy). Under LUPA, "[t]he court may grant relief only if the party seeking relief [here,

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<sup>25</sup> See TRD's Notice of Appeal filed herein, stating "Petitioner Toward Responsible Development seeks review..."

TRD] has carried the burden of establishing that one of the standards set forth in (a) through (f) of [RCW 36.70C.130(1)] has been met.” RCW 36.70C.130(1). TRD seeks relief only under RCW 36.70C.130(1)(a) – (d). In addition to meeting those standards, TRD must also demonstrate prejudice under RCW 36.70C.060(2).

LUPA challenges alleging procedural errors are reviewed under RCW 36.70C.130(1)(a), which requires TRD to establish not only a procedural error, but also that the error was not harmless. *See e.g., Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 54, 52 P.3d 522 (2002) (finding a SEPA violation but upholding the adequacy of the EIS after citing RCW 36.70C.130(1)(a) and concluding “[e]ven when there are procedural errors in the decision-making process, a land use decision may not be reversed under LUPA if the court determines the errors were harmless”); *Moss*, 109 Wn. App. at 26-27, 31 P.3d 703 (2001) (upholding land use decision in the face of opponents’ SEPA challenges and citing the harmless error standard).

LUPA challenges alleging an erroneous interpretation of the law are reviewed under RCW 36.70C.130(1)(b). Such interpretations are reviewed *de novo* after allowing for deference to the local decision maker. *Phoenix Development v. City of Woodinville*, 171 Wn.2d 820, 837, 256 P.3d 1150 (2011). EIS adequacy refers to the legal sufficiency of the environmental data contained in the EIS, and therefore a determination of EIS adequacy is considered a question of law, subject to *de novo* review. *See, e.g., Klickitat County Citizens Against Imported Waste v. Klickitat*

*County*, 122 Wn.2d 619, 632, 860 P.2d 390 (1993). The *de novo* standard of review is tempered by SEPA's express requirement that the Court must give substantial weight to the City's EIS Adequacy Determinations. RCW 43.21C.090; *Glasser v. City of Seattle*, 139 Wn. App. 728, 740, 162 P.3d 1134 (2007). Similarly, review of any claimed error of law in the City Council's interpretation of City ordinances is *de novo*, but must accord deference to the City Council's expertise. *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Associates*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004) (affirming the City Council's decision because appellants did not meet their "burden under RCW 36.70C.130(1)(b) of showing that the City Council decision was an erroneous interpretation of the law"); *Phoenix Development*, 171 Wn.2d at 838, 256 P.3d 1150 (2011) (affirming city's decision after deferring to the city's interpretation of its own code and comprehensive plan).

LUPA challenges to the sufficiency of evidence supporting the City's MPD Permit Approvals and the Examiner's EIS Adequacy Determinations are reviewed under RCW 36.70C.130(1)(c). To succeed in a challenge under subsection (c), TRD must show that there is not "a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Phoenix Development*, 171 Wn.2d at 829, 256 P.3d 1150 (citing *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)). When reviewing a challenge to the sufficiency of the evidence under subsection (c), the court views facts and inferences in a light most favorable to the

party that prevailed in the highest forum exercising fact-finding authority (here, the City and Yarrow Bay). *Id.* at 828-9. The court is not to weigh evidence or substitute its judgment for that of the decision maker. *Id.* at 832. The Court must uphold the challenged factual determination if there is substantial evidence to support the factual finding or evidence that would persuade a fair-minded person of the truth of the statement asserted. *City of Federal Way v. Town & Country Real Estate*, 161 Wn. App. 17, 37, 252 P.3d 382 (2011).

LUPA challenges involving an application of the law to the facts are reviewed under the clearly erroneous standard in RCW 36.70C.130(1)(d). An application of law to the facts is clearly erroneous when the Court is left with a definite and firm conviction that a mistake has been committed. *Phoenix Development*, 171 Wn.2d at 829, 256 P.3d 1150 (2011).

**B. EIS Adequacy is Tested under the Rule of Reason and Substantial Weight is Granted to the City's Determinations.**

In addition to the standards of review under LUPA, a separate, specific test is applied in the context of EIS adequacy determinations under SEPA. The adequacy of an EIS is tested under the “rule of reason.” *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390 (1993). In order for an EIS to be adequate under the rule of reason, the EIS must present decision-makers with a “reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency’s decision.” *Id.*

The rule of reason is in large part a broad, flexible cost-effectiveness standard, in which the adequacy of an EIS is best determined on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives. *Id.* In determining whether the EISs prepared for the MPD Permits provide sufficient information to be considered legally adequate, it is well recognized that:

[A]n EIS is not a compendium of every conceivable effect or alternative to a proposed project, but is simply an aid to the decision making process. That is, the EIS need include only information sufficiently beneficial to the decision making process to justify the cost of its inclusion. Impacts or alternatives which have insufficient causal relationship, likelihood, or reliability to influence decisionmakers are "remote" or "speculative" and may be excluded from an EIS.

*Klickitat*, 122 Wn.2d at 641, 122 Wn.2d 619.

Because under the rule of reason a legally adequate EIS must provide only a "reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision," courts have rejected attempts to "fly speck" an EIS.<sup>26</sup> *See Mentor v. Kitsap*

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<sup>26</sup> TRD seeks to rely on cases interpreting the National Environmental Policy Act ("NEPA"). *See, e.g.*, TRD Brief, p. 17. The Washington Supreme Court has recognized that the Court "will look when necessary to the federal cases construing and applying provisions of NEPA for guidance." *Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d 475, 488 n. 5, 513 P.2d 36 (1973). NEPA cases therefore have been used to help interpret SEPA provisions. But, of course, where SEPA provisions already have been interpreted by Washington courts, review of NEPA case law on those same provisions is unnecessary. To the extent the Court examines NEPA's "hard look" doctrine, Yarrow Bay notes that it is applied to EISs created under the different NEPA regulatory scheme, but is not dramatically different from the rule of reason. What constitutes a "hard look" cannot be defined precisely, but rather requires the Court to apply "pragmatic judgment" to confirm a "thorough investigation" of environmental impact was made, that the Court not "flyspeck" an EIS looking for any deficiency, no matter how minor, and that the Court must take a "holistic view" of the EIS. *Webster v.*

*County*, 22 Wn. App. 285, 290, 588 P.2d 1226 (1978) (emphasis added) (upholding the challenged EIS despite its failure to discuss the impact of locating the planned facility within an area designated as “open space” in the comprehensive plan, which the court held was “unfortunate but not fatal”). Similarly, minor SEPA violations are deemed inconsequential and do not justify a remedy. *Thornton Creek Legal Defense Fund*, 113 Wn. App. 34, 52 P.3d 522 (2002) (holding that failure to formally adopt EIS and failure to properly circulate addendum were harmless); *Moss v. City of Bellingham*, 109 Wn. App. 6, 13-14, 31 P.3d 703 (2001) (holding that several SEPA errors related to the MDNS were harmless where all adverse impacts were mitigated).

Because TRD bears the burden of proof, it is not enough for TRD to raise questions or doubts about an EIS, TRD must present evidence. As to any argument that a particular impact was not discussed, where the appellants present no evidence of that impact, the alleged impacts are speculative. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 714, 720, 47 P.3d 137 (2002) (holding that while the Boehms complained of a failure to adequately identify or mitigate impacts, they have “produced no evidence that such impacts exist.... Therefore, the impacts are speculative.”).

TRD attempts to marginalize SEPA’s requirement, that this Court must accord substantial weight to the City’s EIS Adequacy Determinations. *See*, TRD Brief, pp. 20-21. Of course deference is not

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*Dep’t. of Agriculture*, 685 F.3d 411, 421-22 (4<sup>th</sup> Cir. 2012) (affirming EIS adequacy in face of multi-pronged attack).

absolute, but in “any action involving an attack on the adequacy of a ‘detailed statement’ [i.e., an EIS], the decision of the governmental agency shall be accorded substantial weight.” RCW 43.21C.090. TRD’s concession that EIS adequacy tests “the legal sufficiency of the environmental data” (TRD Brief, p. 21), belies TRD’s further unsupported and unclear argument that the EISs are inadequate because the EISs somehow defy SEPA’s statutory language and intent.<sup>27</sup> The point is that there is no authority that would allow this Court to ignore the substantial weight this Court must accord to the City’s EIS Adequacy Determination.

TRD cites WAC 197-11-080(1), WAC 197-11-400, and WAC 197-11-030(2)(c) as supposedly requiring that any piece of data or analysis that is unknown but might be useful to have, must be obtained and included in the EISs so long as the cost to obtain it is not exorbitant. TRD Brief, pp. 16-17. This argument turns the SEPA process and standard of review on its head. These sections of the SEPA Rules mean that EISs must evaluate all “probable adverse environmental impacts which are significant,” including providing information and analysis that is “essential” to understanding those impacts so long as that information can be obtained without “exorbitant” cost, and that an EIS should be supported by “necessary” environmental analysis, but not “extraneous” or “excessively detailed” information and analysis. Nothing in those provisions allows TRD to prevail simply by pointing to a particular

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<sup>27</sup> Perhaps TRD is arguing that the City’s Responsible Official, Steve Pilcher, failed to assure that the EISs met SEPA statutory standards. Yarrow Bay expects City will vigorously defend the competence of Mr. Pilcher, and joins in the City’s argument.

analysis methodology that was not used in the EISs, or to any additional information that, under the rule of reason, is not necessary or comes at an exorbitant cost, or addresses non-probable, non-significant impacts. The adequacy of an EIS depends not on any single piece of data or any specific methodology, but on the Court's application of the rule of reason.

Here, the Hearing Examiner concluded properly that each EIS is adequate. AR 0024642 and 0024711. Since SEPA's adoption in 1971, there have been only three<sup>28</sup> reported decisions where appellate courts have held that an EIS was inadequate. *Kiewit Construction Group v. Clark County*, 83 Wn. App. 133, 920 P.2d 1207 (1996) (applying substantial weight to, and upholding, the county's determination that the EIS was inadequate<sup>29</sup> after the permit applicant appealed the county's decision). *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994) (holding the EIS inadequate because county failed to discuss any offsite alternatives, as required for public projects); *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980) (also holding that the County's EIS was inadequate because it did not discuss alternative sites). On appellate review, courts apply the rule of reason and the vast majority

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<sup>28</sup> An argument could be made that *S.A.V.E. v. Bothell*, 89 Wn. 2d 862, 865, 576 P.2d 401 (1978) involved a finding of EIS inadequacy because the Court subsequently characterized its decision as such in *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 208-11, 634 P.2d 853 (1981). But the *S.A.V.E.* decision did not explicitly address EIS adequacy and therefore it is not included here.

<sup>29</sup> The Board found that the EIS inadequately disclosed and discussed truck traffic concerns and ordered a Supplemental EIS. In the alternative, the Board granted the permit on the condition that the applicant construct costly on-and off- ramps. Instead of doing so, the applicant appealed the Board's decision to superior court.

of reported decisions hold that the challenged EIS is adequate under SEPA even with various imperfections.<sup>30</sup>

**C. In the Unlikely Event that one or both EISs are Found Inadequate, the Remedy is Remand to the City for Correction.**

If TRD carries its burden of establishing that one of the standards set forth in RCW 36.70C.130(1)(a)-(d) has been met, then TRD suggests that the Court should grant an improper and extraordinary remedy—plainly not authorized by LUPA—of voiding the MPD Permits as though they never were approved. TRD Brief, p. 14, n.4, and 99.<sup>31</sup> The only authority TRD cites in support of its suggestion that the MPD Permits are void upon a finding of EIS inadequacy is inapposite. TRD Brief, p. 14, n.4 (citing *Leschi Improvement Council v. Wash. State Highways*

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<sup>30</sup> *E.g., Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 197 P.3d 1153 (2008) (holding EIS was adequate even though not all potential mitigation measures were identified and even though the setback recommended in the siting decision was not specifically discussed in the EIS); *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1995) (holding EIS was adequate for a regional solid waste landfill unclassified use permit even though the EIS did not analyze alternative sites and did not provide detailed analysis of groundwater impacts where they could be studied in more depth at the time of subsequent required regulatory approvals); *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860 P.2d 390 (1993) (holding EIS was adequate in face of a flurry of technical arguments regarding the EIS preparation process and the analysis of historical and cultural impacts); *Glasser v. City of Seattle*, 139 Wn. App. 728, 162 P.3d 1134 (2007) (holding EIS was adequate in face of challenge that mitigation measure described in EIS was unlikely to occur).

<sup>31</sup> It appears that TRD is seeking this extraordinary remedy in order to invalidate the City's subsequent 2011 approval of development agreements that implement the MPD Permits, a 2012 approval of the first preliminary plat, and other applications that Yarrow Bay has filed within each MPD. But if TRD wanted to preserve the status quo prior to MPD Permit approval, TRD was required to seek a stay of the effectiveness of the MPD Permits under RCW 36.70C.100. TRD sought no such stay, the MPD Permits have been and continue to be effective, and cannot now be voided retroactive to the date of their approval. If reversal of the MPD Permits occurs, it can occur only as of the date the reversal order is entered.

*Comm 'n*, 84 Wn.2d 271, 525 P.2d 774 (1974)). *Leschi* addresses the then newly adopted SEPA and upholds a challenged EIS. *Leschi* does not support TRD's claim that if an EIS is held to be inadequate, then the court voids the related permits.

In a handful of cases, Washington courts have voided or held unlawful agency actions pursuant to SEPA, but those cases are both pre-LUPA and involved dramatically different facts in which no EIS was prepared at all and, therefore, have no bearing on the outcome of this matter. *E.g.*, *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973) (holding issuance of grading permit unlawful where there was no evidence the city conducted any SEPA analysis); *Noel v. Cole*, 98 Wn.2d 375, 379, 655 P.2d 245 (1982) (holding timber sale void when no environmental review conducted); *Eastlake Community Council v. Roanoke Assoc.*, 82 Wn.2d 475, 497-98, 513 P.2d 36 (1973) (holding issuance of building permits for 128-unit, 5-story condo in Lake Union to be unlawful when absolutely no environmental review was conducted). The utter absence of environmental review in those cases stands in stark contrast to this case, where environmental review and analyses are in the hundreds of pages for the "concise" EISs themselves and the thousands of pages for the technical reports analyzing the environmental impacts of the MPD Permits.<sup>32</sup>

LUPA sets forth the specific relief that the Court may provide:

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<sup>32</sup> See AR 0020584-859 and 0016094-0018037 (The Villages FEIS and FEIS Technical Appendices), and AR 20860-0021135 and 0021136-0023734 (Lawson Hills FEIS and FEIS Technical Appendices).

The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction.

RCW 36.70C.140. In the unlikely event that the Court reverses one or both EIS Adequacy Determinations, the proper remedy is to remand to allow the City to fix the EIS.

## V. ARGUMENT

### A. Applying the Rule of Reason, this Court should affirm the City Hearing Examiner's decision that the EISs were adequate.

#### 1. **TRD Misunderstands SEPA when TRD Attacks the Style of the Examiner's EIS Adequacy Determinations, the Programmatic Label Applied to the EISs, the Use of Phased Review and References to Mitigation, and the Scope of the Alternatives Analysis in the EISs.**

##### a. The Examiner's EIS Adequacy Determinations were Written in a Narrative Style and Cannot be Evaluated Accurately without a Full Reading of each Determination.

TRD alleges repeatedly that the City's Hearing Examiner "determined that several parts of the EIS were inadequate," but that the Examiner excused these alleged inadequacies by "averaging the good and the bad" instead of reviewing the EIS under the rule of reason. *See e.g.*, TRD Brief, pp. 10, 22-29, 47. This is simply not true.

The City's Hearing Examiner issued a 64-page decision finding The Villages EIS adequate, and a 61-page decision finding the Lawson

Hills EIS adequate.<sup>33</sup> The text of the Examiner's EIS Adequacy Determinations often highlights issues raised by the appellants below, and then explains why those issues failed to render the EISs inadequate. For example, TRD cites a statement by the Examiner at AR 0024581 that vital information was missing (TRD Brief, pp. 22-23), but TRD fails to cite the Examiner's additional explanation that under the rule of reason "all of the issues raised by the SEPA Appellants were relatively minor ('unfortunate but not fatal' under the case law) or there was little benefit found in additional TV FEIS review." AR 0024581.

To render a complete and correct decision in this matter, the Court must read all of the words of the Examiner's EIS Adequacy Decisions and understand the EIS as a whole. In particular, the Examiner's "Executive Summary" (AR 0024580-586) describes the "sum total of all deficiencies," which the Examiner properly found were relatively minor, including the explanation that the rule of reason does not require an EIS to be perfect. AR 0024581. The Examiner restated the basics of the rule of reason. AR 0024593-94. The Examiner's assessment of any shortcoming in the EIS in the context of the "overall thoroughness of the EIS," including that the minor deficiencies can be addressed by further analysis and mitigation "without depriving the decision maker of significant information to assist in the decision-making process" (AR 0024595) is

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<sup>33</sup> The Examiner's EIS Adequacy Determinations are at AR 0024575-0024642 and Errata at 0024575-6 (Villages) and AR 0024646-0024711 and Errata at 0024646-8 (Lawson Hills). Complete copies of the Examiner's EIS Adequacy Determinations are attached to this brief as Appendices D and E.

consistent with the rule of reason standard, including that: the EIS need only include a reasonably thorough discussion of probable significant adverse environmental impacts, need include only information sufficiently beneficial to the decision process to justify the cost of its inclusion, and need not list every speculative or possible effect.<sup>34</sup>

- b. The EISs prepared for the MPDs utilized the appropriate level of detail for the MPD Permits, regardless of whether they were called “programmatic” EISs.

TRD argues that the Court should reverse the Examiner’s EIS Adequacy Determinations because the Examiner erred by characterizing the EISs as “programmatic” rather than project-specific. *See, e.g.*, TRD Brief, pp. 31-33. The characterization of the EISs as programmatic or project-specific has no bearing on the question of whether the EISs were adequate. Rather, it is the substance of the environmental review conducted in relation to the substance of the action evaluated that matters, not the label applied to the action.

The SEPA Rules, at WAC 197-11-704(a) and (b), classify actions as either “project” actions which “directly modify” the environment – e.g., involve construction – or “non-project actions” which are purely planning documents. TRD argues that the Examiner improperly weighed the sufficiency of the environmental review under the rule of reason because the Examiner considered the MPD Permits as non-project (or

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<sup>34</sup> Even under TRD’s preferred NEPA “hard look” doctrine, case law is clear that EISs are reviewed as a “whole.” *See, e.g., Save Lake Washington v. Frank*, 641 F.2d 1330, 1336 (1981) (viewing the EIS “as a whole” agency had adequate basis to evaluate concerns of cities affected by Sand Point project); *Nat’l Parks & Conservation Ass’n v. U.S. Dep’t of Transp.*, 222 F.3d 677, 682 (9th Cir. 2000) (“we review EIS as a whole”).

programmatic) actions rather than project-specific actions authorizing construction. The MPD Permits are initial project permits that set forth a site plan for development. They are not permits for clearing, grading, subdivision, or construction of any kind. Therefore, the Examiner appropriately classified the MPD Permits as “hybrid actions” which required a “level of detail [in the EIS that] is expected to be comparatively high for project specific impacts.” AR 0024594, AR 0024666. Contrary to TRD’s assertion (TRD Brief, p. 33), the Court of Appeals’ decision confirming that the MPD Permits are project permits does not retroactively change the Examiner’s correct understanding of the nature of the MPD Permits or the level of environmental data sufficient for the EISs to be deemed adequate under the rule of reason.

- c. The Examiner understood and properly applied the rule of reason to evaluate the EISs impact analysis, assessment of mitigation and the reality of phased review.

TRD mischaracterizes the Examiner’s adequacy decisions as justifying the EISs’ impacts analysis because adequate mitigation was imposed. TRD Brief, pp. 29-31. Similarly, TRD focuses heavily on the temporal nature of SEPA review as projects occur in phases, arguing that the Examiner “erred in relying on the concept of ‘phased review’ to bail out the deficient EIS.” TRD Brief, pp. 33-38. SEPA review has been conducted for the MPD Permits themselves, using the EISs under attack in this litigation. Future implementing approvals are subject to BDMC 18.98.070.C, which requires that all “implementing city permits and

approvals, such as preliminary plats ...shall be subject to applicable SEPA requirements.”<sup>35</sup>

TRD is wrong in arguing that the Examiner improperly excused the absence of an impact analysis because adequate mitigation was imposed. Legally, such a situation is anticipated by SEPA. WAC 197-11-055 dictates the timing for preparation of threshold determinations<sup>36</sup> and EISs, and limits the current environmental review of future activities to activities that are specific enough to allow evaluation of their probable environmental impacts, including that “the environmental effects can be meaningfully evaluated.” Mitigation of impacts is expressly allowed so as to reduce the level of impact below “significant” and avoid the preparation of an EIS in the first place. WAC 197-11-350, *see also Moss v. City of Bellingham*, 109 Wn. App. 6, 22, 31 P.3d 703 (2001) (holding that cities planning under the GMA, like the City of Black Diamond, are authorized “to determine that the requirements for environmental analysis, protection and mitigation in its development regulations, comprehensive plan, and other applicable laws or rules provide adequate analysis of and mitigation for some or all of the project’s adverse impacts.”) Next, factually, what the Examiner actually did here was to describe the type of impacts analysis performed at this MPD Permit phase (*See, e.g.*, AR 0024599-

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<sup>35</sup> The EISs themselves also note that “[a]t the time future implementing applications are submitted, and approvals sought, the City will determine whether and what type of additional environmental review is required to address any additional identified impacts.” AR 0020845 (The Villages) AR 0021121 (Lawson Hills).

<sup>36</sup> Threshold determinations dictate whether the proposal’s impacts on the environment are significant enough to mandate the preparation of an EIS.

603), discuss the mitigation in the context of that impacts analysis (*See, e.g.,* AR 0024603-607), and conclude that the EISs provide a “reasonably thorough discussion of...impacts...as required for an adequate EIS” (*See, e.g.,* AR 0024607). Therefore, Examiner did not forgive any impacts analysis in favor of mitigation measures, but even if he had, that is acceptable under SEPA.

WAC 197-11-060(5)(c)(ii) expressly authorizes phased environmental review when the “sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts).” In 1981, the Supreme Court applied what are now codified as SEPA’s phased review concepts when affirming a “bare bones” EIS for two master-planned developments on 1,800 acres of land, just like the MPD Permits in this case, because an exhaustive EIS was impracticable given the 25 year build out period. *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 208, 210, 634 P.2d 853 (1981); *see also, Mentor v. Kitsap County, supra*, 22 Wn. App. at 290, 588 P.2d 1226 (holding EIS contained sufficient information concerning the environmental consequences of constructing a bulkhead along the beachfront of the property where EIS briefly discussed the potential long-term effects of the bulkhead, and an additional permit needed to be obtained before commencing construction). Similarly, an EIS may call for studies to be performed later at a more detailed permit phase, because an “[a]n early-stage EIS is particularly appropriate when

decisionmakers will have an opportunity to demand greater detail at a later project stage.” *Organization to Preserve Agr. Lands v. Adams County*, 128 Wn.2d 869, 880, 913 P.2d 793 (1996).

Here, the EISs address the environmental impacts that can be measured from the action at issue, i.e. the approvals of the MPD Permits. This is not the snowballing or unstoppable inertia effect argued by TRD. TRD Brief, pp. 15-17. SEPA’s phased review assures that analysis occurs at the time that impacts can be reasonably identified and mitigated. For example, the phosphorous analysis conducted for the MPD Permits focused on basin-wide phosphorous loading analysis and resulted in the imposition of many mitigation conditions. *See*, AR 0027312-316. Among those conditions was the requirement to identify phosphorus discharge from the MPD sites when a later more specific permit was processed. AR 0027315 (Condition No. 81). Phased review allows additional engineering work and background studies to be conducted related to the later permit. In this case, those studies allowed Yarrow Bay to offer and the City to accept and impose an additional mitigation condition assuring that as the MPDs develop, there will be no net increase in the amount of phosphorous flowing from the MPD development lands to Lake Sawyer.<sup>37</sup> The Examiner properly evaluated the EISs’ impact analysis, in light of

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<sup>37</sup> The condition mandating “no net increase” in phosphorus flowing to Lake Sawyer from MPD development was part of the City’s subsequent approval of Development Agreements for The Villages and Lawson Hills. TRD is challenging those agreements before this Court in Case No. 69414-6-I.

SEPA's phased review concepts, and the mitigation conditions for the MPD Permits.

- d. SEPA does not require evaluation of TRD's Preferred Alternative, and Adequate Analysis of the Alternatives was provided.

Continuing its theme that TRD wants only smaller MPD projects, TRD argues that the EISs should have included a discussion of alternatives that would allow the City to choose "a smaller development or one more in keeping with the landscape of the town's existing character." TRD Brief, p. 19. TRD's argument is not supported by law.<sup>38</sup>

When proposals are for private projects on a specific site (like the MPDs here) SEPA requires evaluation of "only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site." WAC 197-11-440(5)(d) (emphasis added). In compliance with that standard, Yarrow Bay's MPD Permits were designed to achieve the size<sup>39</sup> and mix of uses<sup>40</sup> called for in the City's development regulations, and were evaluated as Alternative 2 in the EISs. The City chose to include and evaluate: Alternative 1, No Action, Alternative 2,

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<sup>38</sup> TRD's citation to *Oregon Natural Desert Ass'n v. Bureau of Land Mgmt.*, 531 F.3d 1114 (9th Cir. 2008) in support of its statement that "[t]he 'heart' of an EIS is its discussion of alternatives to the proposal" has no application here. *Desert Ass'n* is a NEPA case that involved a land use plan developed by the federal Bureau of Land Management for a large portion of Oregon State. Both the facts and the law discussed in the *Desert Ass'n* case are inapplicable here, where the Court is determining the adequacy of EISs on Yarrow Bay's private projects under SEPA.

<sup>39</sup> BDMC 18.98.120.E and Comp. Plan at 5-13 to 5-26 ("Densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process.").

<sup>40</sup> See BDMC 18.98.120.A ("MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.").

Yarrow Bay's MPD Permits, Alternative 3, a smaller MPD that included less residential and commercial development, and Alternative 4, an MPD that reduced residential unit counts. AR 0020886-909, AR 0020621-35.

Under WAC 197-11-402(9), "the range of alternative courses of action discussed in EISs [] encompass those to be considered by the decision maker." SEPA allows, but does not mandate, that "[r]easonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures." WAC 197-11-440(5) (emphasis added). This permissive language does not lead to the conclusion necessary to support TRD's argument; namely, that the EISs must include an alternative that is much smaller in scale and intensity than that authorized and anticipated by the City's adopted development regulations. If the environmental analysis of the MPD Permits had disclosed impacts that could not be mitigated, then the City might have been able to condition the MPDs to be smaller using the City's substantive SEPA authority. *See* RCW 43.21C.060 (authorizing the City to condition approval of a proposed action in certain circumstances). That independent SEPA substantive authority, however, is distinct from the separate SEPA Rules that limit the scope of alternatives to be included in an EIS. TRD's argument that the EISs were required to include alternatives with less density than that allowed by the City Code confuses these two legal concepts.

In addition, TRD argues that the analyses in the EISs for the reduced scale alternatives (Alternatives 3 and 4) did not provide the City with enough information to evaluate and compare the four alternatives.<sup>41</sup> *See e.g.*, TRD Brief, pp. 8-9, 19-20, 36-38, 52-54, 63-64, 68-69, and 76-77. Contrary to TRD’s contention, the “reasonable alternatives” in WAC 197-11-440(5)(d) that are to be evaluated for achieving the proposal’s objective on the same site contains the word “reasonable” specifically because it is intended to limit the number of alternatives, “as well as the amount of detailed analysis for each alternative.” WAC 197-11-440(5)(b)(i).

SEPA, at WAC 197-11-440(5)(c),<sup>42</sup> describes what must be included in the alternatives section of an EIS, including:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

\* \* \*

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the

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<sup>41</sup> Several times, TRD quotes the Examiner as stating that the EISs gave “short shrift” to the alternatives analyses. TRD Brief, pp. 9, 26, and 69. This is another example of TRD distorting the Examiner’s EIS Adequacy Decisions through piecemeal quotations. For example as to transportation, the Examiner’s conclusion states “While the FEIS gave short shrift to Alternatives 3 and 4, merely noting the percentage increase posed by each alternative, failure to go into more detail is not fatal to the validity of the FEIS....The FEIS provided sufficient information to enable the decision-makers to making [sic] a reasoned choice among alternatives. The issues Appellants claim should have been addressed in more detail with regard to each alternative, such as safety, hours of commute analyzed, character and travel times are discussed elsewhere herein, and were not necessary for the validity of the FEIS.” AR 0024622 and 0024690.

<sup>42</sup> Among these provisions, TRD quotes only the first sentence from subsection (v). TRD Brief, p. 19.

alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(Emphasis added). As required by SEPA, the alternatives analysis in the EISs provided their principal features, provided sufficient information to allow a comparative evaluation of the alternatives, and utilized Alternative 2 as a benchmark for comparing the remaining three alternatives, and then concluded with the explanation that Alternatives 1, 3 and 4 would have the same or fewer impacts than Alternative 2 (Yarrow Bay's MPDs). AR 0020610-618, AR 0020621-635 (Villages) and AR 0020886-894, AR 0020897-0020909 (Lawson Hills). Under SEPA, each EIS more than adequately evaluated alternative actions.

**2. Potential Phosphorus Impacts to Lake Sawyer were thoroughly Analyzed in the EISs and Appropriate Mitigation was Imposed.**

- a. This Court should affirm the Hearing Examiner's decision that there was no need for the EISs to include an additional MPD-specific calculation of phosphorus load to Lake Sawyer.

TRD argues that the EISs should have calculated the potential amount of phosphorus (known as the phosphorus "load") that the MPD

projects would contribute to Lake Sawyer, including the assertion that, under WAC 197-11-794, impacts of greater severity should be provided more thorough analysis. TRD Brief, pp. 45-60, particularly, pp. 47-55. WAC 197-11-794 does not require analysis above and beyond the rule of reason standard for potential impacts that may be more severe; instead, that section of the SEPA Rules explains that when measuring whether or not a potential impact rises to the level of “significance” requiring review in an EIS, a potentially severe impact should be considered significant even if its chance of occurrence is very low.

The Examiner upheld the EISs under the rule of reason standard<sup>43</sup> because the EISs provided a reasonably thorough discussion of the potential impacts of the MPD Permits on Lake Sawyer. AR 0024581:14 - 0024583:11 (Executive Summary for The Villages), AR 0024595-608 (The Villages EIS Findings and Conclusions), *see also* AR 0024667-79 (Lawson Hills EIS Findings and Conclusions). To evaluate phosphorus loading, the EISs incorporated the Lake Sawyer Management Plan, published by King County in 2000 (“LSMP”).<sup>44</sup> As the Hearing Examiner explained, the EISs did not need to include an additional MPD-specific calculation of “how much phosphorus the MPDs will discharge to Lake Sawyer” because “the evidence in the record conclusively establishes that the LSMP overstates the amount of phosphorus loading from the MPDs.

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<sup>43</sup> See Section V.A.1.a for Yarrow Bay’s rebuttal to TRD’s repeated argument that the Examiner applied a different rule of “overall averaging.”

<sup>44</sup> The complete text of the LSMP is found in the record at AR 0005385-532. The LSMP Appendices are located, albeit out of order, at AR 0004061-595.

Consequently, the MPDs are well within the LSMP assumptions for phosphorus loading,” and that reliance “upon the LSMP, instead of [MPD-specific] calculations, provides a reasonably thorough discussion of stormwater impacts to Lake Sawyer as required for an adequate EIS.” AR 0024601-03, particularly AR 0024601:13-15, and 0024603:2-5, and AR 0024607:5-6.

Even TRD’s expert witness on stormwater issues conceded the LSMP was the “current model for lake response in Lake Sawyer.” AR 0002606:11-15. A lake response model is “a tool used to assess the results of different management scenarios on the lake’s water quality,” by “simulating phosphorus levels in Lake Sawyer associated with potential changes in watershed land use and/or the application of restoration measures,” such that the “lake response model was used to predict the annual and summer phosphorus concentrations [for different scenarios, including future development].” AR 0005489. Thus, the lake response model of the LSMP predicted phosphorus impacts to Lake Sawyer assuming future development such as the MPDs and overstated the potential phosphorus impacts, such that the EISs’ use of the LSMP resulted in over-disclosure of the potential impacts of the MPD Permits. AR 0024601-03.<sup>45</sup>

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<sup>45</sup> Citations to hearing testimony and exhibits in the Examiner’s EIS Adequacy decision were drafted prior to the certification of the Administrative Record before the Superior Court. Cross-references to the Administrative Record for the pertinent exhibits and testimony cited in the Examiner’s decision at AR 0024601-03 are: (a) Testimony of Kindig, 3/12 at 2032-2033 is AR 0001571-72, (b) Ex. H-8 is AR 0015379, (c) Testimony of Fure, 3/12 at 2007 is AR 0001546, (d) LSMP App. C, Fig E6 is AR 0004299, (e) Testimony of Abella, 3/8, pp. 558, and 564 is AR 0000561, 0000567, (f) LSMP pp. 6-6 {02175287.DOC;11 }

Not only did Yarrow Bay, the City's SEPA Responsible Official, and the City's Hearing Examiner support the conclusion that the EISs adequately disclosed the potential for phosphorus impacts, but so did the State Department of Ecology ("Ecology" or "DOE"). Even TRD's expert conceded that Ecology is an agency responsible for water quality in Lake Sawyer because Ecology established a "Total Maximum Daily Load" ("TMDL"), adopted a June 2009 TMDL Implementation Plan,<sup>46</sup> and must implement a plan to ensure the TMDL is met. AR 0002611. The 2009 TMDL Implementation Plan incorporates the recommendations of the LSMP, and notes that new development in the basin must apply Best Management Practices ("BMPs"). AR 0015386-87, AR 0015402-03.

As to all lands within Black Diamond, the Implementation Plan concludes that by continuing to require compliance with the phosphorus removal goals of the 2005 Ecology Manual for stormwater controls on new development, "compliance with the [City's stormwater] permit constitutes compliance with the TMDL," thereby protecting Lake Sawyer. AR 0015416-19. And as to the MPD Permits for The Villages and Lawson Hills, in a September 2009 comment letter sent to the City from Ecology upon review of the Draft EISs for The Villages and Lawson Hills, Ecology did not ask for the EISs to include any MPD-specific phosphorus loading model, but instead confirmed that the City should ensure that each

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to 6-7 is AR 0010646-47, (g) Testimony of Abella at 174 and 179 (cites from a "daily" transcript later updated to pp. 558-59), is AR 0000561-62.

<sup>46</sup> The complete text of the Implementation Plan is found at AR 0015380-454.

MPD Permit comply with Ecology's 2005 Manual requirements for phosphorus control and treatment, comply with phosphorus loading limits and implement best management practices, and implement Low Impact Development techniques whenever possible.<sup>47</sup> AR 0017775-79.

TRD misconstrues the record when it cites in isolation statements that the TMDL threshold is not consistently being met. TRD Brief, p. 51. In reality, the Examiner acknowledged a lack of clarity in the relationship between the two TMDL measurements (the 715 kg/y limit versus the in-lake concentration of 16 micrograms/L). AR 0024604. Then the Examiner found that the "MPDs adequately mitigate phosphorus impacts to Lake Sawyer," noting that it was "unrefuted" that the "MPD projects meet the DOE conditions for consistency with the TMDL." AR 0024603. The Examiner found that "DOE has the expertise and authority to oversee the TMDL," that DOE has no "self-interest or political reason to find TMDL compliance when that was not the case," and that TRD offered no evidence to rebut that DOE has found TMDL compliance via implementation of the same measures DOE confirmed should be required as mitigation for the MPD Permits. AR 0024604-605, and *see*, AR 0017775-79. TRD's arguments, relying only on excerpts of the EIS Adequacy Determinations and the record, missed the fact that reports by the State Department of Ecology confirm the EIS analysis that "Lake Sawyer is no longer anywhere near the tipping point and it appears

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<sup>47</sup> *See also*, Section V.D., below, including discussion of the City Council imposed conditions on each MPD Permit.

unlikely that the MPD proposals would exceed the tipping point, given that the Villages and Lawson Hills MPDs only take up 10% of the land area and 4% of the developable area of the Lake Sawyer watershed.” AR 0024582, AR 0015386, AR 0015398.

TRD asserts the Examiner erred by concluding that any requirement to provide a project-specific phosphorus loading calculation would not provide any valuable information to the decision makers, and that somehow the TMDL will be violated. TRD Brief, pp. 56-57. The Examiner properly applied the rule of reason, including that an EIS need only include information sufficiently beneficial to the decision makers to justify the cost of its inclusion under *Klickitat, supra*, 122 Wn.2d at 641, 860 P.2d 390. The Examiner concluded that the only possible additional “useful analysis” that could have been provided was if Yarrow Bay “essentially rewrote the LSMP, which is not a reasonable requirement” because “the price of this additional information is to hold [Yarrow Bay] to a different standard than the watershed standards developed in the LSMP and the Implementation Plan.” AR 0024606-607.

In light of DOE’s “objectivity and expertise,” as well as the “substantial weight that the Examiner must provide to the determination of the SEPA responsible official,” the Examiner found that “the DOE’s conclusions on TMDL compliance provide reasonable assurance on the adequacy of the mitigation measures incorporated into the MPD proposals.” AR 0024605. TRD’s wish for an MPD-specific loading model is not supported by the weight of the evidence in the record. The

EISs presented a reasonably thorough discussion of the potential impacts of phosphorus loading to Lake Sawyer.

b. TRD's additional attacks on EIS Adequacy as to phosphorus fail.

Despite TRD's efforts to argue otherwise (e.g., TRD Brief, pp. 53-54), a reading of the Examiner's decision as a whole makes clear that as to phosphorus, the sole "deficiency" that the Examiner found in the EISs, which the Examiner deemed "unfortunate, but not fatal" under the rule of reason standard, was that there was not a separate paragraph identifying the potential consequences of phosphorus in the lake environment, specifically, increased algal blooms, toxins, and beach closures. *See*, AR 0024572-0024642, in particular AR 0024583 (regarding the potential consequences of phosphorus), AR 0024585-0024586 (describing the "sum of all deficiencies" which did not render the EIS inadequate because the issues were "relatively minor"), and AR 0024581 (describing how the vital information sought by TRD did not render the EIS inadequate, because the few omissions were "relatively minor ('unfortunate but not fatal' under the case law) or there was little benefit found in additional" environmental review in these EISs.) The Examiner felt that the EISs should "identify the impacts of eutrophication . . . even if the risks of that occurring are within the level of risk adopted by the TMDL." AR 0024599-600. But applying the rule of reason, the Examiner also noted that the EISs' description on this point "cannot by itself justify a finding of inadequacy for the entire document, especially given that the reference to

eutrophication in both documents does provide “inquiry notice to persons concerned about water quality.” AR 0024601.

TRD asserts that “inquiry notice” is not a reasonably thorough discussion of the probable significant adverse environmental impacts of a project. TRD Brief, pp. 55-56. In reality, the EISs provided far more than “inquiry notice” that eutrophication might occur and the risks presented by eutrophication. For example, under a bold heading “**Why is phosphorus harmful?**”, The Villages EIS states: “Phosphorus is a nutrient found in limited quantities in the natural environment. Human activities - such as fertilizing a lawn - can cause more phosphorus to enter surface water via stormwater. High phosphate levels cause algae growth in surface waters, ultimately decreasing oxygen levels and killing fish.” AR 0020688.

Even without that disclosure, “inquiry notice” of this issue is perfectly acceptable under SEPA. The importance of Lake Sawyer and its known history of issues with phosphorus are documented in the City’s Comprehensive Plan,<sup>48</sup> such that the possible effects of phosphorus were known to the City Council. TRD argues all information must be included in an EIS itself, but in support cites only WAC 197-11-402(6) and WAC 197-11-440. TRD Brief, pp. 47, n. 11, 56. WAC 197-11-400(4) is the relevant section, and it provides that an EIS “shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.” (Emphasis added). Similarly, WAC 197-11-402(6) allows use of other documents in the agency record.

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<sup>48</sup> Appendix C, Comp. Plan, pp. 4-2 to 4-5.

Next, TRD twists the language of the Comprehensive Plan and the LSMP to argue that a long-term commitment “to reduce future watershed loading” means every new development must analyze specific numbers to show post-development phosphorus loads from the development site will somehow be less than pre-development. TRD Brief, p. 52. An accurate reading of the LSMP shows that the first and second goals of the LSMP are to: “maintain the Lake’s mesotrophic state and accommodate future growth,” and to “reduce the main nonpoint sources of phosphorus loads to the Lake.”<sup>49</sup> AR 0005399. There is no requirement to show that new development will result in a reduction of phosphorus loading from the development parcel. The LSMP calls for the reduction of existing sources of pollution, such as the maintenance or replacement of the over 260 septic systems serving the residences fronting Lake Sawyer. AR 0005438, 0005461, 0005506.

TRD argues that the EISs should have included either additional alternatives or additional analysis of Alternatives 3 and 4. TRD Brief, p. 53. Yarrow Bay has responded in Section V.A.1.d., above.

In another attack, TRD describes how during very large rainstorms, some water bypasses stormwater treatment facilities. TRD Brief, p. 51. However, this design for phosphorus treatment ponds results in only the most dilute 5% of stormwater not being treated during large winter storms which is not a significant impact. AR 0001519-80 (EIS Appeal Hrg. Testimony of Dr. Andy Kindig). No showing was made by

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<sup>49</sup> As to the proper context of Comp. Plan Section NE-6, see Section V.D., below.

TRD, because no showing is possible, that this is a significant impact on its own, or that requiring a treatment facility to accommodate the additional 5% of stormwaters meets SEPA's test for reasonable mitigation measures that are capable of being performed and are cost-effective.

TRD argues that comments raised by King County and peer review comments drafted by Parametrix were ignored. TRD Brief, pp. 58 - 60. But King County confirmed that the comment of concern to TRD (at AR 0017807) was based only upon review of the EISs' cover volume, and not on the extensive analysis that was contained in Technical Appendix M, which was never reviewed by the County. AR 0000707. *See also*, the argument in Section V.A.5. TRD asserts a memo dated October 13, 2008 from Jenna Friebel of Parametrix suggesting additional discussion of potential increases in temperature and phosphorus loading was never addressed by the City. TRD Brief, pp. 58-60. In fact, Appendix M to the Lawson Hills FEIS includes a supplemental memorandum from A.C. Kindig regarding possible temperature impacts associated with stormwater facilities. AR 0017147-50. In addition, Susan Graham, the Parametrix project manager for the EISs, confirmed that Ms. Friebel "concurred with what was written in the final EIS" which was published in December 2009, such that the phosphorus loading and other concerns raised in Ms. Friebel's 2008 memo had been resolved. AR 0000801. While the basis for Ms. Friebel's concurrence as to phosphorus loading is not stated in the record, it seems likely the concerns listed in her 2008 memo were addressed by the 2009 Ecology Implementation Plan and Ecology's own

September 2009 comment letter on the EIS. *See* AR 0017775-79. TRD did not submit any evidence to rebut Ms. Graham’s testimony that Ms. Friebel’s concerns had been addressed.

Finally, the Examiner thoroughly evaluated the battle between Yarrow Bay’s expert, Dr. Kindig, and TRD’s expert, Mr. Zisette, and concluded their differences “fall squarely within differences in professional judgment.” AR 0024608. Thus, providing the necessary “substantial weight” to the City’s SEPA Responsible Official, as to the issue of phosphorus and Lake Sawyer, the Examiner found, as this Court should affirm, that “the analysis, discussion and mitigation measures [were] adequate.” AR 0024608.

**3. Potential Transportation Impacts were thoroughly analyzed in the EISs and Appropriate Mitigation was imposed.**

TRD argues that the EISs’ description of traffic impacts was too brief, should not have relied on the customary Level of Service methodology, and that a scattershot list of other issues were inadequately addressed. TRD Brief, pp. 60-75. As to the alleged brevity of the transportation analysis, under WAC 197-11-425(2) and (4), the text of an EIS should be limited to 150 pages not counting the appendices, and the overall EIS is required to be “concise and written in plain language” and not excessively detailed or technical. Here, the EISs’ transportation analysis described the affected environment, and directed the reader to the “technical analysis” contained in a “detailed Transportation Technical Report . . . Appendix B.” AR 0020649-50 (Villages) and AR 0020922-23

(Lawson Hills). Each Transportation Technical Report (or “TTR”) included between 323 and 341 pages of detailed charts, data, calculations, analysis and text. AR 0016252-575 (The Villages), and AR 0021293-634 (Lawson Hills). Precisely as required by SEPA, the concise EIS volumes then summarized that TTR analysis into 12 to 13 pages of plain language text, including diagrams and tables. AR 0020649-60 (The Villages), and AR 0020922-34 (Lawson Hills).

a. Safety issues are analyzed during later phased review.

TRD complains that traffic safety issues were not discussed. TRD Brief, pp. 61-64. EISs “need analyze only” the “probable adverse environmental impacts that are significant.” WAC 197-11-402(1). The Examiner understood this dictate when he found that the EISs “did not identify safety concerns as a probable significant adverse impact.” AR 0024616 (Villages Finding No. 14), *see also* AR 0024684 (Lawson Hills Finding No. 14). And the record explains why. While TRD likes to assert many possible ways in which a safety analysis could have been conducted, TRD’s witness, Matthew Nolan, testified that “[f]or King County projects, we also look at the safety of a roadway, safety being the number of trips out there exacerbate an existing or a potential safety issue on that roadway. We look at high-accident locations, being eight or more collisions in a three-year period, would these types of increases in volumes drive the collision rate out there.” AR 0000497 (emphasis added). The City’s expert, Mr. Perlic, testified that there were no high accident intersections in the study area, and that accidents, especially including

accidents involving pedestrians and bicyclists, are random, and that at the level of review applied to the MPDs meaningful analysis could not be conducted. *See* AR 0024617, AR 0002000-03 (no such “hazardous roads” or “trouble spots” exist), AR 0001247-50 (accidents are random), AR 0001245-50 (pedestrian movements are accommodated in LOS analysis of intersections, the MPDs are designed to provide pedestrian and cyclist facilities, and more specific impacts to cyclists are analyzed later when the specific location of a cyclist generating use is defined). Mr. Perlic testified further that it is common knowledge that accident rates increase with increased traffic, and that an EIS typically only evaluates safety when the traffic impacts are unique – such as many large trucks travelling from a quarry. AR 0001878.

TRD misstates the text of the EISs, asserting it states that the MPDs will “not affect” pedestrians and cyclists (TRD Brief, p. 62 n. 17, p. 63). In fact, the EISs describe how the offsite road “corridors in the study area generally accommodate non-motorized travel with gravel or paved shoulders” and that the MPDs “would not affect the non-motorized system external to the specific project sites.” AR 0020660 (Villages), AR 0020933-34 (Lawson Hills). Thus, the EISs describe that the existing system includes areas for non-motorized travel, and that the MPDs are not eliminating any of those areas.

The only evidence presented by TRD directly regarding traffic safety were data describing traffic counts and accidents on SE Green Valley Road over a 10 year period. AR 0015490-98. But during 2008 –

2009, due to a bridge closure elsewhere, regional traffic was detoured along SE Green Valley Road, greatly increasing the number of vehicles travelling on the road, and the accident rate did not increase; thus, TRD's evidence simply supports that accidents are random and accident rates are unpredictable. AR 0001984-86 (Testimony of Perlic).

TRD alleges that the EISs should have discussed "queue lengths" affect on traffic safety. TRD Brief, p. 62. Relying on the testimony of the City's expert, Mr. Perlic, the Examiner properly found that analysis of queue lengths on safety should occur as part of the phased review of later intersection construction because that "will allow consideration of signal timing, actual volumes, intersection design, and will more accurately predict what the specific mitigation needs would be, such as whether a left turn lane is needed to be added, and the necessary length of that left turn lane" which is far better than analyzing it now and "trying to guess what will happen 15 years from now." AR 0024615:10 -14, *see also* AR 0024682-683.

SEPA expressly authorizes this type of phased review. WAC 197-11-060(5)(c)(ii); *see also*, Section V.A.1.c., *supra*. Thus, as the Examiner properly concluded, TRD failed to meet its burden to present any evidence that safety issues "could be adequately addressed at this higher level of review. It is reasonable to conclude that decision makers would recognize that vehicle accidents will increase proportionately with increased traffic

volumes.” AR 0024620 (Villages Conclusion 2), AR 0024688 (Lawson Hills Conclusion 2). This Court should affirm.<sup>50</sup>

- b. LOS analysis was appropriate for the EISs and no travel time analysis is necessary.

TRD complains that the EISs test transportation impacts using only the Level of Service (“LOS”) method, instead of answering a number of hypothetical questions propounded by TRD or including an analysis of travel times. TRD Brief, pp. 64-65. TRD’s desired “travel time” analysis is not “a common way of reporting impact -- impact information for a project like this” and in contrast to the standard practice of using LOS analysis, travel time analysis “wouldn’t be a state of the practice or standard at this point.” AR 0001982 (Testimony of Perlic). The EISs include a readable and concise explanation of the term Level of Service, including that “[t]he letter “A” is used to describe the least amount of congestion and best (quickest) operations and the letter “F” indicates the most congestion and worst (slowest) operations.” AR 0020650 (Villages), AR 0020923 (Lawson Hills). It is preposterous for TRD to complain that the LOS system is not meaningful to the general public, when the system is based on common, schoolhouse letter grades. The Washington Supreme Court has previously upheld an EIS against a similar challenge, concluding that the appellant’s “criticism is one of detail – asserting that the FEIS lumped the impacts on traffic into the phrase ‘Worse LOS F’.”

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<sup>50</sup> At worst, any omission here is “unfortunate but not fatal” just as was the omission of impacts on open space described in *Mentor v. Kitsap Co.*, 22 Wn. App. 285, 290-91, 588 P.2d 1226 (1978).

*Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 368-69, 894 P.2d 1300 (1995) (affirming adequacy of a 781-page long EIS including a 42-page discussion on the traffic impacts for the Emerald Downs Racetrack, ultimately summarized with the challenged phrase “Worse LOS F.”)

c. Construction traffic will be analyzed as part of subsequent phased reviews.

TRD argues the EISs should have considered construction traffic impacts. TRD Brief, pp. 65-68. TRD’s own witness, Mr. Nolan, testified that construction traffic impacts typically should be evaluated at the time in a phased development that the construction methodology is understood, including whether it has become possible to “balance” cut and fill on the site so as to reduce traffic generation. AR 0000464-65. TRD failed to produce evidence that addressing construction impacts at the MPD Permit “stage of environmental review would result in a more effective mitigation.” AR 0024624. Given the high level nature of the MPD Permits, it is not necessary, or feasible, to identify impacts associated with construction traffic or road closures associated with transportation improvements. In fact, some of the roads that may be used in the future for construction vehicles do not even exist yet. AR 0020655, AR 002930 (showing hashed “planned roadways”). As recognized by the Hearing Examiner, the City of Black Diamond Engineering and Construction Standards, Section 1.17, require a traffic control plan prior to commencing physical construction. AR 0024624. The EISs need include only

information sufficiently beneficial to the decisionmaking process to justify the cost of its inclusion. The City determined that information regarding potential construction impacts was not necessary at this time because the impact is better evaluated in the later phased review anticipated by City Code and SEPA. BDMC 18.98.070(c), WAC 197-11-060(5)(c)(ii), and *See* Section V.A.1.c., *supra*. The City's decision is entitled to substantial weight.

d. Analysis of Alternatives was adequate.

TRD argues that the EISs' analysis of traffic fails to give enough attention to Alternatives 3 and 4. Yarrow Bay responds at Section V.A.1.d., *supra*.

e. Traffic mitigation measures will be implemented.

TRD argues that the EISs need to evaluate the feasibility of funding and building the long list of intersection and roadway projects imposed as mitigation measures. TRD Brief, pp. 69-72. The Examiner was correct in concluding that the EISs need not evaluate the feasibility of implementing mitigation measures. AR 0024622-623 (Villages EIS Conclusion No. 10), AR 0024690 (Lawson Hills EIS Conclusion No. 10); *see also*, WAC 197-11-448(3) (methods of financing proposals not included in EISs). The Court of Appeals has recognized that SEPA is a procedural statute that does not demand a substantive result in government decision making, including no requirement that an EIS provide reasonable assurances that mitigations imposed would actually occur. *Glasser v. City of Seattle*, 139 Wn. App. 728, 741-42, 162 P.3d 1134 (2007).

TRD argues that if the traffic mitigation projects are not built, the traffic impacts will be far worse, citing AR 0021381, which shows the LOS difference between a mitigated and unmitigated intersection. The assertion of TRD (Brief, pp. 70-71) that there is no funding available for certain 4-lane improvements to SR-169 rendering those improvements speculative is unrelated to the mitigation imposed on the MPD Permits. The only lane improvements along SR 169 that are part of the MPD Permits' mitigation are included as mitigation projects controlled by the City of Maple Valley. *See*, AR 0027299-303, and *see* Yarrow Bay's Supplemental Designation of Clerk's Papers.<sup>51</sup> TRD's own witness, Mr. Pazooki, confirmed that funding for lane improvements along SR 169 can come from cities like Maple Valley. AR 0001174-75.

The MPD Permit conditions assure mitigation will be built. Yarrow Bay must "construct any new roadway alignment or intersection improvement" that is depicted in the City's Comprehensive Plan and necessary to maintain the City's LOS. AR 0027298 (Condition No. 10), AR 0027466 (Condition No. 9). Yarrow Bay is also responsible for the mitigation projects outside the City of Black Diamond, where Yarrow Bay can assure construction of those projects by entering a separate mitigation agreement with the applicable agency or by paying its proportionate share

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<sup>51</sup> On March 11, 2013, Yarrow Bay filed a Supplemental Designation of Clerk's Papers, including Sub Number 40, a Declaration from Counsel for the City of Maple Valley which summarizes the process in which Yarrow Bay and Maple Valley reached a mitigation agreement for Maple Valley projects, including lane improvements along SR 169, and provide a copy of that agreement.

toward construction of projects in other jurisdictions. AR 0027290 (Condition No. 15), AR 0027467 (Condition No. 14).

The MPD Permits are conditioned to require that transportation mitigation projects are built at the same time as the development (i.e., that the mitigation is “concurrent”). AR 0027306 (Condition No. 20), AR 0027307 (Condition No. 25). TRD’s complaints about the City’s concurrency program (TRD Brief, p. 71) are misplaced because the EISs could only evaluate the MPD Permits under existing standards. If the City chooses, later, to lower its LOS standards, the City will need to conduct SEPA review for that action. Finally, the MPD Permit conditions mandate multiple new tests and reviews to assure that the transportation mitigation is working, and if not, to impose different or additional mitigation. AR 0027298-0027308, particularly Condition Nos. 10, 15, 17, 20, and 25.

f. The LOS Analysis was Complete.

TRD argues that the LOS analysis should have covered more than a single PM peak hour, that the analysis should have covered the AM peak hours as well, and that the use of intersection averaging somehow masked the true extent of impacts. TRD Brief, pp. 60, 72-74. The EISs plainly disclose that the PM peak hour is studied because “it represents the period when traffic is heaviest. We use this time of day in our planning to ensure that future conditions won’t be worse than what we study.” AR 0020665, AR 0020925. Analysis of traffic during additional PM hours would simply show the intersections functioning better than during that worst hour.

TRD is wrong when they allege that no AM traffic analysis was conducted. First, analysis of the PM peak hour -- which is the worst hour all day -- encompasses the lesser traffic in the morning. AR 0020665, AR 0020925. Second, where the EIS authors were concerned that the PM peak hour LOS analysis would not cover the AM impacts, the TTRs did analyze the AM peak hour traffic at multiple intersections, and explained that the mitigation designed to alleviate impacts during the PM peak hour would have even greater benefits during the AM peak hour. AR 0016333-341 (Villages TTR), *see also*, AR 0002035-37 (Perlic Testimony regarding Lawson Hills TTR).

Finally, the testimony of TRD's own expert does not support TRD's argument to this Court that the EISs should have included analysis based on failure of a particular "leg" of an intersection rather than the entire intersection. As concluded by the Examiner:

Whole intersection failure was sufficient to establish necessary mitigation. The City's LOS standards for intersections applies to the whole intersection, and [the City's expert] Mr. Perlic and [TRD's expert] Mr. Tilghman both testified that it is standard practice to analyze the entire intersection because mitigation is tied to failure of [the] whole intersection. While Appellants would have the FEIS also examine the various legs of each intersection, such detail is inappropriate for the FEIS itself; this analysis is included in the Transportation Technical Report. Analysis of LOS at intersections contained a reasonably thorough discussion of significant aspects of probable environmental consequences.

AR 0024621 (Villages EIS Conclusion No. 5), AR 0024689 (Lawson Hills EIS Conclusion No. 5).

TRD's arguments fail to articulate a basis for this Court to reverse the Examiner's findings and conclusions regarding the impacts resulting from increased traffic volumes and decreased levels of service upon an "unprecedented number" of intersections, and the identified mitigation. AR 0024617:21 – 0024618:4 (Villages Finding 15), *see also* AR 0024685 (Lawson Hills Finding 15). AR 0024620 and 0024621 (Villages Conclusion Nos. 1 and 3), AR 0024688 and 0024688 (Lawson Hills Conclusion Nos. 1 and 3).

**4. Potential Noise Impacts were thoroughly analyzed and Appropriate Mitigation was imposed.**

- a. TRD's challenge to EIS Adequacy Regarding Noise must be dismissed because TRD cannot demonstrate Prejudice.

Under SEPA, an administrative appeal to the Examiner must be filed before "judicial review of any SEPA issue that could have been reviewed under the [City's] procedures." WAC 197-11-680(3)(c); RCW 43.21C.075(4); *see also* RCW 36.70C.070(2)(d) (requiring exhaustion of administrative remedies to have standing under LUPA). Only two SEPA appeals were made to the Examiner that mentioned noise issues: the Clifford Appeal (AR 0003669-87) and the Harp Appeal (AR 0003571-84). The Clifford Appeal raises noise impacts as an issue only with regard to noise generated from proposed schools. AR 0003680. TRD abandoned that issue by failing to raise it in its LUPA Petition. CP 67 and 69. The Harp Appeal alleged that The Villages FEIS<sup>52</sup> did not adequately address

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<sup>52</sup> No one appealed or otherwise contested the sufficiency of the noise analysis for the Lawson Hills MPD. Consequently, only the noise impact analysis in The Villages EIS is before the Court.

the impact of construction noise on their property, the location of the sources of expected noise affecting their property, and the duration of construction noise upon their property. AR 0003578; *see also*, AR 0024612 and 0024608 (Examiner Decision concluding Harp Appeal limited to three residences); AR 0020665 (TV EIS at 3-29) (addressing the area that includes the three residences identified in the Harp Appeal).<sup>53</sup>

TRD cannot demonstrate prejudice because the parties to the Harp appeal no longer live on the property identified in their appeal. Cindy Proctor moved to Enumclaw during the MPD hearings. AR 0014199, AR 0013976 (Proctor comments noting “Moving to...Enumclaw, WA 98022 3/20/10”). Mr. Harp, sadly, has passed away. Mrs. Harp sold her house and moved in April of 2012. *See* Yarrow Bay’s Supplemental Designation of Clerk’s Papers.<sup>54</sup> Since no party still lives on the lands designated in the Harp appeal, no party can demonstrate prejudice as required by RCW 36.70C.060(2)(a) and *Moss v. City of Bellingham*, 109 Wn. App. 6, 31 P.3d 703 (2001). Accordingly, TRD’s claims regarding noise should be dismissed.

b. If the Court Reaches the Issue of Noise Impacts, The Villages EIS Adequately Evaluated Noise.

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<sup>53</sup> The Harp property was located in a finger of land between two portions of The Villages MPD site, south of Roberts Drive (which road is sometimes labeled on maps as Auburn-Black Diamond Road), and east of the existing neighborhood of Morganville. AR 0027509.

<sup>54</sup> On March 11, 2013, Yarrow Bay filed a Supplemental Designation of Clerk’s Papers, including Superior Court Sub Number 122, which is a declaration from one of Yarrow Bay’s attorneys, documenting these facts.

In the event that the noise issue is reviewed by the Court, Yarrow Bay responds. TRD argues that the Examiner determined the EIS failed to adequately address noise, but excused that failure because only a few people would be affected and because future mitigation would address impacts. TRD Brief, pp. 74-77. Again, the actual words of the Examiner's decision show that TRD's claims are without merit. AR 0024580-86 (especially AR 0024583), and AR 0024608-612. The Examiner properly concluded that the EIS disclosed that construction noise impacts could be severe on the only affected property about which an appeal was filed, that the only information missing was the duration of the noise impacts, but that the loudest activities—tree clearing—would be short in duration. *Id.* Thus, the Examiner properly found the absence of a duration analysis to be minor, and unfortunate but not fatal. *Id.* The EIS noise study describes the existing noise levels in the area of the proposed development, the expected effects of construction-related noise on nearby uses, the projected traffic noise outside the MPD sites, and options for reducing noise disturbance from short and long term noise sources. AR 0020661-70; *see also* AR 0024611.

TRD argues that the EIS is inadequate because it does not include a site-specific analysis of the impacts of truck traffic noise on every potentially affected property along the probable truck haul routes. TRD Brief, p. 76. In fact, potential noise impacts from construction activities (including use of dump trucks) are disclosed and discussed in the EIS. AR 0020664-67. The potential sound levels from construction activities are

set forth in Exhibit 3-12. AR 0020665. The table includes the sound levels that may be expected at three distances. This information, including the disclosure that the farther away a noise receptor is from a noise generator the less impact the noise generator has on the receptor, is certainly sufficient to inform decision makers of potential noise levels at any given location. The EIS must contain a reasonably thorough discussion of impacts but a complete EIS need not evaluate every possible scenario or conduct a “worst case analysis.” *Solid Waste Alternative Proponents (SWAP) v. Okanogan County*, 66 Wn. App. 439, 447-48, 832 P.2d 503 (1992) (citations omitted). Nor must an EIS exhaustively describe in words every potential impact. *Concerned Taxpayers Opposed to the Modified Midsouth Sequim Bypass v. State Dept. of Transp.*, 90 Wn. App. 225, 233-34, 951 P.2d 812 (1998) (holding that though the FEIS did not describe in words the impacts of the four routes, the detailed maps were sufficient to inform decision makers that three of the routes would destroy a historic building).

Here, the Villages EIS also indicates that construction noise would be temporary and that the increase in noise levels depends on the type of equipment used and the amount of time it is in use. AR 0020665 (TV FEIS pg 3-12). At any given off-site property, construction noise will necessarily be intermittent and temporary, and so would not comprise a “continuous” exposure source. This sort of intermittent and temporary potential adverse effect is not usually determined to represent a significant

environmental impact under SEPA. AR 0002051-53 (Testimony of Richard Steffel).

TRD also argues that the Examiner erred by concluding that subsequent studies and corresponding mitigations would address noise impacts. TRD Brief, pp. 76-77. In support of its argument, TRD cites *Protect Key West, Inc. v. Cheney*, 795 F. Supp. 1552 (S.D. Fla. 1992). In *Protect Key West*, the Navy proposed construction of 160 homes for military personnel on 28.65 acres of land in Key West, Florida, but rather than prepare an EIS, relied on an 11-page environmental assessment (“EA”) that summarily concluded that the project would have no significant adverse environmental effect. The Court held that the EA was “wholly inadequate” and the Navy’s attempt to subsequently append the EA with studies produced later to justify its decision not to prepare an EIS violated the letter and intent of NEPA. *Id.* at 1559. In sharp contrast, here, a substantial, detailed EIS was prepared that discloses noise impacts and then mitigation conditions were imposed on the MPD Permits.

Washington courts applying SEPA have allowed the use of future studies as a mitigating condition. For example, in *West 514, Inc. v. City of Spokane*, 53 Wn. App. 838, 770 P.2d 1065 (1989), a Mitigated Determination of Non-Significance (“MDNS”) was issued for a proposed shopping mall development. A condition of the MDNS required future air quality studies, “which when met will confirm that the project will not have a significant adverse environmental effect.” *Id.* at 844. On appeal to the Court of Appeals, opponents of the proposed development argued that

it was error for the county to issue the MDNS when it was “conditioned on future environmental studies which in and of themselves had no mitigating effect.” *Id.* at 848. Opponents argued “this procedure allowed the County to make a determination of nonsignificance before the full impact of the mall was understood,” but the Court of Appeals disagreed, holding that the county could issue the MDNS with the condition requiring future air quality studies. *Id.* at 849.

The noise impacts at issue in this case are far less controversial than the future studies allowed under *West 514*. Here, future studies were not required to justify not issuing an EIS. Rather, a detailed EIS was issued. The EIS discussion of noise impacts was adequate for phased review because not only will additional SEPA review of noise impacts on specific properties occur with subsequent implementing permit applications, but also the MPD conditions of approval mandate that certain noise mitigation be provided at the time of later construction. AR 0024612, AR 0024583, AR 0027310-311.

**5. TRD did not Appeal on Grounds of Alleged Inadequacy of the City’s Response to EIS Comments, but even if a Proper Appeal was made, TRD’s Claims fail.**

This Court should not consider TRD’s allegations asserting inadequacies in response to comments on the EISs because “the adequacy of FEIS response to comments were not included in any of the SEPA appellant appeal statements” for either The Villages or Lawson Hills. AR 0024635 (Examiner’s EIS Finding 2), AR 0024701 (Examiner’s EIS

Finding 2). Yarrow Bay concurs with the Examiner's conclusions that "nothing in the record establishes that the DEIS comments properly presented issues [which] were inadequately addressed in the EIS," and that the single comment that might have come close was "not enough to render [the EIS] inadequate." See AR 0024635 (Examiner's EIS Conclusions 2 and 3), AR 0024702 (Examiner's EIS Conclusions 2 and 3).

Under WAC 197-11-560, the City is to "consider" comments, and "respond" by any one of a number of means, including modifying the EIS or explaining that no response is required; the City may respond individually, in groups, by cross-reference, or by other method. The Supreme Court has held it harmless error when a county made no response whatsoever to comments on a draft EIS:

Procedural errors occurring during the EIS process are reviewed under the rule of reason. Where such errors are not consequential, they must be dismissed as harmless. See *Mentor v. Kitsap Cy.*, 22 Wn. App. 285, 290–91, 588 P.2d 1226 (1978). Although the County failed to respond to specific comments on the CDL/woodwaste DSEIS, it did respond to other general comments on handling CDL waste, and made some modifications and additions to the final EIS as a result. Under the rule of reason, we conclude the County's failure to respond to comments on the CDL/woodwaste DSEIS does not render the [Plan] EIS inadequate.

*Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 638, 860 P.2d 390 (1993).

Pursuant to WAC 197-11-560, the City's broad discretion over the form of response to comments did not obligate the City to respond to comments that did not warrant a response, such as comments directed at

future or different proposals. Even one of TRD's County witnesses conceded that when King County prepares an EIS, the County does not actually do all of the additional analysis requested by every single comment filed on the draft EIS. AR 0000471:4-7. Also, TRD complains about the nature of response to written comments made, not by TRD's members, but by agency staff from King County and the Washington State Department of Transportation. Neither King County nor the Washington State Department of Transportation chose to appeal the adequacy of either EIS. Lack of certain agency comments bars that agency from later appeal, and lack of comments from other agencies is "construed as lack of objection to the environmental analysis." WAC 197-11-545. Likewise, common sense supports that lack of an appeal by an agency means that the agency has no further objection and neither should TRD.<sup>55</sup>

TRD's citation to NEPA case law is, again, misplaced. TRD Brief, p. 39. NEPA regulations have different response requirements than SEPA, requiring discussion of "any responsible opposing view which was not adequately discussed in the draft statement." 40 C.F.R. § 1502.9(b). In each of the cases cited by TRD, the EISs at issue failed to discuss in any meaningful way comments by federal and state agencies with expertise, that included evidence contrary to that relied upon in the applicable EIS.<sup>56</sup>

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<sup>55</sup> Yarrow Bay notes that it is the position of the overall agency that is legally relevant, not whatever complaints might be raised by individual agency employees.

<sup>56</sup> See *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (2011) (holding the Bureau of Land Management failed to consider and respond "objectively and in good faith" to concerns raised by its own experts, U.S. Fish and Wildlife Service, the Environmental Protection Agency, and state agencies); *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157 (2003) (holding U.S. Forest Service failed to

In sharp contrast, here, the EIS comment responses are not governed by the NEPA's CEQ regulations, the City did provide substantive responses to comments that actually addressed environmental review of the MPD Permit proposal, and TRD's objections are to matters where an agency raised a question or asked for more review, rather than presented contrary analysis. In addition, here, the MPD Permits will be followed by subsequent more detailed implementing permits, all subject to phased review under SEPA.

Because more specific implementing proposals will occur at a later time, the City's response to comments on the MPD Permits under consideration were appropriately limited to the environmental effects that can be meaningfully evaluated at the MPD Permit stage. WAC 197-11-784. For example, TRD cites King County's comment (AR 0023500) alleging a possible impact on a regional trail from a possible infiltration pond, and TRD complains the City did not respond. TRD Brief, p. 40. But, as disclosed in the MPD and EIS, the location of the pond is subject to later permitting and review, and the pond might be sited in an alternate location. AR 0016752-65, AR 0017158, AR 0017183-237. Moreover, The Villages MPD Condition No. 78 (AR 0027314) expressly obligates Yarrow Bay to obtain all necessary permits from King County for this

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specifically mention or discuss detailed challenges to Service's conclusion regarding bird habitat filed by Arizona Game and Fish Department and U.S. Department of Fish and Wildlife Service); *Seattle Audubon Society v. Espy*, 998 F.2d 699 (1993) (holding the U.S. Forest Service failed to address in any meaningful way scientific evidence prepared for the U.S. Fish and Wildlife Service that concluded owl population was declining more quickly than anticipated in the challenged owl management plan).

pond in this location. It is only at the time that the pond itself is subject to permit review that it will be a “proposal” ripe for SEPA review and analysis of any potential impacts. The County’s comment was simply beyond the scope of the EIS. TRD’s remaining complaints (listed at TRD Brief, pp. 40-44) similarly do not warrant a more detailed response or were appropriately responded to consistent with the relationship of the comment to the MPD Permit proposal.

TRD next argues that the Examiner’s conclusions that responses to comments were adequate are due no deference because the Examiner did not discuss the “specific items that formed the bases of this part of the SEPA inadequacy claim.” TRD Brief, p. 44. TRD’s argument ignores the fundamental problem with TRD’s case: TRD did not raise “the adequacy of FEIS response to DEIS comments” as an appeal issue, and TRD presented “nothing in the record to suggest that the City failed to address DEIS comment letters that raised significant adverse environmental impacts that were not adequately addressed in the EIS.” AR 0024635 (Examiner’s EIS Findings 2 and 3). The Examiner had no specific items to discuss because TRD both failed to raise this issues in proper appeals and failed to provide any relevant evidence.

**B. The MPD Permits are Consistent with the Comprehensive Plan Provisions calling for Incremental Development, Retention of Natural Setting, and Small Town Character.**

Black Diamond’s 2009 Comprehensive Plan (Appendix C) includes four themes relevant to TRD’s arguments. First, the Plan

anticipates “significant residential growth” (Comp. Plan, p. 3-7) in the City limits “as a result of the Master Planned Developments (MPDs)” (Comp. Plan, p. 3-1) by the year 2025. Second, the Plan establishes that MPD densities “are intended to be urban in nature (minimum of 4 dwelling units per gross acre) . . . .” Comp. Plan, p. 5-13. Third, in planning for and managing such growth, the Comprehensive Plan notes the “City will apply several fundamental principles to retain its small town character, as follows: [r]etain the natural setting; [d]efine features and landmarks; [p]rovide mixture of uses and continuity of form; [c]ontinue compact form and incremental development; [m]aintain pedestrian scale and orientation; [and p]rovide opportunities for casual meeting and socializing.” Comp. Plan, pp. 5-7 to 5-8 (emphasis added). Finally, in order to implement these six fundamental principles to retain small town character, the Plan directs the City to “[d]evelop and enforce regulations consistent with the character and scale of the community and [to] use design guidelines to help shape development.” Comp. Plan, p. 5-33.<sup>57</sup>

Implementing its Comprehensive Plan, the City adopted the Master Planned Development Framework Design Standards and Guidelines (“MPDFDSG”) (AR 0016096-115), BDMC 18.98, and its 2009

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<sup>57</sup> See also Comp. Plan, p. 1-10 (“The essence of the historical community will be perpetuated through the use of design guidelines for new development.”) (emphasis added); p. 2-16 (“Utilize the Black Diamond Design Guidelines and Standards as the standards to determine the design features of commercial, office, and industrial uses and as guidance in designing residential development in the UGA.”) (emphasis added); p. 5-10 (“Design guidelines will provide methods and examples of how to achieve design continuity and to reinforce the identity of the City as a rural community.”) (emphasis added).

Engineering Design and Construction Standards, including provisions to specifically preserve small town character. The City Council Conclusions of Law Nos. 16 and 27 confirm that the MPDs implement and satisfy the Comprehensive Plan policies and the MPDFDSG, including implementing small town character policies. AR 0027249, 0027256-57 (Villages Conclusion Nos. 16 and 27); AR 0027420, 0027427-28 (Lawson Hills); AR 0027284-95 (Villages Conclusion Nos. 73 to 96); AR 0027454-64 (Lawson Hills). It is TRD's burden under LUPA to establish that these conclusions are erroneous or not based on "a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Phoenix Development*, 171 Wn.2d 820, 829, 256 P.3d 1150 (2011) (citing *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)). TRD rarely cites to the record, and fails to meet its burden.

The City's Comprehensive Plan reflects a policy preference to retain "small town character" and preserve the natural setting. Comp. Plan, pp. 2-5, 4-1, 5-7, 5-8, 5-33, 5-38, 5-49, 5-50, 7-49. However, as recognized by both the City Council and Hearing Examiner, nothing in the Comprehensive Plan requires "rural densities or suggest that they supersede the more specific comprehensive plan policies and [s]tate mandates requiring urban densities." AR 0024892-93. Instead, according to the City Council and the Examiner, the City's MPD regulations must be read in such a way that "harmonizes the requirement for urban densities with the objective of maintaining small town character." *Id.*

BDMC 18.98.010(L) implements these general standards of the Comprehensive Plan by noting that MPDs should incorporate the same design principles “all as identified in the book Rural By Design by Randall Arendt and in the city’s design standards.” As approved and conditioned in the MPD Permits, The Villages and Lawson Hills MPDs implement all six<sup>58</sup> of these principles demonstrating that The Villages and Lawson Hills MPDs were designed to implement small town character principles and retain the natural setting. AR 0027258-59 (Conclusion of Law No. 27, Villages MPD); AR 0027429 (Conclusion of Law No. 27, Lawson Hills MPD).<sup>59</sup>

1. “Retain the natural setting,” and “Future development is likely to occur in numerous “villages” separated by sensitive areas and treasured places.” Comp. Plan, pp. 5-7 and 5-8. The City’s MPD regulations, as well as Sensitive Areas Ordinance (BDMC Chapter 19.10), contain provisions that further the principle of retaining the natural setting. The Villages and Lawson Hills MPDs are compliant with both ordinances.<sup>60</sup> Within The Villages, 507 acres of on-site open space is provided and only half an acre of wetland will be disturbed. AR 0020618. Within Lawson Hills, 138 acres of on-site open space is provided and only

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<sup>58</sup> Principles 5 and 6 are discussed, together, below.

<sup>59</sup> See also AR 0024924 (Hearing Examiner MPD Recommendation, Conclusion of Law No. 23, Villages MPD); AR 0027814-25 (City Council, Testimony of Lauri Fehlberg); AR 0000982-94 (Hearing Examiner, Testimony of Lauri Fehlberg).

<sup>60</sup> See AR 0024141-55 (Villages MPD application, Ch. 2); AR 0023762-75 (Lawson Hills MPD Permit application, Ch. 2); AR 0027247 (Conclusion of Law No. 11(B), Villages MPD); AR 0027418 (Conclusion of Law No. 11(B), Lawson Hills MPD).

an acre of wetland will be disturbed. AR 0020894. Thus, the allegation (TRD Brief, p. 84) that the MPDs do not “retain any natural vegetation or protect the ‘varied topography’ on site” is unsupported by the record.

The Villages’ and Lawson Hills’ open space and sensitive areas are natural neighborhood separators.<sup>61</sup> Moreover, despite allegations to the contrary (TRD Brief, p. 85), the MPDs will fit “within the environment rather than on top of it,” in accordance with one of the Rural by Design principles. For example, The Villages MPD has a substantial series of wetlands that run throughout the project site like fingers. AR 0027509. The Villages and Lawson Hills MPDs are not modifying these sensitive areas in order to accommodate traditional development patterns, but rather the built environment is integrated around the existing configuration of sensitive areas. Similarly, the MPDs’ internal road networks gently curve and wind around the open space areas. AR 0027509.

Contrary to TRD’s allegations, Yarrow Bay will not, and is prohibited from, taking down major hillsides to level the site. The City

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<sup>61</sup> Notably, the two figures referenced by TRD in its Opening Brief at page 79, footnote 19 from the Rural by Design book (Figures 7-2 (AR 0014092) and 7-3 (AR 0014092)) are exactly what the City Council approved in The Villages and Lawson Hills MPD Permits. There is development, it is dense, and clustered with areas of open space between. The depictions of people and buildings on pages 3-5 through 3-7 of the Villages MPD Permit application are focused on The Villages Town Center, which strongly resembles the clustered development in the middle of the aerial view of the “creative development” page (Figure 7-3 (AR 0014092)). See AR 0024164-66 (Villages MPD Permit application, pp. 3-5 – 3-7). If a viewer zooms out and takes a higher aerial view of the MPDs’ land use maps, there are parks and green spaces inside the Town Center, and copious natural areas and parks outside the Town Center that separate development parcels. See AR 0027509 (Villages MPD Land Use Plan); AR 0027508 (Lawson Hills MPD Land Use Plan); AR 0024163, 72-74 (The Villages MPD Permit application, pp 3-4, 3-13 – 3-15).

Council adopted a condition requiring an overall grading plan be submitted prior to the first MPD implementing project approvals and that, as part of that grading plan, the balance of cut-and-fill cannot exceed the other by more than 20 percent. AR 0027319 (Condition of Approval No. 110, Villages MPD); AR 0027487 (Condition of Approval No. 110, Lawson Hills MPD). In addition, all implementing projects for The Villages and Lawson Hills MPDs are required to comply with the City's Tree Preservation Ordinance (BDMC Ch.19.30) per the terms of BDMC 18.98.195(A).

2. "Define Features and Landmarks." Comp. Plan, p. 5-8. The Comprehensive Plan acknowledges that fundamental elements of small town character are distinguishing features and landmarks. The Comprehensive Plan states: "The City's distinguishing characteristics include its history as a coal mining town and traditions associated with that history; views of Mount Rainier; and the geography of natural features that define the southern and western edges of the original townsite." Comp. Plan, p. 5-9. Likewise, The Villages and Lawson Hills MPDs include defining features and incorporate characteristics of the existing community. For example, elements of The Villages Town Center include elements of "old town" architecture and the elongated roundabout located just past The Villages Town Green creates a strong community landmark. AR 0024172. The design of major roads within the MPDs are oriented to take advantage of southerly views to Mount Rainier (AR 0027509), further incorporating this element of the City's vision.

3. “Provide Mixtures of Uses and Continuity of Form.”

Comp. Plan, p. 5-7. The Villages and Lawson Hills MPDs contain a mixture of uses and provide the continuity of form envisioned within the Comprehensive Plan. AR 0024142-44, 0024158-203 (Villages); AR 0023763-65, 0023777-810 (Lawson Hills).<sup>62</sup> The Lawson Hills MPD also provides continuity of form by mimicking the existing residential area, known as Lawson Hill, with a variety of housing types and sizes. AR 0023763-65, 0023777-810. The more intense commercial land uses associated with the Lawson Hills MPD are appropriately located closer to the State Route 169. AR 0000982-94 (Testimony of Lauri Fehlberg).<sup>63</sup> The uses provided in The Villages MPD Town Center area are the mix of uses supported by the Comprehensive Plan. AR 0024142-44, 0024158-203.<sup>64</sup> Yarrow Bay’s inclusion of neighborhood commercial in limited amounts also furthers the goals of the Comprehensive Plan, p. 5-40, Policy LU-25. AR 0024142-44, 0024158-203 (Villages MPD Permit application); *see also* AR 0000982-94 (Hearing Examiner, Testimony of Lauri Fehlberg). Finally, the continuation of commercial and business park/light industrial uses in the Lawson Hills North Triangle and Villages North Property help achieve not only the City’s targets for employment,

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<sup>62</sup> *See also*, AR 0027814-25 (City Council, Testimony of Lauri Fehlberg); AR 0000982-94 (Hearing Examiner, Testimony of Lauri Fehlberg)

<sup>63</sup> *See* Comp. Plan, pp. 5-37 and 5-40. Comp. Plan Policy LU-28 encourages community commercial development within the SR 169 Community Commercial area.

<sup>64</sup> *See* Comp. Plan, pp. 5-32, 5-33, 5-40, 5-41; *see also* p. 5-40 (Policy LU-24).

but the desire for the City to be self-sufficient. AR 0000983-94 (Hearing Examiner, Testimony of Lauri Fehlberg).<sup>65</sup>

4. “Development should continue compact form and incremental development.” Comp. Plan, p. 5-8. The traditional pattern of development within Black Diamond comprises small lots in traditional grid patterns, developed at a predominant density of about 6 dwelling units per acre. Comp. Plan, p. 5-4. The existing town was developed in a manner that preserved large tracts of mining land and located residences near services. Within The Villages, the most dense and compact development is similarly located nearest the Town Center, which offers shopping and other services. AR 0027509. Both MPDs also include limited neighborhood commercial, such as corner stores, to be located within residential areas.<sup>66</sup> Just as the existing town is defined by natural topographic landforms, so are the Villages and Lawson Hills MPDs, which utilize sensitive areas and open spaces to define and separate neighborhoods.<sup>67</sup>

Contrary to TRD’s opinion, the concept of “incremental development” does not require limiting growth, but instead necessitates a phased approach to development that the City has incorporated into BDMC Chapter 18.98 and that Yarrow Bay has incorporated into The

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<sup>65</sup> See Comp. Plan, pp. 5-39 through 5-44.

<sup>66</sup> See AR 0024181 (Villages MPD Permit application, p. 3-22); AR 0023790 (Lawson Hills MPD Permit application, p. 3-11).

<sup>67</sup> See AR 0024157-203 (Villages MPD Permit application, Ch. 3); AR 0023777-810 (Lawson Hills MPD Permit application, Ch. 3).

Villages and Lawson Hills MPDs.<sup>68</sup> The Comprehensive Plan provides that a master planned development approval is to be “developed to guide unified development over a period of many years” (Comp. Plan, p. 5-13) and BDMC 18.98.195 mandates an incremental and phased build-out over 15 to 20 years. As specifically approved by the City Council in the MPD Permits at MPD Condition of Approval No. 3, the MPDs are in fact phased development projects. AR 0027297; AR 0027465.<sup>69</sup>

The City Council imposed numerous conditions that ensure incremental and phased, responsible development. For example, at the beginning of each MPD phase: (i) a detailed schedule for construction of infrastructure must be provided;<sup>70</sup> (ii) an overall grading plan must be reviewed and approved;<sup>71</sup> (iii) a model must be run to test what transportation infrastructure is required;<sup>72</sup> and (iv) a fiscal impact analysis must be produced.<sup>73</sup>

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<sup>68</sup> TRD also alleges that the MPDs are “likely to necessitate a widening of SR 169” contrary to the intent of the City’s Comprehensive Plan. TRD Brief, p. 82. This allegation is again unsupported by the record. The traffic improvements anticipated for, and required to be constructed by, the MPDs are set forth in the MPD Conditions of Approval. *See, e.g.*, Villages Condition No. 15 AR 0027299-301. Widening SR 169 through the middle of Black Diamond is not part of this list of transportation improvements.

<sup>69</sup> *See also* AR 0024299-314 (Villages phasing plan); AR 0023885-900 (Lawson Hills phasing plan).

<sup>70</sup> AR 0027307, 0027325 (Conditions of Approval Nos. 29 and 164, Villages MPD); AR 0027493 (Condition of Approval No. 169, Lawson Hills MPD).

<sup>71</sup> AR 0027319 (Condition of Approval No. 110, Villages MPD); AR 0027487 (Condition of Approval No. 110, Lawson Hills MPD).

<sup>72</sup> AR 0027307 (Condition of Approval 25, Villages MPD); AR 0027475 (Condition of Approval 24, Lawson Hills MPD).

<sup>73</sup> AR 0027323-24 (Condition of Approval No. 156, Villages MPD); AR 0027492 (Condition of Approval No. 160, Lawson Hills MPD).

The type of incremental growth demanded by TRD does not meet the growth timelines set out in the City’s Comprehensive Plan. This fact is acknowledged by the City Council in Conclusion of Law No. 27(A)(ii) of both The Villages and Lawson Hills MPD Permits.<sup>74</sup> Contrary to TRD’s position, throughout the Comprehensive Plan the City repeatedly recognizes that considerable growth may occur within the City in the next twenty years (Comp. Plan, pp. 1-1, 3-7, 5-4, 5-47): “By 2025, the City is expected to grow to a population of 16,980 residents. Much of the growth will occur as a result of Master Planned Developments (MPDs) in areas annexed to the City in 2005 . . .” Comp. Plan, p. 3-1. *See also* Comp. Plan, pp. 3-7 and 5-4. In fact, the Comprehensive Plan openly acknowledges that the City’s population will more than quadruple between 2007 and 2025. Comp. Plan, p. 3-7. The Comprehensive Plan also anticipates that large MPDs will occur within the City by 2022. Comp. Plan, p. 2-13. A 15-year term for MPD permit build-out is set by BDMC 18.98.195, with possible 5-year extension. A fifteen-to-twenty-year planning horizon for growth and MPD development was fully contemplated and disclosed by the City’s Comprehensive Plan and land use regulations.

5 and 6. “Maintain Pedestrian Scale and Orientation,” and “Provide Opportunities for Casual Meeting and Socializing.” Comp. Plan, pp. 5-7 and 5-8. The Villages and Lawson Hills MPDs foster a sense of community by providing for pedestrian and bicycle mobility

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<sup>74</sup> AR 0027258 (Villages MPD); AR 0027428 (Lawson Hills MPD).

throughout miles of trails and on-street facilities, and include numerous parks, schools and public plazas that create opportunities for neighbors to interact and socialize. AR 0024143 (Villages); AR 0023764 (Lawson Hills); *see also* AR 0000982-94 (Testimony of Lauri Fehlberg). The Town Center in the Villages MPD is specifically designed with pedestrian amenities. AR 0024168-69. Large community parks, such as the Town Green and Lookout Park, provide for larger scale community events. AR 0024170; AR 0023839-40. The MPDs also have neighborhood amenities such as pocket parks within comfortable walking distances. AR 0024239 (Villages MPD Permit application, p. 5-5); AR 0023837-61.

For all of the above reasons, both the Hearing Examiner and the City Council concluded that The Villages and Lawson Hills MPDs are designed in compliance with the design principles set out in Rural by Design and implement the “small town character” and “retain the natural setting” goals reflected in the City’s Comprehensive Plan and BDMC Ch. 18.98 and the MPDFDSG.<sup>75</sup> TRD requests the Court ignore the record and the City’s detailed conclusions and instead engage in *ad hoc* decisionmaking based on the general concepts of “small town character,” “incremental growth,” and “preservation of its natural setting.” Both the City Council and the Hearing Examiner previously rejected TRD’s request.<sup>76</sup> And such a case-by-case approval procedure has also been

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<sup>75</sup> AR 0027249, 0027256-59, 0027284-85 (Conclusions of Law, Villages MPD); AR 0027420, 0027427-29, 0027454-64 (Conclusions of Law, Lawson Hills MPD).

<sup>76</sup> *See* AR 0027258-59 (Conclusion of Law 27(v), Villages MPD); AR 0027429 (Conclusion of Law 27(v), Lawson Hills MPD); AR 0024892-93 (Hearing Examiner MPD Recommendation, Finding of Fact 5(A), Villages MPD).

rejected by the Washington courts. See *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 897-98, 83 P.3d 433 (2004) (finding proposed special use permit complied with both the general standards of subarea plan and specific standards of the County code provisions).<sup>77</sup>

The *Cingular Wireless v. Thurston County*, 131 Wn. App. 756, 129 P.3d 300 (2006) case cited by TRD is not inapposite. In *Cingular*, the Court of Appeals, Division 2, upheld the county board's decision to deny a special permit for a wireless communication facility ("WCF") based on the general standards in the County's Comprehensive Plan despite the permit's consistency with the County's separate specific standards for WCFs in the zoning code. The *Cingular* court distinguished *Lakeside* based on its "particular facts," holding that any conflict between a plan's general policy statement and more specific authorization must be resolved in favor of the more specific authorization. *Cingular*, 131 Wn. App. at 771, 129 P.3d 300. Likewise, BDMC 18.98.080(A)(1) requires that any conflict between policies, standards or regulations, must be resolved in favor of the most stringent and specific provision.<sup>78</sup>

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<sup>77</sup> See also, *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35-37, 873 P.2d 498 (1994), *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995).

<sup>78</sup> It is a fundamental rule of statutory construction that where a general statute and a subsequent special statute relate to the same subject matter, the provisions of the special statute will prevail unless it appears that the legislature intended expressly to make the general statute controlling. *E.g.*, *Wark v. National Guard*, 87 Wn.2d 864, 867, 557 P.2d 844 (1976); *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 447, 536 P.2d 157 (1975); *Port Townsend School District No. 50 v. Brouillet*, 21 Wn. App. 646, 656, 587 P.2d 555 (1978).

The Comprehensive Plan concepts of incremental growth, small town character, and preservation of natural setting are not independent of the specific standards set forth in BDMC ch. 18.98 or the MPDFDSG. The City Council's and Hearing Examiner's harmonization of the City's Comprehensive Plan and MPD-specific regulations was consistent with Washington State case law and the Black Diamond Municipal Code.<sup>79</sup> And the Council properly decided that the MPD Permits met the applicable standards, to assure incremental growth, small town character, and preservation of natural setting.

C. **The City Council's Findings and Conclusions on Small Town Character are More Than Sufficient under Washington Law.**

The Villages and Lawson Hills MPD Permits include findings of fact and conclusions of law which comprehensively address all disputed factual and legal issues presented in the MPD Permit Hearings from traffic, to water quality, to noise, to fiscal impacts. Nevertheless, TRD contends that the City Council's findings on small town character are somehow insufficient. TRD Brief, pp. 85-86.

Both BDMC 18.98.060(A)(6) and 18.08.070(A)(3)<sup>80</sup> require the City Council to enter findings and conclusions approving, denying or modifying a MPD proposal. Washington case law pre-dating LUPA

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<sup>79</sup> TRD's requested case-by-case approval procedure should also be rejected by this Court because it is susceptible to a due process void for vagueness challenge. *See Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993) (a statute violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application).

<sup>80</sup> MPD permits are deemed Type 4 Quasi-Judicial decisions pursuant to BDMC 18.08.070.

provides that a permit decision must be accompanied by findings of fact and conclusions of law or reasons for the action.<sup>81</sup> Today, the appropriate standard of review for insufficient findings and conclusions is contained in RCW 36.70C.130(1)(a), under which the reviewing court must determine whether “the body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless.” See, *Tugwell v. Kittitas County*, 90 Wn. App. 1, 13, 951 P.2d 272 (1997). The initial inquiry is whether the City Council’s findings and conclusions violated the requirements of BDMC 18.98.060(A)(6) and BDMC 18.08.070(A)(3), and, if so, whether the violation was harmless. *Id.*

Here, the City Council included 46 findings of fact and 194 conclusions of law totaling 164 pages for both MPD Permits. As discussed in Section V.B, the Council entered extensive findings and conclusions confirming that the MPDs were consistent with the City’s policies and regulations protecting small town character.

TRD seeks to analogize this case to the situation in *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994). TRD Brief, p. 86. But, in that case, the hearing examiner’s decision consisted almost entirely of a summary of the evidence presented, “without any guidance as to how issues involving disputed evidence were resolved . . .” *Id.* at 36, 873 P.2d

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<sup>81</sup> See *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35-36, 873 P.2d 498 (1994); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 463-64, 573 P.2d 359 (1978); *Johnson v. City of Mount Vernon*, 37 Wn. App. 214, 219-20, 679 P.2d 405 (1984); *Hayden v. City of Port Townsend*, 28 Wn. App. 192, 194, 622 P.2d 1291 (1981), *overruled in part on other grounds by Save a Neighborhood Env’t v. Seattle*, 101 Wn.2d 280, 676 P.2d 1006 (1984).

498.<sup>82</sup> In stark contrast, the City Council's findings in this case -- as to both the Comprehensive Plan and the more specific implementing MPDFDSG -- clearly resolved the issues involved.

Moreover, contrary to TRD's request that this Court remand to the City so that the policies associated with small town character can be addressed, each of the courts in *Weyerhaeuser*, *Tugwell*, and *Hayden* looked at the findings and conclusions of the decision makers comprehensively -- not at the sufficiency of one specific issue or finding. Here, the relevant question is whether, when viewed as a whole, the City's extensive findings and conclusions contained in the MPD Permits<sup>83</sup> resolve the factual disputes presented during the MPD hearings and allow full judicial review. TRD does not even allege any violation of BDMC 18.98.060(A)(6) and BDMC 18.08.070(A)(3), much less establish that any alleged violation rises above the harmless threshold of RCW 36.70C.130(1)(a). The MPD Permits' findings and conclusions are comprehensive. As such, there is no basis for reversing or remanding the MPD Permits.

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<sup>82</sup> TRD's citation to *Cingular Wireless v. Thurston County*, 131 Wn. App. 756, 129 P.3d 300 (2006) is also unpersuasive. TRD cites *Cingular Wireless* for the proposition that Washington law only requires general standards and that provided due process is met such generality does not excuse a permit applicant from complying with such standards. See TRD Brief, p. 86, fn. 21. Here, contrary to TRD's allegations, the City does not waive the MPDs' compliance with the Comprehensive Plan's general small town character policies identified by TRD. See AR 27258-59 (Conclusion of Law 27(1)(A)(v)). Instead, the City Council interprets these Comprehensive Plan policies and finds that the MPDs are consistent with small town character as harmonized and applied through Rural By Design principles and the City's MPD regulations. In fact, the City directly responds to TRD's alleged inconsistencies with these policies and the same legal argument (raised by Mr. Bricklin below) in Conclusion of Law 27(1)(A)(v).

<sup>83</sup> See, e.g., The Villages MPD Permit, AR 0027169-188, AR 0027242-296.

**D. The MPD Permits Establish that The Villages and Lawson Hills are Consistent with the Protection of Lake Sawyer. Yarrow Bay Bears no Burden before this Court.**

The City Council's approval of the MPD Permits, including seven pages of findings regarding water quality, additional conclusions of law, and over fifty conditions of approval controlling water quality establish that Yarrow Bay met its burden below and that The Villages and Lawson Hills MPDs are consistent with the protection of Lake Sawyer. *See* AR 0027168-75 (Finding of Fact No. 7, Villages MPD); AR 0027340-47 (Finding of Fact No 7, Lawson Hills MPD); AR 0027312-16 (Conditions of Approval Nos. 60-85, Villages MPD); AR 0027480-83 (Conditions of Approval Nos. 62-86, Lawson Hills MPD).

Yarrow Bay bears no burden before this Court. TRD bears the burden under RCW 36.70C.130 of establishing that the City's Council's decision was not supported by evidence in the record (RCW 36.70C.130(c)) or was an erroneous application or interpretation of the law under RCW 36.70C.130(b) or (d). TRD fails even to cite the Council's Findings and Conclusions, and cannot meet its burden. TRD Brief, pp. 86-90.

Contrary to TRD's allegation (TRD Brief, p. 87), there is no requirement in the City's Comprehensive Plan or development regulations that a Master Planned Development applicant demonstrate that its development "will not cause an increase in phosphorous pollutants reaching Lake Sawyer (the so-called 'phosphorous load')." The only policy cited by TRD regarding Lake Sawyer is Comprehensive Plan

Policy NE-6. TRD Brief, p. 87. In order to understand Policy NE-6, it must be reviewed together with Policy NE-5:

Policy NE-5: Within areas highly susceptible to groundwater (aquifer) contamination, adopt special protection measures. The special protection measures require businesses that use hazardous chemicals to have containment facilities to capture potential chemical spills, and require the use of best management practices for applying pesticides and fertilizers for business residential, and recreational uses.

Policy NE-6: The special protection measures noted in NE-5 should evaluate and define “high risk” uses and address the siting of such uses in sensitive aquifer recharge areas. The protection measures should also evaluate and include measures to reduce pollutant loads, including phosphorous discharged to Lake Sawyer.

Comp. Plan, p. 4-25. These policies do not support TRD’s contention that Yarrow Bay was required to demonstrate an MPD-specific measurement of phosphorous load to Lake Sawyer. Rather, the policies require the City to adopt special water quality protection measures governing application of pesticides and fertilizers, and governing features of businesses located in certain areas. The special protection measures are to contain chemical spills, to require the use of best management practices in the application of chemicals and fertilizers, and to provide other mechanisms to reduce pollutant loads (including phosphorus to Lake Sawyer). For example, Policies NE-5 and NE-6 mean that if an Ace Hardware were to open in a protected area of Black Diamond, the City is directed to have regulations in place to govern how that business stores its phosphorous-containing fertilizer.

Next, ignoring the decades of study and analysis of the phosphorus issue, TRD argues that approving the MPD Permits without project-specific phosphorus loading calculations results in a “leap before you look” gamble. TRD Brief, p. 87. Yarrow Bay has already explained how the EISs and administrative record provide more than sufficient information on phosphorus loading to Lake Sawyer. *See*, Section V.A.2, above. The City Council’s MPD Permit approvals evidence their understanding that phosphorus has already been sufficiently studied.<sup>84</sup> A new project-specific calculation of phosphorus load is not necessary, especially in light of the June 2009 Ecology Implementation Plan for the phosphorus TMDL at Lake Sawyer. As the Hearing Examiner found:

[t]he saving grace for the MPDs was a Washington State Department of Ecology determination that development will not violate water quality standards if they are subjected to the 2005 DOE Stormwater Manual and the City continues to implement a water quality monitoring program in conjunction with implementation projects within the Lake Sawyer watershed. The DOE Lake Sawyer Water Quality Implementation Plan, Ex. H-9, identifies the measures that the City and other organizations should be implementing to protect water quality. . . .<sup>85</sup>

The City Council concurred. *See* AR 0027170 (Finding of Fact No. 7(G), Villages MPD); AR 0027342 (Finding of Fact No. 7(G), Lawson Hills MPD); AR 0027312 (Condition of Approval No. 60, Villages MPD); AR 0027480 (Condition of Approval No. 62, Lawson Hills MPD).

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<sup>84</sup> *See e.g.*, Conclusion of Law No. 7(I) for the MPDs. AR 0027171-73 (Villages MPD); AR 0027343-45 (Lawson Hills MPD).

<sup>85</sup> AR 0024902-904 (Hearing Examiner MPD Recommendation, Finding of Fact No. 5(G), Villages MPD) (italics in original, underlining added) incorporated in the Hearing Examiner’s Lawson Hills MPD Recommendation at AR 0024994.

TRD also argues (TRD Brief, pp. 89-90) that the phosphorus monitoring plan found at Ex. NR-TV-7, and imposed by The Villages MPD Condition of Approval No. 79, is inadequate, claiming that “the damage will be done by the time the monitoring documents the problem.” Of course, the phosphorous monitoring program of Ex. NR-TV-7 (AR 0005190-94) is not “after-the-fact,” but rather is a monitoring program that is concurrent with development, providing opportunities to proactively fix any problem that may occur. The monitoring plan applies to those portions of The Villages MPD that drain to Lake Sawyer (and a similar plan applies to the Lawson Hills site). AR 0005190-94, and for explanation of drainage basins and designs, *see* AR 0024274-85 (Villages MPD Permit application, Ch. 6); AR 0023863-69 (Lawson Hills MPD Permit application, Ch. 6). The portions of the MPD sites that drain to Lake Sawyer are designed to have their stormwater detained and treated via multiple wet ponds. *Id.* Phosphorus monitoring starts when 75% of the dwelling units or commercial square footage contributing stormwater to the first wet pond receive occupancy permits. AR 0005190. Six samples will be taken during the wet season (October 1 through March 31) and monitoring results will be provided to the City. AR 0005190-91. If monitoring reports reveal higher than anticipated phosphorous concentrations as outlined in the LSMP, then the City can immediately require additional mitigation, including mitigation to be applied site-wide as the remaining portions of The Villages and Lawson Hills MPDs develop. AR 0005192. And, contrary to TRD’s allegations (TRD Brief,

p. 90), if these measures are not working, then there are in-lake contingency measures, such as buffered alum treatment and/or hypolimnetic aeration, that can be used, which have immediate results, and which would not take “a decade or longer” to clear Lake Sawyer. AR 0005515-16.

TRD’s arguments fail to establish any basis under RCW 36.70C.130 for this Court to remand the MPD Permits to the City for further findings on Lake Sawyer.

**E. The MPD Permits Establish that The Villages and Lawson Hills Address Transportation Issues. Yarrow Bay Bears no Burden Before this Court.**

TRD bears the burden to establish that the MPD Permit approvals were erroneous. Yet, instead of challenging the Council’s Findings of Fact or Conclusions of Law or mitigation conditions regarding transportation,<sup>86</sup> TRD propounds a list of hypothetical questions that TRD alleges were unasked and unanswered, arguing that without those answers, the City Council could not determine that the MPD Permits appropriately mitigated transportation impacts as required by BDMC 18.98.080.A.2. TRD Brief, pp. 90-94. TRD’s hypothetical questions are irrelevant; the relevant question under RCW 36.70C.130(c) is whether the transportation findings in the MPD Permits are “supported by evidence that is substantial when viewed in light of the whole record before the court.”

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<sup>86</sup> See AR 0027161-68 (Findings of Fact Nos. 5-6, Villages MPD); AR 0027333-40 (Findings of Fact Nos. 5-6, Lawson Hills MPD); AR 0027298-308 (Conditions of Approval Nos. 10-34, Villages MPD); AR 0027466-76 (Conditions of Approval Nos. 9-31, Lawson Hills MPD).

TRD's focus on what is allegedly missing utterly ignores what is present in the City's MPD Permit approvals.<sup>87</sup> The City described the comprehensive study area including 46 intersections throughout Maple Valley, Covington, Auburn, Black Diamond, and other areas within unincorporated King County. AR 0027161-62 (Finding of Fact No. 5(B), Villages MPD). The City described the traffic counts collected for purposes of the analyses and the use of the Institute of Traffic Engineers Trip Generation Manual to determine the amount of traffic each MPD would generate: 5,152 and 2,050 net new PM peak hour vehicle trips for The Villages and Lawson Hills, respectively. AR 0027162 (Findings of Fact Nos. 5(C), (D), and (E), Villages MPD). The City outlined in great detail how these net new vehicle trips were assigned to the study area's 46 intersections, including background traffic volume growth, and how the operations of each intersection were analyzed to identify necessary infrastructure improvements to mitigate level of service failures. AR 0027162-63 (Findings of Fact Nos. 5(G), (H), (I), and (J), Villages MPD). The City Council concluded that the methodology and engineering decisions made by the City's traffic expert "are all within the parameters of reasonably justified professional engineering judgment." *See, e.g.*, AR 0027163 (Finding of Fact No. 5(I), Villages MPD). The City Council then addressed each of the challenges raised in the MPD Permit Hearings (which echo the challenges raised in the TRD Brief) and found those

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<sup>87</sup> TRD's arguments also are a re-statement of its arguments about EIS adequacy. Yarrow Bay has already responded to those arguments in Section V.A.3 of this Response Brief.

challenges unsupported by the balance of evidence in the record. *See, e.g.*, AR 0027164-68 (Findings of Fact No. 5(K) and 6, Villages MPD). The Council's Finding, Conclusions and Mitigation Conditions met the standard of BDMC 18.98.080.A.2, and TRD's failure to even allege a finding or conclusion is fatal to TRD's argument.

TRD argues that the City "Council's 'mid-point review' is inadequate," and authorizes an improper "leap before you look" approach. TRD Brief, pp. 93-94. In fact, the City Council imposed far more than a mid-point review. AR 0027303-306 (Condition of Approval No. 17, Villages MPD). Not only were the MPDs' traffic impacts extensively analyzed in the EISs assuring that analysis was conducted prior to approval of the MPD Permits,<sup>88</sup> but the Council required a new transportation demand model to be run when just 850 building permits (15% of the MPD projects) have been issued within The Villages and Lawson Hills and then to be run, over and over again, at multiple future intervals determined by the City Council. AR 0027303-306. From this analysis, the City will determine whether the transportation projects set forth in the MPDs' Conditions of Approval adequately mitigate the transportation impacts of the MPDs and, if not, recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects. *Id.*

The City Council imposed this periodic review requirement based on the finding that (emphasis added):

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<sup>88</sup> *See* Section V.A.3, above.

all travel demand models and transportation impact analyses rely upon engineering assumptions and the exercise of engineering judgment about future conditions. As such, neither the PSRC model nor the City of Maple Valley model [which were used in the EIS and administrative hearings] is optimally suited to predict the long-term traffic impacts for the Black Diamond community. And, the length of the Village's 15-year build out period increases the risk that one or more assumption could turn out to be incorrect.<sup>89</sup>

The City Council also deliberated extensively regarding the appropriate trigger point for the first running of the new transportation demand model. AR 0029021-68, 0029335-42 (City Council Hrg. Transcript). Those deliberations show that the Council ultimately concluded that 850 dwelling units was the appropriate trigger because at such point in time the MPDs would probably have finished Phase IA (i.e., the first phase) and thereby generate enough residential and commercial vehicle trips to validate assumptions made in a new transportation demand model such as trip distribution, internal capture, and trip generation. The Council also noted that an 850 dwelling unit threshold was conservative because King County testified on the record that anywhere between 1000-2000 units was acceptable for purposes of periodic traffic review. *See* AR 0028422:16-19 (City Council Hrg. Transcript, Matthew Nolan).

TRD's arguments fail to establish any basis under RCW 36.70C.130 for this Court to remand the MPD Permits to the City for further analysis of transportation impacts.

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<sup>89</sup> AR 0027166-67 (Finding of Fact No. 5(L), Villages MPD); AR 0027338-39 (Finding of Fact No. 5(L), Lawson Hills MPD).

**F. The MPD Permits Establish that The Villages and Lawson Hills Address Noise Issues. Yarrow Bay Bears no Burden Before this Court.**

Again, TRD bears - and cannot meet - the burden to establish under RCW 36.70C.130(c) that the record lacks substantial evidence to support the City Council's findings of fact regarding noise. TRD's allegations (TRD Brief, p. 94) of noise impacts reaching fire alarm levels of 90 decibels also must be tempered. Construction of the MPD projects will not produce *sustained* noise of 90 dBA or more. *See, e.g.*, AR 0027176-77 (Finding of Fact No. 9(E), Villages MPD); AR 0002054-56 (Testimony of Richard Steffel), AR 0020665 (Villages MPD FEIS, noting that a specific neighboring property "could experience *peak* noise levels *up to* 90 dBA.")

TRD simply seeks to re-argue its SEPA case that more analysis was required before setting the size of the MPDs, while conceding that there is little mitigation available to ameliorate the noise impacts of construction trucks. TRD Brief, pp. 95-96. Yarrow Bay addressed TRD's SEPA arguments about noise in Section V.A.4, above.

As to the applicable MPD Permit standards, BDMC 18.98.080.A.2 provides that appropriate mitigation for significant environmental impacts is required for MPD permit approval. TRD argues (TRD Brief, p. 95) that the Council authorized the MPD Permits by deferring a noise impacts study to later, but cites one condition that requires every implementing construction project to utilize best management practices, such as engine intake silencers so as to minimize construction noise.

Actually, the City Council entered six factual findings regarding noise issues at Finding of Fact No. 9 for each MPD, entered conclusions of law, and imposed twenty-four conditions of approval regarding noise. *See* AR 0027175-77 (Finding of Fact No. 9, Villages MPD); AR 0027348-49 (Finding of Fact No. 9, Lawson Hills MPD); AR 0027309-11 (Conditions of Approval Nos. 35-45, Villages MPD); AR 0027476-79 (Conditions of Approval Nos. 32-45, Lawson Hills MPD). There, the City Council reviewed the studies that had already been conducted, and found that existing noise levels were measured along SE Auburn-Black Diamond Road/Roberts Drive to establish a baseline;<sup>90</sup> that project noise impacts are most likely to impact disproportionately the residences adjacent to the MPD sites;<sup>91</sup> and that the duration of construction-related noise impacts could be lengthy.<sup>92</sup> The Council's noise mitigation conditions are extensive. For example, all MPD development parcels which abut existing homes are identified and Yarrow Bay is required to meet with those affected homeowners to see if an agreement can be reached that will address their individual concerns regarding construction-related noise. AR 0027310; AR 0027477-78. If an agreement cannot be reached, then Yarrow Bay must choose between either creating a 100-foot tract to serve

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<sup>90</sup> *See, e.g.*, AR 0027175-76 (Finding of Fact No. 9(A), Villages MPD).

<sup>91</sup> *See, e.g.*, AR 0027176 (Finding of Fact No. 9(D), Villages MPD).

<sup>92</sup> *See, e.g.*, AR 0027176-77 (Finding of Fact No. 9(E), Villages MPD). As noted in Section V.B., the MPD Permits were further conditioned from the proposal in the MPD Application to minimize the amount of grading and, therefore, reduce the potential number of construction truck trips. *See* AR 0027319 (Condition No. 110), AR 0027487 (Condition No. 110).

as a noise buffer, or providing a noise attenuating barrier (i.e., wall, berm or combination). Similarly, construction haul routes must be designated because hauling is prohibited on certain streets. AR 0027478; AR 0027310. The City Council concluded that the MPD Conditions of Approval Nos. 35-45 and Lawson Hills MPD Conditions of Approval Nos. 32-45 “will appropriately mitigate the construction noise impacts of the [MPDs].” AR 0027177 (Finding of Fact No. 9(F), Villages MPD); AR 0027349 (Finding of Fact No. 9(F), Lawson Hills MPD). Thus, the Council made precisely the determination required by BDMC 18.98.080.A.2, and supported that determination with findings based on substantial evidence in the record.

**G. The MPD Permits Establish that The Villages and Lawson Hills Address the City’s Job Creation Policies.**

TRD alleges that the record lacks substantial evidence to support the City Council’s findings regarding the City’s job creation target described in BDMC 18.98.120(C).<sup>93</sup> In Villages and Lawson Hills

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<sup>93</sup> TRD Brief, pp. 96-98. TRD ignores that the City’s MPD Code addresses jobs in two additional sections. BDMC 18.98.010(J) lists as one of the purposes of the MPD permit process the “[p]romot[ion of] economic development and job creation in the city. . . .” and BDMC 18.98.020(E) lists as a public benefit objective for an MPD project the “[p]rovision of employment uses to help meet the city’s economic development objectives.” The City Council found in Conclusions of Law Nos. 13 and 21 for the Villages and Lawson Hills, that these job-related code sections are also “satisfied” by the MPDs. AR 0027254 (Conclusion of Law No. 21, Villages MPD). Specifically, the City Council found that: . . . “BDMC 18.98.020(E) does not require (nor could it) that the MPD meet all of the City’s economic development objectives. Instead, it requires only that the MPD “help meet” them. Consequently, any significant contribution to available employment would satisfy this requirement. As detailed in Finding of Fact No. 2, the project has designated 67 acres for a maximum of 775,000 square feet of retail/commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. The amount of jobs and tax revenues to be generated by this area will be dependent upon the mix of development that occurs, but *there is no question that the*

Conclusion of Law No. 47(A), the City Council found that the three criteria listed in BDMC 18.98.120(C) were satisfied:

The criterion requires the MPD to provide within the MPD boundary or elsewhere within the City (1) sufficient properly zoned lands; and (2) sufficient incentives as permit conditions to encourage development; (3) so that the employment targets set forth in the comprehensive plan for the number of residential units within the MPD will with reasonable certainty be met. This criterion requires that the “employment targets set forth in the comprehensive plan” be applied to the MPD as well as “elsewhere within the city.” As explained below, because there are properly zoned lands for employment development within the MPD and within the City as a whole sufficient to permit the comprehensive plan’s employment targets to be met, this criterion is satisfied.

AR 0027270 (emphasis added); *see also* AR 0027441.

TRD attacks these conclusions asserting that the City Council’s 0.5 jobs per household standard is erroneous. TRD Brief, p. 97. TRD fails to recognize, as detailed in the City Council’s Finding of Fact No. 22<sup>94</sup> and Conclusion of Law No. 47(B)-(E),<sup>95</sup> that there are two employment targets listed in the City’s Comprehensive Plan: Table 3-9 indicates a goal of attaining 0.5 jobs per household by the year 2025; whereas, page 3-11 states that “the City’s employment target is to provide one job per

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*project will add to the employment base of the City.” Id.* (emphasis added); *see also* AR 0027425 (Conclusion of Law No. 21, Lawson Hills MPD).

<sup>94</sup> AR 0027187-88 (Finding of Fact No. 22, Villages MPD); AR 0027359 (Finding of Fact No. 22, Lawson Hills MPD).

<sup>95</sup> AR 0027271 (Conclusions of Law Nos. 47(B)-(E), Villages MPD); AR 0027441-42 (Conclusions of Law Nos. 47(B)-(E), Lawson Hills MPD).

household within the City by the year 2025.” Comp. Plan, p. 3-11. As explained by the Council:

Page 3-11 of the Comprehensive Plan states that “the City’s employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City’s population will need to grow first so that it provides a larger market base that can attract and support a larger market base....”...Therefore, the Comprehensive Plan indicates that the City’s updated projection is to have 2,677 new jobs by 2025. Comprehensive Plan at 3-12. These jobs are to be allocated among “833 acres of employment land ... proposed in the City limits....” *Id.* This equates to 3.21 jobs per acre of employment land.

AR 0027187 (Finding of Fact No. 22(C), Villages MPD). The Council recognized “that population growth must precede employment growth, and in light of the “Employment Targets” specified in Table 5-3 and on page 3-12, the jobs per household target specified by the Comp. Plan is 0.5 jobs per household.” AR 0027271 (Conclusion of Law 47(D), (E), Villages MPD).

The City Council’s confirmation of the City’s jobs standard as 0.5 jobs per household is based on substantial evidence found within the language of the City’s Comprehensive Plan itself and is entitled to considerable deference by this Court under *Phoenix Development v. City of Woodinville*, 171 Wn.2d 820, 830, 256 P.3d 1150 (2011) (internal citations omitted) (holding “when construing a municipal ordinance, a

reviewing court gives considerable deference to the construction of the challenged ordinance by those officials charged with its enforcement.”).

In an attempt to support its argument that substantial evidence is lacking to support the Council’s findings that the MPD Permits include “sufficient incentives” to encourage commercial development, TRD mischaracterizes the record. TRD Brief, p. 98. The citation of TRD to the City Staff reports does not support a finding that a City’s consultant determined the MPDs will create insufficient incentives, but rather that jobs within the MPD itself will likely be combined with jobs on lands outside the MPD. *See* AR 0002982, 0007718. Moreover, TRD simply ignores the incentives listed by the City Council required by Code or MPD Permit condition, including “a requirement for designation of a light industrial area,<sup>96</sup> a requirement that the Development Agreement specify a Floor Area Ratio (“FAR”) standard for the retail/commercial/ light industrial development,<sup>97</sup> a limitation that no more than two floors of residential development be constructed on top of any retail or commercial development,<sup>98</sup> and a granting of the request for reduced parking standards within the Mixed Use Town Center area.”<sup>99</sup> AR 0027271 (Conclusion of Law No. 47(F), Villages MPD). These incentives, combined with the land allocated for commercial uses within the MPDs and City-wide as

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<sup>96</sup> AR 0027322 (Villages, Condition of Approval No. 140); 0027490 (Lawson Hills, Condition of Approval No. 144).

<sup>97</sup> AR 0027322 (Villages, Condition of Approval No. 145); 0027491 (Lawson Hills, Condition of Approval No. 150).

<sup>98</sup> AR 0027322 (Villages, Condition of Approval No. 146).

<sup>99</sup> AR 0027322 (Villages, Condition of Approval No. 148).

established by Appendix J Fiscal Analysis of the FEIS<sup>100</sup> and the Comprehensive Plan at 5-31, constitute substantial evidence supporting the City Council’s conclusion that the Villages and Lawson Hills MPDs provide “reasonable certainty” that the City’s 0.5 jobs per household goal will be met.<sup>101</sup>

**H. The MPD Permits Establish that The Villages and Lawson Hills Address Walkable Schools.**

BDMC 18.98.080(A)(14) provides:

School sites shall be identified so that all school sites meet the walkable school standard set for[th] in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district’s adopted standard. . . .

(Emphasis added). As both the City Council and Hearing Examiner concluded, however, there is no “walkable school” standard expressed in the Comprehensive Plan, including the Enumclaw School District Capital Facilities Plan (2009-2014).<sup>102</sup> AR 0027267-68 (Conclusion of Law No. 40(A), Villages MPD); AR 0027438–39 (Conclusion of Law No. 40(A), Lawson Hills MPD); AR 0024897-99 (Hearing Examiner MPD

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<sup>100</sup> AR 0016871-0017051.

<sup>101</sup> TRD also ignores the findings of both the City Council and the Hearing Examiner that the job creation standard of BDMC 18.98.120(C) is not only of dubious legal validity, but is illegal if interpreted as a mandate to provide a 0.5:1 ratio of jobs to households within each MPD because there is no nexus and it is unreasonable. *See* AR 0027271-72 (Conclusion of Law No. 47(F), Villages MPD); AR 0024772-73 (Hearing Examiner MPD Recommendation, Villages MPD); AR 0025144-50 (Applicant’s Closing Statement).

<sup>102</sup> Finding of Fact No. 17 of the Villages MPD Staff Report notes that the School District’s Capital Facilities Plan (“CFP”) has been adopted into the City’s Comp. Plan. AR 0013515. The CFP is in the record at AR 0011948-973.

Recommendation, Villages MPD). Instead, page 1-10 of the City's Comprehensive Plan provides as follows:

The creation of a pedestrian friendly environment is central to the success of the City's plan, and will be implemented by the plan's concept of the "ten-minute walk"[.] The goal is for 80% of City residents [to] have no more than a 0.50-mile walk from a cluster of commercial services, employment, or access to transit.

The City Council concluded that this 0.50-mile distance is "consistent with the maximum distance one would expect a child to walk to school, as well as with the proximity needed in order for schools to provide for joint recreational use as encouraged by Comprehensive Plan Objective CF-14, under School Objectives and Policies, which encourages the use of joint-use agreements for school recreation facilities." AR 0027267-68 (Conclusion of Law No. 40(A), Villages MPD); AR 0027438-39 (Conclusion of Law No. 40(A), Lawson Hills MPD). Based on this conclusion and to ensure compliance with BDMC 18.98.080(A)(14)'s requirement for compliance with the walkability standard, the City Council imposed the following Condition of Approval on The Villages and Lawson Hills MPDs: "To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs." AR 0027317 (Condition of Approval No. 98, Villages MPD); AR 0027485 (Condition of Approval No. 99, Lawson Hills MPD).

Allegations that land use decisions contain an erroneous interpretation of the law are legal questions reviewed *de novo*, but only after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise. RCW 36.70C.130(1)(b). The Supreme Court confirms that a City Council's interpretation of its own code must be provided deference. *Phoenix Development*, 171 Wn.2d 820, 837, 256 P.3d 1150 (2011). In addition, because there is no walkable school standard in the Comprehensive Plan, the reference in BDMC 18.98.080(A)(14) is ambiguous and the City Council's interpretation is entitled to deference as the administrative agency charged with administering and enforcing the statute. *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975). *See also Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Associates*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004) (affirming the City Council's decision after finding that "Pinecrest advanced no persuasive arguments that the City Council decision was based on an erroneous interpretation of its municipal code" and concluding that "Pinecrest has not met its burden under RCW 36.70C.130(1)(b) of showing that the City Council decision was an erroneous interpretation of the law").

Even if, for the sake of argument, the Court were to ignore the deference afforded to the City Council under *Phoenix Development* and *Hama Hama Co.*, the City's interpretation of BDMC 18.98.080(A)(14) is reasonable. For a majority of the residential areas on the MPD lands, a 0.50-mile walking distance for elementary schools is met. AR 0024161

(Figure 3-2, Villages MPD); AR 0023781 (Figure 3-2, Lawson Hills MPD). The language on page 1-10 of the City's Comprehensive Plan does not require that all of the City's residents have no more than a 0.50-mile walk; instead, the Comprehensive Plan sets a goal of 80%.<sup>103</sup> The Council's conclusions of Law were supported by the facts in the record. AR 0027268 (Conclusion of Law No. 40(B), Villages MPD); AR 0027439 (Conclusion of Law No. 40(B), Lawson Hills MPD).

Moreover, TRD fails to consider the impracticality of its suggested alternative interpretation. A 0.50-mile walking distance is not practical or desirable for middle or high schools because it would require too many small school sites and that multitude of small middle and high schools would not meet the School District's other goals for middle or high school sizes and facilities. *See* AR 0011956.

The City Council's findings and conclusions that the MPDs, as conditioned by The Villages Condition of Approval No. 98 and Lawson Hills Condition of Approval No. 99, satisfied BDMC 18.98.080(A)(14) is not an erroneous interpretation of the law.

**I. Yarrow Bay Requests an Award of Attorneys' Fees and Costs under RCW 4.84.370 against TRD and the Individuals Improperly using TRD's Corporate Form to Evade their Statutory Duty under RCW 4.84.370.**

Under RCW 4.84.370(1)(a)-(b), "reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing

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<sup>103</sup> It is important to note that no party raised the issue of the proximity of Parcel B's residential area to a school site during the hearing below as evidenced by TRD's lack of citation to the record. *See* TRD Brief, p. 99 n.22. In any event, the 80% proximity goal still is met.

party on appeal before the court of appeals...of a decision by a...city...to issue...a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision.” Yarrow Bay prevailed before the City<sup>104</sup> and the trial court.<sup>105</sup> Now, the Court could (a) grant Yarrow Bay’s motion to dismiss on standing grounds; (b) deny Yarrow Bay’s standing motion and decide the merits of the case in Yarrow Bay’s favor; or (c) reach some combined decision, such as granting the motion to dismiss all of TRD’s SEPA claims (since TRD did not file any of the administrative appeals required by RCW 36.70C.060(2)(d)), and deciding the MPD Permit claims in Yarrow Bay’s favor. Any of these rulings in Yarrow Bay’s favor entitles Yarrow Bay to an award of attorneys’ fees and costs under RCW 4.84.370.

Pursuant to RAP 18.1, Yarrow Bay asks the Court to enter an award of attorneys’ fees and costs against not just Toward Responsible Development, a Washington nonprofit corporation (“TRD Corporation”), but also against Robert and Mary Edelman<sup>106</sup> (the “Edelmans”), who

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<sup>104</sup> AR 0027242-96 (City’s approval of The Villages MPD Permit) and AR 0027413-64 (City’s approval of Lawson Hills MPD Permit). Complete copies of each MPD Permit Approval are filed herewith as Appendices A and B. AR 0024575-0024642 (Examiner EIS Adequacy Determination for The Villages) and AR 0024646-0024711 (Examiner EIS Adequacy Determination for Lawson Hills). Complete copies of the Examiner’s EIS Adequacy Determinations are attached to this brief as Appendices D and E.

<sup>105</sup> CP 101-108 (Superior Court Findings of Fact, Conclusions of Law, and Order Denying TRD’s Land Use Petition).

<sup>106</sup> The MPD Permit hearing records do not reflect participation by a “Mary Edelman,” but do include testimony from Janie Edelman. It appears Mary Edelman is Janie Edelman’s formal name. Mary (aka Janie) Edelman was not among the Individuals who filed the LUPA appeal to Superior Court.

control TRD Corporation,<sup>107</sup> Judith Carrier, and Melanie Gauthier (collectively, the “Individual Members”). Only Mr. Edelman, Ms. Carrier, and Ms. Gauthier chose to identify themselves as members of TRD.<sup>108</sup> As described in Yarrow Bay’s Motion to Dismiss Appellant’s Appeal, Ms. Gauthier was not a party before the Superior Court, and both Mr. Edelman and Ms. Carrier have been actively pursuing this and prior appeals, but chose not to appeal in their individual capacities but instead to prosecute their appeals to the Court of Appeals only through their alter ego, TRD Corporation. Thus, while not named parties, the Individual Members are the driving force behind this appeal, in particular, the Edelmanns, who are the sole corporate officers of TRD Corporation.

As discussed in Yarrow Bay’s Reply to Appellants’ Answer to Motion to Dismiss Appellants’ Appeal, typically, landowners seeking permits suffer far more harm from the delay caused by appeals. Project opponents benefit from simply filing appeal after appeal that clouds the approved permits, while incurring only the costs to file and prosecute such appeals. In contrast, the landowner incurs larger combined defense costs, holding costs for the land, and continued permit processing costs. By awarding fees to the party who prevails three times in a row, RCW 4.84.370 requires project opponents to have some “skin in the game” after

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<sup>107</sup> See Appendix H to Declaration of Nancy Bainbridge Rogers in Support of Yarrow Bay’s Motion to Dismiss Appellant’s Appeal (TRD annual report listing corporate officers).

<sup>108</sup> See Declaration of Robert Edelman in Support of Appellants’ Answer to Motion to Dismiss, Declaration of Judith Carrier in Support of Appellants’ Answer to Motion to Dismiss, and Declaration of Melanie Gauthier in Support of Appellants’ Answer to Motion to Dismiss.

bringing two or more consecutive losing legal challenges. The statute mitigates the inequities between landowners and project opponents. By utilizing a corporation with no known assets to prosecute their appeal, the Individual Members are using the corporate form to perpetuate a fraud, causing injury to Yarrow Bay while avoiding their statutory duty to pay the award of fees and costs required by RCW 4.84.370.

While an entity's corporate form is a legitimate way to limit the liability of that entity's officers, directors, shareholders, or participants, "there are circumstances...in which the corporate form has been so abused that, in order to do justice, the corporate personality will be disregarded so long as the rights of innocent third parties are not prejudiced." *Burns v. Norwesco Marine, Inc.*, 13 Wn. App. 414, 418, 535 P.2d 860 (1975) (disregarding an entity where a corporate officer was active in the affairs of the company, and, among other factors, conducted the affairs of the corporation as a personal enterprise). Washington cases have disregarded the corporate form when a corporate entity has been used to "perpetrate a fraud or wrong, gain an unjust advantage, or evade an obligation." *Id.* at 418 (citing several cases in support of quoted language). The Court of Appeals, Div. 2, has recognized that "there may be situations in which a corporation is so thinly capitalized that it manifests a fraudulent intent." *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 645, 618 P.2d 1017 (1980) (refusing to pierce the corporate veil where the plaintiff failed to utilize safeguards when choosing to deal with an undercapitalized

corporation). Here, Yarrow Bay did not choose to deal with TRD Corporation but rather is defending against TRD Corporation's challenges.

In *Meisel v. M&N Hydraulic Press Co.*, 97 Wn.2d 403, 645 P.2d 689 (1982), the Washington Supreme Court set forth the two-part test for disregarding the corporate form: (1) The "corporate form must be intentionally used to violate or evade a duty;" and (2) "[D]isregard must be 'necessary and required to prevent unjustified loss to the injured party.'" *Id.* at 410 (quoting *Morgan v. Burks*, 93 Wn.2d 580, 587, 611 P.2d 751 (1980)).

Here, the two-part test from *Meisel* has been met. First, by using TRD Corporation (a corporation with no known assets) to prosecute their appeal, the Individual Members are intentionally using the corporate form to evade their statutory duty to pay attorneys' fees and costs under RCW 4.84.370. Second, the inability to collect that award from TRD will subject Yarrow Bay to the very loss the Washington State Legislature attempted to vitiate by passing RCW 4.84.370. Accordingly, fees and costs should be awarded to Yarrow Bay against both TRD Corporation and the Individual Members.

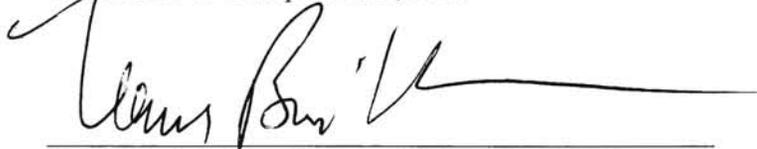
## VI. CONCLUSION

The City of Black Diamond held over one hundred hours of public hearings, during which and tens of thousands of pages of exhibits were submitted and reviewed. Among those exhibits, EISs were prepared to evaluate the probable adverse environmental impacts of The Villages and Lawson Hills MPDs. Applying the rule of reason, those EISs were upheld

as adequate by the City's Hearing Examiner. This Court must grant substantial weight to the Examiner's EIS Adequacy Determinations. The City Council entered separate detailed findings and conclusions to approve each MPD Permit as consistent with all applicable codes. All Council interpretations of the City's own Code and Comprehensive Plan also require deference. TRD fails to meet its burden to overcome this deferential review and demonstrate error in the City's decisions. This Court should dismiss TRD's LUPA appeal, and affirm the City Council's approvals of the MPD Permits for The Villages and Lawson Hills together with the City Hearing Examiner's EIS Adequacy Determinations, and award attorneys' fees and costs to Yarrow Bay under RAP 18.1 and RCW 4.84.370, including piercing the corporate veil to allow Yarrow Bay recovery of those fees against the identified "Individual Members" of TRD.

DATED this 11<sup>th</sup> day of March, 2013.

Cairncross & Hempelmann, P.S.

A handwritten signature in black ink, appearing to read "Nancy Bainbridge Rogers", written over a horizontal line.

Nancy Bainbridge Rogers, WSBA No. 26662  
Randall P. Olsen, WSBA No. 38488  
Attorney for Respondents, BD Lawson Partners, LP  
and BD Village Partners, LP

**Certificate of Service**

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on March 11, 2013, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

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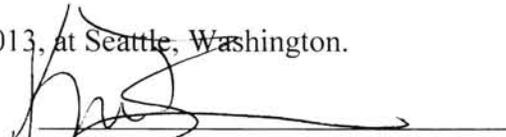
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DATED this 11<sup>th</sup> day of March, 2013, at Seattle, Washington.

  
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Kristi Beckham, Legal Assistant

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**APPENDIX A  
THE VILLAGES  
ORDINANCE NO. 10-946**

ORDINANCE NO. 10-946

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE MASTER PLANNED DEVELOPMENT FOR THE VILLAGES; AMENDING THE CITY'S ZONING MAP TO DESIGNATE CERTAIN PROPERTY "MASTER PLANNED DEVELOPMENT - MPD"; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, in accordance with a request by BD Village Partners, LP ("the Applicant"), the City of Black Diamond determined that an Environmental Impact Statement ("EIS") should be prepared concerning the Applicant's Villages Master Plan Development proposal pursuant to the State Environmental Policy Act, RCW 43.21C ("SEPA"); and

WHEREAS, the City retained an independent consulting firm, Parametrix, to prepare the EIS; and

WHEREAS, on May 28, 2008 and pursuant to WAC 197-11-408 and Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(4)(b), Parametrix held a scoping meeting to obtain input from the public and other public agencies as to the proposed scope of the EIS; and

WHEREAS, on June 11, 2008, Parametrix held an additional meeting with other public agencies, including the Cities of Maple Valley and Covington, and the Washington Department of Transportation, to discuss the scope of the EIS's analysis concerning the proposed MPD's anticipated transportation impacts; and

WHEREAS, pursuant to Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(1), on January 27, 2009 the Applicant attended a pre-application conference with City of Black Diamond staff, prior to submitting its application for the Villages Master Planned Development ("Villages MPD"); and

WHEREAS, on February 7, 2009, the Applicant held a public information meeting concerning the Villages MPD application, pursuant to BDMC 18.98.060(A)(2); and

WHEREAS, on February 10, 2009, pursuant to BDMC 18.98.060(A)(3), the Applicant made a presentation concerning the overall planning and design concept of the proposed Villages MPD to the Black Diamond Planning Commission, and the Commission provided preliminary feedback to the Applicant regarding the consistency of this concept with the City's adopted standards, goals and policies; and

WHEREAS, on March 17, 2009, a second public information meeting was held concerning the proposed Villages MPD; and

WHEREAS, on May 28, 2009, the Applicant submitted an application for the Villages MPD approval to the City of Black Diamond; and

WHEREAS, on August 12, 2009, Parametrix held additional meetings with the government agencies listed above, to conduct a pre-release discussion of the draft EIS element related to the transportation impacts analysis; and

WHEREAS, at the June 11, 2008 and August 12, 2009 transportation meetings, Parametrix explained the methodology the EIS would use to analyze transportation impacts, the size and parameters of the EIS study area and study area intersections, and the expected trip distribution percentages, and the other public agencies concurred in Parametrix's approach; and

WHEREAS, on September 2, 2009, the City of Black Diamond issued a Draft Environment Impact Statement ("DEIS"); and

WHEREAS, on September 29, 2009, the City of Black Diamond held a public hearing on the DEIS; and

WHEREAS, on September 30, 2009, the City of Black Diamond extended the comment period, during which it would accept written public comment on the DEIS, until October 9, 2009; and

WHEREAS, on December 11, 2009, the City of Black Diamond announced the availability of the Final Environmental Impact Statement ("FEIS"); and

WHEREAS, on December 28, 2009, appeals of the FEIS were filed by Christopher P. Clifford on behalf of Annette Smith, Gilbert and Marlene Bortleson, Jay and Kelley McElroy, Melanie Gauthier, Michael Smith, Judith Carrier, Gerold Mittlestadt, Steve Sundquist; Vicki and William Harp and their daughter, Cindy Proctor; Joe May; and

WHEREAS, on December 31, 2009, the Applicant submitted a revised application for the Villages MPD to the City of Black Diamond; and

WHEREAS, pursuant to BDMC Section 18.98.060(A)(d), the Villages MPD application was forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, pursuant to BDMC Section 19.04.250, the FEIS appeals were forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, the Hearing Examiner scheduled consolidated hearings on the MPD application and the FEIS appeals, pursuant to WAC 197-11-680(3)(u)(v) and RCW 36.70B.120; and

WHEREAS, the Hearing Examiner held an open record hearing commencing on March 6, 2010 and continuing from day to day until March 22, 2010; and

WHEREAS, the Hearing Examiner accepted additional rebuttal presentations in accordance with the deadlines he had previously set, until April 12, 2010; and

WHEREAS, on April 15, 2010, the Hearing Examiner issued the Hearing Examiner Decision affirming the FEIS for the Villages MPD; and

WHEREAS, on May 10, 2010 the Hearing Examiner issued his Findings, Conclusions and Recommendation recommending approval of the Villages MPD, and issued an Errata and a signed copy of the Recommendation the following day, on May 11, 2010; and

WHEREAS, on June 21, 2010, the City Council convened its closed record hearing to consider the Villages MPD application; and

WHEREAS, the City Council continued the closed record hearing from day to day, and heard oral argument from and considered written materials submitted by parties of record from June 24, 2010 to July 14, 2010; and

WHEREAS, the City Council continued the closed record hearing from day to day to deliberate concerning the MPD application and to discuss potential litigation concerning it, from July 19, 2010 to August 24, 2010; and

WHEREAS, on August 24, 2010, the Black Diamond City Council approved a motion to direct the City Attorney to prepare a written ordinance approving the Villages MPD subject to conditions as discussed by the Council; and

WHEREAS, the City Council desires to approve the Villages MPD subject to certain specified conditions of approval as set forth herein, and to rezone certain parcels within the MPD to the zoning designation of "Master Planned Development - MPD");

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Findings of Fact.** The City Council hereby adopts the Findings of Fact set forth in Exhibit A attached hereto and incorporated herein by this reference.

**Section 2. Conclusions of Law.** The City Council hereby adopts the Conclusions of Law set forth in Exhibit B attached hereto and incorporated herein by this reference.

**Section 3. Approval of Master Planned Development.** Based on the Findings of Fact and Conclusions of Law adopted in Sections 1 and 2 above, the City Council hereby approves the Villages Master Planned Development, as set forth in the application dated December 31, 2009 and as delineated on the revised Land Use Plan map (Figure 3-1) dated July 8, 2010, subject to the conditions of approval set forth in Exhibit C attached hereto and incorporated herein by this reference.

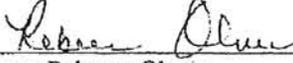
**Section 4. Rezone.** Although pursuant to Black Diamond Municipal Code Section 18.98.130(B) a formal rezone of parcels within the Master Planned Development boundary is not required, in order to remove any uncertainty or confusion as to the applicable zoning designation, the City of Black Diamond Zoning Map is hereby amended to designate the parcels legally described and depicted in Exhibit D attached hereto and incorporated herein by this reference as "Master Planned Development – MPD."

**Section 5. Severability.** Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

**Section 6. Effective Date.** This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 14th day of September, 2010.

Passed by the City Council on the 20<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
Mayor Rebecca Olness

ATTEST:

Brenda L. Martinez  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha  
Chris Bacha, City Attorney

Published: 9/28/10  
Effective Date: 10/3/10

## EXHIBIT A

### FINDINGS OF FACT

1. The record considered by the City Council consists of the following:
  - A. Several hundred exhibits admitted into evidence before the Hearing Examiner. The Exhibit lists are set forth in Attachment 1 to these Findings of Fact, and summarized as follows:
    - i. Index of "H" Documents: These exhibits were admitted during the hearings.
    - ii. Black Diamond MPD Hearing Exhibits: These documents, which include the City staff report and written comments from citizens, were submitted during the hearing and admitted at the end of the hearing process.
    - iii. Index of Prehearing Documents: These documents were identified in pre-hearing exhibit lists submitted by the SEPA Appellants, the Applicant, and counsel for the City.
    - iv. Emails for the Villages-Lawson Hills MPDs: These were emails that the SEPA Appellants, the Applicant, counsel for the City, and the Examiner exchanged on SEPA appeal issues.
  - B. Audio recordings of proceedings before the Hearing Examiner on the FEIS Appeals and the Villages MPD application.
  - C. A transcript of proceedings before the Hearing Examiner on the FEIS appeals and the Villages MPD application.
  - D. Audio recordings of the proceedings before the City Council during the City Council's closed record hearing on the Villages MPD application.
  - E. Written materials submitted by the parties of record to the City Council during the City Council's closed record hearing on the Villages MPD application. These materials were indexed as "C" exhibits, as shown in the list in Attachment 2 to these Findings of Fact.

2. Proposal Description. The Master Planned Development ("MPD") includes 1,196 acres, to be developed with the following uses: a maximum of 4,800 low, medium and high density dwelling units; a maximum of 775,000 square feet of retail, offices, commercial and light industrial development; schools; and recreation and open space. The MPD land uses are shown on the Land Use Plan map Figure 3-1 dated July 8, 2010. The MPD will also result in the rezoning of portions of the property from the

current R6 Single Family Residential and CC Community Commercial designations to a designation of Master Planned Development MPD. The details of the Villages MPD are outlined in the Master Planned Development application, dated May 11, 2009 and as revised on December 31, 2009. A significant feature of the project is that 505 acres, or 42% of the project area, will be open space.

3. MPD Project Area. The Villages MPD project area consists of two subareas, the Main Property and the North Property (also known as Parcel B). The "Main Property" is located primarily south of Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2 miles south and eventually east to SR-169 along the southern city limits. A portion of the Main Property (a.k.a. Parcel C) is located on the north side of Auburn-Black Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is located to the west of SR 169, approximately two miles north of the Main Property and north of SE 312th Street (if extended). The North Property is south of and adjacent to the North Triangle property that is part of the proposed Lawson Hills MPD project. The MPD project area is shown on the Land Use Plan map, Figure 3-1 (dated July 8, 2010) accompanying the MPD application.

4. MPD Project Density. If developed to the full extent proposed in the MPD application dated May 11, 2009 and as revised on December 31, 2009, the Villages MPD will have an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133) and an average density of 8.71 units per net acre (4,800 units/551 acres with residential or mixed use designations (as shown on the Land Use Plan map in Figure 3-1) = 8.711).

5. MPD Project Traffic.

A. Chapter 3 of the Villages FEIS includes an analysis of the transportation impacts of the Villages MPD, as well as a discussion of possible mitigation of those impacts. The FEIS discussion of transportation impacts was based on a detailed analysis included in the Transportation Technical Report ("TTR") attached to the Villages FEIS as Appendix B.

B. The TTR analyzed the transportation impacts of the Villages MPD that would occur in a study area with 46 intersections, covering a geographic area ranging from Maple Valley, Covington, Auburn, Black Diamond and other areas within unincorporated King County. As discussed at page 2-1 of the TTR, the eastern limit of the study area is generally bounded by SR 169, with the northern boundary at SR 169/SE 231<sup>st</sup> Street in Maple Valley, and the southern boundary at SR 169/SE Green Valley Road. The western study area limit extends up to SR 516/160<sup>th</sup> Avenue SE in the City of Covington and SE Auburn-Black Diamond Road/SE Green Valley Road in the City of Auburn. Because traffic volumes are higher and traffic operations are worse during the PM peak hour, the TTR analyzed intersection operations during the PM peak hour, with the exception of a

few key intersections in the project vicinity, where operations were also analyzed for the AM peak hour.

- C. Using traffic counts collected in 2007, the TTR analyzed existing transportation levels of service ("LOS") for the 46 study area intersections, by comparing the existing intersection operations to the LOS adopted by the jurisdiction in which the individual intersections are located. As depicted on Table 4, pages 2-14 – 2-15 of the TTR and as explained on pages 3-16 of the Villages FEIS, three study area intersections currently operate worse than the adopted LOS standard:
- SE 288<sup>th</sup> Street/216<sup>th</sup> Avenue SE: LOS D (vs. adopted Black Diamond standard of LOS C)
  - SR 169/Black Diamond Ravensdale Road: LOS F (vs. adopted Black Diamond standard along SR 169 of LOS D)
  - SR 169/SR 516: LOS E (vs. adopted Maple Valley standard of LOS D)
- D. Based on the Institute of Traffic Engineers ("ITE") Trip Generation Manual (8<sup>th</sup> Edition), the Villages MPD will generate 6,019 total new PM peak hour vehicle trips, as shown in tables in Appendix A to the TTR.
- E. After an 11 percent reduction for internal trip capture and a 10 percent reduction for pass by and diverted link trips respectively, the Villages MPD will generate 5,152 net new PM peak hour trips, as shown on Tables 9 – 10 of the Villages TTR. The internal trip capture rate of 11 percent was based upon the ITE Trip Generation Handbook, a widely accepted source for estimating internal trip capture. Perlic testimony, Transcript at 1,499 - 1,500. The internal trip capture rate and pass by and diverted link trip reduction rates were conservatively low estimates, so as not to underestimate the total net new traffic trips that would be generated by the Villages MPD.
- F. Mr. Perlic distributed the 5,152 net new PM peak hour trips over the roadway network within the City of Black Diamond using the City of Black Diamond transportation demand model. For the study area roadway network outside of the City of Black Diamond, Mr. Perlic used the Puget Sound Regional Council ("PSRC") model, adjusted with the use of engineering judgment. The use of the PSRC model was appropriate because it is a regional model, whose full regional roadway network is needed to address the regional nature of many of the new vehicle trips that will be generated by the Villages MPD. The results of the trip distribution are shown on page 3-9 and Figures 6-11 of the Villages TTR.
- G. Using the trip distribution percentages, the FEIS analysis then assigned trips from those percentages to individual intersections. The assigned trips

were combined with existing traffic, plus assumed growth in background traffic of 1.0% annually for the Covington area along SR 516, and 1.5% annual growth rate for all other intersections in the study area. In many areas the historical annual growth in traffic volume was less than this rate, and in some areas the current trend is a decline in growth. Consequently, as the City of Maple Valley's expert Natarajan Janarathanan agreed, the use of these background traffic growth rates was conservative, in that they potentially overstated the total amount of traffic at individual intersections and the potential need for future infrastructure improvements.

- H. The FEIS analysis then considered the operations of the 46 study area intersections in the year 2025, assuming the total numbers of assigned trips described in Finding No. 5(G) above. The intersection operations analysis considered the average level of service for the entire intersection, rather than analyzing the level of service of individual intersection legs (although the TTR did analyze individual turning movements). As Mr. Perlic and the SEPA Appellants' expert Ross Tilghman testified, it is standard practice to analyze the entire intersection because mitigation is tied to failure of the whole intersection. Tr. pages 1,527 and 607. The FEIS analysis concluded at page 3-18 that 22 of 46 intersections would have failing levels of service. The year 2025 projected levels of service are shown in Exhibit 3-6 of the FEIS, and in Table 16 (pages 3-55 - 3-57) of the TTR.
- I. The FEIS and TTR analyses described above contains a reasonably thorough discussion of significant adverse transportation impacts of the Villages MPD. The choice of methodology and engineering decisions made therein are all within the parameters of reasonably justified professional engineering judgment. The FEIS and TTR analyses are adequate and sufficient to support approval of the Villages MPD with conditions.
- J. The FEIS analysis also identified infrastructure improvements as mitigation for the projected LOS failures. These improvements are listed in Exhibit 3-7 of the Villages FEIS. In addition to these improvements, the Applicant has also committed under certain conditions to pay a specified percentage of additional improvements located within the City of Maple Valley. The improvements listed in the FEIS, together with the additional improvements offered by the Applicant, are sufficient to mitigate the LOS failures projected by the Villages FEIS and TTR as well as the impacts projected by the City of Maple Valley, and are therefore adequate, appropriate and sufficient to support approval of the Villages MPD with conditions. Additional review of transportation impacts will be performed and potential additional mitigation identified in conjunction with specific projects, as called for by conditions of MPD approval.

K. Challenges to the FEIS and TTR analyses by parties of record are not supported by the balance of the evidence, for the following reasons:

i. Use of the PSRC Travel Demand Model. The FEIS and TTR appropriately utilized the PSRC regional model, rather than the City of Maple Valley's model:

a. The Maple Valley model's trip distribution was based on an incorrect split between trips generated by residential uses and trips generated by commercial uses. Because trips from these kinds of different land uses have different travel patterns, this error increased the percentage of MPD project trips that would be distributed along SR-169 into Maple Valley and overstated the extent of traffic impacts in Maple Valley. This error and its significance are explained in the Declaration of John Perlic at pages 10 - 13 and 17 - 18.

b. The Maple Valley model also incorrectly distributed more trips northward along SR-169 vs. west and northwest along Covington-Lake Sawyer Road and 216<sup>th</sup> Avenue SE. The PSRC regional model accounts for trips traveling to major employment centers in the Kent Valley, Seattle and Bellevue. Mr. Perlic adjusted the PSRC trip distribution manually to account for the fact that these longer regional trips would make a choice to avoid the congested SR-169 and travel west and northwest to take a different route. This will be particularly true for trips originating from the Villages, because those trips would essentially have to "backtrack" to get out to SR-169 rather than taking a more direct route west or northwest. The Maple Valley model, by contrast, is "cordoned off" with respect to regional work trips, and therefore could not take them properly into account. Further, the Maple Valley model did not take intersection delay along SR-169 into account, and automatically assigned trips to that route if capacity existed. These erroneous assumptions artificially inflated the percentage of trips distributed to SR-169, and inflated the extent of projected impacts in Maple Valley.

c. The Maple Valley distribution and assignment was then analyzed using inappropriately low peak hour factors, which artificially worsened intersection levels of service. In some cases the Maple Valley model used a peak hour factor ("PHF") lower than existing peak hour factors, when available literature documents that PHF increases as traffic volumes increase.

d. Other flaws in the Maple Valley model's analysis are detailed in Mr. Perlic's Declaration, which the Council finds credible.

- ii. Internal Trip Capture. The FEIS analysis' internal trip capture rate was based on the ITE Trip Generation Handbook, which both Mr. Perlic and Matt Nolan of King County agreed (Tr. at 520 - 523) was the standard method for determining trip generation. Further, in its written comments on the DEIS, the City of Maple Valley expressed concern that the internal trip capture rate was actually too low and would thus overstate impacts from the project.
- iii. Background Traffic Growth. The FEIS and TTR background traffic growth projections were conservative and therefore reasonable, and within the bounds of professional engineering judgment. The other parties did not demonstrate that the background traffic growth rates were erroneous. To the extent that actual growth in background traffic turns out to be lower than projected, this can be addressed in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.
- iv. Peak Hour of Analysis. Use of the PM peak hour analysis was sufficient to establish necessary mitigation for traffic increases. While some SEPA Appellants would have preferred the FEIS address other times, including AM peak hours, it is customary to use the highest travel hour so mitigation is imposed for the worst-case traffic scenarios. Mr. Perlic testified to this effect.
- v. Level of Service Intersection Analysis. It was not necessary for the FEIS and TTR to discuss the anticipated increases in travel times resulting from increased traffic. The FEIS and TTR addressed levels of service and contained a reasonable and appropriate discussion of the impacts resulting from increased traffic volumes and decreased levels of service. The LOS analysis, rather than a travel time analysis, is the more customary manner to address traffic issues. The Growth Management Act requires an LOS analysis to gauge the performance of local transportation systems. RCW 36.70A.070(6)(a)(iii)(B). City and County elected officials deal with level of service on a regular basis in their review of planning documents required by the Growth Management Act and their review of land use applications. Mitigation is based on level of service; thus a discussion of LOS is more meaningful than increased travel times. Mitigation is shown when the levels of service become unacceptable. It is reasonable to conclude that decision-makers are familiar with LOS analysis; additional analysis of anticipated increases in travel time was not necessary.
- vi. Peak Hour Factor. Application of the 0.97 peak hour factor does not invalidate the FEIS and TTR analyses. While there was some testimony that a 0.92 peak hour factor is the accepted standard,

applying that factor to an intersection already at 0.92 or higher would be superfluous, and a higher factor is appropriate. 85% of the 39 study area intersections existing today (7 of the study area intersections will be created as a result of the MPD) have an existing peak hour factor of .92 or higher. There was also testimony that peak hour factors increase over time as congestion increases, and that an increase of .05 is an appropriate rule of thumb for planning purposes. In addition, the peak hour factor can be adjusted based on actual conditions in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.

vii. Queuing Analysis. Queue analyses are more appropriately done at the project level, because the determination of whether there is a significant adverse impact will occur in conjunction with construction, rather than as part of a projection of impacts 15 years into the future. Queue analyses at the project level will allow consideration of signal timing, actual volumes, intersection design, and will more accurately predict what the specific mitigation needs would be, such as whether a left turn lane is needed to be added, and the necessary length of that left turn lane. Tr. pages 1,472-1,512.

viii. Railroad Avenue. The City's Comprehensive Plan designates Railroad Avenue as a collector road, with a level designation of C, and whose purpose is to collect and distribute traffic between local roads and arterial system. Railroad Avenue has sufficient capacity to handle projected increases in traffic, even with on-street parking. Tr. pages 1,535-1,536. While Railroad Avenue is part of the City's Old Town historic district overlay, and Black Diamond Comprehensive Plan policies state that the historical character "should be retained and enhanced, and this area should become the focus of tourist and specialized retail activities," there are several other roads in the area, such as the main roads through North Bend and Snoqualmie, with historical characteristics similar to Railroad Avenue (including parking) that have been able to retain their rural character in spite of development and increases in traffic. Moreover, analyzing impacts to a road's "rural character" would be speculative and subjective.

L. Future Transportation Analysis. Notwithstanding the above Findings concerning the reasonableness and appropriateness of the FEIS and TTR's analyses of potential transportation impacts and identification of mitigation for them, all travel demand models and transportation impact analyses rely upon engineering assumptions and the exercise of engineering judgment about future conditions. As such, neither the PSRC model nor the City of Maple Valley model is optimally suited to predict the long-term traffic impacts for the Black Diamond community. And, the length of the Village's 15-year build out period increases the risk that one

or more assumption could turn out to be incorrect. This risk, which may be exacerbated by the scale of the MPD development, warrants the preparation of additional transportation analyses at appropriate, future intervals, as called for by conditions of the MPD approval in Exhibit C below.

6. Traffic Safety.

- A. As a general matter, it is reasonable to expect the number of accidents to increase in proportion to increases in traffic volumes. This general proposition does not always hold true, however. Exhibit H-22 is a Washington State Department of Transportation accident history detail report, showing reported collisions that occurred on Southeast Green Valley Road from Auburn/Black Diamond Road to SR-169, January 1, 2001 through 2009. Ex. H-22 includes a period during 2008 during which traffic volumes increased substantially due to a detour resulting from a bridge closure; however, despite the increased traffic during that period, the number of accidents did not increase above the average for this nine-year reported period. Tr. at 1,541 - 1,543. Exhibit H-22 demonstrates that vehicle accident rates are somewhat random and are not necessarily directly tied to increases in traffic volumes.
- B. There are no high incident accident intersections in the FEIS transportation study area. Those accidents that did occur in the study area were random and not tied to any particular, identified hazards on the roads. Some of the safety impacts will be mitigated by the improvements called for in the FEIS, and the randomness of the accidents makes it difficult to predict and impose more specific mitigation that would decrease the risk. There is no known way to analyze safety impacts except to evaluate the particular configuration of a high incident location. Tr. at 1,541 - 1,543.
- C. Green Valley Road has been designated under King County's Historic Heritage Corridor. Traffic on Green Valley Road is projected to increase by as much as 300 - 400%. Tr. at 476. Green Valley Road currently has very low traffic volumes, and although the anticipated increase in traffic volumes resulting from the project will not exceed Green Valley Road's capacity, increased traffic may result in safety concerns. Green Valley Road has limited or no roadway shoulders, trees and fences in very near proximity to the roadway, and very curvilinear alignment. Additionally, some witnesses testified that Green Valley Road has a high number of large animals that regularly cross the road, as well as a high volume of bicyclists, hikers, joggers, tubers, swimmers, outdoor groups, and fishermen using the shoulder of the road. These factors justify a study of traffic impacts and recommended mitigation to provide for safety and compatibility between the varied uses of Green Valley Road. The study

should include an analysis of measures designed to discourage and/or prevent MPD traffic from utilizing the road, such as the installation of traffic calming devices, while ensuring that such measures can be designed in a manner consistent with the road's designated status.

7. Stormwater Quality.

- A. Lake Sawyer. Lake Sawyer is a significant water body. It is the fourth largest lake in King County, covering 280 acres. Ex. NR-TV-11, p. ES-1. Its watershed encompasses 8,300 acres. Ex. H-9, p. vii. Over 200 people live upon its shorelines. The lake is used extensively for recreational purposes such as sailing, water skiing, scuba diving, swimming, picnicking, wildlife observation and aesthetic enjoyment. Ex. NR-TV-11, p. ES-1. Public access is provided by two city parks, one on the northwest side of the lake and another on the southern end of the lake. The lake provides habitat for three federally listed species: Steelhead, Coho and Chinook salmon. TV FEIS at 4-71, 4-73.
- B. Phosphorus. Phosphorus poses a significant threat to Lake Sawyer water quality. In lakes of the Puget Sound Lowlands, phosphorus is often the nutrient in least supply, meaning that biological productivity is often limited by the amount of available phosphorus Lake Sawyer Water Quality Implementation Plan (Ex. H-9) at 6 (*citing* Abella, 2009). Thus, for lakes such as Lake Sawyer, phosphorus is usually the main nutrient that drives the eutrophication process. When lakes are polluted with excessive levels of nutrients and have high biological activity, they are considered eutrophic. When a lake reaches a eutrophic state the consequences are serious. Blue-green algae bloom, creating toxics that are lethal to aquatic life, birds and shore animals, including cats and dogs. The blue-green algae form a scum over lake surfaces, causing beach closures. Testimony of Abella, 3/8/10, p. 555. The toxins are also under study as a cause for liver ailments in humans. *Id.* A eutrophic state also harms coldwater fish. Coldwater fish need to stay in the lower, colder layers of a lake. A eutrophic state deprives the lower waters of necessary oxygen and leaves it in the warmer upper layers. Zisette testimony, 3/6/10, pp. 72 - 73.
- C. Previous Lake Sawyer Water Quality Problems. In the 1970's, evidence of failing septic systems in the Lake Sawyer watershed resulted in a decline in water quality in Lake Sawyer and the rivers that feed into it. To correct this problem, the City of Black Diamond constructed a sewage treatment plant in 1981. Treated effluent was discharged into a natural wetland, which ultimately discharged into Lake Sawyer. Lake Sawyer Water Quality Implementation Plan ("Implementation Plan") Ex. H-9 at 1. The treated effluent caused a significant degradation of Lake Sawyer water quality. As phosphorous levels went up, algae blooms occurred.

According to witnesses, a green scum covered the lake, rendering the lake virtually unusable for recreational and other public activities. Testimony of Wheeler, Tr. 3/19, pp. 3647 - 3648. Due to the water quality problems caused by the treated sewer water, the Department of Ecology required the diversion of the effluent from the natural wetland to a secondary treatment plant in Renton via a King County sewer line. Ex. H-9 (Implementation Plan) at 1. This diversion was completed in 1992. *Id.*

- D. Lake Sawyer Listing. As a result of Lake Sawyer's water quality problems, DOE listed Lake Sawyer as an "impaired water body" pursuant to the requirements of the Clean Water Act. The Clean Water Act requires a total maximum daily load (TMDL) to be developed for impaired water bodies. The TMDL is subject to approval by the US Environmental Protection Agency. The TMDL sets a limit to the amount of phosphorous that is allowed into a water body. Implementation Plan, Ex. H-9 at 3. The Lake Sawyer TMDL for phosphorous approved by the EPA in 1993 established a target in-lake, summertime average phosphorus concentration of 16 micrograms per liter. Ex. H-9 (Implementation Plan) at 1, 9, and 12. To meet this target, the TMDL also established a loading capacity, expressed in volume, of 715 kilograms of phosphorous per year. *Id.* at 9 (Table 1). This means that all sources of phosphorous may not exceed a total of 715 kilograms per year.
- E. Current Lake Sawyer Water Quality. Lake Sawyer had average summertime (June-August) phosphorous concentrations of 12 to 23 micrograms/L from 1990 to 1998. Ex. H-9 at 1, 12 (Figure 5). From 1999 to 2007 the average summertime phosphorous levels have been in the 8 to 16 microgram/L range. *Id.* The TMDL target of 16 micrograms/L has been met since 1998, with levels down to 8 or 9 micrograms/L in 2007. Ex. H-9 at 12. The Implementation Plan shows that this current state of the lake, with a total phosphorus concentration of 8 or 9 micrograms/L, is not temporary but is anticipated to be stable, absent further development.
- F. King County Lake Sawyer Management Plan. In 2000 King County prepared the Lake Sawyer Management Plan, Ex. NR-TV-11 ("LSMP"). It is considered a supporting document of the Lake Sawyer TMDL. Ex. H-9 at 1. The purpose of the LSMP was to complete a Phase 1 study initiated in 1989-90. LSMP at 1 - 5. The primary purpose of the Phase 1 Study was to assess the impact of the water treatment plant diversion on water quality, update the lake's nutrient and water budgets, and to evaluate and recommend restoration alternatives that will maintain and protect Lake Sawyer's water quality and beneficial uses. *Id.* The LSMP was based upon years of data collection and employed the input of several stakeholders representing public and private organizations. It included a detailed projection of phosphorous levels at full build out of the Lake Sawyer watershed, with and without recommended mitigation. The

LSMP identifies several mitigation measures directed at the Lake Sawyer watershed to control phosphorous loading. LSMP, Chapter 6. If these measures fail to reach or maintain lake management goals, the LSMP identifies "contingency in-lake measures" to improve water quality. LSMP at 6 - 22. These measures consist of buffered alum treatment (treating the lake with alum) and hypolimnetic aeration and circulation (pumping oxygen into the lake through a piping system).

- G. Department of Ecology Lake Sawyer Water Quality Implementation Plan. In 2009 DOE released the Lake Sawyer Total Phosphorous Maximum Daily Load Water Quality Implementation Plan ("Implementation Plan"), Ex. 9. It is considered the follow up document to the Lake Sawyer Total Phosphorous TMDL. Ex. H-9 at 2. It provides a framework for corrective actions to address sources of phosphorous pollution in Lake Sawyer and the surrounding watershed. Unlike the LSMP, it did not include any modeling of future lake conditions. Like the LSMP, the Implementation Plan was based upon the input of several stakeholders participating in the Lake Sawyer Steering Committee, consisting of representatives of: DOE; King County; City of Black Diamond; King County Conservation District; Washington Department of Fish and Wildlife; the Muckleshoot Indian Tribe; and local watershed residents. The corrective actions identified in the Implementation Plan largely mirrored the mitigation recommended in the LSMP, with the important distinction that the Implementation Plan also contemplated the City's adoption of the 2005 Stormwater Management Manual for Western Washington. The Implementation Plan concludes that with compliance with the Western Washington Phase II Municipal Stormwater Permit, the adoption of and compliance with the 2005 DOE Manual, and a monitoring program for the implementation projects, the City of Black Diamond would meet the requirements of the TMDL. Ex. H-9 at 31 - 32. There is no evidence to suggest that these measures, including the 2005 DOE manual, are inadequate.
- H. Credibility of the LSMP and the Implementation Plan. The LSMP and the Implementation Plan build upon years of research and hundreds of pages of scientific analysis. The plans are the result of significant collaboration of all major stakeholders. The Implementation Plan's conclusions that compliance with the 2005 Stormwater Management Manual for Western Washington will constitute compliance with the TMDL were made by the Department of Ecology, whose primary mission and expertise are the protection of environmental resources, such as Lake Sawyer. Given DOE's mission and expertise, the City Council finds the Implementation Plan's conclusions credible. There is nothing in the record to suggest that DOE would have any self-interest or political reason to find TMDL compliance when that was not the case. The Applicant raised the issue of DOE approval prior to the Appellants' rebuttal and nothing was offered by the Appellants to explain why DOE would reach such a conclusion if there

was no reasonable basis for it. While some parties of record argued that the data and methodology shows that the MPD projects will load phosphorous in excess of TMDL and that this phosphorous loading will approach (but not exceed on its own) the eutrophication point for Lake Sawyer, these parties did not dispute the data or methodology used in the LSMP or the Implementation Plan to assess the effectiveness of mitigation. Therefore, their arguments and evidence are insufficient to refute the conclusions of DOE's Implementation Plan.

I. The Villages MPD is Within LSMP's Total Phosphorous Loading Assumptions.

- i. Reliance on LSMP Loading Assumptions. Although the Applicant has not chosen to conduct its own analysis of how much phosphorous the MPD's will discharge to Lake Sawyer, the Applicant has relied upon the phosphorous loading estimates of the Lake Sawyer Management Plan ("LSMP"), prepared by King County in 2000. Through extensive analysis and testimony, the Applicant established that the MPD projects are consistent with the assumptions used by the LSMP in predicting total phosphorous loading.
- ii. LSMP Overstates Potential Total Phosphorus Loading. The record of this proceeding conclusively establishes there are three (and potentially four) factors that result in an overstatement of phosphorous loading in the LSMP model:
  - a. The LSMP overstates the amount of the MPD development area that drains to Lake Sawyer. The Applicant's geotechnical consultants performed 110 test borings to determine the location of impermeable surfaces and the resultant subsurface flows of stormwater. Tr. 2641. Through this geotechnical analysis the Applicant determined that 30% of the project area does not drain into Lake Sawyer as assumed in the LSMP. Kindig Testimony, 3/12/10, pp. 2032 - 2033. No party rebutted this testimony or geotechnical analysis.
  - b. The LSMP overstates the amount of potential development in the MPD project area. As shown in Exhibit H-8 and as testified by Al Fure, the LSMP overstates the development of the MPD's by 25%. Tr. at 2,007 (Fure testimony, 3/12).
  - c. The LSMP model utilized an inappropriately high total phosphorus baseline. The LSMP model relied upon the in-lake phosphorous concentrations from March 1994 through April 1995. Wheeler Ex. 20(e), Appendix C, Figure E6. The concentrations during this base period ranged from 20 to 60 micrograms/L, significantly higher

than the TMDL concentration of 16 microgram/L. As shown at p. 12 of the Implementation Plan, the 2007 phosphorous concentration was 8 or 9 micrograms/L. *Id.* The "typical year" baseline used in the LSMP model was 84% over the TMDL concentration. Wheeler Ex. 20. The significant disparity between current phosphorous concentrations and those used in the baseline of the LSMP model is probably due to the five year recovery period of the lake from the treatment plant diversion in 1992. *Id.* Yet, Table 6-7 of the LSMP, which provided the projections on future phosphorous loading, noted that "it is assumed that internal loading will not change in the future," when more recent data (shown in the Implementation Plan) demonstrates that internal loading has, in fact, changed.

- d. A fourth factor may be the City's adoption of the 2005 DOE Stormwater Manual. The LSMP was based upon the assumption that new development would be regulated by the Department of Ecology's 1992 Stormwater Manual. Tr. at 558 (Abella testimony, 3/8/10). Development of the Villages MPD, however, will be regulated by the DOE 2005 Manual. As Ms. Abella testified, the 2005 DOE Manual provides "better by far" phosphorous safeguards than the 1992 manual. Tr. at 564 (Abella Testimony, 3/8/10). However, some of the benefits of the 2005 Manual may already be integrated into the LSMP model. One of the recommended stormwater controls in the LSMP is the adoption of the 1998 King County Surface Water Design Manual. LSMP, p. 6-6 to 6-7. In the alternative, the LSMP recommends adoption of the "Lake Protection Standard", a component of the King County Surface Water Design Manual. In recommending these standards, the LSMP focuses upon the fact that they have a phosphorous treatment reduction goal of 50%, which is the same standard required under the 2005 DOE Manual. If the 2005 DOE Manual does not provide any level of phosphorous protection better than the 1998 King County Manual, the City's adoption of the 2005 DOE Manual is simply an adoption of one of the LSMP mitigation measures and its actions fall squarely within the LSMP modeling. However, if the 2005 DOE Manual provides better protection than the 1998 King County Manual, as Ms. Abella testified is the case, this is a fourth reason why the LSMP model overstates the potential phosphorous loading from future build out.
- e. There is no evidence in the record that identifies any factors that would result in an underestimation of phosphorous loading in the LSMP. While Ms. Abella testified that the LSMP was outdated, she could only conclude that an updated LSMP could "go either way" in changing the outcome of phosphorous loading predictions.

Ms. Abella testified that the LSMP is based upon data and development regulations from 1995. Tr. at 174. She noted that development projections in the LSMP may not be accurate, due to possible changes in Black Diamond comprehensive plan policies and development regulations and Black Diamond annexations that occurred subsequent to 1995. *Id.* at 179. The Applicant addressed Ms. Abella's concerns about projected MPD development in the preparation of Ex. H-8 and the testimony of Al Fure, which, as discussed above, demonstrated that the LSMP actually overestimated potential development within the MPD project areas and, therefore, overestimated potential phosphorus loading from new development.

J. The Villages MPD Will Comply With DOE Manual Requirements and the TMDL.

- i. The Villages MPD will comply with the requirements of the DOE 2005 Manual, and will therefore be within the TMDL. Dr. Kindig testified that, as designed, the Villages MPD meets the DOE conditions for consistency with the TMDL. Tr. at 2,025-26. Not only was Dr. Kindig's testimony on this point unrefuted, but Robert Zisette, the SEPA Appellants' water quality expert, agreed that the mitigation implementation measures identified in the Implementation Plan are incorporated into the Villages MPD proposal. Tr. at 3,625 (Zisette testimony, 3/19/10). Therefore, according to DOE's conclusion in the Implementation Plan, the Villages MPD will comply with the TMDL.
- ii. The SEPA Appellants asserted that compliance with the mitigation measures outlined in the LSMP (and presumably the Implementation Plan) would not be sufficient to comply with the Lake Sawyer TMDL or to prevent Lake Sawyer from reaching eutrophic status. The SEPA Appellants' expert, Mr. Zisette, performed an interpolation of the modeling used to predict phosphorous loading for total build out, and determined that the phosphorous loading attributable to the MPD proposals, with LSMP stormwater controls, would generate an additional 353 kg/yr above the 715 kg/year TMDL limit. See Wheeler Prehearing Ex. 20. In making this calculation, Mr. Zisette used approximately the same MPD area calculated by the Applicant as draining into Lake Sawyer, employing the area outlined in Exhibit H-7. Mr. Zisette's TMDL calculations, however, did not reveal any new information not readily apparent to DOE when it concluded (in the Implementation Plan) that development in accordance with the 2005 Stormwater Manual would comply with the TMDL. Additionally, beyond adjusting downward for development area, Mr. Zisette's calculations did not alter any of the assumptions used in the LSMP model which, as found above, significantly overstated the potential

total phosphorus loading to Lake Sawyer. The LSMP model predicted a total phosphorous load of 2,255 kg/yr at build out, which is 1,540 kg/yr above TMDL; the baseline "typical year" in the LMSP model was already 627 kg/yr above the TMDL. Mr. Zisette's calculation merely showed that the MPD's proportionate share of this excess phosphorous is 353 kg/yr. Mr. Zisette's interpolation was not the kind of analysis of the total phosphorus volume loading of the Villages MPD to Lake Sawyer that he testified (Tr. at 3,596) that the Applicant should have performed. Given the objectivity and expertise of DOE, and the significant improvement in the current Lake Sawyer water quality that was not factored into the LSMP modeling, the City Council finds credible DOE's conclusions that compliance with the NPDES Phase II Stormwater Permit and the 2005 DOE Manual, and with additional monitoring and conditions of approval noted above, the Villages MPD will comply with the TMDL. Those conclusions are hereby adopted.

- iii. The SEPA Appellants also asserted that the MPD could cause Lake Sawyer to exceed 24 micrograms/L, which they alleged, based on Table 4-10 of the LSMP, is the scientific dividing line between a mesotrophic and eutrophic lake. The meaning or eutrophic risk of this "dividing line" is not explained in the LSMP, however. The TMDL is set at a point where there is a 5% chance of reaching eutrophic status. See LSMP, Appendix F, 2/11/93 Wong Memo. And, the 24 micrograms/L is significantly more than the TMDL, which at 16 micrograms/L has a 50% less phosphorous concentration. Further, while the SEPA Appellants point to Table 6-3 of Appendix I to the LSMP, which provides that the current condition of Lake Sawyer is at 23 micrograms/L and that build out of the watershed, with watershed controls, will reach 31 micrograms/L, neither Table 6-3 nor Table 4-10 reflects current conditions. As discussed previously, the Implementation Plan shows the current state of the lake at 8 or 9 micrograms/L, and these levels are anticipated to be stable, absent further development. The lake concentration has been under 16 micrograms/L since 1998. There is nothing in the record to suggest that the Villages and Lawson Hills MPDs, alone, will push the Lake Sawyer total phosphorous concentration beyond 24 micrograms/L, given the lake's current conditions.

K. Estimation of Total Phosphorus Volume Loading. The Applicant did not determine the total volume of phosphorous the Villages MPD would add to Lake Sawyer. This phosphorus volume loading is not unreasonably difficult to compute, because the Applicant has data on both projected stormwater volumes and expected phosphorous concentrations. The Applicant did not rebut testimony on this point. Information as to the annual projected total phosphorus volume load from the Villages MPD to

Lake Sawyer would assist the City in meeting the future water quality monitoring called for by the TMDL, and in determining whether the Villages MPD is, in fact, in compliance with the TMDL established for Lake Sawyer.

L. Total Phosphorus Concentrations in Rock Creek. Mr. Rothschilds, one of the members of the public who testified on water quality issues, raised concerns over phosphorous impacts to Rock Creek that had not been discussed during the SEPA appeals. The Applicant submitted a rebuttal declaration by Dr. Kindig, Ex. 121, which detailed that Mr. Rothschilds had not considered the impacts of additional flows from development in his estimates of Rock Creek phosphorous concentrations. Dr. Kindig established that the resulting phosphorous concentrations after the build out of both MPDs would be 0.026 milligrams/L. There is no evidence in the record to suggest that these concentrations would be adverse to Rock Creek.

M. Low Impact Development. Low-impact development techniques are also proposed as part of the Villages MPD, and are recommended conditions of approval. These techniques will also significantly mitigate stormwater impacts. The MPD project site contains permeable soils that are amenable to low-impact development techniques.

8. Stormwater Quantity. One party of record, Jack Sperry, shared photos of, and others shared concern over, past flood events. The added stormwater generated by the MPDs will not make a significant difference in the quantity of water that reaches Lake Sawyer during storm events. As discussed in the declaration of Al Fure, Ex. 123, the developed areas of the Villages and Lawson Hills MPDs occupy only 4% of the Lake Sawyer watershed. A little more than a third (326/922 acres) of the MPD developed areas are within the Lake Sawyer watershed. Using the volumes generated by the January 7, 2009, flooding events, the MPDs would have added an additional depth of 1.85 inches to the storm event, if the storm quantity was instantaneously delivered to the Lake. It would take several days for all of the water from such storm event to reach Lake Sawyer from the MPDs. Therefore, the MPD does not serve as a significant flood threat to Lake Sawyer properties.

9. Noise.

A. Existing noise levels. As summarized in the Villages FEIS at page 3-25, existing noise levels along SR-169 in the vicinity of the Villages MPD project area have been measured between 54 and 66 decibels (dBA), depending largely on the speed of vehicles. Noise levels have been measured at 62 dBA on Roberts Drive/Auburn-Black Diamond Road at the City offices, but noise levels in residential areas at a distance from major roads drop to between 46 and 53 dBA, with noise levels in more rural and undeveloped areas as low as 31 dBA. Appendix C to the

Villages FEIS identified the five locations where sound level measurements (SLMs) were taken to establish the base line or existing environmental noise level along SE Auburn-Black Diamond Road/Roberts Drive. Richard Steffel, the Applicant's noise expert, testified in a rebuttal declaration that the SLMs were taken after a traffic detour on SR-169 was discontinued to ensure that unusual traffic conditions were not present to influence the findings of the noise analysis. The Villages FEIS and its technical appendix addressing noise impacts (Appendix C) do not disclose the anticipated duration of each of the construction activities listed in the table in the Villages FEIS Exhibit 3-12. Tr. at 795-96.

- B. Projected Noise Impacts from Villages MPD. As discussed in the Villages FEIS at Exhibit 3-12, MPD construction noise is estimated to be 80 to 96 dBA at 50 feet from the source, 74 to 90 dBA at 100 feet from the source, and 68 to 84 dBA at 200 feet from the source.
- C. Noise Standards. Generally speaking, 55 dBA is an acceptable level of outdoor noise in a residential area pursuant to the "environmental designation for noise abatement" classification system utilized by Washington State and the U.S. Department of Housing and Urban Development Index. Villages FEIS at 3-27. The Federal Highway Administration Noise Criteria indicate that 52 dBA is an acceptable noise level for the interior of a residence. *Id.* at 3-28. Construction noise originating from temporary construction sites is exempt from noise regulation by the Department of Ecology. Because the Villages MPD is anticipated to be built out over a fifteen-year period, the noise standards adopted by DOE and other agencies do not adequately address construction noise impacts associated with the scale and construction duration of the Villages MPD.
- D. Parties Affected by Noise Impacts. The parties most likely to be affected by construction noise include residents adjacent to the site, including single-family residential development to the east on both sides of Roberts Drive, and one residential family to the west of the property south of Roberts Drive, the Harps, who could experience peak noise levels up to 90 dBA. Villages FEIS at 3-29; testimony of Jerry Lilly (SEPA Appellants' expert) and Richard Steffel (Applicant's expert). The Harps' residence is located within 35 feet of the Villages main property. At least one member of each household referenced on page 3-29 of the Villages FEIS suffers from medical conditions which may be exacerbated by the construction noise. Harp Appeal of the Villages FEIS, pp. 8 - 9.
- E. Duration of Construction Noise Impacts. The Villages MPD application (page 1-6) indicates that it is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for development of the main Villages site. Because dirt removed must be

used as fill, trucks will not be used to export the entire 4.7 million cubic yards of dirt. If the Applicant performs 4.7 million cubic yards of cut, and retains the 1,685 million cubic yards on site as required, approximately 3,680,000 cubic yards of dirt would have to be removed from the site. This is equivalent to approximately 153,000 truckloads of exported material. If ten truckloads are removed per hour, eight hours per day, five days per week, that would be 400 truckloads a week for about 7.35 years. As acknowledged by Exhibit 3-12 of the Villages FEIS, dump trucks generate 82 – 94 dBA of noise when measured 50 feet from the source and 76 – 88 dBA when measured 100 feet from the source. The 90 dBA clearing activities will likely be of short duration, since there are only so many trees adjacent to the three residential properties that will most likely be affected by such noise.

- F. Noise Mitigation. During its rebuttal presentation, the Applicant volunteered to provide certain specified mitigation to address construction noise impacts. City staff also recommended a condition requiring establishment of a construction haul route, with a corresponding prohibition of construction haul use of specified City streets. The City Council finds that incorporation of the Applicant's volunteered mitigation, and the construction haul requirements recommended by staff as conditions of MPD approval, will appropriately mitigate the construction noise impacts of the Villages MPD.

#### 10. Schools.

- A. School District. The Villages MPD project area is located in the Enumclaw School District ("District"). The District's schools are already over capacity, according to testimony by school officials.
- B. School site standards. The District's capital facilities plan ("CFP") identifies acreage needs for new schools. Ex. 14, attached Ex. A, p. 15. However, the CFP appended to Ex. 14 fails to identify an explanation/justification for the acreage standards. Nevertheless, it is the most suitable standard provided in the record because it is incorporated into the City's Comprehensive Plan. In addition, BDMC 18.98.080(A)(19) requires that:

*[t]he number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build out, using school sizes based upon the applicable school district's adopted standard....*

This standard links the size of the "school" to adopted District standards, but does not expressly tie the size of the "site" to the CFP acreage needs used to calculate District school impact fees. Because the acreage

requirements in the CFP are used to calculate school impact fees and are not necessarily intended to serve as minimum site standards for the construction of all schools, the acreage standard can be applied in a flexible manner, so long as sufficient acreage is provided to meet the District's adopted school size standard incorporated in BDMC 18.98.080(A)(19).

- C. District/Applicant School Mitigation Negotiations. The District and the Applicant have been involved in extensive negotiations on a school mitigation agreement since August, 2006. The record reflects that the latest draft is satisfactory to both the District and the Applicant.
- D. School Facilities Needed. The draft school mitigation agreement (Ex. NR-TV-8) indicates that the District identified the need for new schools to serve 1,800 elementary students, 1,100 middle school students, and 1,200 high school students. Likewise, Ms. Graham testified that during the process of preparing the DEIS, Parametrix identified the need for seven schools to serve the project areas of the Villages and Lawson Hills MPDs. The District identified the school needs and the District and Applicant "firmed up" the location of the elementary and middle schools in April 2009, and the location of the high school in late August or early September 2009. Tr. at 878-79. If the District proposes to locate a school in unincorporated King County, a conditional use permit must be obtained from King County.
- E. Analysis of Traffic Impacts of School Construction. The FEIS and TTR transportation analysis addressed the cumulative, AM peak hour traffic impacts of schools needed to serve approximately the same number of students contemplated by the draft school mitigation agreement. FEIS, Appendix B at Table 10, p. 3-7; Tr. at 2,535 (Perlic testimony). Because school-generated traffic does not affect the PM peak hour, any change in the AM peak hour school traffic analysis due to a change in school site location would likely not affect the FEIS and TTR impact analysis and mitigation for PM peak hour conditions. Tr. at 2,541-42. (Perlic testimony). The SEPA Appellants and other parties of record have not demonstrated that this analysis was deficient, in that they did not provide any evidence suggesting which, if any, of Mr. Perlic's calculations would be rendered inadequate and how that may affect the proposed MPD construction and the associated planned road and intersection improvements.
- F. Alleged Water Quality Impacts from School Construction. One party of record, Gil Bortleson, alleged that building the twin school sites south of the Villages along Green Valley Road would create a "high risk" of drying out approximately ten shallow wells serving neighboring residents in rural King County. Tr. at 137. In addition, Mr. Bortleson alleged that increased

runoff from the school sites would drain to the west, potentially flooding septic systems located in that area. Tr. at 144. Mr. Bortleson's allegations are speculative. Mr. Bortleson did not review any site plan for the proposed school construction prior to giving his testimony and assumed that the entire twin school site, 70 acres of land, would be paved or graded, creating 70 acres of new impervious surface. Tr. at 148. Mr. Bortleson also was not able to give any testimony with respect to the quantity of water that currently infiltrates to the wells that would not infiltrate to the wells after the project. Tr. at 153. He also was not able to answer any question regarding the amount of surface water infiltration needed to sustain the operation of the at-risk wells. Tr. at 154. Further, these alleged impacts can be more effectively evaluated when a specific proposal for school construction is submitted for permit review.

- G. Lake Sawyer Park. Some parties of record objected to the potential use, contemplated in the draft school mitigation agreement among the Applicant, the School District, and the City, for joint school/City use of Lake Sawyer Park. Such joint use is consistent with Black Diamond Comprehensive Plan Policy CF-14, which calls for the City to "Maintain a joint-use agreement for all facilities and land."

## 11. Fiscal Impacts.

- A. FEIS Analysis. The FEIS Fiscal Impact Analysis ("FIA") determined that the Lawson Hills MPD would have a positive fiscal impact and the Villages a negative fiscal impact, with the Villages MPD reaching a million dollar annual deficit by 2030. FEIS FIS at 4; Villages FEIS at 3-95. The FIA assumes \$152 retail sales per square foot, and a \$354,000 value for single-family homes and a \$125,000 value for multi-family units, based upon house sales in Black Diamond four to five years ago. The Villages and Lawson Hills MPD proposals may only build residences in the first phases of development. See Villages and Lawson Hills MPD Applications, Chapter 9. As noted in the ECS 11/16/09 memo (Ex. J to the Villages FEIS), single-family residential developments typically produce deficits, and it is therefore likely that the first phases of MPD development will produce deficits if those phases are limited to residential development.
- B. Applicant Analysis. Mike Whipple, the Applicant's fiscal expert, provided written comment regarding the divergent results reached by the Applicant's FIA and that adopted into the Villages FEIS. See MPD Ex. 124. Mr. Whipple's analysis found that the fiscal impacts for both MPDs would be positive. MPD Ex. 124, p. 4. As reflected in the Villages FEIS, pp. 3 - 96, Mr. Whipple noted that slight changes in assumptions can lead to differing results in the fiscal impact analysis. The primary differences in assumptions appear to concern retail sales and housing values. Mr. Whipple wrote that the FEIS FIA dollar amount of retail sales per square foot is significantly below the average for retail sales and is not supported by any market study. Mr. Whipple based his retail sales estimates upon the lower end of estimates prepared utilizing the Urban Land Institutes' "Dollars and Cents of Shopping Centers, 2002" and "2007 Retail Taxable Sales Estimates" prepared by HDL Companies. For housing values, Mr. Whipple assumed that single-family homes would sell for \$420,000 and multi-family homes for \$150,000. Mr. Whipple stated these housing values were based upon current market studies, although he did not mention whether these studies were conducted before the recent downturn in real estate sales.
- C. Parametrix Sensitivity Analysis. The City also subjected the FEIS FIA to peer review by Parametrix in a "sensitivity analysis." Parametrix employed the methodology of both Mr. Whipple and the FEIS FIA to determine what would happen under four scenarios: (1) adjusting housing values; (2) assuming all parks maintained by an HOA; (3) assuming all streets maintained by an HOA; and (4) reducing police costs (the DEIS incorrectly calculated the number of new police officers needed; it is unclear if this error was remedied for the FEIS). Parametrix made these changes to assess both short- and long-term impacts on each MPD

individually and cumulatively. Under each scenario, Parametrix found a net positive fiscal impact, although the amount of the change in anticipated housing values was not identified.

- D. Comparison of Fiscal Analyses. Neither study makes any assumptions or employs any methodology that could be considered unreasonable or excessively self-serving. The primary difference in the models used by the Applicant and for the FEIS are the assumptions made about future housing values and commercial activity for the City of Black Diamond over the next 15 years. Selecting one FIA over another would require a determination of which FIA more accurately predicts the performance of the economy for Black Diamond during the FIA's duration. Predicting the economy is an impossible task, or at least beyond the capabilities of current economic science. The FIAs only serve as a general guide to economic impacts, and those impacts must be considered inconclusive given the limitations of predicting economic performance 15 years in advance.
- E. Fiscal Neutrality Factors. There are several factors that put the City in a good position to assure fiscal neutrality.
- i The Applicant has agreed to a condition that will make it responsible for any fiscal shortfalls projected after each phase of development. The Applicant proposes the following condition:

The applicant shall be responsible for addressing any projected city fiscal shortfall that a fiscal analysis, prepared at each phase, shows is a result of the Villages MPD. The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

- ii. The sensitivity analysis conducted by Parametrix determined that under both FIAs, measures such as HOA ownership and maintenance of roads and/or parks would result in a net positive fiscal impact. Consequently, it is reasonable to conclude that any long term projected shortfalls could be addressed by privatizing infrastructure. Combining Applicant responsibility with the options of privatization provides reasonable assurance that the projects will not have an adverse fiscal impact upon the current residents of Black Diamond. In order to ensure that the MPD does not lower staffing levels of service as required by BDMC 18.98.050(A)(5), a condition of approval could be

worded to also require that the projects generate sufficient revenues to maintain required staffing levels.

- iii. Additional fiscal analysis is required every five years, and at the start of each phase. The Applicant's recommended condition will be combined with that of the Staff's. As recommended by Staff, a fiscal analysis will be required five years into the project when it is likely that the Applicant's development is mostly residential and hence impacts may be most severe.

F. Table 3.4 of the application shows proposed land uses, and shows that a school uses are conditionally permitted within the office and retail designations. If a high school were located in an office or retail designation, because the amount of land a high school would occupy the amount of retail/office development would be significantly reduced. For this reason, Exhibit C below contains a requirement for preparation of an updated fiscal analysis for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use. This condition will also assist in assuring fiscal neutrality.

## 12. Wildlife.

- A. Wildlife Species Likely to be Found on MPD Project Site. In order to determine the types of wildlife and habitat present on the sites for the purposes of the FEIS analysis, a resource study was conducted, which involved multiple site investigations throughout several different months and years, in addition to research of records and documents from DFW and other agencies. Tr. at 178 - 180 and 2,407. This included days of site investigations in 2005, 2007, and 2008. The results of this study are presented in the FEIS, which contains at page 4-72, Ex. 4-14 a summary of wildlife species expected to inhabit the Villages MPD site. The appendix to the FEIS contains a detailed list of all species considered. FEIS Appendix N, at July 16, 2008 WRI Memorandum pp. 11 - 15 and App. B thereto. Jason Knight, the consultant who prepared the technical analysis included in the FEIS, also noted that band tailed pigeons need mineral springs at their breeding site, and such springs are not found at the MPD project sites. While the band tailed pigeons may be found there during their migration, evidence presented support the findings that they do not inhabit or nest at the sites. Tr. at 60 - 61 and 2410-11. Mr. Knight added that no endangered or threatened species were found at the sites, which is also consistent with the findings by the DFW. He opined that development may benefit elk population because elk feed on landscaping plants that are more likely to be present as a result of development.

- B. Wildlife Corridors. The width of the wildlife corridors on the Villages MPD site will be between 300 and 900 feet. The King County network biologist's minimum recommended width for a wildlife corridor is 150 feet. The width of the wildlife corridors proposed as part of the Villages MPD is adequate because it is at least double the minimum recommended by King County's network biologist, and provides sufficient space for wildlife to travel around spots where natural barriers such as flooded wetlands are present. Tr. at 2410-16 and 2454.
- C. Impacts to Wildlife. Wildlife impacts are an inevitable impact of development. The only way to completely mitigate them is to provide for a one-to-one replacement of lost habitat with new habitat. Most development could not proceed under these conditions, and such a requirement would not be reasonable. The Villages MPD proposes to retain 42% of the project area in open space, a large portion of which will serve as a wildlife corridor. This open space retention is a relatively large set-aside for any development project, and the wildlife corridor within the open space is of sufficient width to provide for wildlife migration. This provides appropriate mitigation for any significant, adverse impacts to wildlife. And, significantly, the record also establishes that there is no threatened, endangered or otherwise protected species that has a habitat within the project area.

13. Wetlands. No evidence was presented on the issue of impacts to Core Wetlands or that the City's Sensitive Areas Ordinance is inadequate to protect these wetlands.

14. Landslide Hazards. Although at least one party of record asserted that landslide hazards had been inadequately analyzed, no evidence of landslide hazards was presented other than photographs of landslides. There also was no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address landslide hazards. Further, the Villages FEIS identifies landslide hazard areas and provides an in-depth assessment of mitigation for such hazards. See TV Appendix D, AESI Technical Report, p. 3-54, 4-2, 4-3, 4-11, 4-18, 4-21, 4-28-29, and 6-13 and 6-14. There was no evidence presented to show this analysis was inadequate.

15. Mine Hazards. The TV FEIS identifies mine hazard areas and concludes that only a small number of low-hazard mine areas are located within the Villages MPD. Villages FEIS at 4-8, 4-14, 4-15 and Exhibit 4-6. The City's Sensitive Areas Ordinance will ensure that these hazards will be sufficiently addressed. Some parties of record asserted that mine hazards had been inadequately addressed. One party of record in particular was primarily concerned with the dumping of toxic waste at mine sites. However, there was no evidence presented on mine hazards by any parties of record other than the Applicant, and there is no evidence in the record to suggest that the FEIS was inadequate on its analysis of mine hazards, including toxic waste issues at mine sites. Several people testified about mine hazard issues during the MPD portion of the hearing,

but there was no evaluation provided of the adequacy of the FEIS on this issue. There was also no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address mine hazards. A condition of approval requiring a notice on title disclosing the existence of present and former mine hazard areas will provide disclosure to potential buyers of homes within the MPDs.

16. Health Care Services. The Lawson Hills FEIS and the Villages FEIS indicate at page 3-89 that three hospital/medical care facilities operate near the City of Black Diamond, including Enumclaw Community Hospital in Enumclaw, Valley Medical Center in Renton, and Auburn General Hospital in Auburn. Advanced Life Support services are provided by King County Medic and are funded through a separate county-wide tax assessment. In addition, emergency medical care is provided by Mountain View Fire and Rescue (also known as King County Fire District No. 44). Specifically, the Villages and Lawson Hills FEISes locate medical facilities on the map in Exhibit 3-39. The FEIS analysis also indicates that additional fire fighters or volunteer EMTs will be required to serve the Villages MPD population, and that updated facilities as well as increased staff and infrastructure may be required for other medical facilities. Lawson Hills FEIS and the Villages FEIS, p. 3-90 - 3-91. Although one party of record alleged that Black Diamond has been identified by King County Public Hospital District #1 as an "underserved" area for health care, there was no additional testimony or evidence presented on health services other than the bare assertion in the Clifford Appeal that the FEIS was inadequate with respect to health services.

17. Historic and Cultural Resources. One party of record asserted that the Villages MPD will have an adverse impact upon historic and cultural resources, specifically a collapsed mine site that still contains the remains of some miners, and the potential existence of some Native American archaeological sites. That party did not pursue these claims during the hearings (beyond alleging traffic impacts to historic downtown areas, dealt with elsewhere in these Findings of Fact). There is no evidence in the record to establish that the Villages MPD has any significant adverse impacts upon cultural and historic resources.

18. Trails and Parks.

A. Amount of Parks. The Villages MPD exceeds the amount of parks required by the 2008 Black Diamond Parks, Recreation and Open Space Plan. The Villages MPD provides double the amount of neighborhood and community parks required by the Plan, and the number of pocket parks meets the Plan's standard.

B. Amount of Open Space. There are two prior agreements relating to open space: the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Protection Agreement ("BDAOSPA"). The open space called for by these agreements has been provided. The BDUGAA called for conveyance to King County of 645.2 acres of land located in the unincorporated county, and 63.3 acres to the

City as an offset for the West Annexation area; and conveyance of 339 acres in unincorporated King County to the County and 81.7 acres as an offset for the South Annexation area. The BDUGAA also required protection or conservation of 347 acres of potential in-city open space on or before annexation of the West Annexation area, and protection or conservation of 195 acres of potential in-city open space on or before annexation of the South Annexation Area. The potential in-city open space was to be protected conserved through purchase or transfer of development rights, or dedication or conveyance of conservation easement to the City or County. BDUGAA (City Staff report, Ex. 7) at 12-13. The BDAOSPA identified the specific lands and provided for mechanisms for their transfer and/or dedication at closing, which was the effective date of annexation of the West Annexation area. Consequently, the lands identified in the BDUGAA for conveyance, protection and/or conservation have been so conveyed, protected and/or conserved. The Villages MPD itself includes 77 acres of open space, trails and parks, 177 acres of wetlands, and 251 acres of buffers, for a total of 505 acres (or 42% of the MPD project site) as open space. Figure 3-1 (July 8, 2010) Land Use Plan map.

- C. Timing of Proposed Parks and Trails Construction. The phasing plan proposed by the Applicant calls for park construction at various stages of specified occupancy. Villages MPD Application at 9-10. This timing is contrary to BDMC 18.98.080(A)(4)(a), which requires that all park improvements be completed prior to any occupancy or final site or plat approval, whichever occurs first. This noncompliance is remedied by inclusion of a condition in Exhibit C below to require construction of parks prior to occupancy or final site or plat approval. For on-site trails and other recreational facilities other than parks, timing of construction is governed by p. 9-3 of the MPD applications, which generally requires that they must be built prior to occupancy. This requirement does not apply to off-site trails.
- D. Integration Into Trail Network. A condition clarifying that off-site trails and recreational facilities may be required as a condition of phased development, as authorized by law, to mitigate the impacts of a particular phase, will enable the City to require off-site trail improvements and connections to facilitate the immediate integration of each phase into an area-wide trail network.

19. Water Availability. As to water availability, the Water Supply and Facilities Funding Agreement ("WSFFA") (Exhibit 9) dated August 11, 2003, provides for water supply through major property owner upgrades of the Black Diamond water system, including upgrades to the city springs, and delivery of city spring water to Black Diamond, and the purchase of new water supply from the City of Tacoma, with a requirement for reimbursement of costs incurred for the upgrades by credits on future

capital facility charges. The project has also been designed, generally, through infiltration systems and circumvention of wetlands, to avoid any risk of adverse impact to private wells and springs that could be affected by the Villages MPD, as established in the AESI reports in Appendix D to the Villages FEIS. There is no evidence to suggest that the use of these water sources will impact or impair existing water rights of other residents.

20. Tree Removal. The Applicant has agreed to comply with the tree preservation ordinance. See MPD Ex. 114, p. 21. The tree preservation ordinance has a comprehensive replacement program for trees that are removed, except for properties that have 40% open space. See BDMC 19.30.070. The City's tree preservation ordinance sets the standard for tree protection in Black Diamond, and is sufficient to protect the community from the removal of trees.

21. Greenhouse Gas Emissions.

A. Quantity of Emissions. Vehicle emissions are a significant source of greenhouse gases. Villages FEIS Appendix Q, "Air Quality", p. 10. The FEIS estimates the volume of vehicle emissions by using the average number of vehicle miles per day in Washington State per person. Villages FEIS, Appendix Q, "SEPA GHG Emissions Worksheet", at 10. While some parties of record (the SEPA Appellants) argued that this state-wide average grossly understates the average mileage of MPD residents because the MPDs are far from employment and commercial centers, as noted by the Applicant the use of the state-wide average is required by King County for assessment of green house gases in King County unincorporated areas. Applicant Closing Brief, pp. 77 - 78. It is also not necessarily intuitive that average daily trips for Black Diamond residents would be significantly higher than the state-wide average. Due to the long distance from commercial and employment centers, Black Diamond residents are probably more likely to carpool, take transit, telecommute, otherwise work from home, or not work at all. The state-wide average also includes all of the other rural areas of the state, including Eastern Washington, where distances to commercial and employment centers exceed those of Black Diamond. The SEPA Appellants presented no evidence of what average daily trips Black Diamond residents would take, or the length of those trips. The record does not support the assertion that the state-wide vehicle mileage used in the greenhouse gas estimates is significantly less than the average mileage of future Black Diamond residents.

B. Parametrix Peer Review. In cross-examination of Steve Filcher, the SEPA Appellants also asserted that the greenhouse gas analysis was not consistent with the peer review requirements of Parametrix. Tr., pp. 3342 - 3344. SEPA Appellants' counsel referenced a Parametrix statement that no alternative land use scenario was analyzed in the air quality analysis. The Villages FEIS, however, does examine air quality impacts under an

alternative land use scenario, consistent with the concerns expressed by Parametrix. Villages FEIS at 4-93 – 4-95, alternative 3.

- C. Mitigation for Greenhouse Gas Emissions. The SEPA Appellants identified several mitigation measures they asserted should be required to reduce greenhouse emissions. Wheeler Prehearing Ex. 19. Many of these recommended measures are already identified in the Villages FEIS, both in the text of the FEIS and in its technical appendices. Villages FEIS at 6-14; Appendix Q, "Air Quality," at 14 - 15. The project design already incorporates several elements that will help reduce greenhouse gases, such as an emphasis upon mixed use; bicycle and pedestrian trails; low impact development; and Built Green and LEED certified/Energy Star homes. Appendix Q, "Air Quality," at 14. As noted in the Villages FEIS technical discussion on greenhouse impacts, there is no standard for greenhouse emissions associated with development projects and the extent to which a single project affects climate change is unknown. Given this context, the mitigation outlined in the Villages FEIS and technical appendices for green house gases is reasonable, appropriate, and adequate.

22. Employment.

- A. The Black Diamond 2009 Comprehensive Plan includes the City's employment targets for 2025. The Comprehensive Plan at pages 5-31 – 5-32 states that the City's target employment for the year 2025 is 2,952 jobs, an increase of 2,525 jobs over the year 2000 job total of 427 jobs. Comprehensive Plan at 5-31, Table 5-3 (2025 Target Employment). These jobs correspond to a total household target of 6,032 households. Comprehensive Plan at 5-29 – 5-30, Tables 5-1 and 5-2. Considering Tables 5-1, 5-2 and 5-3 together yields a job/household ratio of 0.468 ( $2,952 \div 6,032 = 0.468$ ).
- B. Table 3-9 of the Comprehensive Plan indicates a goal of attaining 0.5 jobs per household by the year 2025. This roughly corresponds to the 0.468 jobs per household that results from Tables 5-1, 5-2 and 5-3.
- C. Page 3-11 of the Comprehensive Plan states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base. . . ." Comprehensive Plan at 3-11 – 3-12. Therefore, the Comprehensive Plan indicates that the City's updated projection is to have 2,677 new jobs by 2025. Comprehensive Plan at 3-12. These jobs are to be allocated among "833 acres of employment land. . . proposed in the City limits . . ." *Id.* This equates to 3.21 jobs per acre of employment land.

- D. The Comprehensive Plan also indicates that "development capacity was calculated for the commercial and industrial designations within the City, as shown in Figure 5-1. . . .The data indicate the City contains the capacity for 5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.
- E. The Villages FEIS Fiscal Analysis in Appendix J contains an analysis of the amount of retail/office square footage to be developed, and projects that such development will generate 1,365 employees.

23. Findings Deemed Conclusions of Law. Any Findings of Fact set forth herein that are deemed to be conclusions of law should be considered as such. Any Conclusions of Law set forth in Exhibit B below that are deemed to be Findings of Fact are adopted herein by reference as if fully set forth.

EXHIBIT A

Attachment 1

0027189

BLACK DIAMOND  
EXHIBIT LIST

("H" Documents)

EXHIBIT A

April 15, 2010

No.	Provided by	Description
H-1	Rogers	DEIS Scoping Meeting Attendance List
H-2		Villages and Lawson Hills Staff Report Amendments
H-3	Maple Valley	Declaration of Jonathan dated 3/12/10 (same as Ex. 15 in MPD Hearings Exhibit List)
H-4		Peak Hour Factor Spread Sheet
H-5		Elk Photos
H-6	Davidson	Wildlife Journals (2)
H-7		Lake Sawyer Basin Map
H-8		Lake Sawyer Tributary Basin Exhibit
H-9	Rogers	Lake Sawyer Total Phosphorous TMDL, Water Quality Implementation Plan, dated 6/09
H-10 (a-c)	Bricklin	Intersection Photos
H-11	Judith Carrier	10/27/09 Letter from Colin Lund, Yarrow Bay Holdings, to Leonard Smith, Black Diamond
H-12 - 19	Bricklin	Queue Analysis (Provisionally admitted)
H-20	Bricklin	King County DOT Level Three Traffic Impact Analysis
H-21	Bricklin	Design Manual Traffic Analysis p. 610-1 through 610-10
H-22	Clifford	WSDOT Accident History Detail Report dated 3/15/10
H-23 (a-m)	Rogers	ASI Technical Report Documents
H-24 (a)	Maple Valley	Sterbank to Taraday e-mail dated 3/16/10, 3:23 pm Barney to Sterbank e-mail dated 3/17/10, 2:14 pm Barney to Sterbank letter dated 3/17/10 Barney to Jonathan letter dated 3/17/10 Barney to Taraday letter dated 3/17/10
H-24 (b)	Maple Valley	E-mails from Examiner to SEPA Appellants re subpoena
H-24 (c)	Maple Valley	Lawson Hills and Villages Revised Schedule
H-24 (d)	Maple Valley	Prehearing Order
H-24 (e)	Maple Valley	City of Black Diamond Hearing Examiner Rules of Practice and Procedure

H-24 (f)	Maple Valley	Clark to Todd 3/5/10 e-mail re Records Request from Black Diamond
H-25	Sterbank	3/16/10 Voice of the Valley Article (MV Councilmember calls for support to BD appellants)
H-26		Cumulative Volumes on Local Roads with Lawson Hills and the Villages MPD
H-27 (a)		
H-27 (b-f)	Bricklin	Queue analysis
H-28	Bricklin	NCHRP Report 599 (cover and Table 19 and Figure 14 only)
H-29		Synchro Studio 7 User Guide
H-30	Bricklin	NCHRP Report 599 p. 47-49 plus cover and foreword

BLACK DIAMOND MPD HEARINGS EXHIBIT LIST  
 The Villages/Lawson Developments SEPA Appeals  
 April 15, 2010

EXHIBIT B

No.	Type of Record	Date	Sender	Recipient(s)	Subject
1	Handwritten note	Undated	Kristen Bryant	Black Diamond	MPD Hearings - Desire to submit comments
2	Article with photograph	11/05	Angela Taeschner	Black Diamond	Bald Eagle Protection in Washington State
3	Comment letter	03/11/10	Steven R. Garnich	Black Diamond	The Village MPD Application Comments
4	Comment letter	03/11/10	Mike and Wendy Ward	Black Diamond City Council & Mayor Olness	Concerns about FRISs for MPDs
5	Comment letter	03/07/10	Sue and Robert Fish	City of Black Diamond Hearing Examiner	Opinions and concerns
6	Comment letter	Undated	Richard R. Ostrowski	--	Written testimony on MPDs
7	Comment letter	03/10/10	Justin Giger and Tyler Ward	Black Diamond City Council	For the abolishment of the plan to build the Yarrow Bay Housing Communities
8	Comment letter	03/07/10	Lynne Christie	Black Diamond Mayor and City Council	Opinions and concerns
9	Comment letter	Undated	Rick and Nanette Stocks	--	Yarrow Bay Development in Black Diamond - Village and Lawson Impacts
10	Oral Testimony Notes with Map	03/11/10	Tom Hanson	--	Villages/Black Diamond - Needed Mitigations
11	Comment letter with attachments	03/11/10	Jack C. Sperry	The City of Black Diamond, Washington	The Villages and Lawson Hills MPDs (Potential for Lake Sawyer Flooding)
12	Comment letter	--	Jay and Kelley McElroy	--	Villages and Lawson Hills MPDs
13	Comment letter	03/11/10	Carrie Hartman	City of Black Diamond	Public Comments, Yarrow Bay MPDs

No.	Type of Record	Date	Sender	Recipient(s)	Subject
14	Comment letter with attachments	03/11/10	Denise L. Stiffarm (K&L Gates) for Enumclaw School District	City of Black Diamond Hearing Examiner	
15	Declaration and written testimony with attachments	03/12/10	Natarajan "Jana" Janarthanan, Ph.D.	--	In Re: Applications for Lawson Hills and The Villages MPDs
16	Comment letter	03/15/10	Kevin Snyder, City of Auburn	City of Black Diamond Hearing Examiner	City of Auburn Public Testimony for Lawson Hills MPD and The Villages MPD
17	Public Testimony with attachments	03/15/10	Robbin Taylor	--	Lawson Hills/The Villages re: mine sites and sink holes
18	Comment letter	03/15/10	Lisa Garvich	City of Black Diamond/ Hearing Examiner	Comments offered during public comment section of Lawson Hills/Villages MPD Hearing
19	Comment letter	03/15/10	Lisa Garvich	City of Black Diamond/ Hearing Examiner	Comments offered during public comment section of Lawson Hills/Villages MPD Hearing - BD Regional Park
20	Testimony re: Lawson Hills MPD Application	Undated	Ron Taylor	--	Use of Botis Drive
21	Testimony notes	Undated	William Wheeler	Hearing Examiner for the City of Black Diamond	Comments on The Villages and Lawson Hills MPD application
22	Comment letter	03/15/10	Leah Grant and Michael Royston	Hearing Examiner Olbrechts, City Council members Hanson, Goodwin, Boston, Saas, Mulvihill, Mayor Olness	Comments on the MPDs for The Villages and Lawson Hills Developments
23	Comment letter with attachments	03/15/10	Judith Carrier	City of Black Diamond/ Yarrow Bay MPD Hearings	Villages South Connector/SR 169 Intersection, FEIS, Yarrow Bay Development

No.	Type of Record	Date	Sender	Recipient(s)	Subject
24	Comment letter with attachments	03/10/10	Bill and Vicki Harp	Mr. Phil Olbrechts, Hearing Examiner, and Steve Pilcher, Director of Planning, City of BD	Comments on MPD - The Villages, Article on Yarrow Bay Development Hearing, Photographs
25	Comment letter with attachments	02/28/10	Erika Morgan	An open letter to our greater community	Black Diamond, Photographs of Black Diamond Lake
26	Comment letter	03/15/10	Ulla Kemman	The Hearing Examiner, Phil Olbrechts; The City Council, Black Diamond	Proposed MPD for the Villages and Lawson Hills
27	Comment letter	03/15/10	Daniel H. Ryning	Hearing Examiner; To Whom It May Concern	MPD Comments on Yarrow Bay proposals for "The Villages" and "Lawson Hills"
28	Comment letter	03/15/10	Ron and Pam Tomich	-	Black Diamond Master Plan Development Hearings
29	Comment letter with attachment	03/10/10	Jacqueline Paolucci Taeschner	Hearing Officer, Mayor, City Council	Stewardship for the Land, the Animals and the People
30	Comment letter	03/15/10	Helen Jacobson	-	Black Diamond Master Plan Development Hearings
31	Comment letter	03/15/10	Andrew & Karen Benedetti	Black Diamond; Hearing Examiner, Phil Olbrechts	City of Black Diamond Master Plan Development Hearing
32	Comment letter	03/12/10	Angela Therese Taeschner	To the Hearing Officer	Letter to be added to 3/11/10 testimony regarding Yarrow Bay Developments/Need to Rethink
33	Comment letter with attachments	03/15/10	Dan Shiplay, President, Horseshoe Lake HOA	City of Black Diamond Hearing Examiner	The Villages Master Plan Development PLN09-0017
34	Comment letter	03/15/10	Robert J. Rothschilds	Submitted to the Hearing Examiner	Lawson Hills and The Villages MPDs, Lake Sawyer water quality
35	Comment letter	03/15/10	Alan Gangl	Black Diamond Hearing Examiner	Master Plan Hearings - Yarrow Bay Development
36	Comment letter	03/15/10	Romana McManus	Hearing Examiner; Black Diamond City Council	Yarrow Bay MPD in Black Diamond
37	English Sonnet	-	Carol Lynn Harp	-	"Master Plan Development Folly"

No.	Type of Record	Date	Sender	Recipient(s)	Subject
38	Comment letter	03/15/10	Bob and Janie Edelman	Black Diamond Mayor Olness and City Council	The Villages and Lawson Hills MPDs
39	Comment letter	03/12/10	Gene Duvernoy, President, Cascade Land Conservancy	Hearing Examiner Olbrechts	Lawson Hills and The Villages Master Planned Developments
40	Public Testimony	03/15/10	Karen Bryant	--	Statements for Public Hearings on MPD from Yarrow Bay
41	Comment letter with attachment	03/15/10	Ericka Morgan	Mr. Examiner	MPD for Black Diamond
42	Comment letter	03/15/10	Eric, Cindy, Leah and Elyssa Sizemore	Black Diamond Council members	MPD Hearings
43	Comment letter	Undated	Richard C. Stewart	--	The Villages and Lawson Hills Master Planned Developments
44	Comment letter	03/15/10	Jeff Merrill	--	Black Diamond Master Plan Development Hearings
45	Comment letter	--	Cheri Merrill	--	The Villages and Lawson Hills Projects - Resident Concerns
46	Comment letter	--	Glenis Richardson	Hearing Examiner	Black Diamond Development by Yarrow Bay
47	Comment letter	03/13/10	Eric Eknes	Phil Olbrechts, Hearing Examiner	Lawson Hills and The Villages MPDs
48	Comment letter	03/15/10	Glen E. Ross	--	Lawson Hills and The Villages MPDs
49	Comment letter	--	Kurt & Ann Kulesza	--	Lawson Hills and The Villages MPDs
50	Comment letter	--	Rick and Nanette Stocks, Joanni Scott, Brent and Sheri Miller, Sandra Denison, Robert Kendrick, Kim Rector, Jason and Renee Brealey	--	Lawson Hills and The Villages MPDs

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
51	Comment letter	03/15/10	Melanie Gauthier	Phil A. Olbrechts, Hearing Examiner	Lawson Hills and The Villages MPD Comments
52	Article, Voice of the Valley	03/09/10	--	--	"KC concerns with proposed Black Diamond MPDs"
53	Amendments and Errata Sheets	Undated	City of Black Diamond	--	The Villages and Lawson Hills Staff Report Amendments
54	Letter	02/24/10	Mayor Margaret Harto, City of Covington	Steve Pilcher, AICP	The Villages and Lawson Hills MPD Public Hearings
55	Letter	03/01/10	Susan F. Ball	City of Black Diamond Hearing Examiner	Reference #PLN09-0017 and PLN09-0016
56	Letter	03/02/10	Judy Taylor, President, Upper Green Valley Preservation Society	Steve Pilcher	Final EIS for Lawson Hills and Villages MPDs
57	Letter	03/04/10	Jacqueline Paolucci Taeschner	Mayor and City Council of Black Diamond	Stewardship for the Land, the Animals, and the People
58	Letter	03/04/10	Mayor Rebecca Olness	Jacqueline Paolucci Taeschner	"Stewardship" letter has been forwarded to the Hearing Examiner
59	Email	03/05/10 10:19 am	Steve Pilcher	Stacey Borland	Forwarding 03/04/10 email from Shari Weiding regarding Lawson Hills and The Villages MPDs
60	Email	03/05/10 10:35 am	Cindy Hartzler	Steve Pilcher, smokejumper	Yarrow Bay Developments
61	Letter	03/03/10	Ty and Jamie Inglis	--	Upcoming meetings for Yarrow Bay
62	Letter	03/04/10	Larry Neilson and Randy Hamblin	City of Black Diamond Hearing Examiner	The Villages and Lawson Hills MPD Public Hearings
63	Letter	02/24/10	Pam Linden	City of Black Diamond Hearing Examiner	Appeal of FEIS and MPD Permit
64	Letter	02/25/10	Larry Fisher, WA State Dept of Fish & Wildlife	Steve Pilcher, City of Black Diamond	DEIS, The Villages MPD, Rock Creek and others, Tributary to Lake Sawyer, King County WRIA 09.0085

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
65	Email	03/02/10	Steve Pilcher	Stacey Borland	Forwarding 03/02/10 email string from Larry D. Fisher
66	Letter	03/05/10	Daryl and Barbara Rush	City of Black Diamond Hearing Examiner	The Villages Master Plan Development
67	Second Declaration with attachments	03/17/10	Natarajan "Jana" Janarthanan, Ph.D.	--	In Re: Applications for Lawson Hills and The Villages MPDs. Exhibit contains as an attachment "City of Maple Valley Brief on Compliance with MPD Permit Decision Criteria" and Appendices A through G
68	Email Exhibit from Proctor	06/10/09	Loren Coubs	Dawn Ketter	Changes from our last work session/Complete Mitigation Section
69	King Co. Comp Plan Appendix B with Chart	03/08	Proctor Exhibit	--	Cost Burden Homeownership
70	Proctor MPD Exhibit Letter	03/04/10	David Bricklin	Black Diamond City Council	Amendments to Zoning Ordinance with Enclosure
71	Kent Reporter Newspaper article with photographs	02/26/10	Proctor Exhibit		"Public hearing Wednesday for major commercial project on Kent's East Hill" by Steve Hunter
72	Minutes	06/18/09	Proctor Exhibit		Black Diamond City Council Minutes
73	Memorandum with attachments	03/10/10	Bill and Vicki Harp	Phil Olbrechts, Hearing Examiner, and Steve Pilcher, Black Diamond Director of Planning	Comments on MPD - The Villages and Exhibit and four photographs
74	Written testimony	03/19/10	Robert J. Rothschilds	Hearing Examiner	Lawson Hills MPD application
75	Written testimony	03/19/10	Robert J. Rothschilds	Hearing Examiner	The Villages MPD application
76	Five photographs	03/18/10	????	Hearing Examiner	Five photographs of deer
77	Comment letter	03/12/10	Jim Kuzaro	Hearing Examiner	Lawson Hill MPD Development
78	Comment letter	03/15/10	Ramin Pazooki	Steve Pilcher, Director	Lawson Hills MPD (PLN09-016)
79	Comment letter	03/15/10	Ramin Pazooki	Steve Pilcher, Director	The Villages MDP (PLN09-017)

No.	Type of Record	Date	Sender	Recipient(s)	Subject
80	Email	03/15/10	Kristen Bryant	Stacey Borland	Comments for Public Hearings on MPD proposal from Yarrow Bay
81	Email	03/07/10	Sue Waller	Rebecca Olness, Kristine Hanson, Bill Boston, Leih Mulvihill, William Saas, Craig Goodwin	Yarrow Bay MPD in Black Diamond
82	Email	03/15/10	Eric Sizemore	Black Diamond Council members	Black Diamond MPD hearings
83	Newspaper	03/16/10	?????	--	Tuesday, 3/16/10, edition of Voice of the Valley
84	Comment letter	03/15/10	Ty Peterson, Director of Comm. Dev., City of Maple Valley	Hearing Examiner, City of Black Diamond	Open record hearing comments re: The Villages and Lawson Hills MPD applications
85	Synopsis of written testimony of 3/15/10	03/17/10	Clarissa Metzler Cross	To Whom It May Concern	Proposed development for Lawson Hills and The Villages
86	Comment letter	Undated	Burr W. Mosby	City of Black Diamond	Proposed traffic on Green Valley Rd.
87	Comment letter	03/11/10	Gretchen and Michael Buet	Yarrow Bay and the City of Black Diamond	Comments on traffic, rural nature, existing trees, Green Valley Road
88	Comment letter	Undated	Richard C. Stewart	--	The Villages and Lawson Hills Master Planned Developments
89	Comment letter	Undated	Monica Stewart	--	The Villages and Lawson Hills Master Planned Developments
90	Comment letter	Undated	Donna Gauthier	--	Presentation submitted by Jack Sperry and Lawson Hill home
91	Comment letter	03/17/10	Kristen Bryant	--	The Villages MPD
92	Comment letter	Undated	Cindy Sizemore	To Whom It May Concern	Proposed Yarrow Bay developments of Lawson Hills and The Villages
93	Comment letter with exhibits	03/17/10	Mack and Harriett Dalos	Hearing Examiner Phillip Olbrechts	The Villages and Lawson Hills MPDs
94	Written testimony	Undated	Kelley McElroy	Mr. Olbrechts	Black Diamond quality of life re:

No.	Type of Record	Date	Sender	Recipient(s)	Subject
					Master Planned Developments
95	Written testimony	Undated	Cynthia Wheeler	--	MPD Comments for Both Lawson Hills and The Villages Projects
96	Letter w/attachments	3/17/10	Erika Morgan	Hearing Examiner	Addendum to previous statements about MPD on Villages Project
97	E-mail, w/ attachments and Public Comments	2/2/10	Cynthia Wheeler	B. Martinez	Comments Re Planning and Community Services Committee Notes and Andy Williamson
98	Written testimony	3/15/10	Cindy Proctor	Hearing Examiner	"Technical Talking Points"
99	Written testimony	3/17/10	Marlene Bortleson	Hearing Examiner	Stewardship of Green Valley Road
100	Statement	3/17/10	Laure A. Iddings	Hearing Examiner	Comments for MPDS Hearing
101	Statement	3/17/10	Beverly Harrison Tonda	--	Comments Re "gravel dirt road" this is a public ROW
102	Letter	3/4/10	Larry Neilson and Randy Hamblin	Hearing Examiner	The Villages and Lawson Hills MPD Public Hearings
103	"English Sonnet"	No date	Carol Lynn Harp	--	"Master Plan Development Folly" - Duplicate of Exhibit No. 37
104	Commentary - Land Use Law	09/90	--	--	"Rural Cluster Zoning: Survey and Guidelines"
105	Article from Community Farming and Agriculture	6/10/08	--	--	"What is Rural Cluster Development?"
106	Black Diamond City Council Minutes	4/2/09	--	--	Regarding Council concern about up-zoning to 30 DU/AC
107	Black Diamond City Council Minutes	6/18/09	--	--	With various attachments
108	Report -King Co Historic & Scenic Corridors Project	Dec. 09	Karen Meader	--	Green Valley Road and Osceola Hoop Heritage Corridors; Chapter 4, Corridor Management

No.	Type of Record	Date	Sender	Recipient(s)	Subject
					Considerations
109	Resolution No. 10-675	3/4/10	--	--	Authorizing Amendment No. 1 to the RH2 Contract for Technical Review of Services, w/attachments
110	"English Sonnet" "New/Improved"	No date	Carol Lynn Harp	--	"Master Plan Development Folly"
111	Law Seminars International	11/19/09	Tim Trohimovich, Co-Director of Planning and Law, author	--	"What Role Does the FMA Play in Reducing Greenhouse Gas Emissions?"
112	Petition to Oppose Joint Use of Lake Sawyer Regional Park	Numerous dated signatures	--	--	42 pages
113	Letter	3/18/10	Bruce Earley	City of Black Diamond	City Council and MPD Hearing Examiner of Yarrow Bay Developments
114	Memorandum	3/22/10	Nancy Bainbridge Rogers	Phil Olbrechts	Applicants' Rebuttal to Public Testimony on the Lawson Hills and The Villages MPDs
115	Written Testimony	3/22/10	Marlene Bortleson	Hearing Examiner	"Proposed Massive Yarrow Bay development" and "Rural Concerns"
116	Letter	3/17/10	Barbara Rush	Hearing Examiner	The Villages Master Plan Development
117	E-mail chain	3/22/10	Phil Olbrechts	Nancy Rogers, et al	Revised Scheduling
118	Memo	3/22/10	Cory and Diane Olson	Members of the Black Diamond City Council	Comments for the 3/22/10 MPD Application Hearing
119	Letter w/ attachment	3/22/10	Kelley and Jay McElroy	Phil Olbrechts, City Council	"The Villages mainly but Lawson Hills as well"
120	Pleading	3/17/10	Jim Johnson	Hearing Examiner	Declaration of Jim Johnson re: Lawson Hills/The Villages SEPA Appeals

No.	Type of Record	Date	Sender	Recipient(s)	Subject
121	Pleading	3/17/10	Andrew Kindig, Ph.D.	Hearing Examiner	Declaration of Andrew C. Kindig, Ph.D re Lawson Hills and The Villages SEPA Appeals
122	Pleading	3/22/10	Alan Fure	Hearing Examiner	Declaration of Alan Fure re: Sammamish Critical Areas Ordinance
123	Pleading	3/22/10	Alan Fure	Hearing Examiner	Declaration of Alan Fure regarding testimony of Jack Sperry
124	Pleading, w/attachment	3/18/10	Mike Whipple	Hearing Examiner	Declaration of Mike Whipple
125	Villages Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Conditions -- The Villages MPD"
126	Lawson Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Conditions -- Lawson Hills MPD"
127	Villages Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Mine Hazard Condition - The Villages MPD"
128	Lawson Revised Conditions	3/22/10	--	--	"Applicant's Requested Revised Mine Hazard Condition - Lawson Hills MPD"
129	Applicant Proposed Condition	Undated	--	--	Midpoint Review of Cumulative Transportation Impacts from The Villages MPD and Lawson Hills MPD
130	"Funding Responsibility" Table	Undated	--	--	Villages and Lawson Hills - Proportionate Share for Intersection and Roadway Improvements
131	Recording Cover Sheet w/attachments	12/17/09	--	--	"Conservation Easement Deed"-- Grantor, BD Village Partners LP
132	Handwritten "Comments"	3/21/10	Rick and Jaily Bradbury	--	Comments on both Villages and Lawson Hills

No.	Type of Record	Date	Sender	Recipient(s)	Subject
133	Letter	3/22/10	David A. Bricklin	Phil Olbrechts	MPD Applications: The Villages and Lawson Hills - Supplement to previous letter
134	King County Countywide Planning Policies	October 2008	--	--	Document approved by "Growth Management Planning Council"
135	King County Comprehensive Plan 2008	October 2008	--	--	Published by King County
136	Report 599	2008	--	--	National Cooperative Highway Research Program - Default Values for Highway Capacity and Level of Service Analyses
137	Handwritten comments	3/22/10	Cindy Wheeler	--	MPD Comments
138	Handwritten note	3/22/10	Cindy Wheeler	--	Section 18.98.080 (12) "Open Space"
139	Handwritten comments	3/22/10	Cindy Procter	--	Rebuttal of Sterbank
140	Memo	3/22/10	Carrie Hartman	City of Black Diamond	Yarrow Bay Developments
141	Memo, w/attachments	3/22/10	William & Cynthia Wheeler	Hearing Examiner and Black Diamond City Council	Yarrow Bay MPDs for the Villages and Lawson Hills
142	Handwritten note	--	--	--	A note addressing fixing "traffic issues before you proceed."
143	Letter	3/22/10	Robert Kirschbaum and Rob Zisette, Herrera Environmental Consultants, Inc.	David Bricklin	Mitigation for the Villages and Lawson Hills MDPs (sic)
144	Memo	3/22/10	Ross Tilghman	David Bricklin	Confirmation of Future LOS Results on SR-169 in Black Diamond

No.	Type of Record	Date	Sender	Recipient(s)	Subject
145	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills
146	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills - Transportation 2040
147	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills - "Rural by Design" - Some Key Features
148	Memo, w/attachments	3/22/10	Cindy Proctor	Phil Olbrechts, Steve Pilcher	The Villages Master Planned Development
149	Memo	3/22/10	Bill and Vicki Harp	Phil Olbrechts, Steve Pilcher	The Villages Master Planned Development
150	Letter, w/attachments	3/2/10	Jerry G. Lilly, PE, President, FASA	Cindy Proctor, William and Vicki Harp	The Villages, Black Diamond, FEIS Noise Study Review
151	Written testimony	3/22/10	Erika Morgan	--	Comments re "Staff Report" on the EIS
152	Written testimony	3/22/10	Steve & Linda Chase	--	"In regards to: BD/YB MPD Hearings"
153	Letter	3/22/10	Howard & Sharon Meece	Phil Olbrechts; Black Diamond City Council	MPD Yarrow Bay Villages
154	Letter	3/22/10	Melanie Ganthier	Phil Olbrechts	Lawson Hills and Villages MPD oral comments and additional written comments
155	Testimony, w/attachments	3/22/10	Judith Carrier	Phil Olbrechts; Black Diamond City Council	Black Diamond / Yarrow Bay urban development
156	Letter (to be added to testimony of 3/11/10)	3/22/10	Angela Therese Taeschner	Hearing Officer	Yarrow Bay Developments and the Need to Rethink
157	Handwritten testimony	3/16/10	Sean Taeschner	Hearing Commissioner	The Villages, Mine and Lawson Hill proposed developments
158	Memo	3/22/10	Christopher P.	Hearing Examiner and	Yarrow Bay MPDs for the Villages

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
			Clifford	Black Diamond City Council	and Lawson Hills
159	Memorandum w/attachment	3/22/10	Ross Tilghman	David Bricklin	Confirmation of Future LOS Results on SR-169 in Black Diamond DISREGARD - Duplicate of previous Exhibit No. 144
160	Public Testimony	Undated	Julie Early	Mr. Examiner and Black Diamond City Council	Lawson Hills and The Villages MPDs
161	Letter with attachments	03/18/10	David Bricklin	Phil A. Olbrechts	MPD Applications: The Villages and Lawson Hills
162	Public Testimony	03/18/10	Nanette & Rick Stocks	Hearing Examiner	Yarrow Bay developments
163	Public Testimony	03/17/10	Joc May	Honorable Hearing Examiner, Phil Olbrechts	Proposed MPDs for The Villages and Lawson Hills
164	Agenda and attachments	01/25/10	--	--	Planning and Community Service Committee Meeting - 01/25/10
165	Comments	03/17/10	Cindy Proctor	Phil Olbrechts and Steve Pilcher	Comments on MPD - The Villages
166	Letter	Undated	Sheri Miller	Mr. Hearing Examiner and City Council Members	Lawson Hills and The Villages impacts on Black Diamond
167	Email	03/22/10	Brian A. Clintworth	Permit Center	Yarrow bay development
168	Public Testimony	Undated	Peter Rimbo	--	Black Diamond MPD Applications
169	Public Comments	Undated	Cindy Wheeler	--	MPD Public Comments
170	Email	03/22/10	Dave Bricklin	Chris Clifford, Phil Olbrechts, appellants, et al.	MPD Comments
171	Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief	--	Nancy Rogers	--	No. 1 on Applicant's Exhibit List (The Villages)

No.	Type of Record	Date	Sender	Recipient(s)	Subject
172	Regional map showing open space areas	--	Nancy Rogers	--	No. 3 on Applicant's Exhibit List (The Villages) (Used during Applicant's MPD Presentation)
173	Enlargements from EIS diagrams	--	Nancy Rogers	--	No. 5 on Applicant's Exhibit List (The Villages) (In record) (Ex 2-3 of Villages Alt 2 MPD; Ex. 3-25 of Villages Alt 2 Proposed Stormwater Facilities, Fig. 1 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 7, 9, 10A, 10B, 11A, 11B, 12, 13, 14, 24, 27 and 28 from FEIS Appendix D, AESI Report
174	Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief	--	Nancy Rogers	--	No. 1 on Applicant's Exhibit List (Lawson Hills)
175	Regional map showing open space areas	--	Nancy Rogers	--	No. 3 on Applicant's Exhibit List (Lawson Hills) (Used during Applicant's MPD Presentation)
176	Enlargements from EIS diagrams	--	Nancy Rogers	--	No. 4 on Applicant's Exhibit List (Lawson Hills) (In record) (Ex 2-2 of Lawson Hills Alt 2 MPD; Ex. 3-24 of Lawson Hills Proposed Stormwater Facilities, Fig. 5 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 3, 4, 5a, 5b, and 13 from FEIS Appendix H (Visual)
177	Two Letters	10/20/09,	Nancy Rogers	--	Letter from Leonard Smith, dated

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
		10/27/09			10/20/09 and Letter from Colin Lund, dated 10/27/09 with Attachment A (NR-TV-16 on Prehearing Exhibit List ("PEL"))
178	Tech Memo	1/29/10	Nancy Rogers	--	Technical Memo from AESI re: The Villages Water Level Monitoring Data (NR-TV-19 on PEL)
179	KC Zoning Code	--	Nancy Rogers	--	KCC 21A.08.050 - Sections of King Co. Zoning Code, regarding schools in rural area (NR-TV-20 on PEL)
180	Agreement	11/30/07	Nancy Rogers	--	City of Black Diamond, Yarrow Bay - SEPA Processing Agreement (NR-TV-9 and NR-LH-7 on PEL)
181	Notice Package	--	Nancy Rogers	--	Black Diamond Agency Scoping Notice Package, including Legal Notices, Meeting Attendees, Letters, Minutes, Revised Determination of Significance, Request for Comments (NR-TV-14 and NR-LH-12 on PEL)
182	Condition Language	--	Nancy Rogers	--	Applicant's Proposed Condition Language - Lawson Hills MPD Large Wet Pond Total Phosphorus Monitoring Program (NR-LH-5)
183	Map	--	Nancy Rogers	--	Section view showing topographic change from Flaming Geyser State Park and Lawson Hills MPD (NR-LH-15)
184	Map	--	Nancy Rogers	--	Topographical Map with City boundaries of The Villages site and Lawson Hills site overlaid on aerial photo (NR-TV-2 and NR-LH-2)
185	Map	--	Nancy Rogers	--	Section view showing topographic

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
					change from Flaming Geyser State Park to the Villages site (NR-TV-18)
186	Condition Language	--	Nancy Rogers	--	Applicant's Proposed Condition Language - The Villages MPD Large Wet Pond Total Phosphorus Monitoring Program (NR-TV-7)
187	Photograph	--	Nancy Rogers	--	Aerial photo of wildlife corridor map (red line shows corridor) (NR-TV-4)
188	Wet site page	--	Nancy Rogers	--	Washington State Parks' web site page on park hours at Flaming Geyser (NR-TV-10, NR-LH-8)
189	Tech Memo	1/22/08	Nancy Rogers	--	Tech Memo from AESI, MPD Open House Comments Received (NR-TV-13 and NR-LH-11)
190	Maps	--	Nancy Rogers	--	Maps from EIS and MPD application re: South Connector to SER 169 (excerpts from 7/17/08 Wetland Assessment for The Villages, including Fig. 6c; Black Diamond Villages EIS Map - Main Property - Parcel F - Fig. 7e; MPD Application pg. 4-3, Fig. 4-1 - Circulation Plan (NR-TV-6)
191	Email exchange	1/28/10	Nancy Rogers	--	Email exchange among Nancy Rogers, Dave Bricklin, and Mike Kenyon re: Hearings (NR-TV-15, NR-LH-13)
192	Report	1/15/10	Nancy Rogers	--	Lake Sawyer Water Quality Report prepared by the King Co. Lake Stewardship Program (NR-TV-12, NR-LH-10)

No.	Type of Record	Date	Sender	Recipient(s)	Subject
193	Map	--	Nancy Rogers	--	City of Black Diamond colored 1996 Comprehensive Land Use Map (Fig. 5-7) (NR-TV-17 and NR-LH-14)
194	Agreement	--	Nancy Rogers	--	Comprehensive School Mitigation Agreement with Exhibits A - V (NR-TV-8 and NR-LH-6)
195	Report	07/2000	Nancy Rogers	--	Lake Sawyer and Its Watershed Management Plan prepared by King County Surface Water Management (NR-TV-11, NR-LH-9)
196	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Development Context Plan - created by Dahlin Group
197	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Development Landuse Plans - created by Dahlin Group
198	Map/Diagram 11" x 17"	Undated	Nancy Rogers	--	Lawson Hills - Yarrowbay Development proposed designs - created by Dahlin Group
199	Map/Diagram 11" x 17"	03/06/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Holdings, Black Diamond Open Space Exhibit
200	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Context Plan - Created by Dahlin Group
201	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Landuse Plan - Created by Dahlin Group
202	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Plan - Created by Dahlin Group
203	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Village Center -

No.	Type of Record	Date	Sender	Recipient(s)	Subject
					Created by Dahlin Group
204	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Overall Phase One Landscape Plan - Created by Dahlin Group
205	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Village Green - Created by Dahlin Group
206	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Civic Park - Created by Dahlin Group
207	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Pocket Park and Common Green - Created by Dahlin Group
208	Map/Diagram 11" x 17"	12/14/09	Nancy Rogers	--	The Villages - Yarrowbay Development Village Square, Alternative 1 - Created by Dahlin Group
209	Map/Diagram 11" x 17"	03/06/10	Nancy Rogers	--	The Villages - Yarrowbay Holdings, Black Diamond Open Space Exhibit
210	Map/Diagram 11" x 17"	Undated	Nancy Rogers	--	Wildlife Corridors
211	Declaration of Natarajan "Jana" Janarthanan	04/02/10	Natarajan Janarthanan (sent by Jeff Taraday)		Third Declaration of Natarajan "JANA" Janarthanan, Ph.D., PTP; Exhibits A through G
212	Pleading	04/02/10	Jeff Taraday for Maple Valley		City of Maple Valley's Second Brief on Compliance with MPD Criteria

0027209

BLACK DIAMOND  
PRE-HEARING EXHIBIT LIST

Lawson Hills/The Villages

EXHIBIT C

April 15, 2010

No.	Provided by	Description
JC-1-A	Judith Carrier	Area Road Map
JC-1-B	Judith Carrier	South Annexation Area O, King County GIS Data, 2007
JC-1-C	Judith Carrier	King Co. DEIS letter dated 9/30/09, Attachment One Transportation Technical Report, author - Kurt Triplett's staff
JC-1-D	Judith Carrier	South Annexation Area G, King County GIS Data, 2007
JC-1-E	Judith Carrier	Black Diamond Development Department Letter 2-16-2009, author - Steve Pilcher
JC-1-Fa	Judith Carrier	FEIS 2007 Existing PM Peak Hour Traffic Conditions
JC-1-Fb	Judith Carrier	FEIS 2025 Alternative 2 PM Peak Hour Traffic Conditions
JC-1-G	Judith Carrier	FEIS Table 18: 2025 Baseline and Cumulative Alternative 2 PM Peak Hour LOS Summary
JC-1-H	Judith Carrier	FEIS p. 214 Comment letter and Black Diamond Response
JC-1-J	Judith Carrier	WSDOT Standard Accident History Detail Report 1-01-2001 through 5/31/2009 (6 pgs)
JC-1-Ja	Judith Carrier	Page 1 of 4 - WSDOT Detail Report
JC-1-Jb	Judith Carrier	Page 2 of 4 - WSDOT Detail Report
JC-1-Jc	Judith Carrier	Page 3 of 4 - WSDOT Detail Report
JC-1-Jd	Judith Carrier	Page 4 of 4 - WSDOT Detail Report
JC-1-Je	Judith Carrier	Page 1 of 1 - WSDOT Standard Accident History Report 6/01/09 through 09/30/09
JC-1-Jf	Judith Carrier	WSDOT Reported Collisions That Occurred on Green Valley Road, From Auburn Black Diamond Rd. to State Route 169, 1/12/01 through 3/31/09
JC-1-K	Judith Carrier	Pictures of Green Valley Road instability
JC-1-Ka	Judith Carrier	Green Valley Road Slide onto Roadway
JC-1-Kb	Judith Carrier	Slide area to top of slope
JC-1-Kc	Judith Carrier	Slide onto roadway
JC-1-L	Judith Carrier	Picture of eroded or poor Green Valley Road conditions
JC-1-M	Judith Carrier	Pictures of elk trails and tracks into timber from green Valley Road edge
JC-1-M-2	Judith Carrier	Green Valley Road Game Trail #1
JC-1-M-2a	Judith Carrier	Game Trail #2a
JC-1-M-2b	Judith Carrier	Game Trail #2b
JC-1-M-e	Judith Carrier	Deer Tracks in Woods closely paralleling Green Valley Road Edge
JC-1-M-f	Judith Carrier	Green Valley Road Game Trail #3
JC-1-M-h	Judith Carrier	Green Valley Road Game Trail #4

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No.	Provided by	Description
JC-1-M-j	Judith Carrier	Green Valley Road Game Trail #5
JC-1-M-k	Judith Carrier	Green Valley Road Game Trail #6
JC-1-M-n	Judith Carrier	Green Valley Road Game Trail #7
JC-1-M-o	Judith Carrier	Green Valley Road Game Trail #8
JC-1-M-p	Judith Carrier	Green Valley Road Game Trail #9
JC-1-M-q	Judith Carrier	South Side Green Valley Road Game Trail #10
JC-1-M-b	Judith Carrier	Green Valley Road Game Trail #1 Elk Track
JC-1-M-g	Judith Carrier	Game Trail #4
JC-1-M-r	Judith Carrier	South Side Green Valley Road Game Trail #10 Elk Track
JC-1-N	Judith Carrier	12/2009 Final Report of the King County Historic Scenic Corridors Project
JC-1-Na	Judith Carrier	Green Valley Road Heritage Corridor, p. 35
JC-1-Nb	Judith Carrier	Green Valley Road Heritage Corridor, p. 36
JC-1-Nc	Judith Carrier	Green Valley Road Heritage Corridor, p. 37
JC-1-O	Judith Carrier	DEIS Agriculture Commission Comment Letter (3 pgs)
JC-1-Pa	Judith Carrier	Pictures of Green Valley Road Preserved Farmland: Vukich Farm
JC-1-Pb	Judith Carrier	Pictures of Green Valley Road Preserved Farmlands including roadway characteristics: Sweet Brian Farm Organic Fruits and Vegetables, Honeytree Christmas Trees, Canterbury Farms (uses both sides of road), Heifer Farm (uses both side of road)
JC-1-Pc	Judith Carrier	Pictures of Green Valley Road Preserved Farmlands including roadway characteristics: Moseby Brothers Farms (uses both sides of the road)
JC-1-Qa	Judith Carrier	WSDOT SR 169 Route Development Report
JC-1-Qb	Judith Carrier	WSDOT SR 169 Route Development Map
JC-1-Qc	Judith Carrier	WSDOT SR 169 Route Development: Urban Planning Manager Letter, dated 2/12/10, Richard Warren, author
JC-1-R	Judith Carrier	WSDOT Urban Planning Manager Letter, dated 3/2/10, Chris Picard, author
CBD-1	City of Black Diamond	Staff Report - Lawson Hills MPD - File No. PLN09-0016
CBD-1-1	City of Black Diamond	Lawson Hills - Master Application
CBD-1-2	City of Black Diamond	Lawson Hills - MPD Application Binder dated 12-31-09
CBD-1-3	City of Black Diamond	Lawson Hills - City of Black Diamond Ordinance No. 08-885
CBD-1-4	City of Black Diamond	Lawson Hills - Notice of Application
CBD-1-5	City of Black Diamond	Lawson Hills MPD FEIS
CBD-1-10	City of Black Diamond	Lawson Hills - Public Hearing Notice

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No.	Provided by	Description
CBD-1-11	City of Black Diamond	Lawson Hills - Land use plan/constraints map overlay
CBD-1-12	City of Black Diamond	Lawson Hills - Parametrix Alternative Roadway Analysis
CBD-1-13	City of Black Diamond	Lawson Hills - Letter from City of Covington, dated 7/30/09
CBD-1-14	City of Black Diamond	Lawson Hills - Letter from Enumclaw School District dated 7/31/09
CBD-1-15	City of Black Diamond	Lawson Hills - E-mail communication from Greater Maple Valley Area Council dated 1/11/10
CBD-1-16	City of Black Diamond	Lawson Hills - Letter from WSDOT dated 1/25/10
CBD-1-17	City of Black Diamond	Lawson Hills - Letter from King County DDES dated 2/9/10
CBD-2	City of Black Diamond	Staff Report - The Villages MPD - File No. PLN09-0017, including Exhibit Nos. 1-25
CBD-2-1	City of Black Diamond	The Villages - Master Application
CBD-2-2	City of Black Diamond	The Villages - MPD Application Binder dated 12-31-09
CBD-2-3	City of Black Diamond	The Villages - City of Black Diamond Ordinance No. 08-885
CBD-2-4	City of Black Diamond	The Villages - Notice of Application
CBD-2-5	City of Black Diamond	The Villages MPD FEIS
CBD-2-10	City of Black Diamond	The Villages - Public Hearing Notice
CBD-2-11	City of Black Diamond	The Villages - Land use plan/constraints map overlay
CBD-2-12	City of Black Diamond	The Villages - City of Black Diamond Ordinance No. 515
CBD-2-13	City of Black Diamond	The Villages - Parametrix Alternative Roadway Analysis
CBD-2-14	City of Black Diamond	The Villages - Letter from City of Covington dated 7/30/09
CBD-2-15	City of Black Diamond	The Villages - Letter from Enumclaw School District dated 7/31/09
CBD-2-16	City of Black Diamond	The Villages - E-mail communication from Bill & Vicki Harp dated 8/3/09
CBD-2-17	City of Black Diamond	The Villages - Letter from City of Black Diamond to Bill & Vicki Harp dated 8/14/09
CBD-2-18	City of Black Diamond	The Villages - E-mail communication from Cindy Proctor dated 9/9/09
CBD-2-19	City of Black	The Villages - Letter from Lynn McArthur dated 10/21/09

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0027212

No.	Provided by	Description
	Diamond	
CBD-2-20	City of Black Diamond	The Villages - Letter from King County DDES dated 11/19/09
CBD-2-21	City of Black Diamond	The Villages - E-mail communication from Greater Maple Valley Area Council dated 1/11/10
CBD-2-22	City of Black Diamond	The Villages - Letter from WSDOT dated 1/25/10
CBD-2-23	City of Black Diamond	The Villages - E-mail communication from Lorraine & William Seaman dated 2/7/10
CBD-2-24	City of Black Diamond	The Villages - E-mail communication from City of Black Diamond to Lorraine & William Seaman dated 2/8/10
CBD-2-25	City of Black Diamond	The Villages - Letter from King County DDES dated 2/9/10
CBD-3	City of Black Diamond	Shared Exhibit No. 6 to Staff Report - Draft School Mitigation Agreement
CBD-4	City of Black Diamond	Shared Exhibit No. 7 to Staff Report - Black Diamond Urban Growth Area Agreement
CBD-5	City of Black Diamond	Shared Exhibit No. 8 to Staff Report - Black Diamond Area Open Space Protection Agreement
CBD-6	City of Black Diamond	Shared Exhibit No. 9 to Staff Report - Water Supply and Facilities Funding Agreement
CBD-7	City of Black Diamond	Lawson Hills DEIS, including exhibits and appendices
CBD-8	City of Black Diamond	The Villages DEIS, including exhibits and appendices
CBD-9	City of Black Diamond	Joe May, Appeal of the FEIS for The Villages, dated 12/28/09
CBD-10	City of Black Diamond	William and Vicki Harp, Appeal of the FEIS, The Villages MPD, dated 12/28/09
CBD-11	City of Black Diamond	Cynthia and William Wheeler, Appeal of the FEIS, Lawson Hills, dated 12/28/09
CBD-12	City of Black Diamond	Melanie Gauthier Appeal of FEIS for Lawson Hills
CBD-13	City of Black Diamond	Christopher Clifford's Lawson Hills EIS Appeal Statement
CBD-14	City of Black Diamond	Christopher Clifford's The Villages EIS Appeal Statement
WH-1	Wheeler/Proctor	Final and Draft EIS for both The Villages and Lawson Hills
WH-2	Wheeler/Proctor	City of Black Diamond Project Files for The Villages and Lawson Hills
WH-3	Wheeler/Proctor	City of Black Diamond Sensitive Areas Ordinance Best Available Science Report
WH-4	Wheeler/Proctor	City of Black Diamond Sensitive Areas Ordinance 08-875

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JC = Judith Carrier; CBD = City of Black Diamond; WH = Wheeler/Proctor; NR = Nancy Rogers; MG = Melanie Gauthier; GB = Gil Bortleson; DB = David Bricklin

0027213

No.	Provided by	Description
WH-5	Wheeler/ Proctor	Black Diamond Urban Growth Area Agreement
WH-6	Wheeler/ Proctor	WA State Dept. of Fish and Wildlife Habitat Map; letter from Larry Fisher, WDFW, to City of Black Diamond, dated 2/28/10
WH-7	Wheeler/ Proctor	Wildlife Documentation Photographs ( six double-sided sheets)
WH-8	Wheeler/ Proctor	2005 DOE Stormwater Manual (Supplied online at <a href="http://www.ecy.wa.gov/programs/wq/stormwater/manual.html">http://www.ecy.wa.gov/programs/wq/stormwater/manual.html</a> )
WH-9	Wheeler/ Proctor	Lake Sawyer Regional Park School Facilities Joint Use Petition
WH-10	Wheeler/ Proctor	Washington State DOT Letter (from Ramln Pazooki, dated 1/25/10)
WH-11	Wheeler/ Proctor	King County DDES Letter (from Stephanie Warden to Stove Pilcher, 11/19/09)
WH-12	Wheeler/ Proctor	Governmental Agencies Letters/Reports (Not a separate exhibit)
WH-13	Wheeler/ Proctor	ESD Tri-Party Agreement
WH-14	Wheeler/ Proctor	King County DDES Letter (from Miles to Pilcher, 2/9/09, with attachments)
WH-15	Wheeler/ Proctor	Medical Impact Letter Re: Noise Stress (from Dr. G.R. Magley, dated 2/10)
WH-16	Wheeler/ Proctor	Email correspondences re: EIS/ MPD/SEPA (various dates and authors)
WH-17	Wheeler/ Proctor	ESD Tri-Party Agreement obtained through Public Disclosure Requests (PDRs); various letters: Combs to Botts, 9-17-09 (2 pgs); Nix to Davis, 11-16-09 (2 pgs); Combs to Ketter, 6-10-09 (1 pg); Combs to Balint, 9-25-09 (1 pg); Combs to Ketter, 9-24-09 (2 pgs); Unidentified sender, 2-8-10 (1 pg); Balint to Pilcher, 12-02-09 (1 pg); Pilcher to Kohl-mann, 12-02-09 (1 pg); Same as Exhibit 11
WH-18	Wheeler/ Proctor	SR 169 Corridor Plan (supplied online at <a href="http://www.wsdot.wa.gov/Projects/SR169/RDP/Report.htm">http://www.wsdot.wa.gov/Projects/SR169/RDP/Report.htm</a> )
WH-19	Wheeler/ Proctor	Greenhouse Gas Emission Report, by Tim Trohmovich, AICP, JD., 12/09
WH-20	Wheeler/ Proctor	Lake Sawyer 2009 Water Quality report, dated January 15, 2010; also other water quality reports provided by Herrera/Lake Sawyer Management Technical Appendices
WH-20A	Wheeler/ Proctor	Memo from Herrera Consultants (Kirschbaum and Zisette) to Bricklin Newman (3/3/10)
WH-20B	Wheeler/ Proctor	Triad memo from Matt to Lund, 9-11-08
WH-20C	Wheeler/ Proctor	"Appendix O" - Response to Comments on the Lake Sawyer Draft Management Plan

[PA0778976.DOC;6113049.9100001]

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0027214

No.	Provided by	Description
WH-20D	Wheeler/ Proctor	Memo from Silva to Thrasher, dated 12-29-99 (Water sample results attached); Appendix L: Land Use Parameters for Modeling; Appendix M: Ecology Equivalency Review Matrix; Appendix N: Conceptual Stormwater Plan for Rock Creek/Ginder Creek Drainage Area
WH-20E	Wheeler/ Proctor	Water Quality Sampling Results; Appendix C: Modeling and Water/Nutrient Budget Methods and Assumptions; Appendix D: Aquatic Plant Management Plan; Appendix E: Public Access Inventory; Appendix F: TMDL; Appendix G: Lake Sawyer Watershed Bioassessment Case Study: 1995; Appendix H: Timing of Juvenile Coho Salmon Emigration from the Lake Sawyer Drainage Basin; Appendix I: Contingency In-Lake Measures for Phosphorus Control in Lake Sawyer; Appendix J: QA/QC Plan; Appendix K: Watershed Sampling
WH-20F	Wheeler/ Proctor	Lake Sawyer Management Plan Title Page, Appendix A: SEPA Checklist; Appendix B: Lake Sawyer Data: 1994-95
WH-21	Wheeler/ Proctor	Noise Reports, by Jerry Lily, 3/2/10; WHO Noise Guidelines
WH-22	Wheeler/ Proctor	Transportation Report of Ross Tilghman of Tilghman Group, dated 2/26/10
WH-22a	Wheeler/ Proctor	Chapter 7 Transportation from the 2009 City of Black Diamond Comprehensive Plan
WH-23	Wheeler/ Proctor	Morgan Kame Terrace Mine DEIS (supplied online at <a href="http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/Morgan%20Kame%20DEIS/Draft%20DEIS-Morgan%20Kame%20Terrace.pdf">http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/Morgan%20Kame%20DEIS/Draft%20DEIS-Morgan%20Kame%20Terrace.pdf</a> )
WH-24	Wheeler/ Proctor	Black Diamond Environmental Partners Comments and Attachment, letter from Jason Paulson to Steve Pilcher, 12/15/09
WH-25	Wheeler/ Proctor	PSRC 2040 Transportation Plan, Appendix B: Program and Project List
WH-26	Wheeler/ Proctor	King County Growth Management Planning Council Motion No. 09-2 (GMC Growth Target Plan)
WH-27	Wheeler/ Proctor	King County Comprehensive Plan (supplied online at <a href="http://www.your.kingcounty.gov/mkoc/compplan/2008/2008-0124.2_AttachB.pdf">http://www.your.kingcounty.gov/mkoc/compplan/2008/2008-0124.2_AttachB.pdf</a> )
WH-28	Wheeler/ Proctor	Relevant newspaper articles and publications ("Public hearing Wed. for major commercial project on Kent's East Hill," by Steve Hunter, 2/26/10)
WH-29	Wheeler/ Proctor	King County Growth Management Planning Council's Countrywide Planning Policies (no citation of URL)
WH-30	Wheeler/ Proctor	School siting Map/Board (this is a Board exhibit)

{FA0778976.DOC;A13049.900000\}

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0027215

No.	Provided by	Description
WH-31	Wheeler/ Proctor	City of Black Diamond Pre-DEIS/FEIS letter and Yarrow Bay's Response (PDR), Steve Pilcher letter to Lund, 6/23/09; Pilcher letter to YB Holdings, 8/11/09; Rogers letter to City of Black Diamond, 8/18/09
WH-32	Wheeler/ Proctor	Various Villages South Connector Maps (this is a Board exhibit)
WH-33	Wheeler/ Proctor	City of Covington letter from Mayor Margaret Harto to Steve Pilcher, dated 2/24/09
WH-34a	Wheeler/ Proctor	1996 Black Diamond Comprehensive Plan
WH-34b	Wheeler/ Proctor	SEPA Addendum issued for 2009 Black Diamond Comp Plan update
WH-35	Wheeler/ Proctor	ESD - Impact Fee Request, Capital Facilities Plan 2008 & 2009; Letter from Superintendent Mike Nelson to Mayor Botts, 8-25-09; letter from Nelson to Pilcher, 7/31/09; Enumclaw School District Capital Facilities Plans excerpts: 2008-2013 and 2009-2014
WH-36	Wheeler/ Proctor	Miscellaneous Open Space Letter (PDR); County Executive Triplet to County Council Chair Constantine, 11-23-09
BD-1	David Bricklin	CVs/Resumes and Witness List (as listed on Pre-Hearing Brief-rest of exhibits submitted by Wheeler/Proctor)
NR-TV-16	Nancy Rogers	Letter from Leonard Smith, dated 10/20/09 and Letter from Colin Lund, dated 10/27/09 with Attachment A
NR-TV-19	Nancy Rogers	Technical Memorandum dated 1/29/10 from AESTI re: The Villages Water Level Monitoring Data
NR-TV-20	Nancy Rogers	KCC 21A.08.050 - Sections of King County Zoning Code, regarding schools in rural area
NR-TV-9 NR-LH-7	Nancy Rogers	City of Black Diamond - Yarrow Bay -SEPA Processing Agreement, dated 11/30/07
NR-TV-14 NR-LH-12	Nancy Rogers	Black Diamond Agency Scoping Notice Package, including Legal Notices, Meeting Attendees, Letters, Minutes, Revised Determination of Significance and Request for Comments on Scope of EIS
NR-LH-5	Nancy Rogers	Applicant's Proposed Condition Language - Lawson Hills MPD Large Wet Pond Total Phosphorus Monitoring Program
NR-LH-15	Nancy Rogers	Section View show topographic change from Flaming Geyser State Park and Lawson Hills MPD
NR-TV-2 NR-LH-2	Nancy Rogers	Topographical Map with City boundaries of The Villages Site and Lawson Hills Site overlaid on an aerial photo.
NR-TV-18	Nancy Rogers	Section view showing topographic change from Flaming Geyser State Park to the Villages Site
NR-TV-7	Nancy Rogers	Applicant's Proposed Condition Language - The Villages MPD Large Wet Pond Total Phosphorus Monitoring Program
NR-TV-4	Nancy Rogers	Aerial photo of wildlife corridor map (red line shows regional corridor)

{PA0778976.DOC;013049.9000000}

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4/16/2010 1:54 PM

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0027216

No.	Provided by	Description
NR-TV-10 NR-LH-8	Nancy Rogers	Washington State Parks web site page on park hours and updates at Flaming Geyser
NR-TV-13 NR-LH-11	Nancy Rogers	Technical Memorandum dated 1/22/08 from ABSI, MPD Open House Comments Received
NR-TV-6	Nancy Rogers	Maps from EIS and MPD application regarding South Connector to SER 169 (Excerpts from 7/17/08 Wetland Assessment for The Villages, including Figure 6c; Black Diamond Villages EIS Map - Main Property - Parcel F - Figure 7e; MPD Application Pg. 4-3, Figure 4-1 - Circulation Plan)
NR-TV-15/ NR-LH-13	Nancy Rogers	Email exchange among Dave Bricklin, Nancy Rogers and Mike Kenyon re: Hearings dated 1/28/10.
NR-TV-12/ NR-LH-10	Nancy Rogers	Lake Sawyer Water Quality report prepared by the King Co. Lake Stewardship Program, January 15, 2010
NR-TV-17/ NR-LH-14	Nancy Rogers	City of Black Diamond colored 1996 Comprehensive Land Use Map (Fig. 5-7)
NR-TV-8/ NR-LH-6	Nancy Rogers	Comprehensive School Mitigation Agreement with Exhibits A - V
NR-TV-11/ NR-LH-9	Nancy Rogers	Lake Sawyer and Its Watershed Management Plan prepared by King County Surface Water Management dated July 2000
NR-AL-1	Nancy Rogers	No. 1 on Applicant's Exhibit List (The Villages) - Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief
NR-AL-2	Nancy Rogers	No. 3 on Applicant's Exhibit List (The Villages) - Regional Map showing open space areas
NR-AL-3	Nancy Rogers	No. 5 on Applicant's Exhibit List (The Villages) - Enlargements from EIS diagrams (Ex 2-3 of Villages Alt 2 MPD; Ex. 3-25 of Villages Alt 2 Proposed Stormwater Facilities, Fig. 1 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 7, 9, 10A, 10B, 11A, 11B, 12, 13, 14, 24, 27 and 28 from FEIS Appendix D, AESI Report
NR-AL-4	Nancy Rogers	No. 1 on Applicant's Exhibit List (Lawson Hills) - Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief
NR-AL-5	Nancy Rogers	No. 3 on Applicant's Exhibit List (Lawson Hills) - Regional Map showing open space areas
NR-AL-6	Nancy Rogers	No. 4 on Applicant's Exhibit List (Lawson Hills) Enlargements from EIS diagrams (Ex 2-2 of Lawson Hills Alt 2 MPD; Ex. 3-24 of Lawson Hills Proposed Stormwater Facilities, Fig. 5 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 3, 4, 5a, 5b, and 13 from FEIS Appendix H (Visual)
MG-1	Melanie Gauthier	Lawson Hills DEIS, including appendices
MG-2	Melanie Gauthier	Lawson Hills FEIS, including appendices

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0027217

No.	Provided by	Description
MG-3	Melanie Gauthier	Lawson Hills MPD, including appendices
MG-4	Melanie Gauthier	The Villages DEIS, including appendices
MG-5	Melanie Gauthier	The Villages FEIS, including appendices
MG-6	Melanie Gauthier	The Villages MPD, including appendices
MG-7	Melanie Gauthier	Morgan Kame Terrace Mine Expansion DEIS
MG-8	Melanie Gauthier	Melanie Gauthier Appeal of FEIS Lawson Hills, dated 12/28/09
MG-9	Melanie Gauthier	Christopher Clifford, et al., Lawson Hills and Villages Appeal, dated 12/28/09
MG-10	Melanie Gauthier	King Co. Dept. of Development and Environmental Services letter to Steve Pilcher, dated 2/9/10
MG-11	Melanie Gauthier	Two letters to Steve Pilcher from Ramin Pazooldi, WSDOT, re Yarrow Bay Developments (The Villages and Lawson Hills)
MG-12	Melanie Gauthier	Miscellaneous letters between City and BD Lawson Hills Partners and BD Villages Partners, concerning adequacy of information provided in the DEIS and MPD
MG-13	Melanie Gauthier	City of Black Diamond letters to interested parties, dated 12/11/09, re: availability of FEIS documents
GB-1	Gil Bortleson	Aerial photograph showing view of Flaming Geyser State Park and proposed Villages
GB-2	Gil Bortleson	Aerial photograph showing vertical view of Flaming Geyser State Park and proposed Villages
GB-3	Gil Bortleson	Illustration showing vertical view of Flaming Geyser State Park and proposed Villages
GB-4	Gil Bortleson	Illustration showing proponent map of visualization from off-site Green Valley Road
GB-5	Gil Bortleson	Photograph showing visual corridor of Flaming Geyser State Park from hillcrest of proposed Villages
GB-6	Gil Bortleson	Table showing petition to preserve visual corridor of Flaming Geyser State Park
GB-7	Gil Bortleson	Letter from local resident of King County asking for visual corridor protection for Flaming Geyser State Park from rimtop development on south side of the Green River in 19874
GB-8	Gil Bortleson	Soils map showing area of high erosion potential below and above Green Valley Road. ACF on map.
GB-9	Gil Bortleson	Geology map showing area susceptible to sliding below Green Valley Road. Qm on map.
GB-10	Gil Bortleson	Photograph showing landslide debris on Green Valley Road
GB-11	Gil Bortleson	Photograph showing soil creep above Green Valley Road
GB-12	Gil Bortleson	Photograph showing incidence of under-mining and slippage of

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4/16/2010 1:54 PM

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0027218

No.	Provided by	Description
		Green Valley Road
GB-13	Gil Bortleson	Photograph showing road crew repair of undermining and slippage of Green Valley Road
GB-14	Gil Bortleson	Map showing proposed school sites in DEIS and FEIS
GB-15	Gil Bortleson	Map showing proposed school sites from Enumclaw School District website (Tri-Party School Agreement)
GB-16	Gil Bortleson	King County letter of response to school sites located outside the Urban Growth Area
GB-17	Gil Bortleson	King County letter of response to school sites located outside the Urban Growth Area (continued)
GB-18	Gil Bortleson	Table showing petition to keep Black Diamond schools in 2009 Black Diamond Urban Growth Area
GB-19	Gil Bortleson	Map showing a large infiltration pond locate outside Black Diamond Urban Growth Area
GB-20	Gil Bortleson	Aerial photograph of representative area near Green River Gorge susceptible to ground saturation during storms causing mudslides
GB-21	Gil Bortleson	Photograph showing a downhill view of mudslide near Green River Gorge during intense storm causing ground saturation in January 2009
GB-22	Gil Bortleson	Photograph showing washout during the high-intensity rainfall of January 2009 in area shown in Exhibit 19
GB-23	Gil Bortleson	Photograph showing washout during the high-intensity rainfall of January 2009 in area shown in Exhibit 19 - continued
GB-24	Gil Bortleson	Photograph showing domestic water supply from a spring in area shown in Exhibit 19. Shallow spring supplies 4 households with a low yield of ~2.5 gal. per min. during wet season.
GB-25	Gil Bortleson	Photograph of year-round spring entering the Green River in area shown in Exhibit 19
GB-26	Gil Bortleson	Photographs showing resident elk herds near Green Valley Road and Flaming Geyser State Park
GB-27	Gil Bortleson	Map showing King County Core-Wetland Open Space/Cranberry Slough in relation to proposed land use in FEIS alternative 2
GB-28	Gil Bortleson	Photograph showing Cranberry Slough located in King County Space near the proposed Triangle
GB-29	Gil Bortleson	Graph showing Lake Sawyer Total Maximum Daily Load criteria versus time shown by year.
GB-30	Gil Bortleson	Position Paper of Rural Green Valley Road Residents

SIXTH REVISED EMAIL EXHIBIT LIST  
List of Emails for Black Diamond  
 The Villages/Lawson Developments SEPA Appeals  
 April 15, 2010

EXHIBIT D

No.	Date	Time	Sender	Subject
1	01/08/10	8:12 am	Steve Pilcher	MPD Hearings/SEPA appeal
2	01/08/10	9:50 am	Phil Olbrechts	MPD Hearings/SEPA appeal
3	01/08/10	10:08 am	Steve Pilcher	MPD Hearings/SEPA appeal
4	01/08/10	10:12 am	Steve Pilcher	MPD Hearings/SEPA appeal
5	01/08/10	10:26 am	Phil Olbrechts	MPD Hearings/SEPA appeal
6	01/08/10	11:00 am	Phil Olbrechts	MPD Hearings/SEPA appeal
7	01/08/10	11:44 am	Steve Pilcher	Ordinance No. 08-857, Hearing Examiner Position - Adding and Amending Chapters in BDMC.pdf
8	01/08/10	3:10 pm	Phil Olbrechts	Proposed Procedural Rules
9	01/08/10	3:11 pm	Phil Olbrechts	Proposed Procedural Rules
10	01/11/10	9:19 am	Steve Pilcher	Materials arriving
11	01/11/10	10:01 am	Steve Pilcher	Proposed Procedural Rules
12	01/12/10	9:42 am	Steve Pilcher	Proposed Procedural Rules
13	01/12/10	9:54 am	Nancy Rogers	Proposed Procedural Rules
14	01/12/10	10:02 am	Steve Pilcher	Proposed Procedural Rules
15	01/12/10	11:33 am	Bill Wheeler	Hearing Examiner Email of January 8, 2010
16	01/12/10	11:56 am	Phil Olbrechts	Hearing Examiner Email of January 8, 2010
17	01/12/10	11:59 am	Steve Pilcher	Hearing Examiner Email of January 8, 2010
18	01/12/10	12:25 pm	Steve Pilcher	Hearing Examiner Email of January 8, 2010
19	01/12/10	2:25 pm	Chris Clifford	Hearing Examiner Email of January 8, 2010
20	01/12/10	2:46 pm	Steve Pilcher	Proposed Procedural Rules
21	01/13/10	2:12 pm	Cindy Proctor	Proposed Procedural Rules
22	01/13/10	8:54 pm	Cindy Proctor	City of Black Diamond Attorney Request
23	01/14/10	11:26 am	Cindy Proctor	Response to Proposed Procedural Rules - Appeal of Villages FEIS
24	01/14/10	4:21 pm	Nancy Rogers	Response to Proposed Procedural Rules - Appeal of Villages FEIS
25	01/19/10	2:09 pm	Joe May	Villages Appeal, Rules Procedures
26	01/19/10	3:12 pm	Gil Bortleson	Appellant Notice
27	01/19/10	3:29 pm	Bill Wheeler	Response to Hearing Examiner
28	01/19/10	3:36 pm	Bill Wheeler	Response to Hearing Examiner
29	01/19/10	4:05 pm	Melanie Gauthier	Response to BD Proposed Procedural Rules - Appeal of Lawson FEIS

No.	Date	Time	Sender	Subject
30	01/19/10	4:23 pm	Gil Bortleson	Appellant Notice
31	01/19/10	4:28 pm	Judith Carrier	Appeals Hearing for The Villages / Lawson Hills Developments
32	01/19/10	4:49 pm	Nancy Rogers	Updated proposed hearing schedule
33	01/19/10	4:57 pm	Bill Wheeler	Confirm Receipt of Response
34	01/19/10	5:01 pm	Cindy Proctor	Updated proposed hearing schedule
35	01/19/10	5:33 pm	Cindy Proctor	Updated proposed hearing schedule
36	01/19/10	11:29 pm	Chris Clifford	Hearing time line
37	01/20/10	12:05 am	Chris Clifford	Hearing time line correction
38	01/20/10	1:19 pm	Mike Kenyon	Hearing time line correction
39	01/20/10	6:18 pm	Phil Olbrechts	Development Reg's
40	01/21/10	10:18 am	Steve Pilcher	Development Reg's
41	01/21/10	11:42 am	Phil Olbrechts	Development Reg's
42	01/25/10	4:34 pm	Phil Olbrechts	Updated proposed hearing schedule
43	01/25/10	4:49 pm	Nancy Rogers	Updated proposed hearing schedule
44	01/25/10	5:30 pm	Cindy Wheeler	Updated proposed hearing schedule
45	01/25/10	5:45 pm	William and Vicki Harp	Updated proposed hearing schedule
46	01/25/10	5:45 pm	Judith Carrier	Updated proposed hearing schedule
47	01/25/10	5:55 pm	Judith Carrier	Updated proposed hearing schedule
48	01/25/10	6:45 pm	Cindy Proctor	Updated proposed hearing schedule
49	01/25/10	8:44 pm	Joe May	Updated proposed hearing schedule
50	01/25/10	9:49 pm	Melanie Gauthier	Updated proposed hearing schedule
51	01/26/10	10:15 am	Gil Bortleson	Updated proposed hearing schedule
52	01/26/10	1:45 pm	Chris Clifford	Updated proposed hearing schedule
54	01/26/10	7:16 pm	Phil Olbrechts	PreHearing Order
55	01/27/10	10:59 am	Kay Richards	PreHearing Order
56	01/27/10	11:05 am	Kay Richards	PreHearing Order
57	01/27/10	12:31 pm	Kay Richards	Prehearing Order; Email Exhibit List
58	01/27/10	1:10 pm	Kay Richards	Prehearing Order; Email Exhibit List
59	01/27/10	4:50 pm	Phil Olbrechts	Pre-Hearing Order Distribution
60	01/27/10	6:07 pm	Kay Richards	Prehearing Order; Email Exhibit List
61	01/28/10	3:10 pm	Kay Richards	Prehearing Order; Email Exhibit List
62	01/28/10	3:27 pm	Kay Richards	Prehearing Order; Email Exhibit List
63	01/28/10	3:41 pm	Kay Richards	Cindy Wheeler's Request for Emails
64	01/28/10	3:44 pm	Kay Richards	MPD Hearings/SEPA Appeal (#3)
65	01/28/10	4:06 pm	Kay Richards	MPD Hearings/SEPA Appeal (#4)
66	01/28/10	4:06 pm	Kay Richards	Ordinance No. 08-857, Hearing Examiner Position/Adding and Amending Chapters (#7)
67	01/28/10	4:07 pm	Kay Richards	Materials Arriving (#10)
68	01/28/10	4:09 pm	Kay Richards	Proposed Procedural Rules (#11)
69	01/28/10	4:11 pm	Kay Richards	Proposed Procedural Rules (#12)

No.	Date	Time	Sender	Subject
70	01/28/10	4:12 pm	Kay Richards	Proposed Procedural Rules (#14)
71	01/28/10	4:13 pm	Kay Richards	Proposed Procedural Rules (#20)
72	01/28/10	4:19 pm	Kay Richards	Development Reg's (#39)
73	01/28/10	4:20 pm	Kay Richards	Development Reg's (#41)
74	01/28/10	4:21 pm	Kay Richards	Development Reg's (#40)
75	01/28/10	4:50 pm	Kay Richards	Villages and Lawson Hills
76	01/28/10	4:54 pm	Steve Pilcher	Steve Pilcher just called with QUESTIONS
77	01/28/10	4:59 pm	Kay Richards	Villages and Lawson Hills - MORE
78	01/29/10	11:38 am	Kay Richards	Villages and Lawson Hills - MORE
79	01/29/10	4:08 pm	Joe May	Permission Request
80	02/01/10	4:16 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
81	02/01/10	4:29 pm	Steve Pilcher	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
82	02/01/10	4:29 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
83	02/01/10	4:41 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
84	02/01/10	4:53 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
85	02/01/10	4:55 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
86	02/01/10	4:59 pm	Steve Pilcher	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
87	02/01/10	5:17 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
88	02/02/10	8:03 pm	Melanie Gauthier	Pre-Hearing Order
89	02/03/10	1:46 pm	Nancy Rogers	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
90	02/03/10	10:35 pm	Chris Clifford	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
91	02/04/10	12:21 pm	Judith Carrier	Adding Appellant e-mail address
92	02/04/10	12:36 pm	Judith Carrier	Steve Sundqvist, Clifford Appeal
93	02/10/10	5:11 pm	Jeff Taraday	Lawson Hills Notice of Appeal with exhibit, signed.pdf; The Villages Notice of Appeal with exhibit, signed.pdf
94	2/11/10	3:30 am	Judith Carrier	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
95	02/11/10	10:32 am	Jeff Taraday	City of Maple Valley's Notice of Appeal
96	02/11/10	11:56 am	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
97	02/11/10	12:07 pm	Jeff Taraday	Maple Valley's Notice of Appeal - Black

No.	Date	Time	Sender	Subject
				Diamond
98	02/11/10	12:18 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
99	02/11/10	12:29 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
100	02/11/10	1:34 pm	Kay Richards	Maple Valley's Notice of Appeal - Black Diamond
101	02/11/10	1:56 pm	Nancy Rogers	Maple Valley's Notice of Appeal - Black Diamond
102	02/11/10	2:14 pm	Dave Bricklin	Maple Valley's Notice of Appeal - Black Diamond
103	02/11/10	2:42 pm	Jeff Taraday	Request for Clarification re Black Diamond's refusal to accept appeal fee
104	02/11/10	3:29 pm	Nancy Rogers	Maple Valley's Notice of Appeal - Black Diamond - Applicant's Responses
105	02/11/10	3:57 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
106	02/11/10	4:03 pm	Mike Kenyon	Maple Valley's Notice of Appeal - Black Diamond
107	02/11/10	4:04 pm	Christy Todd	Maple Valley's Notice of Appeal - Black Diamond
108	02/11/10	4:06 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
109	02/11/10	4:27 pm	Phil Olbrechts	Revised Prehearing Order
110	02/11/10	4:29 pm	Phil Olbrechts	Revised Prehearing Order
112	02/11/10	4:33 pm	Phil Olbrechts	Revised Prehearing Order
113	02/11/10	4:34 pm	Christy Todd	Revised Prehearing Order
114	02/11/10	4:39 pm	Mike Kenyon	FW: Maple Valley's Notice of Appeal - Black Diamond - City's Responses
115	02/11/10	4:51 pm	Phil Olbrechts	Revised Prehearing Order
116	02/11/10	4:59 pm	Kay Richards	Revised Prehearing Order
117	02/11/10	5:00 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
118	02/11/10	5:07 pm	Kay Richards	Revised Prehearing Order
119	02/12/10	1:06 pm	Dave Bricklin	Maple Valley's Notice of Appeal - Black Diamond
120	02/12/10	1:45 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
121	02/12/10	2:51 pm	Mike Kenyon	Revised Prehearing Order
122	02/12/10	2:51 pm	Phil Olbrechts	Revised Prehearing Order
123	02/12/10	2:56 pm	Christy Todd	Maple Valley's Notice of Appeal - Black Diamond
124	02/12/10	3:02 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond

No.	Date	Time	Sender	Subject
---END OF FIRST REVISED EMAIL EXHIBIT LIST---				
125	02/12/10	3:29 pm	Nancy Rogers	Revised Prehearing Order - Motions for Reconsideration
126	02/13/10	6:16 pm	Melanie Gauthier	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
127	02/14/10	9:01 pm	Phil Oibrechtis	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
128	02/16/10	7:54 am	Steve Pilcher	Gil Bortleson has a new email address
129	02/16/10	11:35 am	Jeff Taraday	Maple Valley Response to Motion for Reconsideration
130	02/16/10	11:36 am	Jeff Taraday	Maple Valley's Prehearing Brief, Witness List, and CV of Expert
131	02/16/10	11:37 am	Jeff Taraday	Maple Valley's Pre-Hearing Motions
132	02/16/10	11:45 am	Kay Richards	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
133	02/16/10	12:23 pm	Peggy Cabill	Black Diamond - Pre-Hearing Brief (Bricklin)
134	02/16/10	3:25 pm	Margaret Starkey	The Villages & Lawson Hills - Black Diamond's Motion to Dismiss and Supporting Declaration (Kenyon)
135	02/16/10	3:56 pm	Kay Richards	Gil Bortleson has a new email address
136	02/16/10	4:31 pm	Jeff Taraday	Maple Valley's Notice of Appeal under BDMC 2.30.085
137	02/16/10	4:31 pm	Kristi Beckham	Applicant's Motions to Dismiss Appeal Issues for The Villages and Lawson Hills (Rogers) - Motions are attachments
138	02/16/10	4:36 pm	Jeff Taraday	Maple Valley's Request for Formal Code Interpretation
139	02/16/10	5:19 pm	Judith Carrier	BD Brief to Conclusion Additional Projects - Brief is attachment
140	02/16/10	10:00 pm	Gil Bortleson	Pre-Hearing Brief - Bortleson - Brief is attachment
141	02/16/10	10:22 pm	Chris Clifford	Clifford et al, Appeals 39 and 40
142	02/16/10	no time/ not an email	David Bricklin	Pre-Hearing Brief, Witness List, and Exhibit List of Appellants Wheeler, Proctor, May and Harp
143	02/17/10	9:26 am	Kay Richards	Gil Bortleson has a new email address
144	02/17/10	2:26 pm	Mike Kenyon	Maple Valley's Response to Motion for Reconsideration
145	02/17/10	3:03 pm	Kathy Swoyer	Maple Valley's Response to Motion for Reconsideration
146	02/17/10	7:36 pm	Judith Carrier	BD Brief to Conclusion Additional Projects
147	02/18/10	2:45 pm	Margaret Starkey	Maple Valley's Notice of Appeal (letter)

No.	Date	Time	Sender	Subject
148	02/18/10	2:48 pm	Margaret Starkey	Black Diamond - Request for Formal Code Interpretation (letter)
149	02/18/10	2:50 pm	Ty Peterson	Black Diamond - Request for Formal Code Interpretation
150	02/18/10	3:11 pm	Margaret Starkey	Black Diamond - Request for Formal Code Interpretation (ordinance)
151	02/18/10	4:52 pm	Ty Peterson	Black Diamond - Request for Formal Code Interpretation
152	02/19/10	12:32 am	Phil Olbrechts	Maple Valley Procedural Issues
153	02/19/10	6:02 am	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
154	02/19/10	8:18 am	Mike Kenyon	Black Diamond - Request for Formal Code Interpretation
155	02/19/10	9:56 am	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
156	02/19/10	12:15 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
157	02/19/10	12:42 pm	Mike Kenyon	Request for Pre-Hearing Conference and Suspension of Schedule
158	02/19/10	1:02 pm	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
159	02/19/10	1:16 pm	Nancy Rogers	Request for Pre-Hearing Conference and Suspension of Schedule
160	02/19/10	2:10 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
161	02/19/10	2:16 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule with Revised Schedule
162	02/19/10	3:58 pm	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
163	02/19/10	4:05 pm	Dave Bricklin	Scheduling Request
164	02/19/10	4:20 pm	Mike Kenyon	Request for Pre-Hearing Conference and Suspension of Schedule
165	02/22/10	4:15 pm	Kay Richards	Second Revised PreHearing Order
166	02/22/10	4:18 pm	Postmaster on behalf of Mike Kenyon	Second Revised Prehearing Order (Out of the Office)
167	02/23/10	12:34 pm	Nancy Rogers	Second Revised Hearing Order
168	02/23/10	2:24 pm	Steve Pilcher	MPD Staff Reports (attachments)
169	02/23/10	10:19 pm	Melanie Gauthier	Request for Pre-Hearing Conference and Suspension of Schedule
170	02/24/10	9:20 am	Kay Richards	2-19-10 Revised Schedule attachment
171	02/24/10	10:20 am	Dave Bricklin	Second Revised Prehearing Order
172	02/24/10	10:55 am	Nancy Rogers	Second Revised Prehearing Order

No.	Date	Time	Sender	Subject
173	02/24/10	11:04 am	Dave Bricklin	Second Revised Prehearing Order
174	02/24/10	2:08 pm	Stacey Borland	Hearing Examiner Packet Exhibits
175	02/24/10	2:23 pm	Steve Pilcher	MPD Staff Reports
176	02/24/10	2:34 pm	Marsha St. Louis	City of Maple Valley Declaration of Service
177	02/24/10	3:14 pm	Phil Olbrechts	Hearing Examiner Packet Exhibits
178	02/24/10	5:09 pm	Cindy Wheeler	MPD Staff Reports
179	02/25/10	7:53 am	Dave Bricklin	Request to Allow Jerry Lilly to Testify on Monday, March 8
180	02/25/10	10:22 am	Phil Olbrechts	Request to Allow Jerry Lilly to Testify on Monday, March 8
181	02/25/10	10:37 am	Phil Olbrechts	Subpoenas
182	02/26/10	11:08 am	Dave Bricklin	Exhibits
183	02/26/10	12:56 pm	Bob Sterbank	Exhibits
184	02/26/10	1:31 pm	Judith Carrier	Second Revised Prehearing Order
185	02/26/10	1:49 pm	Dave Bricklin	Exhibits, Continuance and Consolidation
186	02/26/10	2:23 pm	Chris Clifford	Motion for Clarification
187	02/26/10	2:41 pm	Dave Bricklin	Addendum re Consolidation Clarification
188	02/26/10	3:27 pm	Bob Sterbank	Exhibits, Continuance and Clarification
189	02/26/10	4:04 pm	Nancy Rogers	Exhibits, Continuance and Clarification
190	02/26/10	4:13 pm	Dave Bricklin	Exhibits, Continuance and Clarification
191	02/26/10	4:27 pm	Dave Bricklin	Ex Parte Motion for Issuance of Subpoenas (with attachment)
192	02/26/10	8:13 pm	Melanie Gauthier	MPD Staff Reports
193	02/27/10	12:05 pm	Melanie Gauthier	MPD Staff Reports
194	02/28/10	4:02 pm	Phil Olbrechts	Exhibits, Continuance and Consolidation
195	02/28/10	5:19 pm	Phil Olbrechts	Exhibits
196	02/28/10	10:01 pm	Gil Bortleson	Site Inspection
197	03/01/10	8:20 am	Dave Bricklin	Exhibits
198	03/01/10	9:49 am	Dave Bricklin	Exhibits
199	03/01/10	10:13 am	Phil Olbrechts	Exhibits
200	03/01/10	10:39 am	Steve Pilcher	Exhibits
201	03/01/10	1:06 pm	Bricklin & Newman, LLP (Anne Bricklin)	Response by Appellants William & Cindy Wheeler, et al. to City's & Applicant's Motion to Dismiss; Declaration of Service
202	03/01/10	2:14 pm	Margaret Starkey	The Villages & Lawson Hills: Black Diamond's Response to Appeals; Witness and Exhibit List; Declaration of Mailing
203	03/01/10	2:50 pm	Margaret Starkey	Attachments to City of Black Diamond's Witness & Exhibit List
204	03/01/10	3:06 pm	Margaret Starkey	Declaration of Mailing for Black

No.	Date	Time	Sender	Subject
				Diamond's Witness & Exhibit List
205	03/01/10	5:24 pm	Kristi Beckham	Lawson Hills - Applicant's Exhibit List and Applicant's Responsive Pre-Hearing Brief
206	03/01/10	5:25 pm	Kristi Beckham	The Villages - Applicant's Exhibit List and Applicant's Witness List
207	03/01/10	5:26 pm	Kristi Beckham	Lawson Hills - Applicant's Witness List and Response in Support of Motion to Dismiss
208	03/01/10	5:28 pm	Kristi Beckham	The Villages - Response in Support of Motion to Dismiss
209	03/01/10	5:57 pm	Nancy Rogers	The Villages - Applicant's Responsive Pre-Hearing Brief
210	03/01/10	10:09 pm	Chris Clifford	Response to Motions to Dismiss, Motion in Limine, etc. (attachment)
211	03/02/10	7:57 am	Steve Pilober	Service Question
212	03/02/10	2:56 pm	Jeff Taraday	Maple Valley Notice of Appeal Pursuant to BDMC 2.30.085
213	03/02/10	3:01 pm	Margaret Starkey	Maple Valley Notice of Appeal Pursuant to BDMC 2.30.085
214	03/03/10	4:13 pm	Kristi Beckham	Notice of Errata - Lawson Hills Prehearing Brief; Applicant's Reply on Motion to Dismiss Appeal Issues (Lawson Hills); Applicant's Reply on Motion to Dismiss Appeal Issues (The Villages)
215	03/03/10	4:34 pm	Dave Bricklin	In re: Master Planned Development Applications for the Villages and Lawson Hills
216	03/03/10	5:00 pm	Margaret Starkey	Black Diamond's Reply on Motion to Dismiss or, in the Alternative, Motion in Limine; Declaration of Mailing
217	03/03/10	5:27 pm	Judith Carrier	Emailing Appeal Exhibits
218	03/03/10	5:28 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 1 of 6
219	03/03/10	5:29 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 2 of 6
220	03/03/10	5:30 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 4 of 6
221	03/03/10	5:52 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Resending Email 3 - Pages 1-74 of TV Ex. 8 - LH Ex. 6. pdf
222	03/03/10	5:59 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Resending Email 6 of 6 - Pages 1-70 TV Ex 11 - LH Ex. 9.pdf

No.	Date	Time	Sender	Subject
223	03/03/10	6:22 pm	Phil Olbrechts	Motions to Dismiss
224	03/03/10	6:23 pm	Nancy Rogers	Re: Motions to Dismiss
225	03/03/10	6:46 pm	Steve Pilcher	Re: Motions to Dismiss
226	03/03/10	9:21 pm	Judith Carrier	Re: Emailing Appeal Exhibits
227	03/04/10	8:59 am	Judith Carrier	Sending exhibits electronically
229	03/04/10	9:21 am	Judith Carrier	Carrier Exhibits #1
230	03/04/10	9:21 am	Judith Carrier	Carrier Exhibits #2
231	03/04/10	9:55 am	Judith Carrier	Carrier Exhibits #3
232	03/04/10	10:28 am	Judith Carrier	Carrier Exhibits #4
233	03/04/10	10:40 am	Steve Pilcher	Wheeler Exhibits
234	03/04/10	10:51 am	Steve Pilcher	1996 BD Comp Plan EIS - Wheeler Exhibits
235	03/04/10	10:53 am	Steve Pilcher	SEPA Addendum for 2009 Comp Plan Update - Wheeler Exhibit
236	03/04/10	10:59 am	Dave Bricklin	Wheeler Exhibits
237	03/04/10	11:02 am	Judith Carrier	Carrier Exhibits #5
238	03/04/10	11:29 am	Kay Richards	1996 BD Comp Plan EIS - Problems Opening WORD documents
239	03/04/10	11:31 am	Kristi Beckham (Nancy Rogers)	Email 1 of 6 - Problems Opening and Printing Documents
240	03/04/10	11:34 am	Judith Carrier	Carrier Exhibits #6
241	03/04/10	11:34 am	Steve Pilcher	1996 BD Comp Plan EIS - Problems with WORD documents
242	03/04/10	12:06 pm	Judith Carrier	Carrier Exhibits #8
243	03/04/10	12:06 pm	Judith Carrier	Carrier Exhibits #7
244	03/04/10	12:27 pm	Dave Bricklin	Scheduling
245	03/04/10	12:40 pm	Nancy Rogers	Scheduling
246	03/04/10	12:48 pm	Steve Pilcher	Scheduling
247	03/04/10	1:02 pm	Dave Bricklin	Scheduling
248	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #11
249	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #10
250	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #9
251	03/04/10	1:23 pm	Steve Pilcher	Wheeler Exhibits
252	03/04/10	1:26 pm	Nancy Rogers	Scheduling
253	03/04/10	2:09 pm	Bob Sterbank	Scheduling
254	03/04/10	2:31 pm	Kristi Beckham (Nancy Rogers)	Resending of Exhibits LH Ex 15 and RV Ex 18
255	03/04/10	2:54 pm	Bob Sterbank	Maple Valley 2/16/10 Notice of Appeal
256	03/04/10	3:26 pm	Stacey Borland (City)	City Exhibits for Lawson Hills (already have copies)
257	03/04/10	3:30 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 2 (already have copies)
258	03/04/10	3:33 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 3 (already have copies)

No.	Date	Time	Sender	Subject
259	03/04/10	3:35 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 4 (already have copies)
260	03/04/10	3:36 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 5 (already have copies)
261	03/04/10	3:37 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 6 (already have copies)
262	03/04/10	3:41 pm	Stacey Borland (City)	City Exhibits for The Villages (already have copies)
263	03/04/10	3:43 pm	Stacey Borland (City)	City Exhibits for The Villages 2 (already have copies)
264	03/04/10	3:47 pm	Stacey Borland (City)	City Exhibits for The Villages 3 (already have copies)
265	03/04/10	3:49 pm	Stacey Borland (City)	City Exhibits for The Villages 4 (already have copies)
266	03/04/10	3:50 pm	Stacey Borland (City)	City Exhibits for The Villages 5 (already have copies)
267	03/04/10	3:51 pm	Stacey Borland (City)	City Exhibits for The Villages 6 (already have copies)
268	03/04/10	4:22 pm	Steve Pilcher	FW: Carrier Exhibits #3 (already have)
269	03/04/10	4:23 pm	Steve Pilcher	FW: Carrier Exhibits #4 (already have)
270	03/04/10	4:24 pm	Steve Pilcher	FW: Carrier Exhibits #4 (already have)
271	03/04/10	4:25 pm	Steve Pilcher	FW: Carrier Exhibits #2 (already have)
272	03/04/10	4:26 pm	Steve Pilcher	FW: Carrier Exhibits #2 (already have)
273	03/04/10	4:26 pm	Steve Pilcher	FW: Carrier Exhibits #11 (already have)
274	03/04/10	4:27 pm	Steve Pilcher	FW: Carrier Exhibits #11 (already have)
275	03/04/10	4:27 pm	Steve Pilcher	FW: Carrier Exhibits #10 (already have)
276	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #6 (already have)
277	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #6 (already have)
278	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #3 (already have)
279	03/04/10	4:29 pm	Steve Pilcher	FW: Carrier Exhibits #9 (already have)
280	03/04/10	4:34 pm	Steve Pilcher	FW: Carrier Exhibits #9 (already have)
281	03/04/10	4:41 pm	Steve Pilcher	FW: Carrier Exhibits #10 (already have)
282	03/04/10	8:10 pm	Judith Carrier	Sending Exhibits Electronically (with Exhibit List Yellow as attachment)
283	03/05/10	9:02 am	Dave Bricklin	Scheduling
284	03/05/10	10:19 am	Steve Pilcher	Yarrowbay MPD (Comment)
285	03/05/10	11:11 am	Steve Pilcher	Yarrow Bay Developments (Comment)
286	03/05/10	11:35 am	Phil Olbrechts	Yarrowbay MPD
287	03/05/10	11:46 am	Steve Pilcher	Joe May Appeal (with attachment)
288	03/05/10	11:53 am	Phil Olbrechts	Scheduling
289	03/05/10	12:01 pm	Dave Bricklin	Scheduling
290	03/05/10	12:07 pm	Nancy Rogers	Scheduling
291	03/05/10	12:16 pm	Bob Sterbank	Scheduling
292	03/05/10	12:44 pm	Dave Bricklin	Scheduling

No.	Date	Time	Sender	Subject
293	03/05/10	12:48 pm	Dave Bricklin	Scheduling
294	03/05/10	12:57 pm	Mike Kenyon	Scheduling
295	03/05/10	12:59 pm	Mike Kenyon	Scheduling
296	03/05/10	1:17 pm	Phil Olbrechts	Scheduling
297	03/05/10	1:41 pm	Nancy Rogers	Scheduling
298	03/05/10	1:43 pm	Chris Clifford	Scheduling
299	03/05/10	1:48 pm	Phil Olbrechts	Scheduling
300	03/05/10	3:18 pm	Phil Olbrechts	Motions to Dismiss
301	03/05/10	3:27 pm	Phil Olbrechts	Scheduling
302	03/05/10	3:28 pm	Kay Richards	Order on Motions to Dismiss (PDF)
---END OF SECOND REVISED EMAIL EXHIBIT LIST---				
303	03/05/10	4:22 pm	Steve Pilcher	Joe May Appeal
304	03/05/10	4:44 pm	Dave Bricklin	Scheduling
305	03/05/10	5:06 pm	Kay Richards	Second Revised Prehearing Exhibit List (PDF)
306	03/05/10	5:25 pm	Phil Olbrechts	Joe May Appeal
307	03/05/10	6:01 pm	Phil Olbrechts	Exhibit Management
308	03/05/10	7:03 pm	Melanie Gauthier	Motions to Dismiss
309	03/05/10	7:47 pm	Dave Bricklin	Subpoena
310	03/05/10	8:31 pm	Steve Pilcher	Joe May Appeal
311	03/08/10	9:00 am	Kay Richards	Standard of Proof on Motions to Dismiss (second copy of DOC)
312	03/09/10	1:02 am	Bob Sterbank	Standing
313	03/09/10	7:44 am	Chris Clifford	Standing
314	03/09/10	9:21 am	Nancy Rogers	Standing
315	03/09/10	10:41 am	Chris Clifford	Standing
316	03/09/10	11:23 am	Phil Olbrechts	Standing
317	03/09/10	11:33 am	Bob Sterbank	Standing
318	03/09/10	12:24 pm	Chris Clifford	Standing
319	03/10/10	7:46 am	Nancy Rogers	Witness Scheduling
320	03/10/10	1:22 pm	Phil Olbrechts	Witness Scheduling
321	03/12/10	6:12 pm	Phil Olbrechts	Hearing Schedule
322	03/14/10	11:19 am	Lynne Christie	Black Diamond question
323	03/14/10	8:31 pm	Phil Olbrechts	Black Diamond question
324	03/14/10	8:37 pm	Phil Olbrechts	Black Diamond question
325	03/14/10	9:21 pm	Postnaster at KenyonDisend	Proposed Scheduling (Out of Office)
326	03/14/10	9:19 pm	Phil Olbrechts	Proposed Scheduling
327	03/15/10	10:35 am	Mike Kenyon	Black Diamond question
328	03/15/10	12:26 pm	Nancy Rogers	Proposed Scheduling
---END OF THIRD REVISED EMAIL EXHIBIT LIST---				
329	03/15/10	1:13 pm	Phil Olbrechts	Black Diamond MPD Hearing Exhibits
330	03/15/10	4:09 pm	Phil Olbrechts	Proposed Scheduling

No.	Date	Time	Sender	Subject
331	03/15/10	4:20 pm	Stacey Borland	Proposed Scheduling
332	03/15/10	4:58 pm	Dave Bricklin	Proposed Scheduling
333	03/15/10	5:04 pm	Dave Bricklin	Proposed Scheduling
334	03/15/10	5:20 pm	Nancy Rogers	Proposed Scheduling
335	03/15/10	6:50 pm	Phil Olbrechts	Proposed Scheduling
336	03/15/10	6:54 pm	Dave Bricklin	Proposed Scheduling
337	03/16/10	1:07 pm	Stacey Borland	Exhibits
338	03/16/10	1:08 pm	Stacey Borland	Exhibits
339	03/16/10	3:25 pm	Phil Olbrechts	Black Diamond MPD Hearing Exhibits
340	03/18/10	8:55 pm	Phil Olbrechts	More Scheduling
341	03/19/10	8:10 pm	Bob Sterbank	More Scheduling
342	03/19/10	11:01 am	Christy Todd	More Scheduling
343	03/19/10	1:05 pm	Christy Todd	More Scheduling
344	03/19/10	3:23 pm	Stacey Borland	Additional MPD Exhibits
345	03/19/10	3:25 pm	Stacey Borland	Additional Exhibit 2
346	03/19/10	4:19 pm	Bob Sterbank	More Scheduling
347	03/19/10	5:03 pm	Dave Bricklin	MPD Rebuttal
--END OF FOURTH REVISED EMAIL EXHIBIT LIST--				
348	03/22/10	8:46 am	Nancy Rogers	MPD Rebuttal
349	03/22/10	9:45 am	Phil Olbrechts	MPD Rebuttal
350	03/22/10	9:52 am	Emily Terrell	MPD Rebuttal
351	03/22/10	9:55 am	Emily Terrell	MPD Rebuttal
352	03/22/10	10:17 am	Bob Sterbank	MPD Rebuttal
353	03/22/10	10:35 am	Dave Bricklin	MPD Rebuttal
354	03/22/10	10:41 am	Bob Sterbank	MPD Rebuttal
355	03/22/10	10:46 am	Nancy Rogers	MPD Rebuttal
356	03/22/10	10:53 am	Brenda Martinez	Black Diamond Exhibit List
357	03/22/10	10:53 am	Marsha St. Louis	Black Diamond Exhibit List
358	03/22/10	11:51 am	Dave Bricklin	MPD Rebuttal
359	03/22/10	12:02 pm	Nancy Rogers	MPD Rebuttal
360	03/22/10	12:05 pm	Phil Olbrechts	MPD Rebuttal
361	03/22/10	12:15 pm	Dave Bricklin	MPD Rebuttal
362	03/22/10	12:45 pm	Nancy Rogers	MPD Rebuttal
363	03/22/10	12:59 pm	Bob Sterbank	MPD Rebuttal
364	03/22/10	2:10 pm	Phil Olbrechts	MPD Rebuttal
365	03/22/10	2:22 pm	Chris Clifford	MPD Comments
366	03/22/10	2:24 pm	Brenda Martinez	MPD Comments
367	03/22/10	2:42 pm	Brenda Martinez	Latest Exhibit List
368	03/22/10	2:42 pm	Phil Olbrechts	Latest Exhibit List
369	03/22/10	2:50 pm	Stacey Borland	Question about Exhibits
370	03/22/10	3:13 pm	Dave Bricklin	Latest Exhibit List
371	03/22/10	3:20 pm	Phil Olbrechts	Revised Scheduling
372	03/22/10	4:02 pm	Stacey Borland	Sign in sheets for public comments
373	03/22/10	4:22 pm	Phil Olbrechts	Hearing Exhibit List ("H" Documents)

No.	Date	Time	Sender	Subject
374	03/22/10	8:50 pm	Dave Bricklin	MPD Comments
375	03/22/10	11:22 pm	Dave Bricklin	LOS
376	03/23/10	8:40 am	Judith Carrier	Hearing Exhibit List ("H" Documents)
377	03/23/10	9:07 am	Phil Olbrechts	Email Comment
378	03/23/10	9:28 am	Phil Olbrechts	Email Comment
379	03/23/10	11:33 am	Stacey Borland	Latest Exhibit List
380	03/23/10	2:17 pm	Phil Olbrechts	Hearing Exhibit List ("H" Documents)
381	03/23/10	2:29 pm	Phil Olbrechts	Email Exhibit List
382	03/23/10	2:48 pm	Stacey Borland	Email Exhibit List
383	03/23/10	3:01 pm	Phil Olbrechts	Email Exhibit List
384	03/23/10	3:07 pm	Stacey Borland	Email Exhibit List
385	03/23/10	3:23 pm	Phil Olbrechts	Email Exhibit List
386	03/23/10	4:21 pm	Bob Sterbank	LOS
387	03/23/10	5:12 pm	Nancy Rogers	LOS
388	03/23/10	6:14 pm	Dave Bricklin	LOS
389	03/23/10	7:45 pm	Jason Paulsen	LOS
390	03/24/10	9:54 am	Nancy Rogers	LOS
391	03/24/1-	12:17 pm	Bob Sterbank	LOS
392	03/24/10	1:55 pm	Dave Bricklin	LOS
393	03/24/10	2:36 pm	Emily Terrell	Question
394	03/24/10	3:34 pm	Emily Terrell	Question
395	03/24/10	4:06 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
396	03/24/10	4:47 pm	Brenda Martinez	Updated Exhibit List
397	03/24/10	5:08 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
398	03/24/10	5:15 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
399	03/24/10	5:54 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
400	03/24/10	5:57 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
401	03/24/10	5:59 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
402	03/25/10	8:06 am	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
403	03/25/10	9:08 am	Dave Bricklin	Ruling on Applicant/City Objections to

No.	Date	Time	Sender	Subject
				Documents Submitted after Close of Record
404	03/25/10	9:59 am	Phil Olbrechts	Index of H Documents
405	03/25/10	10:22 am	Bob Sterbank	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
406	03/25/10	10:32 am	Nancy Rogers	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
407	03/25/10	11:18 am	Stacey Borland	Index of H Documents
408	03/25/10	11:18 am	Stacey Borland	Email Exhibit List
409	03/25/10	1:21 pm	Stacey Borland	Black Diamond Exhibit #10: Problem
410	03/25/10	3:20 pm	Phil Olbrechts	Timeliness of Bricklin 3/22/10 email objection
411	03/26/10	5:02 pm	Jeff Taraday	Missing Exhibit
412	03/27/10	4:33 pm	Jeff Taraday	Missing Exhibit
413	03/29/10	10:27 am	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
414	03/29/10	10:32 am	Nancy Rogers	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
415	03/29/10	11:07 am	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
416	03/29/10	11:08 am	Jeff Taraday	Missing Exhibit
417	03/29/10	11:13 am	Stacey Borland	MPD Hearing Exhibit List
418	03/29/10	11:21 am	Phil Olbrechts	MPD Hearing Exhibit List
419	03/29/10	1:01 pm	Jeff Taraday	Black Diamond Demand Model
420	03/29/10	2:12 pm	Bob Sterbank	Black Diamond Demand Model
421	03/29/10	3:28 pm	Jeff Taraday	Black Diamond Demand Model
422	03/29/10	3:39 pm	Phil Olbrechts	Please communicate with me via this email address
423	03/29/10	3:42 pm	Phil Olbrechts	Please communicate with me via this email address
424	03/29/10	4:04 pm	Chris Clifford	Closing for Clifford et al
425	03/29/10	4:18 pm	Peggy Cabill for David Bricklin	Post-Hearing Brief of SEPA Appellants, Declaration of Service
426	03/29/10	4:19 pm	Bob Sterbank	Re: Black Diamond Demand Model
427	03/29/10	4:23 pm	Cindy Proctor	Supplemental Post Hearing Brief Wheeler Proctor
428	03/29/10	4:28 pm	William and Cindy Wheeler	Supplemental Post Hearing Brief Wheeler Proctor
429	03/29/10	4:35 pm	Melanie	Post Hearing Brief of SEPA appellant M.

No.	Date	Time	Sender	Subject
			Gauthier	Gauthier
430	03/29/10	4:37 pm	Jeff Taraday	Re: Black Diamond demand model
431	03/29/10	4:54 pm	Kristi Beckham for Nancy Rogers	Applicants' Closing Brief and Applicants' Rebuttal to Additional Public Testimony
432	03/29/10	5:34 pm	Judith Carrier	Closing Brief Time Deadline
433	03/29/10	6:13 pm	Bob Sterbank	MPD Applications for The Villages and Lawson Hills - City's Post-Hearing Brief
434	03/29/10	6:50 pm	Chris Clifford	Motion to Strike City of Black Diamond's FEIS Closing - Untimely
435	03/29/10	6:55 pm	Dave Bricklin	Out of Office
436	03/29/10	6:56 pm	Phil Olbrechts	Briefing Deadlines
437	03/29/10	7:00 pm	Bob Sterbank	Re: Motion to Strike City of Black Diamond's FEIS Closing - Untimely
438	03/29/10	7:01 pm	Bob Sterbank	Re: Briefing Deadlines
439	03/29/10	11:48 pm	Bob Sterbank	Black Diamond's MPD Rebuttal Comments; Felt-Hanson; King Co. CPP Excerpts
440	03/29/10	11:50 pm	Judith Carrier	BD Closing Brief
441	03/29/10	11:51 pm	Bob Sterbank	Black Diamond's MPD Rebuttal Comments
442	03/30/10	9:05 am	Judith Carrier	BD Closing Brief
443	03/31/10	2:11 pm	Dave Bricklin	Out of Office
444	03/31/10	2:11 pm	Phil Olbrechts	Prehearing Exhibits
445	03/31/10	3:36 pm	Stacey Borland	Re: Electronic Files - Staff Reports Attachments are staff reports for The Villages and Lawson Hills
446	03/31/10	5:45 pm	Judith Carrier	Re: Prehearing Exhibits; attachment is BD Exhibit List Yellow.docx
447	03/31/10	8:10 pm	Melanie Gauthier	Re: Prehearing Exhibits; attachment is Exhibits for FEIS hearing.doc
448	04/01/10	9:24 am	Stacey Borland	Additional Exhibit
449	04/01/10	10:52 am	Gil Bortleson	"Mr. Olbrechts" (?) report that prehearing exhibits were delivered to the City of Black Diamond
450	04/01/10	1:21 pm	Jeff Taraday	Tomorrow's submission from Maple Valley
451	04/01/10	2:03 pm	Nancy Rogers	Re: Prehearing Exhibits; attachments are Redlined Villages and Lawson Hills SEPA Appeal Exhibit Lists (2)
452	04/01/10	2:05 pm	Nancy Rogers	Re: Prehearing Exhibits; attachment is The Villages Context Plan
453	04/01/10	2:07 pm	Nancy Rogers	Re: Prehearing Exhibits; attachment is Lawson Hills Context Plan

No.	Date	Time	Sender	Subject
454	04/01/10	2:34 pm	Phil Olbrechts	Re: Tomorrow's Submission from Maple Valley
455	04/01/10	3:10 pm	Jeff Taraday	Re: Tomorrow's Submission from Maple Valley
456	04/01/10	3:44 pm	Nancy Rogers	Re: Tomorrow's Submission from Maple Valley
457	04/01/10	4:00 pm	Jeff Taraday	Re: Tomorrow's Submission from Maple Valley
458	04/01/10	8:27 pm	Phil Olbrechts	Re: Tomorrow's Submission from Maple Valley
459	04/02/10	9:15 am	Bob Sterbank	Re: Tomorrow's Submission from Maple Valley
460	04/02/10	10:31 am	Cindy Proctor	Re: Prehearing Exhibits; attachment is Wheeler et al Exhibits List and Electronic Exhibits List
461	04/02/10	11:17 am	Nancy Rogers	Re: Tomorrow's Submission from Maple Valley
462	04/02/10	12:47 pm	Jeff Taraday	Exhibit G to Dr. Janarthanan's Third Declaration
463	04/02/10	1:17 pm	Phil Olbrechts	Prehearing Exhibits
464	04/02/10	2:52 pm	Jeff Taraday	Third Declaration of Natarajan Janarthanan, Exhibit Nos. B - F; attachments are Exh. B - Parametrix Trip Distribution Sheet for The Villages; Exh. C - Parametrix Trip Distribution sheet for Lawson Hills; Exh. D - PM Trip Distribution Map; Exh. E - Maple Valley 2025 Trip Distribution Map, Exh. F - Figure 11 from TTR
465	04/02/10	9:09 pm	Jeff Taraday	Third Declaration of Natarajan Janarthanan and Exhibit A; attachments are Third Declaration and Exhibit a
466	04/02/10	11:33 pm	Jeff Taraday	Maple Valley's Second Brief on MPD Compliance; attachment is MV's Second Brief on MPD Compliance PDF
--END OF FIFTH REVISED EMAIL EXHIBIT LIST--				
467	04/05/10	4:01 pm	Dave Bricklin	Re: Prehearing Exhibits; Wheeler et al Exhibits List as attachment
468	04/09/10	1:20 pm	Phil Olbrechts	Exhibit Lists
469	04/09/10	3:41 pm	Kay Richards	Re: Exhibit Lists; Attachments are Index of H Documents; Index of Prehearing Documents; MPD Hearing Exhibits; Email Exhibit List
470	04/12/10	9:33 am	Phil Olbrechts	Exhibit Lists
471	04/12/10	1:05 pm	Phil Olbrechts	Question on Gauthier Exhibits

No.	Date	Time	Sender	Subject
472	04/12/10	1:33 pm	Melanie Gauthier	Re: Question on Gauthier Exhibits
473	04/12/10	4:10 pm	Kristi Beckham (Nancy Rogers)	In re MPD Applications for Villages/Lawson Hills; attachment is Applicants' 3rd Rebuttal Memo, 4-12-10
474	04/12/10	11:19 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. 1a, 1b, 1c, 1d, 1e, 1f, and 1g as PDFs
475	04/12/10	11:21 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. 2a, 2b, 2c, 2d, 2e, 2f, and 2g as PDFs
476	04/12/10	11:24 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. B1, B2, C, D, E1 and E2
477	04/12/10	11:26 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; no attachments, left off in error
478	04/12/10	11:40 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. F1, F2, F3, F4, G, H, and I
479	04/12/10	11:55 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
480	04/13/10	12:02 am	Bob Sterbank (sent from home email address due to fear of nondelivery of earlier message)	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
481	04/13/10	12:13 am	Bob Sterbank (sent from home email address due to fear of nondelivery of earlier message)	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
482	04/13/10	8:43 am	Nancy Rogers	Re: In re: MPD Apps for Villages and Lawson Hills; "City's proposed clarifications are acceptable to Applicant"
483	04/13/10	1:22 pm	Dave Bricklin	Re: In re: MPD Apps for Villages and Lawson Hills; Comments on Perlic's supplemental declaration
484	04/13/10	2:06 pm	Bob Sterbank	Re: In re: MPD Apps for Villages and Lawson Hills; Comments on Bricklin's

No.	Date	Time	Sender	Subject
				comments on Perlic's declaration
485	04/13/10	2:09 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills; Ruling on SEPA decision
486	04/13/10	5:02 pm	Nancy Rogers	Re: Another Question re the Exhibit Lists re: transcripts
487	04/13/10	5:45 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Comments on Bricklin's comments on Perlic's declaration
488	04/13/10	5:47 pm	Phil Olbrechts	Re: Another Question re the Exhibits Lists; Transcript emails to be removed
489	04/13/10	8:07 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills re: deadlines for submission
490	04/14/10	12:30 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Perlic Declaration in Support of MDP Traffic Rebuttal attachment
491	04/14/10	12:32 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Attachments A - I to the Perlic Declaration
492	04/14/10	12:36 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills
493	04/14/10	12:43 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills
494	04/14/10	8:19 pm	Dave Bricklin	Re: In re MPD Apps for Villages and Lawson Hills
495	04/14/10	10:53 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills
496	04/15/10	11:59 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills; attachment is The Villages Hearing Examiner Decision

EXHIBIT A

Attachment 2

0027238

BLACK DIAMOND MPD CLOSED RECORD HEARINGS  
EXHIBIT LIST

("C" Documents)

Updated - July 19, 2010

No.	Provided by	Description
C-1	Cindy Proctor	06/21/10 General Affidavit
C-2	Cindy Proctor	03/05/10 email from Leih Mulyihill to Cindy Proctor
C-3	Nancy Rogers	Excerpts from Craig Goodwin's Blog
C-4	Nancy Rogers	Excerpts of Craig Goodwin's Blog
C-5	Robert Edelman	06/22/10 Request for reconsideration regarding Council rules
C-6	City of Black Diamond	Staff Comments and Recommendations concerning HE recommendations
C-7	Councilmember Goodwin	06/24/10 preliminary questions for YarrowBay
C-8	Nancy Rogers	06/22/10 Memorandum to Black Diamond City Council
C-9	David Bricklin	06/24/10 Letter to Mayor Rebecca Olness
C-10	Mike Kenyon	06/25/10 Email exchange from Peter Rimbos and Mike Kenyon
C-11	Bob Sterbank	6/28/10 Email exchange between Jason Paulsen and Bob Sterbank
C-12	Judith Carrier	Copy of comments read into the record
C-13	Lynne Christie	Written Statement
C-14	Ron Taylor	Copy of comments read into the record
C-15	Judy Taylor	Copy of comments read into the record
C-16	Cindy Proctor	Copy of comments read into the record
C-17	Robert Taeschner	Copy of comments read into the record
C-18	Judith Carrier	Maps
C-19	Vicki Harp	Email exchange between Vicki Harp and Mike Kenyon regarding clarification on ex parte communication with Councilmember Hanson
C-20	Cindy Proctor	Melanie Gauthier written statement
C-21	Gomer Evans	Written Statement
C-22	Clarissa Metzler Cross	Copy of comments read into the record
C-23	Mark and Harriet Dalos	Copy of comments read into the record
C-24	Donna Gauthier	Copy of comments read into the record
C-25	Cindy Wheeler	Copy of tree preservation code from City's website
C-26	Robbin Taylor	Copy of comments read into the record, including referenced materials
C-27	City of Auburn	Written Statement

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C-28	Richard Ostrowski	Copy of comments read into the record
C-29	Fred and Polly Rohrbach	Written Statement
C-30	Janie Edelman	Copy of comments read into the record
C-31	Robert Edelman	Written Statement
C-32	Thomas Hanson	Written Statement
C-33	Cindy Wheeler	Copy of comments read into the record
C-34	Bruce Early	Written Statement
C-35	Mike Irrgang	Copy of comments read into the record
C-36	Erika Morgan	Copy of comments read into the record
C-37	David Bricklin	Rural by Design figures 6-2, 6-3
C-38	Gretchen and Michael Buet	Written Statement
C-39	Ulla Kemman	Copy of comments read into the record
C-40	Robert Rothschilds	Copy of comments read into the record
C-41	Vicki and William Harp	Copy of comments read into the record
C-42	Steven Garvich	Copy of comments read into the record
C-43	Lisa Garvich	Copy of comments read into the record
C-44	Lisa and Steve Garvich	Letter to Black Diamond City Council
C-45	Robert Rothschilds	Written Statement
C-46	Jack Sperry	Copy of comments read into the record
C-47	Jack Sperry	Written Statement
C-48	David Bricklin	Written Statement
C-49	Cindy Proctor	Letter to Black Diamond City Council
C-50	Laure Iddings	Suggested Amendments
C-51	G. C. Bortleson	Copy of comments read into the record
C-52	G. C. Bortleson	Written Statement
C-53	Joe May	Copy of comments read into the record
C-54	Carol Lynn Harp	Copy of comments read into the record
C-55	Peter Rimbo	Copy of comments read into the record
C-56	Peter Rimbo	Written Statement
C-57	City of Maple Valley	Proposed Order on Remand
C-58	City of Maple Valley	Maple Valley Brief
C-59	City of Maple Valley	Map - Exhibit No. 15 (Exhibit 7)
C-60	City of Maple Valley	Map - Exhibit No. 211 (Exhibit D)
C-61	City of Maple Valley	Map - Exhibit No. 211 (Exhibit E)
C-62	City of Maple Valley	Map - Exhibit No. 211 (Exhibit F)

C-63	City of Maple Valley	Map - Exhibit No 15 (Exhibit 2)
C-64	City of Maple Valley	Map - Exhibit No. 15 ( Exhibit 3)
C-65	City of Maple Valley	Map - Exhibit No. 15 (Exhibit 4)
C-66	Laure Iddings	Copy of comments read into the record
C-67	Judith Carrier	Written Statement
C-68	Sally Neary - Sierra Club	Copy of comments read into the record
C-69	Steve Hiester - GMVUAC	Copy of comments read into the record
C-70	Rick Bradbury	Copy of comments read into the record
C-71	Dennis Boxx	Written Statement
C-72	Bill Wheeler	Copy of comments read into the record
C-73	Kristin Bryant	Copy of comments read into the record
C-74	Julle Earley	Copy of comments read into the record
C-75	Bonnie Scott	Copy of comments read into the record
C-76	Monica Stewart	Copy of comments read into the record
C-77	City of Black Diamond	Staff Closing Statement
C-78	Nancy Rogers	Applicant Closing Statement
C-79	Mike Kenyon	Objections to Extra-Record Evidence
C-80	Bob Edelman	Objections to evidence outside of the MPD records
C-81	Jeff Taraday	Objections to new evidence submitted during hearing
C-82	Nancy Rogers	Extra Record Objections

## EXHIBIT B

### CONCLUSIONS OF LAW

1. Authority of City Council. BDMC 18.98.060(A)(6) provides that the City Council shall, following receipt of the hearing examiner's recommendation, schedule a time for consideration of the MPD, and that the council may (a) accept the examiner's recommendation; (b) remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or (c) modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed. The Conclusions of Law set forth below, and the Findings of Fact adopted in Exhibit A above upon which these Conclusions of Law are based, are within the City Council's authority provided in BDMC 18.98.060(A)(6)(c).
2. Conclusions as Findings of Fact. Any Conclusions of Law adopted herein that are findings of fact shall be deemed as such. Any Findings of Fact adopted in Exhibit A above that are conclusions of law are hereby adopted as if set forth herein in full.
3. Review Criteria. BDMC 18.98.060(A)(6) and 18.98.080 require the City Council to base its decision the MPD on the approval criteria set forth in BDMC 18.98.080. However, BDMC 18.98.080(A)(1) also requires compliance with all applicable regulations, and BDMC 18.98.080(A)(10) requires compliance with the purposes outlined in BDMC 18.98.010(B) through (M) as well as the public benefit objectives contained in BDMC 18.98.020. Consequently, these Conclusions of Law address compliance with all the provisions of Chapter 18.98 BDMC, as well as some provisions of the International Fire Code (IFC) required to be addressed at this stage of review. Applicable criteria are quoted in bold italics with corresponding Conclusions of Law assessing compliance.
4. ***BDMC 18.98.010(A): Establish a public review process for MPD applications.***

This purpose is met. The MPDs have been the subject of multiple environmental appeals, over one hundred hours of open and closed record hearings, and hundreds of written comments. Members of the public were given ten minutes each to testify before the Hearing Examiner, and parties of record who so testified or submitted written comments were also provided ten minutes each to present argument to the City Council during its closed record hearing. Although some parties of record nevertheless asserted that there was not enough time for them to review or comment upon the MPD applications, the public was provided ample opportunity to comment on the MPDs. The public review process utilized for the Villages MPD applications complied with the purpose of BDMC 18.98.010(A).

**5. BDMC 18.98.010(B): *Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size.***

As detailed in Finding of Fact No. 2, the Villages MPD project comprises 1,196 acres. It is therefore subject to the MPD review process as per BDMC 18.98.010(B). The North Property (aka Parcel B), although approximately 80 acres in size (and thus potentially eligible to be an MPD unto itself), is considered part of the overall Villages MPD, and was therefore also subjected to the MDP review process in accordance with BDMC 18.98.010(B). Pursuant to Section 18.98.030(C), an MPD commercial area may be geographically separate from the MPD's residential component.

**6. BDMC 18.98.010(C): *Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents.***

As detailed in Finding of Fact No. 2, the Land Use Plan map (Figure 3-1, dated July 8, 2010), and page 3-21 of the MPD application, the project proposes to preserve significant amounts of open space. They include a mix of passive and usable areas comprised of sensitive areas such as wetlands and their associated buffers, trails, parks, and utilities such as stormwater ponds. Figure 3-1 (July 8, 2010) of the MPD application shows a majority of the areas dedicated to open space as a coordinated network. As detailed in Finding of Fact No. 12.B, the wildlife corridors are more than double the width recommended by King County's wildlife network biologist. The vast majority of open space will be maintained as sensitive areas (primarily wetlands and streams) and their required buffers. Therefore, these open space, trails, parks, wetlands, buffers and wildlife corridors comply with BDMC 18.98.010(C)'s purpose of preserving open space, wildlife corridors and open space lands.

**7. BDMC 18.98.010(D): *Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;***

Chapter 3 of the MPD application requests residential and commercial development standards that allow for great flexibility in building design and development layout. In terms of residential development, this includes a variety of housing types at varying densities; alley-loaded lots; clustered residential centered on common greens; and live/work units. The applicant has agreed to a condition requiring detached single-family dwelling units to be "alley loaded," which is not a typical suburban development pattern.

In addition, live/work units are described on page 3-35 of the application materials, and their potential location is now depicted on the Land Use Plan map contained in the Land Use Plan Map in Figure 3-1 (July 8, 2010). Although when researching other large master planned communities in the Puget Sound (such as Issaquah Highlands), staff

found the viability of live/work units to be limited, the location indicated in the Land Use Plan map is in the center of the Villages proposed development area where live/work units are most likely to be viable.

With the unavoidable exception of several road crossings, avoidance of sensitive areas was a factor in the overall layout of this project. The land use plan/constraints map overlay (Ex. CBD-2-11) shows the relationship between sensitive areas and proposed development parcels. The Villages MPD application materials indicate that the proposed Community Connector road and multiple parks are designed to enhance views of Mt. Rainier.

As proposed in the Villages MPD application, the innovative design purpose of BDMC 18.98.010(D) is met. The City Council expects to establish some of the street design features in the Development Agreement and other infrastructure design flexibility through the design deviation process already established within the Black Diamond Engineering Design and Construction Standards.

**8. BDMC 18.98.010(E): Allow flexibility in development standards and permitted use;**

A. Chapter 3 of the MPD application proposes residential and commercial development standards and uses that allow for flexibility in building design and development layout. The commercial component of the MPD would be located on the North Property (Parcel B) and in the northern portion of the Main Property. The eastern portion of Parcel B is proposed as a high density residential use. The remaining residential, schools, and parks components would occur on the Main Property. In some cases, these proposed densities differ from those available under other zoning designations in the remainder of the City, and would therefore be unique to these MPD properties. As such, the development of the MPD will utilize flexibility in development standards and permitted uses, and therefore satisfies the purpose outlined in BDMC 18.98.010(E), as explained in more detail below.

B. The project proposes three residential categories, MPD-L (1-8 du/ac), MPD-M (7-12 du/ac) and MPD-H (13-30 du/ac). (The minimum 1 unit per acre density proposed is not consistent with the BDUGAA, past pre-annexation agreements, or the City's Comprehensive Plan. A minimum density of 4 du/ac for residential properties is therefore a condition of approval.) Chapter 3 of the application requests the MPD "Master Developer" have the ability to propose to change the category of individual residential development parcels as shown on the Figure 3-1 Land Use Plan. The proposal includes the ability to adjust up or down one residential land use category through an administrative review process (this would not apply to the 18-30 du/acre category). The adjustment of land use categories would not allow an increase in the overall unit cap of 4,800. The areas proposed for the highest residential densities (18-30 du/ac) have been depicted on the land use plan.

C. The City Council concludes that if the applicant requests to change the residential category of a development parcel internal to the project, then an administrative process would be appropriate. However, a change in a residential category that abuts the perimeter of the MPD requires a public hearing process as a Major Amendment to the MPD. Additionally, the Development Agreement should also establish a limitation to allow such reclassification of development parcels no more frequently than once per calendar year (consistent with the allowance for Comprehensive Plan amendments).

D. While the applicant has proposed a wide variety of project-specific development standards, not all should be granted. Some of these areas are identified and discussed under the "Functionally Equivalent Standards" portion of these Conclusions. Specifically, decision on a number of the land use development standards (table of allowed uses, setbacks, etc.) should be addressed in the Development Agreement. This will provide the opportunity for further discussions with the applicant. There are several areas in which less stringent standards than required elsewhere in the city are being sought, some of which are requested in the functionally equivalent standards mentioned above. Until the applicant provides greater certainty and clarity to the actual development proposed for the site, these requests are not justifiable even with the flexibility called for by BDMC 18.98.010(E). The amount of flexibility being requested in the proposed project at this time - while the overall plan is highly conceptual - does not result in a compelling reason to allow these different standards. There are numerous concerns, including uses proposed to be permitted in open space areas; a minimum 18' front yard setback to residential garages (20' required by MPD Design Guidelines and in standard zones); inadequate parking lot landscaping, resulting in less required landscaping than the city's nonresidential zones; excessive allowance for compact parking stalls (65% vs. 25% elsewhere in the city); and insufficient required parking for commercial/retail uses (a particular concern when Parcel B's location means it will be heavily oriented to automobile trips).

E. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and storm water comprehensive plan concepts. Staff, the applicant, the hearing examiner and the Council can resolve the large, overarching design issues and establish some of the proposed functionally equivalent construction standards as part of the Development Agreement. In addition to the flexibility of establishing functionally equivalent standards as part of the Development Agreement, the Engineering Design and Construction Standards contain an administrative deviation process (section 1.3 of the standards) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering Design & Construction Standards' administrative deviation process.

**9. BDMC 18.98.010(F): Identify significant environmental impacts, and ensure appropriate mitigation;**

The MPDs have been subject to extensive and intensive environmental review. The FEIS is supported by hundreds of pages of environmental analysis. The bulk of the hearings on the MPDs was comprised of the testimony of numerous experts addressing the appeals of the FEIS. Through this process several areas of improvement were identified, resulting in Hearing Examiner recommendations for and Applicant offers of extensive additional mitigation, including additional future impact analysis and mitigation. That mitigation, and the requirements for additional future analysis, are incorporated into the conditions of MPD approval in Exhibit C below. New conditions addressing traffic and noise in particular, will help ensure that all significant environmental impacts are appropriately mitigated. See Finding of Fact No. 5.E. For the reasons detailed in the Findings of Fact, the City Council concludes that the requirement of BDMC 18.98.010(F) has been met.

**10. BDMC 18.98.010(G): Provide greater certainty about the character and timing of residential and commercial development and population growth within the city.**

A. As detailed in the Findings of Fact, the project proposes a maximum of 4,800 units and 775,000 square feet of office and commercial uses to be built out in three phases over a period of approximately 15 years. (It should be noted that the application includes several uses which are typically considered to be industrial uses under the definition of "office"). Chapter 9 of the MPD application indicates the phasing of development, with the initial development focus south of Auburn-Black Diamond Road, followed later by development on the north side and the commercial area of the proposed Lawson Hills MPD (North Triangle). Development would progress outward from these areas, with the southeastern portion of The Villages site being the last area likely to be developed.

B. Chapter 3 of the MPD application contains design concepts that illustrate the proposed character of development. Ch. 3 also describes a variety of housing types anticipated to be built and proposes development standards that would apply exclusively within the MPD. Although the level of detail of the MPD does not include typical subdivision or project layouts, per Conclusion No. 8 above and related conditions of approval in Exhibit C below, the Development Agreement will specify details of what product type will be built where and when, and the additional development standards and design guidelines to which the development will be subject. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines adopted in June 2009. In addition, the conditions of approval shall also establish a target unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) be incorporated into the Development Agreement. And, all commercial/office uses (other than home occupations) shall only occur on lands so designated.

Therefore, subject to the conditions of approval in Exhibit C below, the purpose set forth in BDMC 18.98.010(G) is met.

11. **BDMC 18.98.010(H): *Provide environmentally sustainable development.***

A. Low Impact Development. The MPD application discusses implementation of low impact development (LID) techniques, water conservation, clustering development and preserving open space. Because of the suitability of soils on the Main Property (as described in Ch. 4 of the FEIS), LID should have excellent potential. As a condition of approval, mechanisms shall be identified to integrate LID into the overall design of the MPD.

B. Compliance with Environmental Ordinances. The MPD will comply with codes aimed at environmental protection, including but not limited to the Sensitive Areas Ordinance, and will also provide mitigation measures derived from the FEIS designed to prevent the project from having an adverse impact on the environment.

C. Vehicle Trip Reduction. The project includes a number of design features (trails and bike lanes, inclusion of schools within walkable distances to residential areas) that will facilitate non-motorized travel within the Main Property. It is possible that some vehicle trips would be reduced especially given the proximity of commercial uses to the residential component of Parcel B and the Main Property's Town Center.

D. Villages MPD Provides Environmentally Sustainable Development. In light of the conclusions in 11.A - C above, and subject to the conditions of approval in Exhibit C below, the Villages MPD complies with BDMC 1898.010(H)'s purpose of providing environmentally sustainable development.

12. **BDMC 18.98.010(I): *Provide needed services and facilities in an orderly, fiscally responsible manner.***

This purpose is met. The MPD application, along with conditions of approval, will ensure that needed services and facilities are provided in an orderly, fiscally responsible manner. Chapters 4-8 of the MPD application discuss transportation, parks, stormwater, sewer, and water facilities; Ch. 9 discusses the project phasing plan and the timing of these improvements. Ch. 9 of the MPD application also discusses several cost recovery mechanisms related to construction of facilities improvements, including local improvement districts, latecomer agreements and other financing mechanisms such as community facility districts. In addition, a proactive transportation monitoring plan, with a list of projects and trigger mechanisms acceptable to the City, is required by Conditions 20 and 25 in Exhibit C below, with the monitoring plan to be further detailed as part of the Development Agreement. Condition 25, in particular, requires traffic mitigation measures to be installed so as to maintain the City's adopted level of service, rather than subsequent to a decline in level of service. And, Condition No. 17 requires periodic

review of traffic impacts, and identification and construction of additional mitigation if the mitigation identified in Conditions 15 and 16 is insufficient to mitigate identified traffic impacts from the Villages MPD. In light of the phased construction of regional public infrastructure projects, the monitoring plan, and periodic review and analysis of traffic impacts and mitigation, to be further specified in the Development Agreement, the Villages MPD will provide services and facilities in an orderly fiscally responsible manner.

**13. BDMC 18.98.010(J): *Promote economic development and job creation in the city.***

The Villages MPD also satisfies the purpose of promoting economic development and job creation in the City, as called for by BDMC 18.98.010(J). As shown on the Land Use Map in Figure 3-1 (July 8, 2010), and as detailed in Finding of Fact No. 2, the MPD project has designated 67 acres for a maximum of 775,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail; among other things, it describes office uses as a broad category including such things as general office, business support services, light manufacturing, wholesaling and mini-storage. While the ultimate mix of uses will remain unknown until full build out, the amount of land provided in the MPD for retail and office uses meets the purpose of promoting economic development and job creation.

**14. BDMC 18.98.010(K): *Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;***

A. The purpose set out in BDMC 18.98.010(K) is also satisfied. As detailed in Finding of Fact No. 2 and as shown on the Land Use Plan map in Figure 3-1 (July 8, 2010) and described in the MPD application, the Villages MPD includes a mixed-use town center, a variety of housing types and densities, areas for schools and other civic uses, and recreational opportunities in the form of a variety of parks and trails. Chapter 3 of the MPD application describes a variety of housing types including detached single family, duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. With the exception of stacked flats, which are described as a possible housing type within the high-density category, all other types could be built within areas designated for either low or medium density residential uses.

B. The application includes schematic drawings of potential housing types and lot configurations (see Chapter 3). However, the distribution of these various modes of development is not defined; therefore, a condition is included in Exhibit C to require the development agreement to set targets for specified housing types for each phase of development.

C. Because the potential earning potential yielded by jobs that may be created in the MPD project area is unknown, if a significant number of jobs is in the retail and service sector, housing affordability may become a significant issue. Therefore, a condition of approval is included in Exhibit C below to require the project to include a mix of housing

types that contribute to the affordable housing goals of the City, and to require that the Development Agreement provide for a phase-by-phase analysis of affordable housing citywide to ensure that housing is being provided at affordable prices.

**15. BDMC 18.98.010(L): *Promote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the City's design standards;***

This purpose is also met by the Villages MPD. As detailed in Finding No. 2, the Land Use Plan map and the MPD application, the Villages MPD application proposes a mix of residential and commercial type uses, with development located in compact clusters separated by sensitive areas and open space. Parks and schools are proposed to be located on site with a road and trail network to link the residential portions of the project. These will provide opportunities for interaction, socializing and a sense of community. Stands of trees and natural areas are proposed along the main spine road through the project. These natural areas and extensive open space will help preserve rural character.

**16. BDMC 18.98.010(M): *Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code.***

In June 2009, the City adopted an updated comprehensive plan, zoning code, design guidelines and engineering design and construction standards. The Comprehensive Plan includes the city's vision statement on page 1-2, which envisions "development [that] maintains a healthy balance of moderate growth and economic viability," residential development with "a mix of types, sizes and densities, clustered to preserve a maximum of open space and to access a system of connecting trails/bikeways." The proposed project is generally consistent with the vision statement and the City's development regulations and policies. Further, Page 5-13 of the Comprehensive Plan (Land Use element) discuss the MPD Overlay plan designation. The Villages MPD is also consistent with that section of the Comprehensive Plan.

These Conclusions of Law address below the MPD proposal's consistency with other provisions of the Black Diamond Municipal Code.

**17. BDMC 18.98.020: *Specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:***

**A. *Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;***

A. This objective is satisfied. The Villages MPD provides a greater preservation and enhancement of the physical characteristics (topography, drainage, vegetation,

environmentally sensitive areas, etc.) of the site than would typically be available through conventional development. This includes:

i. The MPD preserves 29 more acres of open space and sensitive areas than would conventional development, according to Exhibit 1-3 of the FEIS;

ii. Because the property is being developed via an MPD, roads, utilities and public facilities will be constructed in a coordinated fashion, minimizing disturbance of sensitive areas; with the unavoidable exception of several road crossings, avoidance of sensitive areas was a factor in the overall layout of this project, as shown in the land use plan/constraints map overlay (Exhibit 11). Under conventional development roads and utilities would be constructed incrementally, as Exhibit 1-3 of the FEIS acknowledges, which could result in additional incursions into sensitive areas as permitted by the City's development regulations for road and other public utility construction (BDMC Section 19.10.080(E)(1));

iii. Because the property is being developed in a coordinated fashion, drainage can be coordinated to maximize infiltration where soils permit, as well as utilization of a large drainage area to maximize sediment and phosphorus removal, in manner that would exceed that available under conventional development; and

iv. Other than where stormwater ponds, utilities and future active park and trail sites may be proposed, open space areas are to remain untouched.

B. Chapter 1 of the MPD application discusses clearing and grading for the project. It is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for the Main Property. Fill is proposed to come from material excavated on site. For Parcel B the estimate is 81,000 cubic yards of cut and 81,000 cubic yards of fill would be necessary (i.e., the site would be "balanced"). The City Council recognizes that in order for urban development to occur, some natural undulations and occasional sharp pitches in the natural grade will need to be graded for street and urban living compatibility, and that initial site grading will provide better, more consistent utility depths and minimize retaining walls and steps to homes and other buildings. The extent of removal and export (approximately 3,000,000 million cubic yards of soil) proposed for the Main Property would be inconsistent with the objective in BDMC 18.98.020.A, however. Therefore, a condition is included in Exhibit C below to require that, prior to the approval of the first implementing plat or site development permit within a phase, the applicant must submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%. This will insure that unnecessary mining of material will not occur and that reuse of existing materials will be maximized. Further, a condition is also included in Exhibit C below requiring the Villages MPD to comply with the Framework Design Standards and Guidelines, which require at 3.A.6 that grading be phased to maintain surface disturbance and maintain significant natural contours.

**18. BDMC 18.98.020(B): Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;**

A. This objective is satisfied. The development standards adopted by the City, combined with the conditions contained in Exhibit C below, will protect both surface and groundwater quality on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies.

B. The City's adopted standards utilize regional stormwater management technologies. BDMC Ch. 14.04.020 adopts the 2005 Ecology Stormwater Management Manual for Western Washington (SMMWW), which is consistent with the requirements of the NPDES Phase II Municipal Stormwater Permit for Western Washington. The provisions of BDMC Ch. 14.04 will apply to all development permits until such time as the City may be required by the terms of the NPDES Permit to amend the provisions of the adopted SMMWW. In addition, the Villages MPD application proposes a project-wide approach to stormwater management (rather than an individual development parcel approach), which also meets the intent of regional stormwater management.

C. As indicated in Chapter 6 of the MPD application, the stormwater management plan includes incorporation of low impact development (LID) techniques. Given the soils on the Main Property as described in Ch. 4 of the FEIS, LID should have excellent potential. Further, Exhibit C contains a condition of approval requiring identification of mechanisms to integrate LID into the overall design of the MPD for the benefit of surface water resources. This meets the intention of the objective's provision for low-impact stormwater management technologies.

D. Exhibit C contains other conditions requiring the Development Agreement to incorporate additional innovative techniques, as follows:

i. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the SMMWW, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

ii. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring

conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of T<sub>p</sub>, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in T<sub>p</sub> so as to bring the discharge below the annual maximum identified pursuant to this Condition.

iii. The Development Agreement shall require a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction phase.

iv. The Development Agreement shall ensure that the storm water system does not burden the city with excessive maintenance costs, while assisting the City with maintenance of landscape features in storm water facilities.

v. The Development Agreement shall require a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations. Particular attention should be paid to phosphorous levels in Lake Sawyer.

vi. If roof runoff will be discharged directly to wetlands or streams for recharge and base-flow purposes, include restrictions on roof types (no galvanized, no copper) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharge is suitable for direct entry into wetlands and streams without treatment. These restrictions should be enforced during permitting and also during the life of the project by the Homeowners Association (HOA). The applicant should develop public education materials that will be readily available to all homeowners and implement a process that can be enforced by the HOA.

vii. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent. This condition recognizes the fact that shifts in the discharge points of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments.

viii. The Applicant shall be required to obtain all necessary permits from King County for construction, including any necessary approval or agreement providing the City ability to perform maintenance of the large regional storm pond proposed to the west of the project. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County. This condition is required in recognition of the fact that although the property to the west of the MPD property is the best location for the regional stormwater infiltration pond because it presents an environmental advantage

(the ability to consolidate the infiltration of the excess runoff to a deep aquifer in one location at the most efficient collection location), this site is not within the City's jurisdiction and approval from King County is required for both pond construction and future City maintenance.

**19. BDMC 18.98.020(C): Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse.**

This objective is satisfied. Chapter 8 of the MPD application describes the proposed water system for the MPD, including details of the required water conservation plan. Additional conservation measures may be required in the Development Agreement as staff and the applicant develop a specific design.

**20. BDMC 18.98.020(D): Preservation and enhancement of open space and views of Mt. Rainier.**

A. This objective is satisfied. Chapter 3 of the MPD application contains details regarding open space. Pursuant to BDMC Sections 18.98.120(G), 18.98.140(F) and (G), an MPD shall provide the amount of open space required in any prior agreements, or the applicant may elect to provide 50% of the project area as open space. As detailed in Finding of Fact 18.B, there are two prior agreements, the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Agreement ("BDAOSPA"), and those agreements have been complied with. Those agreements resulted in the preservation of nearly 1,670 acres of open space and, as recited in those agreements, conveyance and/or preservation of the specific acreages set forth in the agreements resulted from a required ratio of 4 acres of open space for every one acre of land allowed for urban development. Finding of Fact No. 18.B; BDUGAA (Staff Report, Ex. 7) at 5, para. 3.5. The objective in BDMC 18.98.020(D) is therefore satisfied.

B. Even if BDMC Sections 18.98.120.G, 18.98.140.F and .G were construed as applying the prior agreements only to the specific portions of the MPD addressed by those agreements, and that a 50% open space requirement applies to the remainder of the MPD, the objective in BDMC 18.98.020(D) is nevertheless satisfied. The portions of the MPD subject to the prior agreements provided 145 acres of open space as an offset for the West (63.3 ac) and South Annexation (81.7 ac) areas. Under such an interpretation, the portions of the MPD not subject to prior agreements are required to provide 50% of the land area as open space (336.4 acres) in order to have varied lot dimensions, cluster housing and pursue additional density (see 18.98.140.G). Thus, the overall amount of open space required to be provided within the MPD is 481.4 acres (145 + 336.4 = 481.4). The Figure 3-1 Land Use plan shows that 505 acres of open space, parks and trails, wetlands and buffers are proposed, while page 1-4 states that a minimum of 481.4 ac will be provided. Therefore, even under an interpretation that applies the "prior agreement" standard to only part of the MPD, and the 50% open space standard to the remainder of the MPD, the Villages MPD complies with the open space requirements of the Black Diamond Municipal Code. This also satisfies the objective in BDMC 18.98.020(D).

C. The MPD application materials indicate that the Community Connector Road and multiple parks are designed to enhance views of Mt. Rainier. There are very limited opportunities for views of Mt. Rainier on The Villages main property. The school site in parcel F may have some views of Mt. Rainier if the areas to the south are cleared. There appears to be reasonable opportunities for views from Parcel B that will be further enhanced if the nearby tailing piles are removed in the future. A condition of approval in Exhibit C will encourage that these view opportunities be explored and incorporated into the planning process.

D. Some parties of record argued that the Applicant was "double dipping," because some of the areas included in the open space totals itemized in Finding of Fact 18.B are also regulated under the City's Sensitive Areas Ordinance. Such a result was expressly contemplated by, and complies with, the BDUGAA and the Black Diamond Municipal Code. Section 7.5 of the BDUGAA expressly provides that open space within the West and South Annexation Areas "can only be used for the purposes included in KCC 26.04.020.L, such as preservation of wetlands and other critical areas, buffers, recreational areas and natural areas or as an urban separator and/or urban/rural buffer." BDMC Section 18.98.140(A) expressly defines open space as "wildlife habitat, areas, perimeter buffers, environmentally sensitive areas and their buffers, an trail corridors." It may also include "those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into a public park system."

**21. BDMC 18.98.020(E): *Provision of employment uses to help meet the city's economic development objectives.***

The objective is satisfied. BDMC 18.98.020(E) does not require (nor could it) that the MPD meet all of the City's economic development objectives. Instead, it requires only that the MPD "help meet" them. Consequently, any significant contribution to available employment would satisfy this requirement. As detailed in Finding of Fact No. 2, the project has designated 67 acres for a maximum of 775,000 square feet of retail/commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. The amount of jobs and tax revenues to be generated by this area will be dependent upon the mix of development that occurs, but there is no question that the project will add to the employment base of the City.

**22. BDMC 18.98.020(F): *Improvement of the city's fiscal performance;***

A. The objective is satisfied. The fiscal impacts of the project are addressed in detail in Finding of Fact No. 11. As noted in that Finding, a condition will be imposed in Exhibit C below, utilizing a combination of the conditions proposed by the Applicant and City staff, respectively, requiring repeated reassessment of fiscal impacts and requiring the Applicant to cover any shortfalls. This will ensure that the objective in BDMC 18.98.020(F) is satisfied.

B. Page 12-15 of the MPD application notes that "the city will commission new rate studies to accurately adjust revenue collection for the Special Funds such that all Special Fund expenditures will be fully funded to match the appropriate standards identified in the updated comprehensive plan." While possibly true for the water, sewer and stormwater utilities, street operation and maintenance is currently inadequately funded by the City's share of the gas tax, with the street maintenance function competing for general fund dollars for the balance of funding. Also, the Applicant is proposing the use of higher risk pervious asphalt in some cases and higher landscape intensive improvements (such as rain gardens). In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, a condition of approval is included in Exhibit C below requiring that all cul-de-sacs and auto courts serving 20 units or less and all alleys be private and maintained by the Master Developer or future Homeowners Association(s).

**23. BDMC 18.98.020(G): *Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and***

A. This objective, which requires provision of facilities, infrastructure and public services in accordance with the more stringent of the existing levels of service within the City of Black Diamond or Black Diamond's adopted levels of service, is satisfied. Chapters 4 and 6 through 9 of the application contain conceptual utility plans and a phasing plan which describes street and utility improvements. These plans assure that infrastructure will be in place at the time and to the extent needed. Details on the proposed timing of improvements are on page 9-3, as well as included in conditions of approval in Exhibit C below, especially for transportation improvements. Page 9-10 indicates the proposed "trigger" for park improvements. Further, the proposed phasing plan of supporting regional infrastructure projects, along with various conditions contained in Exhibit C below and a satisfactory implementing Development Agreement, will provide for the required facilities and infrastructure in time to meet adopted levels of service applicable in other jurisdictions.

B. Further, the conditions of approval in Exhibit C require preparation of a revised transportation demand model, and use of that model at specified points in the future to periodically review traffic impacts of the MPDs as they develop and identify additional mitigation as necessary to meet levels of service for successive phases of development. Mitigation may exceed that identified in the FEIS if necessary to meet level of service standards, so long as the adverse impacts are identified in the relevant environmental document (here, the FEIS), and the mitigation is consistent with an environmental policy adopted by the governmental body and referenced in its decision. WAC 197-11-660(1)(a) and (b); see also *Quality Rock Products, Inc. v. Thurston County*, 139 Wn. App. 125, 140-141 (Div. II 2007). Here, requiring such additional mitigation is consistent with the City's policy set out in BDMC 18.98.020(G), which is adopted by reference as a SEPA policy in BDMC 19.04.240(B)(3). Under these conditions, the first periodic review will be conducted at the point where building permits have been issued

for 850 homes for the Villages and Lawson Hills together; subsequent periodic review will occur at such future points specified by the City Council.

As discussed in Finding of Fact 5(L), the future periodic reviews utilizing a revised transportation demand model are warranted, because of the length of the project build out, and because the existing models are not optimally suited to predict future traffic impacts 15 or more years into the future, particularly given the scale of the two MPD projects and the models' underlying assumptions. Future periodic reviews will involve re-validation of the transportation demand model by checking the traffic analysis against actual MPD traffic growth.

**24. BDMC 18.98.020(H): *Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole.***

The objective is satisfied. Chapter 5 of the MPD application contains provisions for a trail network which would connect areas of the MPD and provide points at which future extensions to the rest of the City could be made by others or the City through public projects.

**25. BDMC 18.98.050(A): *MPD Permit Required. An approved MPD permit and Development Agreement shall be required for every MPD.***

This objective is satisfied. These Conclusions of Law are part of an ordinance granting MPD permit approval. The conditions of approval included in Exhibit C require a Development Agreement, consistent with BDMC 18.98.050(A).

**26. BDMC 18.98.050(C): *Implementing Development Applications. An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing approval...***

This objective is satisfied, for the reasons explained in Conclusion No. 25 above. The recommended conditions of approval require execution of a development agreement before approval of any implementing land use or development permits.

**27. BDMC 18.98.080(A): *An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met:***

**1. *The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of section 18.98.130 have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or***

**regulations, then the specific requirement of this chapter shall be deemed the most stringent.**

The criterion is met. As discussed at length below, Comprehensive Plan policies are met. Further, specific MPD regulations and design requirements are also met, as explained and addressed throughout these Conclusions of Law and in the conditions in Exhibit C below.

A. Compliance with Comprehensive Plan policies.

i. The most controversial policies at issue concern those pertaining to preservation of small town character. Many parties of interest argued that the Comprehensive Plan policies require preservation of "rural" character. This is incorrect, and would be inconsistent with the Growth Management Act, the City's Comprehensive Plan, and implementing development regulations in any event. As the Hearing Examiner's Recommendation explained, when it comes to density, "the die has already been cast on this issue." The Growth Management Act, Chapter 36.70A RCW, requires cities to encourage urban densities in order to promote efficient use of infrastructure and contain urban sprawl. See RCW 36.70A.110, 36.70A.020. Under the GMA, cities are not permitted to adopt Comprehensive Plan policies requiring certain areas to remain "rural." See, e.g., Final Decision and Order in *Robison v. Bainbridge Island*, CPSGMHB No. 94-3-0025, at 22-23. In *Robison*, the Board determined that the City of Bainbridge Island's "Overriding Policy No. 1," which called for the City to "preserve the rural character of the Island" violated RCW 36.70A.020(1) and (2), and remanded the policy to the City for revision (the City excised the word "rural"). As the Board explained, "Compact urban development is not "rural" land use. . . . [B]ecause Bainbridge Island has chosen to be a city, it must remain cognizant of its duty under the Act to plan for compact urban development within its boundaries as it grows."

ii. The City Council has implemented the GMA's mandate to provide for urban densities, by adopting Comprehensive Plan provisions concerning a "Master Planned Development (MPD) Overlay (pages 5-13 - 5-14) that state that MPD "densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process." (Emphasis added). The Plan acknowledges that all cities (including Black Diamond) are to be included within the Urban Growth Area, which is to include "areas and densities sufficient to accommodate urban growth expected to occur in the City in the next 20 years." Comp Plan at 1-6. As such, the Plan proposed a "village" environment, residential and economic development (including job opportunities for local residents and a long-term tax base for the City) . . . ." Comp Plan at 1-8. The Plan also uses innovative techniques such as density bonuses and MPDs (*Id.* at 1-8 - 1-9) to accommodate a 2025 population of nearly 17,000 people in "compact" (i.e., dense) urban development that preserves 35-40% of the City as open space. *Id.* at 1-10. "Much of this growth will occur as a result of Master Planned Developments in areas annexed to the City in 2005 . . . ." Comp Plan at 3-1.

iii. In light of the above, the Legislature and the Black Diamond City Council have adopted legislation that authorizes projects the size and density of the Villages MPD if specified criteria are met, and due to those legislative actions, the City Council is not in a position to deny the MPD applications because their densities might be construed as damaging "rural character." The impacts created by those densities, however, may be (and are) addressed through application of the MPD criteria and conditions of approval imposed pursuant to them.

iv. The City's Comprehensive Plan policies do not require preservation of "rural" character, even if such an approach was authorized under the GMA. Instead, the Comprehensive Plan instead refers to protection of "small town" character -- and this is to be accomplished by principles that include compact development. See, e.g., Comp Plan at 5-10 (continue compact form); at 5-4 - 5-5 (existing residential areas are developed at density of 4 and 6 dwelling units per acre); at 5-7 - 5-11 (addressing seven principles to preserve "small town character"); at 5-10 (discussing compact development, along with ways to connect "large-scale development" to older sections of town). On page 5-10, the Comprehensive Plan indicates that it calls for the use of "techniques that continue the character of compact form," while design guidelines will help the new, compact development feel like a rural community. This does not mean that the Plan is calling for protection of "rural character" by limiting density. It is only areas designated "Limited" Residential, *i.e.*, areas subject to significant environmental constraints and open space protection that are to "reflect the informal rural development typical of many portions of the City." Comp Plan at 5-50. And, while the Comprehensive Plan and BDMC 18.98.010(L) do reference the book "Rural by Design," they do so only with respect to the extent that the book identifies ways by which the City can achieve its goal that an MPD "incorporate and/or adapt the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community." The listed planning and design principles are not "rural"; if anything, the reference to "compact form" is a reference to urban rather than rural development.

v. Exhibit 161, prepared by Dave Bricklin, does not require a conclusion to the contrary. Exhibit 161 identifies several comprehensive plan policies that require protection and/or consistency of "community character," "existing character of the historic villages," "natural setting," "rural community," "traditional village community," "small town character," and "existing historical development." See Black Diamond Comprehensive Plan, pp. 2-5, 4-1, 5-7, 5-8, 5-33, 5-38, 5-49, 5-50, 7-49. Another policy provides that design guidelines are required to provide methods and examples of how to achieve design continuity and to reinforce the identity of the City as a rural community. *Id.* at 5-10. All of the policies referenced above reflect a strong preference to retain small town character. None require rural densities or suggest that they supersede the more specific comprehensive plan policies and state mandates requiring urban densities within the City. The MPD regulatory framework must and can be applied in a manner that harmonizes the requirement for urban densities with the objective of maintaining small town character. The MPD regulations provide the specific examples of how this is to be accomplished, including but not limited to reference in BDMC 18.98.010(L) to the book

"Rural by Design" and its synthesis of the urban density/small town character concepts. The City Council must apply these specific standards, and may not impose conditions upon the MPDs on some vague "feeling" that they are necessary to protect small town or rural character, because such terms are highly subjective and difficult to assess. *See, Anderson v. Issaquah*, 70 Wn. App. 64 (1993) (a statute violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application).

B. Compliance With King County Growth Allocations.

Some parties of record argued that the City has improperly planned for more growth in the MPDs than allocated to the City by King County GMA growth allocations. Cities, however, are not bound by County-adopted growth targets unless specifically required by county-wide planning policies. *See West Seattle Defense Fund v. City of Seattle*, CPSGMHB 94-3-0016, Final Decision and Order (4/4/95), p. 55. It is also worthy of note that even if the GMA growth targets were designed to limit growth in Black Diamond, it is too late to raise that issue now. The same reasoning applies to the applicability of any other county-wide planning policies. Black Diamond's comprehensive plan and development regulations allow master plan developments with the densities and population proposed in the Lawson Hills and Villages MPDs. If King County or any other party had wanted to challenge those regulations and policies as inconsistent with growth targets, that should have been done via an appeal to the Growth Management Hearings Board within sixty days of adoption of the comprehensive plan and development regulations that required the densities proposed for the MPDs<sup>1</sup>. RCW 36.70A.290(2); *Wenatchee Sportsmen Ass'n v. Chelan County*, 153 Wn. App. 394 (2009).

C. Compliance with MPD Framework Design Standards and Guidelines, Section G.

Some parties of record sought more protection than the five-foot perimeter setbacks that would generally be provided under the City's development regulations. The Framework Design Standards and Guidelines, however, require compatibility with adjoining densities. Through these guidelines, the Villages MPD will be conditioned to provide for 50 foot buffers along the most sensitive project interfaces on the northern part of the main property, where some of the highest densities are proposed. The guidelines require a minimum 25-foot buffer for multi-family and non-residential land uses, and perimeter lots for single-family development may be no less than 75% the size of the abutting residential zone or 7200 square feet, whichever is less. These standards help assure compatibility along perimeter areas.

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<sup>1</sup> Some of the Villages and Lawson Hills property are zoned R4, R6, MDR8 and community commercial, and these designations are being amended by the Ordinance approving the MPDs. However, the R4 - MDR8 designation already allows 4 to 8 dwelling units per acre, respectively, and community commercial densities are only limited by floor/area ratios, height, parking and other site requirements. Consequently, all approved zoning already allows the population proposed in the MPD applications.

D. Comprehensive Plan Police T-1. The only comprehensive plan policy found by staff to raise some compliance issues is Comprehensive Plan Policy T-1, which calls for connections to surrounding neighborhoods with roads and trails. The City's Engineering Design and Construction Standards section 3.2.02 D sets a limit of no more than 300 homes on a single point of access before a second connection must be constructed. Based on the comprehensive plan and design standards, the Main Property south of the Auburn Black Diamond Road will be required to connect all the way through to SR 169, regardless if the final phases are ever completed. There are several locations along the main spine road through the project where a parallel road will not be possible. Additionally, the FEIS modeled the traffic distribution with the spine road connection to SR 169. Therefore, a condition of approval is included in Exhibit C below to require:

- No more than 150 residential units shall be permitted with a single point of access. Three hundred units may be allowed on an interim basis, provided that a location for a secondary point of access is identified.
- The Development Agreement shall define a development parcel(s) beyond which no further development will be allowed without complete construction of the South Connector.

28. **BDMC 18.98.080(A)(2): Significant adverse environmental impacts are appropriately mitigated.**

A. For the reasons explained in Findings of Fact in Exhibit A above, and in subsections B-I in this Conclusion below, the criterion in BDMC 18.98.080(A)(2) is satisfied by imposition of the FEIS mitigation measures, in addition to the other mitigation identified in the Findings of Fact in Exhibit A above. The Applicant's argument that environmental mitigation is limited to that identified in the FEIS is incorrect. A local jurisdiction's exercise of substantive SEPA authority allows the imposition of environmental mitigation beyond that identified in a threshold environmental determination, if relevant to permitting criteria and otherwise consistent with legal requirements. WAC 197-11-660(1)(a) and (b); *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). Even with the issuance of an EIS, an applicant must still comply with all MPD permit criteria, and the review standard for an FEIS is significantly different than that under MPD permit review. As noted in the FEIS decisions, the Examiner must give substantial weight to the determination of the SEPA responsible official in assessing the adequacy of an EIS. By contrast, the factual findings made by the City Council in finding compliance with MPD criteria must be supported by substantial evidence. See RCW 36.70C.130(c). All FEIS mitigation and modifications thereto incorporated into the conditions of this MPD approval should be considered as imposed pursuant to the City's substantive SEPA authority under RCW 43.21C.060 and WAC 197-11-660, as well as pursuant to the MPD criterion in BDMC 18.98.080(A)(2) governing this Conclusion of Law.

B. As discussed in the Findings of Fact, including but not limited to Findings 5, 7, 9, and 10, there are some environmental impacts for which reasonable mitigation was

adequately identified under the rule of reason standard applicable to a challenge to an FEIS, but where additional or more comprehensive mitigation was nevertheless warranted. For the reasons discussed in the applicable Findings of Fact, there is substantial evidence to justify such additional mitigation, including but not limited to additional, periodic traffic analysis based on a revised transportation demand model, additional study of noise impacts and mitigation related thereto, and further study, monitoring, and mitigation for protection of Lake Sawyer water quality.

C. Geologically hazardous areas shall be designated as open space, with roads and utilities routed to avoid such areas. Where avoidance is impossible, the applicant should utilize the process in BDMC 19.10 (supplied with adequate information as defined in code) and the Engineering Design and Construction Standards to build roads and utilities through these areas.

D. A condition shall be included in Exhibit C below requiring that all houses that are sold in classified or declassified coal mine hazard areas be accompanied by a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement. This Conclusion addresses environmental impacts from classified or declassified coal mine hazard areas by providing notice to potential homeowners of the hazards and creating a market disincentive for construction in such mine hazard areas.

E. The MPD application states that the 2005 Ecology manual is "expected to be adopted." The City adopted this in June 2009 and it will be applicable to this project until such time as the city may be required to adopt an updated stormwater manual by state mandate as a requirement of the City's Phase II Municipal Stormwater General Permit.

F. The proposal meets city standards and with the additional goals and conditions will provide several enhancements:

- Regional infiltration pond will provide a central low maintenance facility that could also provide multipurpose recreational opportunities.
- Regional infiltration pond will provide opportunities for storm water reuse that could further conserve potable water.
- Low impact development proposal with HOA maintenance will provide distributed infiltration that will be closer to natural stormwater flow regimes.

F. Construction must be authorized by an NPDES permit for stormwater treatment and discharge issued by the Department of Ecology. Although permit conditions imposed by NPDES permits are not administered by the City, a condition is included in Exhibit C below reserving to the City the right to enforce the conditions of NPDES

permit(s) applicable to the Villages MPD project. Since the city has a high interest in protecting receiving waters under the city storm water permit, the condition also requires the Applicant to fund necessary costs for training related to inspection services.

G. The MPD application's suggestion (at page 6-5) that the City lacks approval authority for water quality treatment options, and that all options allowed under the 2005 Manual are allowed "without preference," is rejected. Because the City is the approving authority and will ultimately own and be responsible for most of the proposed storm water facilities, the City retains the authority to reject higher maintenance cost facilities when lower maintenance cost options may be available.

H. Given that there are water quality and balance challenges that are addressed in the storm water management concept, and that storm water management is not an exact science, shifts in the distribution of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments. The MPD approval will therefore include a condition in Exhibit C requiring that the Development Agreement include language to allow for adaptive management of the distribution of stormwater when justified by technical analysis and risk assessment, as long as the impacts to on-site and off-site environment are maintained or enhanced.

1. Per BDMC 18.98.195, stormwater ponds, water quality treatment facilities, and other components of the stormwater treatment and conveyance system governed by the City's stormwater regulations shall vest phase by phase, to the extent authorized by the NPDES Phase II Stormwater Permit for Western Washington and state law.

**29. BDMC 18.98.080(A)(3): *The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule: [Remainder not listed here; refer to BDMC for complete code text.]***

The criterion is satisfied as discussed in Finding of Fact 11 and as conditioned in Exhibit C below.

**30. BDMC 18.98.080(A)(4): *A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:***

***a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build-out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to***

*serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and*

*b. At full build-out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.*

A. As modified with the conditions identified below and included in Exhibit C, the criterion is satisfied. In addition, see Conclusion of Law 23 above.

B. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer, water and the project phasing plan. Chapter 9 of the MPD application contains the phasing plan, which also projects which parcels will be developed and associated unit counts. Parks are to be built by phase also. The above provisions (4.a and 4.b) shall also be addressed in the Development Agreement.

C. Chapter 9 of the MPD application states that "[t]he facilities that serve the MPDs as well as development in areas outside of the MPD project boundaries will be a shared responsibility between the City and Master Developer, with the Master Developer contributing a proportionate share." While other benefiting parties may make use of roads and other infrastructure, it is unrealistic for the Applicant to expect full cost recovery for every implementing project. The City cannot guarantee cost recovery from benefiting non-contributing properties or cost recovery from the City. Absent these developments, there would not be a need to construct some of the improvements identified in the MPD Application. Many new vehicle trips coming from outside the City may make use of roads and intersection improvements funded by the developer, but the City has no ability to collect from the growth in background traffic. Cost recovery for the Applicant can occur where the benefiting parcels can be clearly defined, the benefiting parties are subject to the City's regulatory authority, and the other parties' pro rata share is significant. The identification of specific projects to be constructed by the Applicant, the projects to be constructed by the City, the projects for which credits or cost recovery may be available, shall be included in the Development Agreement, pursuant to a Condition No. 10, Exhibit C below

D. On page 9-3 of the MPD application, the Applicant proposes that final design must be approved and constructed, bonded or financially guaranteed prior to occupancy of any structure relying on the facility. This would be inconsistent with the surety requirement established in the City's Engineering Design and Construction Standards adopted pursuant to BDMC Section 15.08.010. To address this, a condition of approval is included in Exhibit C requiring that, before the first implementing project of any one

phase is approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

E. The timing of the design and alignment of the Pipeline Road will need to be determined as part of the Development Agreement, as parties other than the Applicant must be involved and the roadway alignment will need to be resolved so that water and sewer alignments to The Villages will not be delayed by preliminary road design issues.

F. With respect to traffic impact mitigation, Page 9-3 of the MPD application proposes to monitor traffic and then implement mitigation projects six months after a loss of level of service is identified. This request is denied; instead, mitigation projects should be in place prior to LOS failure. A condition of approval (No. 25) is included in Exhibit C requiring the Applicant to analyze the traffic impact of a pending phase of development before the start of that phase to determine when a street or intersection is likely to drop below the adopted level of service. Transportation mitigation projects should then be implemented to prevent LOS failure. Traffic mitigation projects may change or additional projects be added to address the traffic issues as they actually develop.

G. As discussed in Finding of Fact No. 18.C above, the phasing plan for the parks is not consistent with the criterion above, and a condition is included in Exhibit C to require compliance. As further discussed in Finding of Fact No. 18.D, off-site trail construction necessary to achieve connectivity will be required prior to occupancy and final plat and site plan approval to the extent allowed by law.

**31. BDMC 18.98.080(A)(5): *The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.***

As conditioned, the project meets the criterion above. The 2009 Comprehensive Plan contains levels of service related to police and fire and emergency medical services. The fiscal analysis indicates that staffing levels should generally be allowed to increase in accordance with population growth. Currently, this area of the city has a minimal level of fire and EMS protection. A condition of approval (No. 100) has been added to Exhibit C to require that the Development Agreement include specific provisions for mitigating fire service impacts to ensure protection concurrent with project build out. The conditions of approval regarding fiscal impacts also include a condition (No. 156) that requires that the fiscal analysis ensure that revenues from the project are sufficient to pay the project's pro rata share to maintain staffing levels of service.

**32. BDMC 18.98.080(A)(6): *Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.***

A. As conditioned in Exhibit C below, this criterion is satisfied. Chapter 3 of the MPD application describes a variety of housing types including detached single family,

duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. The Fiscal Analysis (Chapter 12) makes some assumptions regarding housing costs for various potential housing types. However, there is nothing in the remainder of the application to indicate whether all these housing types will be built. A condition is included in Exhibit C requiring that the Development Agreement include targets for various types of housing for each phase of development, as well as a unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial).

B. As previously noted, the commercial component of the project will most likely include retail, office and personal service uses. The MPD should provide housing opportunities for individuals anticipated to work at those jobs; this may require a greater mix of multifamily housing and/or the construction of housing types that can meet the affordability goals of the Comprehensive Plan. The staff report proposed a condition that requires the Applicant to meet housing targets for purchasers at specified income levels. The Applicant subsequently indicated its agreement to a modified condition that provides more generalized goals for providing affordable housing. This modification complies with BDMB 18.98.050.A.6 and the law governing the extent to which a development applicant may be compelled to address affordable housing goals. That condition is included in Exhibit C as Condition No. 138.

**33. BDMC 18.98.080(A)(7): *If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.***

A. For the reasons detailed in Finding of Fact 18.B, this criterion is satisfied. The Villages MPD includes properties that are subject Black Diamond Urban Growth Area Agreement (BDUGAA) (Exhibit 7): two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area). The BDUGAA requires that 63.3 acres of open space be provided within the West Annexation Area, which is located in the Villages Main property. BDUGAA, Ex. 7, at 8, Section 5.2(c)(1). The BDUGAA also requires that 81.7 acres of open space be provided within the South Annexation Area. *Id.* at 9, Section 4 (c)(1). As detailed in Finding of Fact No. 18.B, the BDUGAA also requires conveyance or protection and/or conservation of open space properties in unincorporated King County, and in other locations with the City of Black Diamond, and such properties have been conveyed or protected / conserved as provided by the BDUGAA and the BDAOSPA.

B. The BDUGAA also requires that for the West and South Annexation areas a minimum average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). As detailed in Finding of Fact No. 4, the proposal complies with this requirement. As a recommended condition of approval and for the Villages MPD to be consistent with this agreement, the entire "Pipeline Road" link will need to be constructed.

34. **BDMC 18.98.080(A)(8):** *If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.*

The criterion is satisfied. The MPD proposal includes properties annexed into the City by Ordinance 515 (Exhibit CBD-2-12) and appears to be consistent with the terms and conditions therein.

35. **BDMC 18.98.080(A)(9):** *The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.*

The criterion is satisfied. The application materials indicate that the Community Connector Road and multiple parks are designed to enhance views of Mt. Rainier. There are very limited opportunities for views of Mt. Rainier on The Villages main property. The school site in parcel F may have some views of Mt. Rainier if the areas to the south are cleared. There appears to be reasonable opportunities for views from Parcel B that will be further enhanced if the nearby tailing piles are removed in the future. Staff recommends that these view opportunities be explored and incorporated into the planning process. Exhibit C below includes a condition of approval to implement this recommendation.

36. **BDMC 18.98.080(A)(10):** *The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.*

As detailed in the MPD staff report and the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions.

37. **BDMC 18.98.080(A)(11):** *If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.*

A. The criterion is satisfied. The North Property (Parcel B) and Main Property are not adjacent to property already developed as an MPD. The North Property is adjacent to property zoned MPD. The property to which the Villages Parcel B is adjacent is located to the north of Parcel B, is zoned MPD and is known as the "North Triangle" portion of the proposed Lawson Hills MPD. A soft surface trail connection between Parcel B and the Lawson Hills North Triangle is shown in Chapter 5 of the Villages and Lawson Hills MPD applications. Chapter 4 of the MPD applications shows the North Connector which will connect Parcel B and the North Triangle with SR 169. The proposed street standards

for the two MPD applications are identical, ensuring consistency between the two projects.

B. The Main Property is also adjacent to property zoned MPD. One hundred sixty (160) acres of property adjacent to the Main Property are located between the Villages' proposed Community Connector road and the western City of Black Diamond city limits. Both hard and soft surface potential trail connections between The Villages and these 160 acres are shown in Chapter 5 of the Villages MPD application. Chapter 4 of the MPD application shows three potential future road connections between The Villages and these 160 acres. Any future development will be reviewed against the regulations in effect at that time regarding connectivity of trails, open spaces and transportation corridors, and the compatibility of streetscape design and public open space amenities.

**38. BDMC 18.98.050(A)(12): *As part of the phasing plan, show open space acreages that, upon build out, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.***

A. The criterion is satisfied as conditioned. The Land Use Plan map, Figure 3-1 (July 8, 2010) shows the areas intended as open space. Chapter 5 of the Villages MPD Application also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency shall be verified at the permitting stage.

B. As previously discussed in Conclusion of Law No. 20, even if the Black Diamond Municipal Code is construed as requiring portions of the MPD project area not specifically addressed in the BDUGAA or other prior agreements to provide 50% of their area as open space, the Villages MPD complies with the criterion above. While the phasing of open space is not included within the MPD Application, conditions have been included in Exhibit C below (Nos. 152 – 155) to require that phasing of open space (which includes parks and is identified within the MPD application) be defined and articulated for timing of final designation within the Development Agreement once acreages have been finalized.

**39. BDMC 18.98.080(A)(13): *Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.***

The criterion is satisfied as conditioned. Analysis of consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of these Conclusions. A recommended condition of approval is to require that this provision be enforced.

**40. BDMC 18.98.080(A)(14): *School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable***

***school district's standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.***

A. Determining compliance with this criterion requires identification of the walkable school standard. This is not straightforward. There is no specific "walkable" standard expressed in the 2009 Black Diamond Comprehensive Plan, or the Enumclaw School District Capital Facilities Plan (2009-2014). However, pages 1-10 of the Comprehensive Plan provide as follows:

The creation of a pedestrian friendly environment is central to the success of the City's plan, and will be implemented by the plan's concept of the "ten-minute walk" The goal is for 80% of City residents have no more than a 0.50-mile walk from a cluster of commercial services, employment, or access to transit.

The half-mile distance is consistent with the maximum distance one would expect a child to walk to school, as well as with the proximity needed in order for schools to provide for joint recreational use as encouraged by Comprehensive Plan Objective CF-14, under School Objectives and Policies, which encourages the use of joint-use agreements for school recreation facilities.

B. Figure 3-1, Land Use Plan, shows four proposed school sites on development parcels V21 (10 ac), V50 (10 ac), V57 (8.4 ac) and V58 (4.1 ac). Alternatively, as shown in Table 3.4 of the application, the applicant is requesting that any development parcel may be used for an institutional use (which could include a school site). Figure 3-2, School Proximity Exhibit, shows that the areas of the project intended for residential use, with the exception of the proposed residential on Parcel B, are within 0.5-1.0 mile of the proposed school site. To ensure compliance with BDMC 18.98.080(A)(14)'s requirement for compliance with the walkability standard, a condition (No. 98) has been included in Exhibit C below to require that, where reasonable and practicable, all schools shall also be located within a half-mile walk of residential areas.

C. To address the Villages MPD's compliance with the remainder of BDMC 18.98.080(A)(14)'s requirements, the Applicant and Enumclaw School District staff have been negotiating a draft school mitigation agreement (Ex. MPD 194 and Ex. 6) to address the district's needs for public schools to serve both the Villages and Lawson Hills MPD. Conditions have been included in Exhibit C require that the Development Agreement include requirements for the Applicant's payment of school impact fees or its proportionate share of school mitigation, based upon the number of school sites and acreage requirements set forth in Exhibit 6.

41. **BDMC 18.98.080(B):** *So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.*

The criterion above is not mandatory. As discussed in Finding of Fact No. 5(F) the Applicant has agreed to cover any short-falls in fiscal impacts attributable to its development. Beyond this the record does not identify any need at this time to advance funds.

42. **BDMC 18.98.090:** *MPD permit - Development Agreement. The MPD conditions of approval shall be incorporated into a Development Agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals.*

The MPD conditions of approval will be incorporated into a Development Agreement as required by this criterion.

43. **BDMC 18.98.110(A):** *Design Standards. The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.*

Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in these Conclusions of Law below. Any subsequent implementing permit or approval will be subject to the MPD design standards.

44. **BDMC 18.98.110(B)(1):** *MPD Permit. The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.*

Analysis of the MPD master plan consistency with Master Planned Development Framework Design Standards and Guidelines is discussed below.

45. **BDMC 18.98.120(A):** *MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.*

The criterion is satisfied. As previously discussed, the MPD proposes residential and commercial uses and the residential uses are proposed at a variety of densities. Conditions of MPD approval in Exhibit C below also require the Development Agreement to provide specific targets for housing types.

46. **BDMC 18.98.120(B):** *The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and may also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.*

The criterion is satisfied. The Comprehensive Plan designation for the North Property is Mixed Use with Master Planned Development Overlay and the Main Property has areas of Low Density Residential and Mixed Use with Master Planned Development Overlay. According to the Comprehensive Plan, "an MPD may include residential and commercial uses clustered around private and community open space, supported by adequate services and facilities." The Mixed Use designation identifies a preferable location for mixed use development within an MPD, in specific areas where the anticipated larger commercial component can also serve the broader community. The potential for mixed uses is permissive, as opposed to being a requirement of development. The Main Property has areas designated for Mixed Use and Low Density Residential uses according to the Comprehensive Plan. The MPD application also includes several parcels designated for high density residential uses in accordance with Section 18.98.120(F). Table 3.4 in the application materials lists neighborhood commercial as a permitted use in low-, medium- and high-density residential areas; however, it is not known if this will actually occur, as the application makes no other mention of it.

47. **BDMC 18.98.120(C):** *The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full build-out of the residential portion of the MPD.*

A. The criterion requires the MPD to provide within the MPD boundary or elsewhere within the City (1) sufficient properly zoned lands; and (2) sufficient incentives as permit conditions to encourage development; (3) so that that the employment targets set forth in the comprehensive plan for the number of residential units within the MPD will with reasonable certainty be met. This criterion requires that the "employment targets set forth in the comprehensive plan" be applied to the MPD as well as "elsewhere within the city." As explained below, because there are properly zoned lands for employment development within the MPD and within the City as a whole sufficient to permit the comprehensive plan's employment targets to be met, this criterion is satisfied.

B. As detailed in Finding of Fact No. 22, the Comprehensive Plan includes the City's updated projection for 2,677 new jobs by the year 2025. Table 3-9 characterizes this as 0.5 jobs per household by the year 2025. This is roughly consistent with the Comprehensive Plan's "Employment Targets" shown on Table 5-3, for a year 2025 jobs target of 2,952 jobs (2,525 new jobs) which, when divided by the household target of 6,302 households, is jobs per household ratio of 0.468.

C. As detailed in Finding of Fact No. 22, the Comprehensive Plan also states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base . . . ." Comprehensive Plan at 3-11 - 3-12.

D. Given the Comprehensive Plan's acknowledgement that more conservative targets are being utilized to recognize that population growth must precede employment growth, and in light of the "Employment Targets" specified in Table 5-3 and on page 3-12, the jobs per household target specified by the Comprehensive Plan is 0.5 jobs per household. Applying this standard to the Villages MPD, the MPD should include sufficient zoned land either within the MPD boundary or the City as a whole, to provide approximately 2,400 jobs ( $4,800 \times 0.5 = 2,400$ ).

E. The Appendix J Fiscal Analysis of the FEIS contains an analysis of the amount of retail/office square footage to be developed within the Villages MPD, which is projected to generate 1,365 employees. Finding of Fact No. 22.E. As detailed in Finding No. 22.D, the City has sufficient zoned lands within it to generate "5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.

F. The conditions of MPD approval set forth in Exhibit C below also contain a number of incentives for development of the retail/commercial/light industrial lands within the Villages MPD. These include a requirement for designation of a light industrial area, a requirement that the Development Agreement specify a Floor Area Ratio ("FAR") standard for the retail/commercial/light industrial development, a limitation that no more than two floors of residential development be constructed on top of any retail or commercial development, and a granting of the request for reduced parking standards within the Mixed Use Town Center area. Exhibit C, Conditions 140, 145-148.

G. Because the Villages MPD is projected to generate 1,365 jobs within the Villages MPD boundary, because the City has sufficient zoned land within the City as a whole for 5,761 jobs, and because the conditions of approval contain incentives for development of the retail/commercial/light industrial areas, the criterion in BDMC 18.98.120(C) is met.

F. To the extent that a reviewing court may construe the City's Comprehensive Plan employment targets or BDMC 18.98.120(C) otherwise, the Hearing Examiner's observations should also be noted:

[R]equiring a developer to be responsible for job creation is of dubious validity, both because there is no clear nexus between job creation and mitigation of development impacts and also because placing this type of burden on a developer can be construed as unreasonable.

Hearing Examiner Villages MPD Recommendation at 164, Conclusion 41.

**48. BDMC 18.98.120(E): *Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.***

A. The criterion is satisfied. Two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area) are subject to a pre-annexation agreement, the Black Diamond Urban Growth Area Agreement (BDUGAA) (Ex. CBD-2-7). The BDUGAA requires that for the West and South Annexation areas a minimum average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). As stated in Finding of Fact No. 4, the Villages MPD proposes an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133). This complies with the BDUGAA's requirements.

B. The portion of the Villages Main Property not subject to the BDUGAA has a Comprehensive Plan Master Plan Development overlay. The MPD Overlay requires a minimum of 4 dwelling units per gross acre. Comprehensive Plan at 5-13. The portion of the Villages Main property not subject to the BDUGAA also has an underlying Comprehensive Plan designation of Low Density Residential, which has a base density of 4-6 dwelling units du/gross ac. The northwest corner of the Main Property has an underlying Comprehensive Plan designation of Mixed Use which does not propose a base density.

C. As noted above, as stated in Finding of Fact No. 4 the Villages MPD proposes an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133). This complies with the minimum densities set forth for these properties in the Comprehensive Plan. The minimum 1 unit per acre density allowance described in the Villages MPD application (page 3-19, Table 3.2) is not consistent with the BDUGAA or the City's Comprehensive Plan. Therefore, a condition of approval is included in Exhibit C below requiring a minimum density of 4 du/ac.

49. **BDMC 18.98.120(F):** *The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of section 18.98.140(G), or otherwise is providing the open space required by section 18.98.140(F), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of Section 18.98.140(G) or is otherwise meeting the open space requirement of [Section] 18.98.140(F), an effective density of development up to a maximum of eighteen dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of [Sections] 18.98.010 and 18.98.020. A MPD may include multi-family housing at up to thirty dwelling units per gross acre, subject to the following:*

A. This provision establishes an overall density of 12 du/ac for the entire proposal, and does not set a maximum cap for specific parcels within the project boundaries. The areas proposed for medium density residential range from 7-12 du/ac and high density 13-30 du/ac (with certain areas dedicated to 18-30 units in accordance with the additional criteria below). As discussed above, the MPD meets the requirements of both BDMC 18.98.140(F) and 18.98.140(G) even assuming that 18.98.140(G) applies independently to those portions of the MPD that are not covered by a prior agreement. As detailed under the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions

**BDMC 18.98.120(F)(1):** *Areas proposed for development at more than 18 dwelling units per gross acre shall be identified on the MPD plan; and*

B. Figure 3-1 Land Use Plan in the MPD application shows eight areas (development parcels V3, V4, V5, V6, V10, V13, V14 and V17) totaling approximately 35 acres intended for high-density residential over 18 du/ac.

**BDMC 18.98.120(F)(2):** *Identified sites shall be located within ¼ mile of shopping/commercial services or transit routes; and*

C. The eight parcels would be located adjacent to proposed shopping/commercial services, and therefore comply with the requirement that they be located within ¼ mile of shopping/commercial services or transit routes.

**BDMC 18.98.120(F)(3):** *The maximum building height shall not exceed 45 feet; and*

D. Table 3.8 Residential Development Standards in the MPD application shows 45 feet as a maximum height for high-density residential development. Therefore, this criterion is met.

**BDMC 18.98.120(F)(4):** *Design guidelines controlling architecture and site planning for projects exceeding 18 dwelling units per gross acre shall be included in the required Development Agreement for the MPD; and*

E. Appendix E of the application contains the high-density residential (18-30 du/ac) supplemental design standards and guidelines. Staff is recommending these guidelines become part of the Development Agreement. Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of this report.

**BDMC 18.98.120(F)(5):** *Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but area subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.*

F. Mixed use as described above is proposed in the application on parcels V11 and V12. A recommended condition stipulates that no more than two floors of residential uses above ground floor commercial/office uses shall be allowed.

50. **BDMC 18.98.120(G):** *Unless the proposed MPD applicant has elected to meet the open space requirements of section 18.98.140(G), or is otherwise meeting the open space requirements of section 18.98.140(F), the following conditions will apply, cannot be varied in a Development Agreement, and shall preempt any other provision of the code that allows for a different standard:*

*1-3 [Not listed here; refer to BDMC for complete code text.]*

As set forth in Finding of Fact No. 18.B, the open space requirements of section 18.98.140(F) are met, because the Villages MPD "contain[s] the amount of open space required by any prior agreement," namely, the BDUGAA and the BDAOSPA. Further, even if Section 18.98.140(G) is construed as applying independently to those portions of the Villages MPD that were not included within the BDUGAA, the provisions of BDMC 18.98.140(G) are met. Therefore, the prohibitions in BDMC 18.98.120(G)(1)-(3) do not apply to this project.

51. **BDMC 18.98.130:** *MPD standards - Development standards.*

*A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related Development Agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:*

1. *Is needed in order to provide flexibility to achieve a public benefit; and*
2. *Further the purposes of this chapter and achieves the public benefits set forth in Section 18.98.010; and*
3. *Provides the functional equivalent and adequately achieves the purpose of the development standard for which it is intended to deviate.*

***B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.***

A. Chapter 13 of the MPD application lists the Applicant's requests for "functionally equivalent standards." There are 19 separate requests that seek to deviate from adopted city codes and standards. In its closing statement to the City Council, however, the Applicant withdrew its request for deviation from the Tree Preservation Ordinance (BDMC 19.30), and its requests for deviation from required front yard setback for garages, alternate parking lot landscaping, allowance for additional compact parking stalls, and insufficient parking outside of the Town Center area. Applicant's Closing Statement in Response to Council Questions and Parties of Record Statements at Section IX, pp. 1-2. One request, for reduced parking standards in the Town Center, is justified, because it is common to have flexible parking standards within mixed use and "downtown" areas. Therefore, this request will be granted in part in the conditions of approval set forth in Exhibit C below.

B. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and stormwater comprehensive plan concepts. Staff and the applicant can resolve the large, overarching design issues and work to establish functionally equivalent construction standards as part of the Development Agreement. The Engineering Design and Construction Standards contain an administrative deviation process (section 1.3) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering, Design and Construction Standards' administrative deviation process.

C. The following requests do not need to be considered as "functionally equivalent standards" and can therefore be addressed through the Development Agreement process:

18.100 Definitions—generally, this is not an area where "functional equivalency" is applicable. While adding words that are not already defined in City code may make some sense, in City code, there is no advantage to treating proposed alternative definitions as "functionally equivalent" standards.

18.76 Gateway Overlay District—grading, removal of invasive species, and installation of infrastructure within the public right of way are not subject to the Gateway District overlay (per Section 18.76.020.B). Therefore, the Applicant's request is unnecessary.

18.38—Community Commercial (CC) Zone Standards and Allowed Uses; Parcel B is being rezoned to MPD as part of this MPD approval.

18.30—R4 Zone Standards—None of the property associated with The Villages is currently zoned R4, nor will be zoned R4.

52. **BDMC 18.98.140(A):** *Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, playfields, parks of on-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may propose other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by Chapter 19.10.*

The project proposes to preserve amounts of open space as detailed on page 3-10 of the MPD application. They include a mix of passive and active areas comprised of sensitive areas such as wetlands, associated buffers, trails, parks, forested areas and utilities such as stormwater ponds. The Land Use Plan map, Figure 3-1 (July 8, 2010) depicts a majority of the open space areas as a coordinated network. The vast majority of open space will be maintained as sensitive areas and their buffers. The uses proposed for the open space areas shown on Figure 3-1 comply with the requirement of BDMC 18.98.140(A). Further, use of sensitive areas and their associated buffers for development including trails, stormwater management, etc. is regulated by the City's sensitive areas ordinance, BDMC Chapter 19.10. Appropriate mitigation for impacts, if required, as well as other required measures would apply and will be evaluated on a case-by-case basis at the time of implementing project application. Chapter 5 of the MPD application (p. 5-5) also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency would need to be verified at the permitting stage. Storm ponds should only be considered as open space if they are developed as an amenity and incorporated into the public park system. A condition of approval is included in Exhibit C below identifying specific criteria to be applied to determine whether a particular storm pond has been developed as an "amenity."

53. **BDMC 18.98.140(B):** *Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.*

A. Figure 3-1 of the application shows that the dedicated open space areas serve as a coordinated network. In order to enhance this coordination for natural areas, a recommended condition of approval is to require that areas shown as natural open space/areas in the figure on page 5-7 of the application to remain natural, with the possibility for vegetation enhancement. No other land clearing shall be permitted other than trails and storm ponds. As previously noted, the figure on page 5-5 depicts some areas as "natural open space" that are also proposed to include stormwater facilities. As noted above, stormwater facilities may be considered as open space only if designed as an amenity. Other than trails and stormwater facilities designed as amenities, the natural areas in the figure on page 5-7 of the Villages MPD application shall be required to remain natural with the possibility for vegetation enhancement. Retention in the natural state is necessary in order to maintain continuous greenbelt areas as required in the criterion above.

B. In order to retain currently forested open space areas in their natural condition, the Development Agreement should also include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested. And, the Development Agreement should include a narrative of the process and basis for removing selective hazard trees at the project perimeter. The intent of this section will be to leave the majority of the perimeter as designated passive open space, and to have it appear and function as native forest.

54. **BDMC 18.98.140(C):** *The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.*

This criterion is met. The Villages MPD is designed so that open space outlines the sensitive areas and their relevant buffers, so as to minimize impacts on wildlife resources. As noted in Finding of Fact No. 12.B, the wildlife corridors proposed as part of the Villages MPD are adequate because they provide at least double the minimum width recommended by King County's network biologist, and provide sufficient space for wildlife to travel around spots where natural barriers such as flooded wetlands are present. And, while some development impacts to wildlife are unavoidable, the large amount of open space provided by the Villages MPD proposal provides appropriate mitigation for any significant, adverse impacts to wildlife. Finding of Fact 12.C. And, mitigation measures related to fish and wildlife are included in Exhibit C as conditions of approval.

**55. BDMC 18.98.140(D):** *The approved MPD permit and Development Agreement shall establish specific uses for open space within the approved MPD.*

Chapters 3 and 5 of the MPD application, including tables 3.4 and page 5-6, describe proposed open space uses. For those portions of the open space that are sensitive areas or associated buffers, minimal flexibility exists as it relates to uses within these areas. All activities shall be conducted in accordance with BDMC Chapter 19.10. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided. A condition of approval is included in Exhibit C requiring the Development Agreement to include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

**56. BDMC 18.98.140(E):** *The approved MPD permit and Development Agreement shall establish which open spaces shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms.*

Page 5-2 of the MPD application generally describes proposed ownership, but as to sensitive areas only identifies various options rather than any specific type of ownership mechanism. A condition of approval is included in Exhibit C below requiring that specific details on which open space is to be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms be established as part of the Development Agreement. An additional condition of approval will also require language in the Development Agreement that will allow for public access to parks and trails facilities.

**57. BDMC 18.98.140(F):** *An approved MPD shall contain the amount of open space required by any prior agreement.*

As discussed in Findings of Fact No. 18B and Conclusions of Law Nos. 6, 20, 33, and 49 above, the MPD application contains the amount of open space required by the BDUGAA and the BDAOSPA.

**58. BDMC 18.98.140(F):** *If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120(F).*

The application is seeking to vary lot dimensions, cluster housing and include high-density residential housing. As discussed above, this is permitted pursuant to Section 18.98.120.F, because the Applicant has complied with BDMC 18.98.140(F). Therefore, compliance with BDMC 18.98.140(G) is not required. As discussed above, even if BDMC 18.98.140(G) is construed as applying independently to those portions of the

MPD site not included in the BDUGAA, those portions of the Villages MPD proposal not included within the BDUGAA provide 50% of open space (336.4 ac total). The MPD proposal satisfies this requirement, to the extent that it applies.

**59. BDMC 18.98.150(A):** *An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.*

**(B).** *The MPD permit and Development Agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance.*

A. Chapter 5 of the MPD application contains information regarding proposed recreation areas and facilities. The proposal meets the adopted levels of service with regard to on-site parks and recreation areas and facilities. In addition, as discussed in Conclusions 15 and 24 above, the MPD includes a coordinated system of trails and pedestrian linkages, both within and connecting to existing or planned trail systems outside of the MPD. Therefore, the criteria in BDMC 18.98.150(A) and (B) are satisfied.

B. Based on maps included with the application, it appears that a significant amount of trail systems will be located within the buffer areas and potentially within sensitive areas themselves. The use of sensitive areas and their associated buffers for development including trails and stormwater management requires appropriate mitigation and other requirements in accordance with BDMC Section 19.10. Conditions of approval in Exhibit C below will require that the Development Agreement include a unit trigger for when trails need to be constructed, and establish the sizes, locations and types of recreation facilities and trails to be built, along with methods of ownership and maintenance. Further, the City, and not the Applicant, must retain discretion concerning when and if a lump sum payment by the Applicant can be accepted in lieu of constructing off-site recreational facilities.

**60. BDMC 18.98.155(A):** *The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.*

The Applicant has requested a deviation from Sensitive Area Ordinance standards. This is denied. The general authority under MPD code provisions in BDMC Ch. 18.98 to vary development standards is superseded by the more specific requirement in BDMC 18.98.155(A). The Villages MPD must at minimum comply with the Sensitive Areas Ordinance. A condition of approval shall be included requiring that the Development Agreement include language providing that areas subject to the Sensitive Areas Ordinance are fixed at the time the mapped boundaries of sensitive areas have been delineated and approved by City staff. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary should

prevail. The applicant should neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

**61. BDMC 18.98.155(B):** *All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.*

With respect to the proposed "Community Connector at Sensitive Areas" (Figure 4-4 in the MPD application), impacts to sensitive areas and buffers should be mitigated, if necessary, in accordance with BDMC 19.10 at the time of actual development. The Villages MPD project overall, including road locations, has been designed to minimize impacts to wildlife and migration corridors as set forth above and in the Finding of Fact No. 12.

**62. BDMC 18.98.160(A):** *All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and Development Agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site.*

The MPD application is consistent with the City's transfer of development rights program. Specifics as they pertain to development right use and timing shall be included within the Development Agreement.

**63. BDMC 18.98.160(A):** *Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.*

This criterion is met. See Conclusion of Law No. 48 above.

**64. BDMC 18.98.170(A):** *Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.*

Functionally equivalent standards are expected to be approved on a general level in the Development Agreement and specific deviations can be dealt with at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

65. **BDMC 18.98.170(B):** *The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.*

The criterion is satisfied. The application materials indicate that the Community Connector Road and multiple parks are designed to enhance views of Mt. Rainier. There are very limited opportunities for views of Mt. Rainier on The Villages main property. The school site in parcel F may have some views of Mt. Rainier if the areas to the south are cleared. There appears to be reasonable opportunities for views from Parcel B that will be further enhanced if the nearby tailing piles on property not owned by the Applicant are removed in the future. A condition is included in Exhibit C below encouraging the Applicant to explore opportunities for view enhancement and incorporate them into the planning process.

66. **BDMC 18.98.170(C):** *The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety.*

Implementing projects shall be designed to foster the development of a street grid system. Functionally equivalent standards are expected to be approved on a general level in the Development Agreement and specific deviations will be addressed at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

67. **BDMC 18.98.180(A):** *The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (E), and (I), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.*

A. The criterion is met. The AESI reports in Appendix D to the TV FEIS show conclusively that the stormwater system has been designed to locate infiltration ponds in areas that will recharge aquifers as required by BDMC 18.98.180(C). Planning on such a large scale has enabled the applicant to use its land efficiently for stormwater purposes, such as creation of a regional infiltration pond that would otherwise be segmented in several areas and thereby increase the need to encroach and segment natural open space and wildlife corridors. In this respect the regional nature of the facilities furthers the purposes of BDMC 18.98.010(C). The Applicant proposes a list of low impact development techniques, maximizing the use of permeable soils, thereby promoting environmentally sustainable development as contemplated in BDMC 18.98.010(H). The efficiencies of using a regional stormwater system also promote compact development as contemplated in BDMC 18.98.010(L). As further required by the criterion above, the

Applicant proposes public ownership of the facility as identified in page 6-4 of the Villages MPD application.

B. Conditions of approval require use of the most recent DOE stormwater manual (the 2005 SWMMWW). They also require that in the event that new phosphorus treatment technology is discovered and is either certified by DOE as authorized for use in meeting requirements of the SMMWW or is in use such that it is considered by the stormwater engineering community as constituting part of AKART, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities. These conditions provide additional compliance with the criterion above, by ensuring that the most up to date standards and technologies are employed to maximize the effectiveness and efficiency of the stormwater system.

**68. BDMC 18.98.180(B):** *The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B).*

The City's storm water codes apply to both public and private improvements.

**69. BDMC 18.98.180(C):** *Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD.*

The criterion is satisfied. The stormwater management plan proposed as part of The Villages takes advantage of the soil conditions in and around the project for infiltration. The stormwater management plan will incorporate distributed infiltration through Low Impact Development and a regional infiltration pond for the excess volume from the developed site. Opportunities for water reuse are preserved with the central collection of stormwater.

**70. BDMC 18.98.180(D):** *The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.*

The criterion is satisfied. A regional storm water system is proposed with sensitivity to existing wetlands and water balance within the basins. A condition of approval requires that stormwater ponds proposed to be included as "open space," and must be developed as a public amenity (i.e., safe, accessible, and aesthetically pleasing). A condition of approval is included in Exhibit C below to require that mechanisms be identified to integrate LID into the overall design of the stormwater system for the benefit of surface

and groundwater resources, provided that future Homeowners' Associations bear the increased cost of landscape maintenance that may be required as a result of use of LID.

71. **BDMC 18.98.190(A):** *An MPD shall be served with public water and sanitary sewer systems that:*

*1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.*

This criterion is satisfied. See Conclusion of Law No. 72 below.

*2: Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.*

A. This criterion is met subject to conditions. First, the Council recognizes that it may be impractical in the early stages of this project to construct the regional sewer pump station within the area identified within the application as the western expansion parcel. Therefore, the Council concludes that an interim sewer pump station will comply with the above criterion, provided that:

- i. Routing of the gravity sewer mains is consistent with the City's ultimate plan for routing sewage; and
- ii. No capital facility charge credit will be considered for interim improvements.

B. In addition, for the Northern Parcel, the Villages MPD application states there will be a point of connection in SR 169. Although that connection point will function, abandonment of the Diamond Glen sewer pump station and connection of the new sewer force main to the existing Diamond Glen sewer force main will be required. Continued installations of redundant interim sewer pump stations would be inconsistent with the criterion above, and will not be permitted. A pump station may be necessary to serve the easternmost portion of Parcel F. Alternatively, if the property to the north has developed or easements are obtained, the eastern area of Parcel F can be served by gravity to the existing King County Jones Lake sewer pump station.

C. King County is in the pre-design phase of an equalization sewer storage project to reduce the peak flow from the Black Diamond sewer service area. Currently, the City and King County have different proposals as to where such a storage facility should be located. When the final location is determined, the Applicant may need to shift its sewer infrastructure to deliver sewage from The Villages to a location upstream of the existing King County pump station G located just southwest of existing downtown Black Diamond. A condition of a approval is added to Exhibit C to so require.

D. The Applicant shall pay the Capital Facilities Charge in accordance with BDMC 13.04.020 and 13.04.295, as they exist or are subsequently amended. Page 8-1 of the Villages MPD application states, "Since water use can vary significantly...projected water use per ERU will be determined at the preliminary plat, binding site plan or site plan approval stage and confirmed prior to Occupancy." This statement implies that the developer can establish their own capital facility charge rate based on projected water use within The Villages. While the Applicant may anticipate that households within the Villages will use less water than other single- or multi-family households, the amount of water used by an "equivalent residential unit" is set by the City's water comprehensive plan. BDCM 13.04.020. Until such time as either the City's code or the water comprehensive plan is amended, the Applicant must pay a CFC in accordance with the same rules that apply to other development.

E. The planned projects for water service to The Villages are consistent with the City's Water Comprehensive Plan. If the City and developer identify new alternatives to distribute water to The Villages that will meet fire flow requirements, maintain redundant looping of the water system and/or reduce the needed facilities without compromising the level of service, the applicant shall pay the cost of a water comprehensive plan update if one is needed to accommodate such alternatives prior to the next scheduled water comprehensive plan update.

**72. BDMC 18.98.190(B):** *Each MPD shall develop and implement a water conservation plan to be approved as part of the Development Agreement that sets forth strategies for achieving water conservation at all phases of development and at full build out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit.*

This criterion is satisfied. The water conservation plan identified on page 8 of the MPD applications meets the requirements of BDMC 18.98.190(B) above. A condition of approval (No. 54) will be included in Exhibit C requiring that the water conservation plan be evaluated for its effectiveness in light of the City's available water resources after 500 dwelling units have been constructed. At that time, additional measures may be imposed.

**73. Master Planned Development Framework Design Standards and Guidelines (MPDFSG) (A)(Environmentally Sustainable)(p. 3):** *To provide resource-efficient site design which includes consideration for saving trees, constructing on-site stormwater retention/infiltration features, and building orientation to maximize passive solar heating and cooling.*

This criterion is satisfied. The Villages MPD application indicates that Low Impact Development techniques will be used for treating and disposing of stormwater. This shall be required as a condition of approval, wherever practical and feasible. Because no specific lot layouts are included in the MPD application, compliance or noncompliance

with solar orientation cannot be determined at this time. The City's Tree Preservation Ordinance will assure a significant retention and/or replacement of trees.

74. **MPDFSG (A)(1):** *Implement a construction waste management plan to reduce construction waste. Consider life-cycle environmental impacts of building materials.*

This criterion is satisfied, with the condition that the Applicant shall submit a construction waste management plan as part of the Development Agreement.

75. **MPDFSG (A)(2):** *Incorporate energy-saving techniques into all aspects of building's design and operation.*

This criterion shall be evaluated at the time of individual building permit applications.

76. **MPDFSG (A)(3):** *Maximize water conservation by maintaining or restoring pre-development hydrology with regard to temperature, rate, volume and duration of flow; use native species in landscaping; recycle water for on-site irrigation use.*

This criterion will be satisfied, subject to a condition requiring use of native vegetation in street landscaping and in parks. The Development Agreement will be required to include a water conservation plan with performance measurements; a general landscape plan; and a stormwater management plan.

77. **MPDFSG (A)(4):** *Use measures that can mitigate the effects of potential indoor air quality contaminants through controlling the source, diluting the source, and capturing the source through filtration.*

This will be addressed at the time of future building permit applications.

78. **MPDFSG (A)(5):** *Reduce overall community impacts by providing connectivity from the project to the community; by incorporating best management practices for stormwater management; by creating useable public spaces such as plazas and parks; and by protecting important community-identified viewsheds and scenic areas.*

This criterion is satisfied. In addition, high pedestrian use is expected to develop east-west along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek is currently unsafe for pedestrians. A condition of approval will be included requiring that a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area be constructed, provided that a design study confirms that the improvement is feasible from an engineering standpoint and that construction costs will be reasonable. Construction timing should be specified in the Development Agreement.

79. **MPDFSG (A)(6):** *Grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain significant natural contours.*

This criterion is satisfied, subject to a condition that will be included as a condition of approval in Exhibit C below, requiring compliance with the Framework Standards and Guidelines. Further, a condition of approval will be included requiring that, prior to the approval of the first implementing plat or site development permit within a phase, the Applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%. This will insure that unnecessary mining of material will not occur and reuse of existing materials will be maximized.

80. **MPDFSG (B)(p. 4):** *Black Diamond has a specific history and setting that involves varied topography, an agricultural past, forested areas, mining, and a small town scale. Care should be taken to reflect these patterns in master planned developments. In addition, the MPD chapter of Black Diamond's Municipal Code requires that fifty percent (50%) of the total land area of an MPD be maintained as open space. Proper design and integration of this open space into a development is very important.*

**Guidelines**

1. *All master planned developments shall include a wide range of open spaces, including the following:*
  - a. *Sensitive environmental features and their buffers*
  - b. *Greenbelts*
  - c. *Village greens*
  - d. *Parks and school playgrounds*
  - e. *Public squares*
  - f. *Multi-purpose trails*

*These features should be deliberately planned to organize the pattern of development and serve as centerpieces to development cluster, not merely as "leftover" spaces.*

2. *Open spaces shall be linked into an overall non-motorized network through sidewalks, trails and parkways.*

*The overall network shall be delineated at initial MPD approval and implanted through subsequent plats and permit approvals.*

For reasons previously discussed, this criterion is satisfied, because the Villages MPD proposal meets the intent of these guidelines.

81. **MPDFSG (B)(3):** *Stands of trees as an element of open space. Due to the propensity of severe wind events in the Black Diamond area, an MPD should incorporate the preservation of larger rather than smaller stands of native trees.*

This criterion is satisfied. There are forested areas proposed for retention as open space (Compare Figure 10-1 with Land Use Plan (Figure 3-1)). In addition, a condition of approval is included that requires a tree inventory prior to the development of implementing projects so that other opportunities to preserve trees may be realized. The City's Tree Preservation Ordinance will also result in significant large tree retention.

82. **MPDFSG (C)(p. 5):** *To allow for an efficient use of land, lower the cost of infrastructure and construction, protect environmentally sensitive areas, and maintain a small town "village" character within an MPD. Development is to be integrated with networks of preserved natural features and developed open space for both passive and active recreational uses.*

#### **Guidelines**

1. *Use of conventional, suburban-style subdivision design that provides little common open space shall be avoided.*
2. *Groupings of primarily residential development of approximately 400-600 units should be contained generally within a quarter mile radius to support walking, bicycling and future transit service. Development clusters shall be surrounded by a network of open space with a variety of recreational uses (including trails) to provide connections between clusters.*
3. *Methodology for Planning Development in clusters.*
  - a. *environmentally sensitive areas to be protected (including streams, wetlands, steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and used as an organizing element for design;*
  - b. *areas for development of housing and commercial development shall be indicated;*
  - c. *streets and public spaces (as well as sites for public facilities such as schools, fire stations and other civic structures) shall be identified;*
  - d. *lots and groups of lots with various ownerships (i.e. fee simple by occupant, condominium, single ownership apartments, etc) shall be integrated with one another throughout all phases of a project;*
  - e. *views of Mt Rainier and other desirable territorial views shall be identified and integrated into site planning to maximize viewing from public spaces (streets, trails, parks, plazas, etc.).*

For reasons previously discussed and as demonstrated in the layout proposed in the MPD applications, the Villages MPD meets the intent of these guidelines; therefore, these guidelines are satisfied.

83. MPDFSG (D)(Ensuring Connectivity)(p. 6): *To promote ease of mobility and access within all portions of the development.*

**1. Pedestrian Connectivity**

a. *Similar to a traditional small town, services and common spaces shall be easily accessible to residents on foot. Off-street pedestrian trails are to be provided as a network throughout the development. Pedestrian connections shall be provided where cul-de-sacs or other dead-end streets are used.*

As conditioned, the criterion is satisfied. The MPDs propose an integrated trail network that connects all portions of the development, including up to the commercial portions of the projects. In addition, high pedestrian use is expected to develop east-west along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek is currently unsafe for pedestrians. A condition of approval will be included requiring that a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area be constructed, provided that a design study confirms that the improvement is feasible from an engineering standpoint and that construction costs will be reasonable. Construction timing should be specified in the Development Agreement.

84. MPDFSG (D)(2)(a): *The system of streets shall demonstrate a high degree of both vehicular and pedestrian connectivity, allowing residents and visitors multiple choices of movement. Isolated and dead-end pockets of development are not desired.*

As depicted in Figure 4-1 of the MPD applications, the proposals depict only an "approximate" and basic "skeleton" of a future street system and descriptions of street types including cul-de-sacs. The trail networks depicted in Chapter 5 of the applications provide more detail. The vehicular and pedestrian circulation plans proposed by the Applicant exhibit several connection points to adjoining properties, thus demonstrating a high degree of connectivity as required by the criterion above. Therefore, this criterion is satisfied. For clarification, page 4-26 of the MPD application refers to a connection point to Green Valley Road. This is construed as in error, because the connection is not depicted in the Land Use Plan and the FEIS assesses a direct connection to SR 169.

85. MPDFSG (D)(2)(b): *Cul-de-sacs shall be avoided unless there are no other alternatives.*

No cul-de-sacs are proposed at this MPD level of design. Regulations and conditions of approval require consistency with the MPDFSG at all stages of development; therefore, this criterion is satisfied.

86. **MPDFSG(E)(Mixing of Housing)(p. 7):** *To encourage a diversity of population and households within Black Diamond through a range of choices in housing types and price.*

*Guidelines*

1. *MPD's shall include various types of housing, such as:  
a.-e. [Not listed here; refer to Design Guidelines for complete text.]*
2. *Each cluster of development shall include a variety of unit types and densities.*

As noted previously, it is not clear what the exact housing mix in the MPD project will be. As previously noted, a condition of approval is included requiring compliance with this guideline. In addition, a condition of approval is also included requiring that the Development Agreement contain specific targets for various types of housing for each phase of development so that this requirement does not become perpetually deferred from one phase to the next. So conditioned, this criterion is satisfied.

87. **MPDFSG(E)(3):** *For Single Family developments, alley access to garages is desired. Direct driveway access to streets should only occur if there are no other alternatives.*

Page 3-30 of the MPD application materials indicates that front loaded single-family homes will, "form the majority of the residential typology" within The Villages MPD. To assure this, a condition of approval is included requiring that detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. However, while alleys provide convenience and a clean streetscape, the City may not be able to cover the additional cost of policing the alleys and maintaining double public street frontage. Therefore, for alleys or auto courts serving less than 20 lots, the alleys and auto courts be privately owned and maintained.

88. **MPDFSG(E)(4):** *Large apartment complexes and other repetitive housing types are discouraged. Apartments should replicate features found in Single Family Residential areas (i.e., garages associated with individual units, individual outdoor entries, internal driveway systems that resemble standard streets, etc.).*

This level of detail is more appropriate at the Development Agreement and implementing permit issuance. Compliance with this guideline is required as a condition of the Development Agreement. As so conditioned, this criterion is satisfied.

89. MPDFSG(F)(Creating Neighborhood Civic/Commercial Centers)(p. 8): *To conveniently concentrate services and activities to serve multiple residential clusters.*

*Guidelines*

1. *Civic/Commercial Centers shall be located to serve groupings of clusters as well as pass-by traffic in order to support an array of shops and services.*
2. *Such centers shall be anchored by a public green space and, ideally, a public building such as a school or meeting hall.*

The proposed Town Center and uses on Parcel B satisfy this provision. Although the proposed allowed uses in the various land use categories indicate the potential for small scale (neighborhood) commercial development occurring in the residential classifications, actual locations are not defined at this time. Commercial areas should be identified on the Land Use Plan through a future amendment to the MPD. Proposed parks are located in areas which comply with this guideline.

91. MPDFSG(F)(3): *Upper story housing above retail or commercial space is strongly encouraged within Civic/Commercial Centers.*

Development parcels V11 and V12, with approximately 160 dwelling units, are proposed as a mixed use component of the Town Center.

92. MPDFSG(F)(Interface with Adjoining Development)(p. 9): *To ensure a transition in development intensity at the perimeter of MPD projects.*  
*Guidelines.*

1. *Where individual lot residential development is located along the boundary of an MPD, lot sizes shall be no less than 75% the size of the abutting residential zone or 7200 sq. ft., whatever is less.*
2. *Multi-family and non-residential land uses should include a minimum 25 ft. wide dense vegetative buffer when located along the boundary of an MPD.*
3. *When there is no intervening development proposed, a minimum 25 ft. wide dense vegetative buffer should be provided between main entrance or access routes into an MPD and any adjoining residential development.*

Compliance with these standards will be required at the time of implementing projects. As so conditioned, this criterion is satisfied. In addition, the minimum buffer along the eastern border of development parcel V13 should be 50 feet. Existing vegetation should be retained and augmented with native plantings. The minimum buffer along the western border of development parcels V1, V2, V10, V15 and V20 should be 50 feet. These parcels comprise the northern part of the main property and Figure 3-1 already depicts these areas as open space tracts. Existing vegetation should be retained and augmented,

except for construction of the planned regional trail with native plantings. The Applicant does propose trails for the 50 foot western border buffer. See MPD application, p. 5-27.

93. **MPDFSG(A)( Streets)(p. 10):** *To establish a safe, efficient and attractive street network that supports multiple choices of circulation, including walking, biking, transit and motor vehicles.*

**I. Connectivity**

**a. The street layout shall create a network that promotes convenient and efficient traffic circulation and is well connected to other existing City streets.**

A. The criterion is satisfied. The new Pipeline Road, the South (Community) Connector and the North Connector through parcel B will provide new efficient transportation links that will avoid having to increase existing roads to 4 or 5 lanes. The network of trails and bike lanes will provide alternate means for local travel. The connection points to surrounding urban zoned properties will provide for future connectivity. Also see previous discussion regarding the extension of the Community Connector to SR 169.

**2. Design**

**a. The layout of streets should relate to a community-wide focal point.**

B. This criterion is satisfied. The street design does provide for a neighborhood focal point at the elongated roundabout near The Villages center.

**b. A consistent overall landscape theme should be utilized, with variations provided to indicate passage through areas of different use, densities, topography, etc.**

C. The MPD application includes a variety of street sections, which can be unified through a landscape theme that emphasizes the use of native plant species.

**c. Limit the use of backyard fences or solid walls along arterial streets.**

D. Compliance with this standard will be required at the time of implementing projects.

**3. Reduced Pavement Widths**

**a. Pavement widths should be minimized to slow vehicular speeds and maintain an area friendly to pedestrians and non-motorized users.**

E. The City street standards were adopted in June of 2009, with reduced widths to address this goal. The Villages proposed streets are very similar to the City's standard streets, but in some cases are wider. The design standards will be established through the Development Agreement and the administrative deviation process provided for in the Engineering Design and Construction Standards.

**4. Low-Impact Design**

**a. Stormwater runoff should be reduced through "natural" techniques: flush curbs, bio-filtration swales, use of drought-tolerant vegetation within medians and planting strips, etc.**

F. This criterion is satisfied as discussed above.

**5. Traffic calming methods should include:**

- Roundabouts
- Traffic Circles
- Chicanes
- Corner bulbs

G. Two roundabouts are proposed along the Community Connector. Staff recommends that traffic calming measures be explored with each implementing development action, at the discretion of the Public Works Director.

**6. Lanes and Alleys**

**a. Access to rear residential garages and commercial loading and service areas shall be available through lanes and alleys.**

H. As noted, the application materials indicate that the majority of homes will be "front loaded lots," which is inconsistent with this guideline. The recommended conditions of approval require that homes have alley access except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. Further, as noted above, in order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all alleys and auto courts serving 20 units or less shall be maintained by the Master Developer or future Homeowners Association(s).

**7. Non-motorized Circulation**

*a. All streets shall include either sidewalks or trails on at least one side of the street. Design streets to be "bicycle" friendly.*

**8. Street Landscaping**

*a. All streets shall include native and/or drought-tolerant vegetation (trees, shrubs and groundcover) planted within a strip abutting the curb or edge of pavement. Native and/or drought-tolerant vegetation shall also be used within all medians.*

I. Compliance with these standards will be required at the time of implementing projects. The details of these design features will be resolved through the Development Agreement and the design deviation process. The City does not have adequate funds to manage street landscaping; a condition of approval included in Exhibit C requires that future Homeowners' Association(s) be required to maintain the street-side landscaping.

**9. On-Street Parking**

*a. Curbside parallel parking shall be included along residential streets. Parallel or angle parking should be included within non-residential areas.*

J. The proposed street standards indicate that parallel parking will be available along residential streets. Compliance with these standards will also be required at the time of implementing projects.

94. **MPDIFSG(B)(Sidewalks)(p. 11):**

**B. Sidewalks**

**Intent**

**Guidelines**

**1. Width**

*a. The minimum clear pathway shall generally be between 5 ft and 8 ft, depending upon adjacent land uses and anticipated activity levels.*

**2. Lighting**

*a. All lighting shall be shielded from the sky and surrounding development and shall be of a consistent design throughout various clusters of the development.*

**3. Furnishings**

*a. Street furnishings including seating, bike racks, and waste receptacles shall be located along main streets in Civic/Commercial areas.*

*b. Furnishings serving specific businesses (outdoor seating) will require a building setback and shall maintain a minimum passable width of the sidewalk.*

*c. Mailbox stations shall be designed to be architecturally compatible with the development in which they are located*

The Villages proposal provides a good network of trails, sidewalks and bike lanes within the project itself. A safe sidewalk link is needed and will be required from The Villages to Morganville (current west Black Diamond) along the Auburn Black Diamond Road/Roberts Drive. The area of greatest concern is the narrow bridge over Rock Creek. Compliance with these standards will be required at the time of implementing projects.

95. MPDFSG(C)( Walkways and Trails)(p. 12):

*Intent*

*To provide safe, continuous pedestrian linkages throughout and sensitive to the project site, open to both the public and project residents.*

A. The Villages proposal provides internal safe continuous pedestrian linkages with sidewalks and trails. With the one additional off-site sidewalk pedestrian link along Auburn Black Diamond Road/Roberts Drive, this guideline will be met.

*Guidelines*

*1. Location*

*a. Walkways and trails shall be integrated with the overall open space network as well as provide access from individual properties. Trail routes shall lead to major community activity centers such as schools, parks and shopping areas.*

B. Staff finds that the proposal meets the intent of this guideline.

*2. Width*

*a. Not less than 8 feet wide to allow for multiple modes of use.*

C. Both 8-foot-wide hard and a 6-foot-wide soft surface trail types are proposed within the project (see page 5-29 of the application). A 5-foot-wide boardwalk trail section is also proposed for limited use. The MPD proposal meets the intent of this guideline, with the exception of the soft-surface trail which is proposed to be 6 feet in width.

*3. Materials*

*a. Walkways connecting buildings and hardscaped common spaces shall have a paved surface.*

*b. Trails throughout the development and connecting to larger landscaped common spaces shall be of at least a semi-permeable material.*

D. The MPD proposal meets the intent of this guideline as proposed and the requirement will be enforced for implementing projects.

96. MPDFSG(pp. 13-18):

*Text not included.*

The remaining design guidelines in the MPDFSG concern design requirements for site plan and building permit level development that are not addressed at this stage of development review. While the staff report references some specific design standards proposed by the Applicant, these do not warrant analysis at this stage of review because the conditions of approval below exclude those proposals from the scope of the MPD approval. As to land use, the conditions of MPD approval limit the proposal to the land use plan map (Figure 3-1 in the MPD applications), description of categories (beginning on page 3-18), and target densities: BDMC 18.98.110 and the conditions of approval both require application of the MPDFSG for implementation projects. Deferral of the site plan and building level of MPDFSG review for implementing permits will not compromise the ability to comply with those standards.

97. *International Fire Code, 2006 Edition*

BDMC 18.98.080(A)(1) requires the MPD to comply with all adopted regulations, which includes the International Fire Code. The requirements below are necessary at this stage of project review to assure compliance with the Fire Code.

**Access:** All Fire Department access roads should be required to meet the International Fire Code, specifically Section 503 (Fire Department Access Roads) and Appendix D (Fire Department Access Roads). Generally this requires that all roads be at least 20 feet in unobstructed width with 13 feet 6 inches of unobstructed vertical clearance across the entire road surface. If fire hydrants are located on the Fire Department access road, then the roads must be at least 26 feet in width. The proposed street designs include some elements (e.g., "auto courts") that do not comply with this standard. Per the Fire Code, road grades should not exceed 10 percent. All portions of the first floor exterior walls of structures should be within 150 feet of approved fire apparatus access roads (especially with high density housing, multi-family and commercial occupancies).

More than one means of access and egress is required per the International Fire Code 2006 ed. Appendix D Section D107. Specifically D107.1 states: "Developments of one or two family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3...."

**Parks and Open Spaces:** Separation of combustible structures and vegetation must be provided to prevent potential wildland fires from the east and south from spreading to structures. This separation will vary with types of structures and the natural vegetation and will be evaluated at the time of implementing project approval.

**Access to Park/Open Space Trails:** To allow for Fire Department access to medical emergencies and small fires involving natural vegetation within the open space and park trails, these trails to be wide enough to allow for passage of the Fire Department off-road "Gator" and wheeled stretchers.

**EXHIBIT C**  
**CONDITIONS OF APPROVAL**  
**The Villages MPD**

**GENERAL**

1. Approval of the MPD is limited to the terms and conditions set forth in the City Council's written decision, and does not include approval of any other portion of the MPD set forth in the application.

2. After approval by the City Council at an open public meeting and after a public hearing as required by law, a Development Agreement shall be signed by the Mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the City shall approve any subsequent implementing permits or approvals. Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of subsequent implementing permits or approvals.

3. The Phasing Plan of Chapter 9 of the MPD application is approved, with the exception of the bonding proposal at p. 9-3 and the proposal for off-site trails at p. 9-2 (to the extent not already considered a regional facility) and parks at p. 9-10, and except as otherwise noted in these conditions of approval.

4. The Development Agreement shall specify which infrastructure projects the applicant will build; which projects the City will build; and for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

5. The Development Agreement shall specifically describe when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

6. The Development Agreement shall include language that defines and identifies a "Master Developer." A single Master Developer shall be maintained through the life of the Development Agreement. The duties of the Master Developer shall include at least the following: a) function as a single point of contact for City billing purposes; b) function as a single authority for Development Agreement revisions and modifications; c) provide proof of approval of all permit applications (except building permits) by other parties prior to their submittal to the City; and d) assume responsibility for distributing Development Agreement entitlements and obligations and administering such.

7. The City shall have the ability but not the obligation to administratively approve off-site projects that would otherwise be compromised if they cannot be completed prior to approval and execution of the Development Agreement. In these instances, the applicant shall acknowledge in

writing that the approval of any such applicable projects does not in any way obligate the City to incur obligations other than those specifically identified in the approved permits for the applicable project.

8. The applicant shall submit a construction waste management plan for inclusion in the Development Agreement.

9. Homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings. In addition, the CCRs shall include provisions, to be enforced by the HOA, prohibiting washing of cars in driveways or other paved surfaces, except for commercial car washes, and limiting the use of phosphorous fertilizers in common areas, so as to limit phosphorous loading in stormwater.

### TRANSPORTATION

10. Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 25 and 20 below. The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur. Any "functionally equivalent" realignment that results in a connection of MPD roads to Green Valley Road shall be processed as a major amendment to the MPD.

11. The City shall create, at the expense of the Applicant, a new transportation demand model for this project for use in validating the distribution of project traffic at the intervals specified in Condition No. 17. The new model shall incorporate, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city. The new model shall include the intersections studied in the FEIS, together with the following additions: all existing principal and minor arterials in Black Diamond, Covington and Maple Valley and the unincorporated areas between these cities and specifically including the Kent-Black Diamond Road; additional study intersections at SE 231<sup>st</sup> Street/SR 18 westbound ramps, SR 169/SE 271st Street and SR 169/SE 280th Street in Maple Valley. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation. Key to the success of the new model is a well-coordinated effort and cooperation among the

cities of Black Diamond, Maple Valley and Covington, the Applicant, King County and the Washington State Department of Transportation. Although the specific assumptions ultimately made in the model may be the subject of differences in professional judgment, the City Council's goal is that, notwithstanding these differences in judgment, the model will be comprehensive and therefore acceptable to all parties. The City Council therefore directs staff in preparing the model to work within the spirit of openness and cooperation with these other agencies and the Applicant, and similarly requests that other agencies and the Applicant join with the City of Black Diamond staff in working together in the same spirit for the common good.

12. The new demand model must take into account recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, and existing speed limits on all roadway links included in the model's roadway network. The model must be run with currently funded transportation projects for each affected jurisdiction as shown in the applicable 6-year Transportation Improvement Plans and with transportation projects shown in the applicable 20-year Transportation Improvement Plans which projects are not funded but are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction.

13. The new model must contain a mode split analysis that reflects the transit service plans of Sound Transit, King County Metro and any other transit provider likely to provide service in the study area. This mode split analysis should include an estimate of the number of project residents likely to use the Sounder and to which stations these trips might be attributed. This analysis must be presented to the City, the applicable transit agencies, and the jurisdictions in which trips are likely to use park and ride, Sound Transit parking garages or other facilities.

14. The new model must include a reasonable internal trip capture rate assumption. The assumed internal trip capture rate must be based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in Western Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.

15. Intersection improvements outside the City limits may be mitigated through measures set forth in an agreement between the developer and the applicable agency. Where agreement is possible, the developer shall enter into traffic mitigation agreements with impacted agencies outside the city that have projects under their jurisdiction in the list below, and the agreement shall be incorporated as part of the Development Agreement, or as an addendum to an adopted Development Agreement. Any agreement so incorporated supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement. If an agreement is not reached, the projects identified below shall be added to the regional project list and included as part of the Development Agreement, and the developer and the City shall agree on reasonable time frames for construction (for projects located within the City of Black Diamond and subject to Condition No. 10), or Applicant payment of its proportional costs toward construction of projects located outside of the City of Black Diamond.

<b>Exhibit 6-1 Intersection Improvements</b>		
<b>Study Intersection</b>	<b>Jurisdiction</b>	<b>Mitigation</b>
SE 288th Street/216th Avenue SE	Black Diamond	Signalize. Add NBR turn pocket.
SE 288th Street/232nd Avenue SE	Black Diamond	Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.
SR 169/SE 288th Street	WSDOT	Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).
SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.
SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.
SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.
SE Auburn Black Diamond Road/ Morgan Street	Black Diamond	Roundabout.
SR 169/Roberts Drive	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.
SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.
SR 169/Baker Street	Black Diamond/WSDOT	Signalize.
SR 169/Lawson Road	Black Diamond/WSDOT	Signalize. Add SBL turn pocket.
SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.
SR 169/SR 516	Maple Valley/WSDOT	Add second NBL turn pocket.
SR 169/SE 240th Street	Maple Valley/WSDOT	Add additional SBT lane on SR 169 from north of 231st Street to Witte Road. Add second NBT lane at SR
SR 169/Witte Road	Maple Valley/WSDOT	

SR 169/SE Wax Road	Maple Valley/WSDOT	169/240th Street.
SR 169/SE 231st Street	Maple Valley/WSDOT	
SR 169/SR 18 EB Ramps	Maple Valley/WSDOT	
SR 516/SE Wax Road	Covington/WSDOT	Add second SBL, WBR, and NBL turn pockets.
SR 516/168th Pl SE	Covington/WSDOT	Add NBL and EBR turn pockets.
SR 516/Covington Way SE	Covington/WSDOT	Optimize signal timings.
SE 272nd Street/160th Avenue SE	Covington/WSDOT	Signalize.
SE Kent Kangley Road/ Landsburg Road SE	Maple Valley/King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.
SR 169/SE Green Valley Road	WSDOT	Signalize.
SE Auburn-Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.
SR 169/North Connector	Black Diamond/WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection.
Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.
SE Auburn Black Road/Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.
SR 169/South Connector	Black Diamond/WSDOT	Signalize. Add SBR and NBL turn pockets.

16. If (a) the City of Maple Valley does not appeal or challenge the MPD Approval for the Villages MPD, (b) the City of Maple Valley does not appeal or challenge the MPD Approval for the Lawson Hills MPD, (c) the City of Maple Valley does not appeal or challenge the Development Agreement for the Villages MPD, (d) the City of Maple Valley does not appeal or challenge the Development Agreement for the Lawson Hills MPD, the Applicant shall provide the following mitigation for the City of Maple Valley, which as to the identified mitigation supercedes the mitigation projects listed for the City of Maple Valley in Condition 15 above.

For purposes of this condition, the percentage of the mitigation project to be contributed by the Applicant to the City of Maple Valley is shown for each project. All references to percentages constitute the combined contribution share of the Villages and Lawson Hills projects.

Project A: Contribute 25.3 percent toward one additional southbound through lane on SR 169 from SE 231st Street to Witte Road. Add a second eastbound to southbound right-turn lane on SE Wax Road (double right turn lanes). Upgrade signal equipment to be able to run the eastbound right turn phase with northbound protected left turn phase at the same time.

Project B: Contribute 26.1 percent toward one additional southbound through lane on SR 169 from SE Wax Road through the intersection at SR 169/Witte Road SE. The curb lane will become a right turn lane. The southbound approach to this intersection will be one right turn lane and two through lanes.

Project C: Contribute 66.6 percent toward a second northbound to westbound left-turn lane (300 ft) on SR 169 and a second westbound to southbound left-turn lane (400 ft) on SE 240th Street. Widen SE 240th Street west of SR 169 to add a second westbound lane (500 ft).

Project E: Contribute 37.2 percent toward a second southbound lane on SR 169 from Witte Road SE to SE 244th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 240th Street to Witte Road SE.

Project F: Contribute 63.2 percent toward installation of a traffic signal at the intersection of SR 169/SE 244th Street.

Project G: Contribute 50.8 percent toward a second southbound lane on SR 169 from SE 244th Street to SE 264th Street. Construct a second northbound lane on SR 169 from SE 264th Street to 1,000 feet north of SE 264th Street.

Project H: Contribute 59 percent toward a second southbound lane on SR 169 from south of SR 516 to SE 271st Street.

Project I: Contribute 54.6 percent toward a signal equipment upgrade at the intersections of SR 169/SE 264th Street, SR 169/SR516, and SR 169/SE 271st Street to be able to coordinate these three signals, and set the signal cycle length at 140 seconds.

Project J: Contribute 61.25 percent toward a second southbound lane on SR 169 from SE 271st Street to SE 280th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 271st Street to SE 271st Street.

Project K: Contribute 58.4 percent toward a second southbound lane on SR 169 from SE 280th Street to Maple Valley's south City limit.

Project L: Contribute 6.8 percent toward a new three-lane road (one eastbound and two westbound lanes) on the SE 271st Street alignment between SR 169 and SR 516. Add a

second northbound to westbound left turn lane (200 ft) on SR 169 and a signal at SR 516/SE 271st intersection.

Project W: Contribute 29.9 percent toward widening SR 516 to 4/5 lanes from 216th Ave SE to the west City limits of Maple Valley. Add a second westbound lane on SR 516 to 1,000 feet east of 216th Ave SE.

Project X: Contribute 29.9 percent toward reconfiguration of the northbound approach to SR 516/216th Ave SE to include one left-turn lane and one left and right-turn share lane. Increase the left turn pocket length to 270 feet. Modify signal to accommodate eastbound right-turn phase overlapping with northbound phase.

Project Y: Contribute 13.5 percent toward a second westbound lane on SE 240th from 500 feet west of SR 169 (see Project C) to Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Y (except for the contribution of the Applicant).

Project Z: Contribute 13.5 percent toward a 2-to-3 lane extension of SE 240th Street between Wax Road and Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Z (except for the contribution of the Applicant).

17. a. At the point where building permits have been issued for 850 dwelling units at the Villages and Lawson Hills together, and again at such phase or interval determined by the City Council following completion of the review called for by this condition, the City shall validate and calibrate the new transportation demand model created pursuant to Condition 11 above for the then-existing traffic from the Villages and Lawson Hills together. The calibration may include an assumption for internal trip capture rates as set forth in Condition 14 above, rather than actual internal trip capture rates, if an insufficient amount of commercial development has been constructed at the time of the validation/calibration required herein. The City shall then run the model to estimate the trip distribution percentages that will result from the next upcoming phase or interval of MPD development, and to assign the estimated trips from that phase or interval to the intersections identified in Condition 11 above.

b. Using the trip distribution and trip assignment yielded by the transportation demand model validation and calibration required in subsection (a) above, the City shall conduct an intersection operations analysis of the transportation levels of service (LOS) for the intersections identified in Condition 11 above, and shall issue findings, conclusions and a recommendation as provided below. The intersection operations analysis shall determine whether then-existing, adopted PM peak hour intersection levels of service are met, and whether the then-existing, adopted PM peak hour intersection levels of service are projected to be met by the time of the next validation/calibration/operations analysis identified by the City Council pursuant to subsection (a) above. The intersection operations analysis for existing conditions must take into account the then-existing peak hour factor; the analysis for the next identified phase or interval of development must be based on a reasonable assumption (justified by reasonable traffic engineering practice) as to the future peak hour

factor, and contain a sensitivity analysis to identify the effect of such peak hour factor assumption. If the findings and conclusions determine that the then-existing, adopted PM peak hour LOS will not be met, they shall also determine whether the projects set forth in Conditions 15 and 16 above adequately mitigate the impacts resulting from the failure to meet the adopted LOS. If the findings and conclusions determine that failure to meet adopted transportation LOS will not be adequately mitigated, they shall also recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects' failure to meet the adopted LOS.

c. The review identified in subsections (a) and (b) above, may be performed concurrent with a preliminary plat application held on either the Villages or Lawson Hills implementing plat, and the City review may incorporate relevant portions of any SEPA documents prepared for the implementing plat which analyze cumulative MPD impacts.

d. When the review thresholds identified in subparagraph a above have been reached, the City shall issue written notice to the Master Developer(s) to each submit within 90 days review documentation summarizing their respective project impacts and compliance with mitigations and conditions to date, as well as any additional information the City deems necessary to perform the transportation demand model validation/calibration and/or intersection operations analysis. In addition, the Master Developer(s) shall each pay a proportionate share of the validation/calibration/operations analysis costs incurred by the City. If a Master Developer fails to submit satisfactory periodic review documentation regarding its project within the 90-day period after notice has been issued as required herein, further permits shall not be approved for that MPD until the required documentation has been submitted.

e. Not later than 90 days following the City's completion of the validation/calibration/operations analysis, the City Director of Community Development shall consult with other affected jurisdictions as to the review analysis results, obtain any input such jurisdictions wish to provide, issue the City's proposed findings, conclusions and recommendation, and at the close of the 90-day period, the City shall meet with the Master Developer(s) to review the proposed findings, conclusions and recommendation and identify what improvements the Master Developer(s) plans to construct. Within 14 days of the City meeting with the Master Developer(s), the City shall finalize its findings, conclusions and recommendation and shall provide mailed notice to all Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the review has been issued.

f. The City's demand model validation and calibration called for by subsection (a) above, and the intersection operations analysis called for by subsection (b) above, (the "periodic review analysis") shall result in written findings and conclusions plus a recommendation for new future permit conditions and mitigations for the Villages and/or Lawson Hills, as required. Proposed conditions and mitigations applicable to future permits and associated mitigation within either or both projects shall be revised if the City finds that the conditions or mitigation measures imposed pursuant to the City's standards in effect at the time of MPD approval have resulted in an unsatisfactory level of mitigation, either because the degree of mitigation is

inadequate or the quantity of impact demonstrated to be attributable to MPD development exceeds levels predicted. New permit conditions and mitigations imposed for cumulative impacts through the periodic review process shall comply with the following standards and limitations:

i. No new standards or requirements shall be imposed upon property in any plat recorded within 60 months of MPD approval to the extent that such standards or requirements would affect infrastructure serving said property also constructed within the 60-month timeframe.

ii. Performance standards more stringent than those contained in the original MPD permit shall not be imposed.

iii. No retrofitting or major modification shall be required for facilities properly installed in accordance with MPD permits unless such is determined necessary to avoid a threat to public health or safety or a new significant adverse environmental impact, and such impact or threat cannot be mitigated by requirements imposed upon or downsizing of MPD development yet to be constructed.

iv. New conditions and mitigations shall be limited to those shown to be necessary as a direct result of the MPD development, and such mitigation must be reasonable and achievable without compromising other MPD permit requirements.

v. Conditions and mitigations applicable to a MPD shall be modified only to the extent that cumulative impacts are demonstrated to be the result of development of such project. If cumulative impacts have been demonstrated to exist but cannot be attributed solely to the MPDs, or allocated between the two MPDs, responsibility for mitigation shall be apportioned equitably in a proportionate or pro-rata share. For purposes of this condition, "proportionate share" shall mean the ratio of the combined Villages and Lawson Hills MPD project PM peak hour trips projected to use the intersection compared to the total number of PM peak hour trips expected to use the intersection. Any mitigations or conditions imposed shall specify clearly which project and which portion thereof to which they apply.

g. The Villages Master Developer, the Lawson Hills Master Developer, or any other party of record may appeal the periodic review analysis within 21 days of the date of its issuance by filing an appeal statement with the Community Development Director, plus a fee in the amount then applicable to an administrative appeal of a SEPA threshold determination. The appeal statement shall specify in detail the errors alleged to exist in the periodic review analysis and any appeal proceedings shall be limited to analysis of such allegations.

h. If one or more timely appeals are filed of the City's periodic review analysis, they shall be heard and decided by the Hearing Examiner within 90 days of the date the appeal is filed. The hearing shall be limited to the issues included within the written appeal statement. Participation in the appeal shall be strictly limited to the City, the Applicant and parties who timely filed complete written appeal statements and paid the appeal fee. The

appellant shall bear the burden of proof in the appeal. The periodic review analysis shall be upheld on appeal unless found to be clearly erroneous based on the record as a whole.

i. The Hearing Examiner's decision on the periodic review analysis shall be a final decision appealable under the Land Use Petition Act, Chapter 36.70C RCW.

j. If no timely appeal of the periodic review analysis is received, its findings, conclusions, and recommendation shall become final and non-appealable 21 days after issuance. If an appeal is filed, the time required for determination of such appeal shall be excluded from the approval period for any MPD permit and preliminary plat in effect on the date of issuance of the periodic review analysis.

18. The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

19. For each potential signal, first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control. [FEIS Mitigation Measure]

20. A transportation monitoring plan shall be established as part of the Development Agreement using the projects identified in the list included in Condition 15 (and as that list is modified as a result of the periodic review process), and including trigger mechanisms acceptable to the City. The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service, provided that for projects within the State right-of-way, the monitoring plan shall establish timing for commencement of only engineering and design of improvement and shall not include deadlines for commencement of construction.

21. Implementing projects shall be designed to foster the development of a street grid system throughout the project.

22. In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all auto courts serving 20 units or less, and all alleys shall be private and maintained by the Applicant or future Homeowners' Association(s). The Development Agreement shall provide that, in the event that the Applicant or future Homeowners' Association(s) fails to maintain such auto courts and/or alleys, the City may enter onto the property, repair or maintain the alleys or autocourts as the City determines in its reasonable discretion is necessary, and collect the costs of such repair or maintenance from the Applicant or Homeowners' Association(s), as applicable. The Development Agreement shall also provide that, to secure repayment, the City may lien the individual lots within the subdivision in which the alley or autocourt is located.

23. The applicant or future Homeowners' Association(s) shall be required to maintain all street side landscaping, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s). The Development Agreement shall provide that, in the event that

the Applicant or future Homeowners' Association(s) fails to maintain such street-side landscaping, the City may enter onto the property, repair or maintain the landscaping as the City determines in its reasonable discretion is necessary, and collect the costs of such maintenance from the Applicant or Homeowners' Association(s), as applicable. The Development Agreement shall also provide that, to secure repayment, the City may lien the individual lots within the subdivision in which the street-side landscaping is located.

24. Traffic calming measures shall be explored with each implementing development action and implemented at the discretion of the Public Works Director.

25. The monitoring plan required by these conditions shall require the applicant to model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the City's adopted level of service. The monitoring plan shall provide for the timing of commencement of construction of projects identified in Condition 15, as well as the amendments to the scope of said projects and/or additions to Condition 15's project list as determined by the City in its reasonable discretion as necessary to maintain the City's adopted levels of service in effect at the time of the modeling, to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard. In the event of a disagreement between the applicant and the City about the timing of construction of a transportation project under the monitoring plan, and if the monitoring plan does not already include period modeling, the applicant shall also monitor traffic levels midway through each phase to determine if the traffic generation, trip distribution and assignment patterns are developing as expected.

26. Reserve a site within the commercial area on either the north or south side of Auburn-Black Diamond Road for a future park and ride lot. [FEIS Mitigation Measure] The site shall be of sufficient size to accommodate parking for the number of vehicles identified in the mode-split analysis in the new transportation demand model as set forth in Condition No. 14 above.

27. No more than 150 residential units shall be permitted with a single point of access. 300 units may be allowed on an interim basis, provided that a secondary point of access is provided.

28. The Development Agreement shall define a development parcel(s) beyond which no further development will be allowed without complete construction of the South Connector.

29. Prior to the first implementing project of any one phase being approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

30. The applicant shall apply road design speed control and traffic calming measures so that inappropriate speeds are avoided on neighborhood streets.

31. The timing of the design and alignment of the Pipeline Road shall be included as part of the Development Agreement.

32. Provided a study confirms engineering feasibility and reasonable and customary construction costs, a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area shall be required along Roberts Drive. Construction timing should be specified in the Development Agreement. The City and applicant shall work in good faith to seek grants and other funding mechanisms to construct the improvement. The applicant shall otherwise be responsible for construction costs to the extent authorized by law.

33. a. The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review committee.

b. A Green Valley Road Review Committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, but only two community members shall have a vote on the committee regarding any matter. The Committee shall meet as needed, and specifically shall meet to review the study required by Condition 33(a) and attempt to reach agreement on whether any suggested traffic calming devices should be provided. If the community members of the Green Valley Road Review Committee decide against the traffic calming measures, then the Applicant need not construct them. The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road. The Applicant shall be responsible, at its expense, for drafting a report to the City Council regarding the Committee's findings on the traffic calming devices and on Plass Road.

34. a. The Development Agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.

b. The Applicant agrees to work in good faith with the City, King County and residents on Plass Road to develop a plan to prohibit or discourage the use of Plass Road as a connection to Green Valley Road. The Applicant will agree to vacate a portion of Plass Road through the Villages property to assure no connectivity to the South Connector roadway towards Green Valley Road, provided the City, King County and Plass Road residents support the road vacation.

## NOISE

35. Each implementing development shall include a plan for reducing short term construction noise by employing the best management practices such as minimizing construction noise with properly sized and maintained mufflers, engine intake silencers, engine enclosures, and turning off equipment when not in use. [FEIS Mitigation Measure]

36. Stationary construction equipment shall be located distant from sensitive receiving properties whenever possible. Where this is infeasible, or where noise impacts would still be likely to occur, portable noise barriers shall be placed around the equipment (pumps, compressors, welding machines, etc.) with the opening directed away from the sensitive receiving property. [FEIS Mitigation Measure]

37. Ensure that all equipment required to use backup alarms utilizes ambient-sensing alarms that broadcast a warning sound loud enough to be heard over background noise, but without having to use a preset, maximum volume. Alternatively, use broadband backup alarms instead of typical pure tone alarms. [FEIS Mitigation Measure]

38. Require operators to lift, rather than drag materials wherever feasible. [FEIS Mitigation Measure]

39. Substitute hydraulic or electric models for impact tools such as jackhammers, rock drills and pavement breakers, wherever feasible. [FEIS Mitigation Measure]

40. Electric pumps shall be specified whenever pumps are required. [FEIS Mitigation Measure]

41. The developer shall establish a noise control "hotline" to allow neighbors affected by noise to contact the City and the construction contractor to ask questions or to complain about violations of the noise reduction program. The noise reduction program is established by conditions 35 through 40 and 42-43. Whether the noise reduction program has been violated shall be determined by the City in its reasonable discretion. Failure to comply with the noise reduction program shall result first in a warning and one or more continuing failures may result in cessation of construction activities until the developer provides an acceptable solution to the City that will reasonably achieve the intent of the noise reduction program and allow construction to continue. Nothing in this condition shall be construed as limiting or altering the City's authority to enforce its noise regulations.

42. If pile driving becomes necessary, impact pile-driving shall be minimized in favor of less noisy pile installation methods. If impact pile driving is required, the potential for noise impacts shall be minimized by strict adherence to daytime only. [FEIS Mitigation Measure]

43. Work hours of operation shall be established and made part of the Development Agreement

44. To provide construction noise attenuation for existing residents adjoining the Villages development, the following condition shall apply to Villages development parcels V1, V2, V10, V13, V15, V20, V49, V57, V60, and V71. For each of the designated parcels, the Applicant shall:

a. offer to meet with the affected existing resident(s) to seek a mutual agreement about mitigation to be provided, or if mutual agreement cannot be reached, then,

b. the Applicant shall have the choice to provide either:

i. mitigation consisting of a buffer, trail easement or other separator between the edge of the development parcel and the property boundary that is 100-feet wide, provided that trails, recreational facilities, stormwater facilities and similar uses otherwise permitted for the MPD are allowed inside the 100-foot area, or

ii. mitigation consisting of all of the following:

(A) a construction noise attenuation barrier (i.e., a berm, wall, or combination of the two) on the development parcel, provided that if a buffer or trail easement less than 100-feet wide adjoins the development parcel, the barrier may be placed within that area;

(B) design, sizing and placement of the noise attenuation barrier in a manner intended to reduce noise from long-term construction activities (i.e., activities lasting 6 months or longer, such as construction hauling and including the loading/unloading of dump trucks);

(C) payment to the City for its costs in commissioning a study to evaluate the noise barrier design and placement shall be prepared by the Applicant, at its expense, and submitted for review and approval by the City;

(D) the noise study shall evaluate whether noise from long-term construction activities will comply with the environmental noise limits in WAC 173-060-040, and if the noise study concludes that an on-site noise barrier cannot effectively control long-term construction noise to the degree that it complies with the WAC noise limits outside the adjoining existing homes, additional mitigation measures intended to reduce interior sound levels will be evaluated,

(E) any additional noise mitigation measures determined to be effective at reducing interior sound levels (i.e., providing a reduction of exterior-to-interior noise transmission at least 7 dBA more than provided by the existing building envelope) shall be implemented so long as the adjoining owner provides permission if the mitigation requires work on their property, and

(F) at the Applicant's discretion, the noise barrier may be temporary (i.e., removed after construction on one of the designated parcels is complete) or permanent.

Mitigation under section (b)(ii) shall be installed before construction activities begin on the designated development parcel. In the event that lands adjacent to any of the

designated development parcels are acquired by the developer of the MPD, this condition shall not apply as to the acquired lands.

45. A Noise Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Noise Review committee shall review and evaluate compliance with the noise conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

#### **PUBLIC UTILITIES – WATER**

46. Comply with the terms of the Water Services Future Funding Agreement (WSFFA).
47. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA. [FEIS Mitigation Measure]
48. Construct an appropriately sized reservoir in 850 Zone or construct an 850 Zone loop back to the existing system in the vicinity of Railroad Avenue. [FEIS Mitigation Measure]
49. Construct a 750 Zone loop back to the existing system, or propose a functionally equivalent alternative as allowed in the MPD code. [FEIS Mitigation Measure]
50. Complete the 850 loop in the North Property and the 850 loop in Pipeline Road with a pressure reducing station to the 750 Zone water main within the North Property. [FEIS Mitigation Measure]
51. Construct needed water supply and storage improvements in accordance with the City's Comprehensive Plan and necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved by City staff within the MPD. [FEIS Mitigation Measure]
52. Should new water distribution alternatives be desired by the applicant that are not consistent with the recently adopted Water Comprehensive Plan, the applicant shall be responsible for the cost of updating the Plan if needed.

53. The Water Conservation Plan included in the Chapter 8 of the MPD Application is approved. The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings, and the impacts if the required savings targets of 10% less than the average water use in the City by residential uses at the time the MPD was submitted are not achieved.

54. The proposed water conservation plan shall be evaluated for its effectiveness in light of the City's available water resources after the first 500 units have been constructed. At that time, additional measures may be required if goals are not being achieved.

#### **PUBLIC UTILITIES – SEWER**

55. King County will be constructing a sewer flow equalization storage reservoir in a location to serve the needs of the City. [FEIS Mitigation Measure]

56. Construct trunk lines Nos. 1 and 4. [FEIS Mitigation Measure]

57. Construct pump station 1 and force main 1 to equalization tank. [FEIS Mitigation Measure]

58. Collection of sewage shall occur as presented in City's Comprehensive Plan, consistent with King County sewage storage site selection, and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved in the future if determined appropriate by City staff and consistent with King County's sewage storage site selection process. [FEIS Mitigation Measure]

59. An interim sewer pump station is accepted, provided that:

- a. Routing of the gravity sewer mains is consistent with the City's ultimate plan for routing sewage.
- b. No capital facility charge credit will be considered for interim improvements.

#### **PUBLIC UTILITIES – STORMWATER AND WATER QUALITY**

60. Stormwater runoff that is collected from impervious surfaces shall be mitigated in accordance with the *2005 Stormwater Management Manual for Western Washington*, and stormwater designs shall include low impact development techniques wherever practical and feasible. [FEIS Mitigation Measure]. Homeowner associations should bear the cost of landscape maintenance associated with the low impact development techniques.

61. Preserve the volume of stormwater for the groundwater area tributary to Black Diamond Lake and associated wetlands. [FEIS Mitigation Measure]

62. Implement the stormwater program described in Appendix D to The Villages FEIS in order to match total runoff volume discharges via surface and subsurface conveyance routes to Horseshoe Lake. [FEIS Mitigation Measure]

63. Provide mitigation facilities within the project limits, expansion parcels or provide an agreement with King County for long term City ownership and/or maintenance of off-site facilities not within City limits. [FEIS Mitigation Measure]

64. Native plants shall be primarily used as part of the planting palette within the MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation Measure]

65. Where point discharges to streams must occur, design the outfall to minimize impacts to the stream channel and avoid areas of significant vegetation. [FEIS Mitigation Measure]

66. Construct stormwater treatment and storage improvements as presented in City's Comprehensive Plan and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD. [FEIS Mitigation Measure]

67. Mechanisms shall be identified to integrate Low Impact Development technologies into the overall design of the MPD and incorporated into the Development Agreement. Future Homeowners' Associations shall bear any increased cost of landscape maintenance.

68. The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. This condition does not constitute approval for direct discharge of roof drainage into wetlands, streams or their buffers; any such direct discharge is authorized only if approved by the Public Works Director as in compliance with Black Diamond Municipal Code Ch. 14.04 and the standards adopted therein. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.

69. Stormwater facilities to be considered as part of required open space shall be designed as an amenity per the Public Works and Natural Resources Directors. Factors to be considered by the Directors in determining whether the facilities are designed as an amenity include, but shall not be limited to, whether the facilities are safe for general public access (*i.e.*, do not have steeply sloped banks requiring fencing), are suitable for active recreational use during at least 3 months per year, are suitable for passive recreational use such as walking, hiking, or bird or other wildlife viewing, and/or provide wildlife habitat. If approved, future Homeowners Association(s) shall be required to provide landscape maintenance of these facilities, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s).

70. The Development Agreement shall include language that binds future developers and contractors to a requirement to comply with any NPDES permits issued by the Washington State Department of Ecology and acknowledge that although permit conditions imposed by NPDES

permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer shall fund necessary costs for training related to inspection services.

71. Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.

72. Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities. The City shall have the right to reject higher cost of maintenance facilities when lower cost options may be available.

73. Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations.

74. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

75. The size of storm ponds for hydraulic purposes shall vest on a phase by phase basis to the extent allowed by the City's DOE discharge permit and state law.

76. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the Stormwater Management Manual for Western Washington, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

77. The Development Agreement shall include language to allow deviations from the stormwater facilities listed in the FEIS when justified by a technical analysis and risk assessment.

78. The applicant shall obtain all necessary permits from King County for both construction, including any necessary approval or agreement providing the City ability to perform maintenance of the large regional storm pond proposed to the west of the project. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.

79. The City shall determine whether the Applicant's reasonable proportionate share participation in any watershed-wide implementation measures identified in Exhibit H-9 would be of significant benefit in protecting Lake Sawyer water quality. If so, those measures shall be incorporated into the Development Agreement. The Development Agreement shall also integrate the phosphorous monitoring plan proposed by the Applicant in Ex. NR-TV-7 as well as a temperature monitoring plan identical to the plan proposed for the Lawson Hills project in Exhibit NR-LH-5.

80. Runoff from basins tributary to Lake Sawyer shall provide water quality treatment in accordance with the phosphorous control menu in the 2005 Stormwater Management Manual for Western Washington. [FEIS Mitigation Measure]

81. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of Tp, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in Tp so as to bring the discharge below the annual maximum identified pursuant to this Condition.

82. Enhanced water quality treatment shall be provided as required by the 2005 Stormwater Management Manual for Western Washington. [FEIS Mitigation Measure]

83. When the Applicant builds improvements to existing public road right-of-way inside the City of Black Diamond and which road right-of-way drains to Lake Sawyer, the Applicant is required to treat the stormwater from those improvements to the then current and applicable phosphorus treatment standard, and the Applicant shall also treat the existing stormwater that runs off the existing right-of-way in the immediate vicinity of the improvement.

84. The Applicant agrees to work cooperatively with the City to identify opportunities where the City can reduce phosphorus sources or improve phosphorus treatment on existing City lands and for existing City owned or maintained stormwater facilities.

85. A Water Quality Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Water Quality Review committee shall review and evaluate compliance with the stormwater conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the

Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

#### **VISUAL AND AESTHETICS**

86. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.

87. The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.

#### **PUBLIC SERVICES – PARKS AND RECREATION**

88. If a school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

89. The details of the park and recreation facilities to serve the new demand from the MPD shall be set in the required Development Agreement, including whether such facilities may be constructed on- or off-site. [FEIS Mitigation Measure]

90. The cost of such facilities, including a proportionate share of facilities not fully warranted by the MPD build out, could be provided by payment of fees. [FEIS Mitigation Measure]

91. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities

92. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.

93. Dependant on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement.

94. The Development Agreement shall include language authorizing public access to parks and trails facilities.

95. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

96. Parks within each phase of development shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the phase, whichever occurs first, to the extent necessary to meet park level of service standards for the implementing project.

97. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

#### **PUBLIC SERVICES – SCHOOLS**

98. The Applicant shall enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference. Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws). The agreed number of school sites and associated minimum acreage, both as set forth in Exhibit 6, shall be used to guide any school mitigation alternative. To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs.

99. An updated fiscal analysis shall be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

#### **PUBLIC SERVICES – PUBLIC SAFETY**

100. The Development Agreement shall include specific provisions for providing fire mitigation to ensure protection concurrent with project build out. Fire mitigation may include

fire impact fees under a City-wide fire impact fee program for new development, a voluntary fire mitigation agreement, and/or the dedication of land for fire facilities (subject to credit under State impact fee laws).

101. All Fire Department access roads must meet International Fire Code, specifically Section 503 Fire Department Access Roads and Appendix D Fire Department Access Roads, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations

102. Auto courts shall meet the requirements of the International Fire Code 2006 ed. Per IFC Section 503, specifically 503.2.1, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations.

103. Separation of combustible structures and vegetation shall be provided to prevent wildland fires from the east and south from spreading to buildings. This shall be determined at the time of implementing projects.

#### **EROSION HAZARDS**

104. Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

105. In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion. [FEIS Mitigation Measure]

106. Bridges or appropriately sized box culverts shall be used for roadway crossings of streams to allow peak flow high-water events to pass unimpeded and to preserve some normal stream processes. [FEIS Mitigation Measure]

107. Design stormwater facilities to avoid discharging concentrated stormwater flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS Mitigation Measure]

108. Utilize stormwater detention facilities that avoid increases in peak stream flows. [FEIS Mitigation Measure]

109. The Applicant shall submit a Temporary Erosion and Sedimentation Control (TESC) plan meeting City standards that will mitigate the potential for construction run-off from the site prior to grading or land clearing activities. The best management practices in the TESC plan shall include standby storage of emergency erosion and sediment control materials; a limit to the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.

110. Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.

#### **LANDSLIDE HAZARDS**

111. Development of landslide hazard areas shall be avoided. Sufficient setbacks shall be required to assure or increase the safety of nearby uses, or where feasible grade out the landslide hazard area to eliminate the hazard in compliance with the city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

112. Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides. [FEIS Mitigation Measure]

113. Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.

#### **MINE HAZARDS**

114. Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.

115. All proposed development within mine hazard areas shall occur in conformance with BDMC 19.10.

116. All houses that are sold in classified or declassified coal mine hazard areas shall require a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement.

#### **VEGETATION AND WETLANDS**

117. Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas. [FEIS Mitigation Measure]

118. Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees. [FEIS Mitigation Measure]

119. New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all

practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. [FEIS Mitigation Measure]

120. A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.

121. The Development Agreement shall include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested.

122. The use of native vegetation in street landscaping and in parks shall be required.

#### **FISH AND WILDLIFE**

123. Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]

124. Mast-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.

125. Provide a 300-foot-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network. [FEIS Mitigation Measure]

#### **CLIMATE CHANGE**

126. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

127. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

#### **LAND USE**

128. Approval of the design concept and land use plan (Chapter 3) shall be limited to the Land Use plan map (Figure 3-1, as updated July 8, 2010); description of categories (beginning

on page 3-18); a maximum of 4,800 total residential units and 775,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Corner store-style neighborhood commercial uses within residential land use categories shall be defined in the Development Agreement and shall only be allowed through minor amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

129. The project shall provide a mix of housing types in conformance with the MPD Design Guidelines. The Development agreement shall set targets for various types of housing for each phase of development.

130. Identification of specific areas where live/work units can be permitted shall be done as part of the Development Agreement or through an MPD minor amendment.

131. A minimum density of 4 du/per net acre for residential development shall be required for implementing projects, and shall be calculated for each development parcel using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010).

132. If the applicant requests to increase a residential category that abuts the perimeter of the MPD, it shall be processed as a Major Amendment to the MPD. Residential land use categories can otherwise be adjusted one category up or down through an administrative approval process provided they also otherwise meet the requirements for minor amendments outlined in BDMC 18.98.100.

133. The Development Agreement shall limit the frequency of proposed reclassification of development parcels to no more frequently than once per calendar year.

134. The Expansion Area process shall be clarified in the Development Agreement.

135. Project specific design standards shall be incorporated into the Development Agreement. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines. All MPD construction shall comply with the Master Planned Development Framework Design Standards and Guidelines, whether or not required by the Development Agreement.

136. A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement.

137. All commercial/office uses (other than home occupations and identified live/work areas) shall only occur on lands so designated. Additional commercial areas shall be identified on the Land Use Plan through future amendment to the MPD.

138. The project shall include a mix of housing types that contribute to the affordable housing goals of the City. The Development Agreement shall provide for a phase-by-phase analysis of affordable housing Citywide to ensure that housing is being provided at affordable

prices. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis.

139. Exact specifications for the housing described in paragraph 122 shall be included within the Development Agreement.

140. A distinct land use category shall be created to recognize potential light industrial uses or the "office" category shall be renamed to properly indicate the range of potential uses. Areas intended to have light industrial type uses shall be identified on the Land Use Map that is made part of the Development Agreement.

141. The high density residential (18-30 du/ac) supplemental design standards and guidelines (MPD application Appendix E) shall become part of the Development Agreement.

142. Detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion.

143. Homeowners Association conditions, covenants and restrictions (CCRs) or the Architectural Review Committee shall review, but shall not preclude, the use of green technologies such as solar panels.

144. Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement.

145. A FAR standard shall be established through the Development Agreement process.

146. No more than two floors of residential uses above ground floor commercial/office uses shall be allowed.

147. The orientation of public building sites and parks shall preserve and enhance views of Mt. Rainier and other views identified in the comprehensive plan. There are tailing piles located on property near Parcel B. The Applicant is not responsible for removal of those tailing piles, but future site and building design for Parcel B should consider the nature of the views to Mt. Rainier that may be possible if those piles are later removed.

148. The Applicant's requests for reduced parking standards in the Mixed Use Town Center as identified at p. 13-4 of the MPD application is granted. All other requests for deviation in the Chapter 13 of the MPD application are denied except for those deviations, mostly utility and street standards, that are identified in the recommendation as amenable to further review in the development agreement process. Any MPD deviations to the Sensitive Areas Ordinance are denied, because BDMC 18.98.155(A) provides that the Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs.

## **SENSITIVE AREAS/OPEN SPACE**

149. The use of sensitive areas including but not limited to wetlands, landslide and mine hazard areas and their associated buffers for development including trails, stormwater management, etc. shall be regulated by BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts as well as other required measures shall be evaluated on a case-by-case basis at the time of implementing project application.

150. Areas shown as natural open space in the figure on Page 5-7 of the application are required to remain natural with the possibility for vegetation enhancement. Modifications to these areas may be approved by the City in its reasonable discretion, on a case-by-case basis, only if necessary for construction of required infrastructure such as roads, trails or stormwater facilities. Any areas disturbed pursuant to such approval shall be replanted with native plants. Nothing in this condition shall allow grading or modifications in the sensitive areas and buffers, except as provided in the Sensitive Areas Ordinance.

151. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

152. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

153. Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

154. Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement.

155. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

## **ADMINISTRATION**

156. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to

maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

a. Within five years, a new fiscal analysis shall be completed to determine the long-term fiscal impact to the City. If necessary, additional project conditions may be required.

b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding.

157. The Applicant and other property owners may petition for the formation of a Community Facilities District to provide a mechanism for funding the costs of "facilities" as defined in Section 501 of SSB 6241. The City Council will review the petition as provided in SSB 6241 and, as set forth in Section 205, determine in its sole discretion whether the petitioners will benefit from the proposed district and whether the formation of a district will be in the best interest of the City and comply with the requirements of the Growth Management Act, Ch. 36.70A RCW.

The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

158. The Development Agreement shall document a collaborative design/review/permitting process that allows City staff to participate in the conceptual stage of project planning in order to provide input on designs and choices that benefit the City as well as the applicant.

159. The Development Agreement shall specifically identify which rights and entitlements are vested with each level of permitting, including but not limited to the MPD Application approval, the Development Agreement approval, and Utility Permit approvals.

160. Reclassification of development parcels shall occur no more frequently than once per calendar year.

161. Proposed reclassification of development parcels located at the project perimeter to a higher density shall only occur through a Major Amendment to the MPD.

162. A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement.

163. The Development Agreement shall define the proposed phasing plan for the various matters (utility and street infrastructure, parks, transferred development rights, etc.) subject to phasing standards.

164. Prior to the approval of the first implementing project of a defined phase, a detailed implementation schedule of the regional projects supporting that phase shall be submitted to the City for approval. The timing of the projects shall be tied to the number of residential units and/or square feet of commercial projects.

## Exhibit D

### Villages MPD Legal Description of Parcels Rezoned to MPD

1. Villages Parcel H (Guidetti) (Parcel #1521069088), legally described as follows:

That portion of the Easterly 660 feet of the West half of the Northeast quarter of Section 15, Township 21 North, Range 6 East W.M., in King County Washington, lying Southerly of Auburn-Black Diamond Highway;

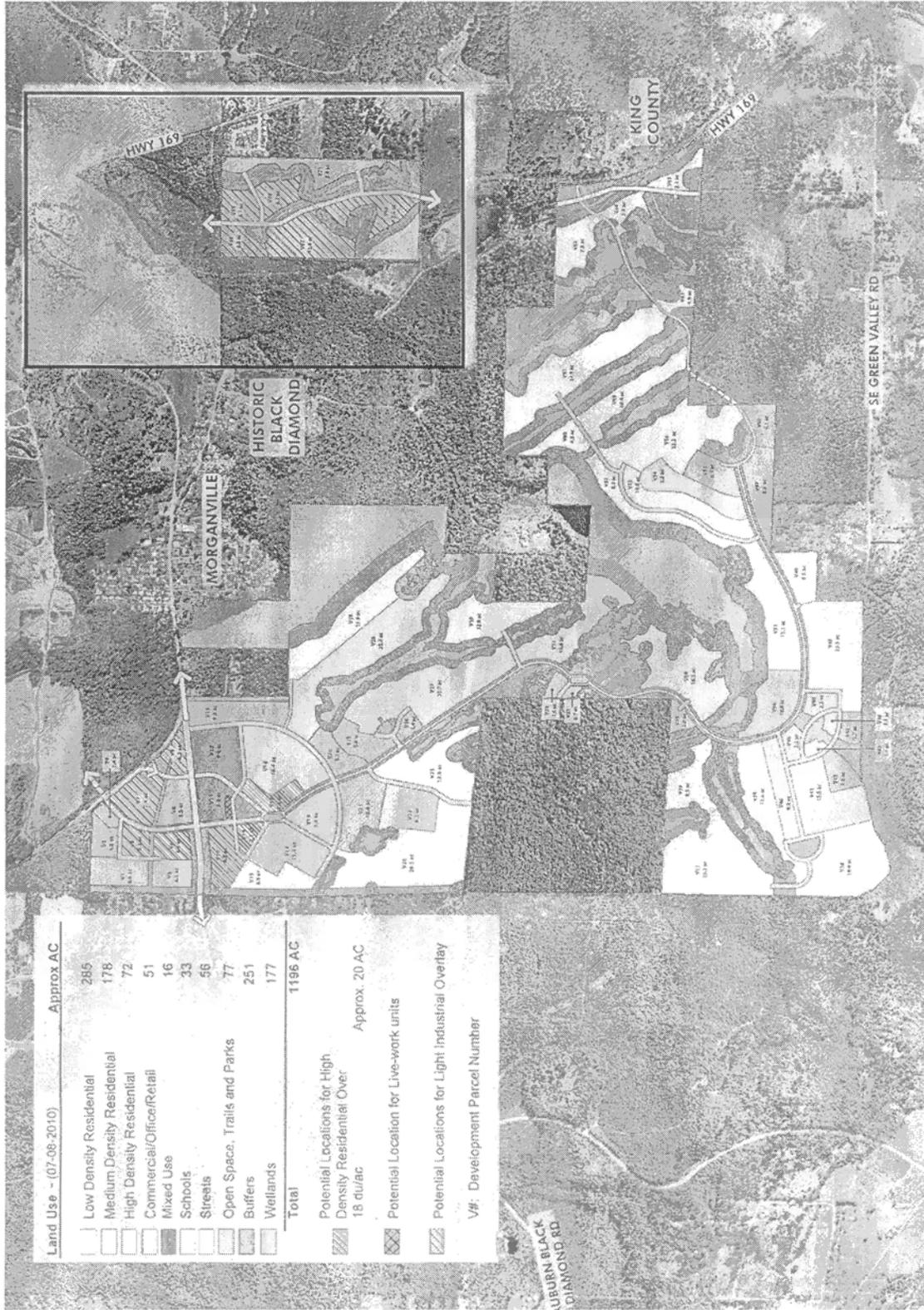
Except the East 381.24 feet of the Northwest quarter of the Northeast quarter of Section 15, Township 21 North, Range 6 East, W.M. lying Southerly of Auburn-Black Diamond Highway and the East 90 feet of the North 165.70 feet of the Southwest quarter of the Northeast quarter of Section 15, Township 21 North, Range 6 East W.M., in King County Washington;

(Also known as Parcel J under survey recorded under recording number 20030917900009); and

2. Parcel B (Parcel #1121069006 and portion of parcel #1121069109), legally described as follows:

The West half of the Northwest Quarter of Section 11, Township 21 North, Range 6 East, W.M., in King County, Washington.

DESIGN CONCEPT AND LAND USE PLAN  
 FIGURE 3-1 LAND USE PLAN



THE VILLAGES  
 AR 0027509

**APPENDIX B  
LAWSON HILLS  
ORDINANCE NO. 10-947**

ORDINANCE NO. 10-947

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE MASTER PLANNED DEVELOPMENT FOR LAWSON HILLS; AMENDING THE CITY'S ZONING MAP TO DESIGNATE CERTAIN PROPERTY "MASTER PLANNED DEVELOPMENT - MPD"; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, in accordance with a request by BD Lawson Partners, LP ("the Applicant"), the City of Black Diamond determined that an Environmental Impact Statement ("EIS") should be prepared concerning the Applicant's Lawson Hills Master Plan Development proposal pursuant to the State Environmental Policy Act, RCW 43.21C ("SEPA"); and

WHEREAS, the City retained an independent consulting firm, Parametrix, to prepare the EIS; and

WHEREAS, on May 28, 2008 and pursuant to WAC 197-11-408 and Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(4)(b), Parametrix held a scoping meeting to obtain input from the public and other public agencies as to the proposed scope of the EIS; and

WHEREAS, on June 11, 2008, Parametrix held an additional meeting with other public agencies, including the Cities of Maple Valley and Covington, and the Washington Department of Transportation, to discuss the scope of the EIS's analysis concerning the proposed MPD's anticipated transportation impacts; and

WHEREAS, pursuant to Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(1), on January 27, 2009 the Applicant attended a pre-application conference with City of Black Diamond staff, prior to submitting its application for the Lawson Hills Master Planned Development ("Lawson Hills MPD"); and

WHEREAS, on February 7, 2009, the Applicant held a public information meeting concerning the Lawson Hills MPD application, pursuant to BDMC 18.98.060(A)(2); and

WHEREAS, on February 10, 2009, pursuant to BDMC 18.98.060(A)(3), the Applicant made a presentation concerning the overall planning and design concept of the proposed Lawson Hills MPD to the Black Diamond Planning Commission, and the Commission provided preliminary feedback to the Applicant regarding the consistency of this concept with the City's adopted standards, goals and policies; and

WHEREAS, on March 17, 2009, a second public information meeting was held concerning the proposed Lawson Hills MPD; and

WHEREAS, on May 28, 2009, the Applicant submitted an application for the Lawson Hills MPD approval to the City of Black Diamond; and

WHEREAS, on August 12, 2009, Parametrix held additional meetings with the government agencies listed above, to conduct a pre-release discussion of the draft EIS element related to the transportation impacts analysis; and

WHEREAS, at the June 11, 2008 and August 12, 2009 transportation meetings, Parametrix explained the methodology the EIS would use to analyze transportation impacts, the size and parameters of the EIS study area and study area intersections, and the expected trip distribution percentages, and the other public agencies concurred in Parametrix's approach; and

WHEREAS, on September 2, 2009, the City of Black Diamond issued a Draft Environment Impact Statement ("DEIS"); and

WHEREAS, on September 29, 2009, the City of Black Diamond held a public hearing on the DEIS; and

WHEREAS, on September 30, 2009, the City of Black Diamond extended the comment period, during which it would accept written public comment on the DEIS, until October 9, 2009; and

WHEREAS, on December 11, 2009, the City of Black Diamond announced the availability of the Final Environmental Impact Statement ("FEIS"); and

WHEREAS, on December 28, 2009, appeals of the FEIS were filed by Christopher P. Clifford on behalf of Annette Smith, Gilbert and Marlene Bortleson, Jay and Kelley McElroy, Melanie Gauthier, Michael Smith, Judith Carrier, Gerold Mittlestadt, Steve Sundquist, Joe May, and William and Cindy Wheeler; and

WHEREAS, on December 31, 2009, the Applicant submitted a revised application for the Lawson Hills MPD to the City of Black Diamond; and

WHEREAS, pursuant to BDMC Section 18.98.060(A)(d), the Lawson Hills MPD application was forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, pursuant to BDMC Section 19.04.250, the FEIS appeals were forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, the Hearing Examiner scheduled consolidated hearings on the MPD application and the FEIS appeals, pursuant to WAC 197-11-680(3)(a)(v) and RCW 36.70B.120; and

WHEREAS, the Hearing Examiner held an open record hearing commencing on March 6, 2010 and continuing from day to day until March 22, 2010; and

WHEREAS, the Hearing Examiner accepted additional rebuttal presentations in accordance with the deadlines he had previously set, until April 12, 2010; and

WHEREAS, on May 4, 2010, the Hearing Examiner issued the Hearing Examiner Decision affirming the FEIS for the Lawson Hills MPD; and

WHEREAS, on May 17, 2010 the Hearing Examiner issued his Findings, Conclusions and Recommendation recommending approval of the Lawson Hills MPD, and issued an Errata and a signed copy of the Recommendation the following day, on May 11, 2010; and

WHEREAS, on June 21, 2010, the City Council convened its closed record hearing to consider the Lawson Hills MPD application; and

WHEREAS, the City Council continued the closed record hearing from day to day, and heard oral argument from and considered written materials submitted by parties of record from June 24, 2010 to July 14, 2010; and

WHEREAS, the City Council continued the closed record hearing from day to day to deliberate concerning the MPD application and to discuss potential litigation concerning it, from July 19, 2010 to August 24, 2010; and

WHEREAS, on August 24, 2010, the Black Diamond City Council approved a motion to direct the City Attorney to prepare a written ordinance approving the Lawson Hills MPD subject to conditions as discussed by the Council; and

WHEREAS, the City Council desires to approve the Lawson Hills MPD subject to certain specified conditions of approval as set forth herein, and to rezone certain parcels within the MPD to the zoning designation of "Master Planned Development – MPD");

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Findings of Fact.** The City Council hereby adopts the Findings of Fact set forth in Exhibit A attached hereto and incorporated herein by this reference.

**Section 2. Conclusions of Law.** The City Council hereby adopts the Conclusions of Law set forth in Exhibit B attached hereto and incorporated herein by this reference.

**Section 3. Approval of Master Planned Development.** Based on the Findings of Fact and Conclusions of Law adopted in Sections 1 and 2 above, the City Council hereby approves the Lawson Hills Master Planned Development, as set forth in the application dated December 31, 2009 and as delineated on the revised Land Use Plan map (Figure 3-1) dated July 8, 2010, subject to the conditions of approval set forth in Exhibit C attached hereto and incorporated herein by this reference.

**Section 4. Rezone.** Although pursuant to Black Diamond Municipal Code Section 18.98.130(B) a formal rezone of parcels within the Master Planned Development boundary is not required, in order to remove any uncertainty or confusion as to the applicable zoning designation, the City of Black Diamond Zoning Map is hereby amended to designate the parcels legally described and depicted in Exhibit D attached hereto and incorporated herein by this reference as "Master Planned Development – MPD."

**Section 5. Severability.** Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

**Section 6. Effective Date.** This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 14th day of September, 2010.

Passed by the City Council on the 20th day of September, 2010.

  
\_\_\_\_\_  
Mayor Rebecca Olness

ATTEST:

Brenda L. Martinez  
Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha  
Chris Bacha, City Attorney

Published: 9/28/10  
Effective Date: 10/3/10

## EXHIBIT A

### FINDINGS OF FACT

1. The record considered by the Council consists of the following:
  - A. Several hundred exhibits admitted into evidence before the Hearing Examiner. The Exhibit lists are set forth in Attachment 1 to these Findings of Fact, and summarized as follows:
    - i. Index of "H" Documents: These exhibits were admitted during the hearings.
    - ii. Black Diamond MPD Hearing Exhibits: These documents, which include the City staff report and written comments from citizens, were submitted during the hearing and admitted at the end of the hearing process.
    - iii. Index of Prehearing Documents: These documents were identified in pre-hearing exhibit lists submitted by the SEPA Appellants, the Applicant, and counsel for the City.
    - iv. Emails for the Villages-Lawson Hills MPDs: These were emails that the SEPA Appellants, the Applicant, counsel for the City, and the Examiner exchanged on SEPA appeal issues.
  - B. Audio recordings of proceedings before the Hearing Examiner on the FEIS Appeals and the Lawson Hills MPD application.
  - C. A transcript of proceedings before the Hearing Examiner on the FEIS appeals and the Lawson Hills MPD application.
  - D. Audio recordings of the proceedings before the City Council during the City Council's closed record hearing on the Lawson Hills MPD application.
  - E. Written materials submitted by the parties of record to the City Council during the City Council's closed record hearing on the Lawson Hills MPD application. These materials were indexed as "C" exhibits, as shown in the list in Attachment 2 to these Findings of Fact.
2. Proposal Description. The Master Planned Development ("MPD") includes 371 acres, to be developed with the following uses: a maximum of 1,250 low, medium and high density dwelling units; a maximum of 390,000 square feet of retail, offices, commercial and light industrial development; schools; and recreation and open space. The MPD land uses are shown on the Land Use Plan map Figure 3-1 dated July 8,

2010. The MPD will also result in the rezoning of portions of the property from the current Single Family Residential (R4), Medium Density Residential (MDR8) and Public (PUB) designations, to a designation of Master Planned Development MPD. The details of the Lawson Hills MPD are outlined in the Master Planned Development application, dated May 11, 2009 and as revised on December 31, 2009. A significant feature of the project is that, as conditioned in Exhibit C below, 152.8 acres, or approximately 41% of the project area ( $152.8 \div 371 = .411$ ), will be open space.

3. MPD Project Area. The Lawson Hills MPD project area consists of two subareas, the Main Property and the North Triangle Property. The "Main Property" is located primarily south of Lawson Street and east of SR-169, along the eastern city limits. The "North Triangle Property" (approx. 80 acres) is located along the west side of SR 169, approximately two miles northwest of the Main Property and north of the intersection of South Summit Drive and SR 169. The North Triangle Property is north of and adjacent to the North Property that is part of the proposed Villages MPD project. The Lawson Hills MPD project area is shown on the Land Use Plan map, Figure 3-1 (dated July 8, 2010) accompanying the Lawson Hills MPD application.

4. MPD Project Density. If developed to the full extent proposed in the MPD application dated May 11, 2009 and as revised on December 31, 2009, the Lawson Hills MPD will have an average density of 3.36 units per gross acre ( $1,250 \text{ units} \div 371 \text{ acres} = 3.36$ ) and an average density of 3.90 units per net acre ( $1,250 \text{ units} \div 318 \text{ acres with residential designations (as shown on the Land Use Plan map in Figure 3-1)} = 3.90$ ).

5. MPD Project Traffic.

- A. Chapter 3 of the Lawson Hills FEIS includes an analysis of the transportation impacts of the Lawson Hills MPD, as well as a discussion of possible mitigation of those impacts. The FEIS discussion of transportation impacts was based on a detailed analysis included in the Transportation Technical Report ("TTR") attached to the Lawson Hills FEIS as Appendix B.
- B. The TTR analyzed the transportation impacts of the Lawson Hills MPD that would occur in a study area with 46 intersections, covering a geographic area ranging from Maple Valley, Covington, Auburn, Black Diamond and other areas within unincorporated King County. As discussed at page 2-1 of the TTR, the eastern limit of the study area is generally bounded by SR 169, with the northern boundary at SR 169/SE 231<sup>st</sup> Street in Maple Valley, and the southern boundary at SR 169/SE Green Valley Road. The western study area limit extends up to SR 516/160<sup>th</sup> Avenue SE in the City of Covington and SE Auburn-Black Diamond Road/SE Green Valley Road in the City of Auburn. Because traffic volumes are higher and traffic operations are worse during the PM peak hour, the TTR analyzed intersection operations during the PM peak

hour, with the exception of a few key intersections in the project vicinity, where operations were also analyzed for the AM peak hour.

- C. Using traffic counts collected in 2007, the TTR analyzed existing transportation levels of service ("LOS") for the 46 study area intersections, by comparing the existing intersection operations to the LOS adopted by the jurisdiction in which the individual intersections are located. As depicted on Table 4, pages 2-14 - 2-15 of the TTR and as explained on pages 3-15 of the Lawson Hills FEIS, three study area intersections currently operate worse than the adopted LOS standard:
- SE 288<sup>th</sup> Street/216<sup>th</sup> Avenue SE: LOS D (vs. adopted Black Diamond standard of LOS C)
  - SR 169/Black Diamond Ravensdale Road: LOS F (vs. adopted Black Diamond standard along SR 169 of LOS D)
  - SR 169/SR 516: LOS E (vs. adopted Maple Valley standard of LOS D)
- D. Based on the Institute of Traffic Engineers ("ITE") Trip Generation Manual (8<sup>th</sup> Edition), the Lawson Hills MPD will generate 2,646 total new PM peak hour vehicle trips, as shown in tables in Appendix B to the TTR.
- E. After an 22 percent reduction for internal trip capture and a 10 percent reduction for pass by and diverted link trips for retail uses, respectively, the Lawson Hills MPD will generate 2,050 net new PM peak hour trips, as shown on Tables 9 - 10 of the Lawson Hills TTR. The internal trip capture rate of 11 percent was based upon the ITE Trip Generation Handbook, a widely accepted source for estimating internal trip capture. Perlic testimony, Transcript at 1,499 - 1,500. The internal trip capture rate and pass by and diverted link trip reduction rates were conservatively low estimates, so as not to underestimate the total net new traffic trips that would be generated by the Lawson Hills MPD. *Id.*
- F. Mr. Perlic distributed the 2,050 net new PM peak hour trips over the roadway network within the City of Black Diamond using the City of Black Diamond transportation demand model. For the study area roadway network outside of the City of Black Diamond, Mr. Perlic used the Puget Sound Regional Council ("PSRC") model, adjusted with the use of engineering judgment. The use of the PSRC model was appropriate because it is a regional model, whose full regional roadway network is needed to address the regional nature of many of the new vehicle trips that will be generated by the Lawson Hills MPD. The results of the trip distribution are shown on page 3-8 and Figures 6-11 of the Lawson Hills TTR.

- G. Using the trip distribution percentages, the FEIS analysis then assigned trips from those percentages to individual intersections. The assigned trips were combined with existing traffic, plus assumed growth in background traffic of 1.0% annually for the Covington area along SR 516, and 1.5 % annual growth rate for all other intersections in the study area. In many areas the historical annual growth in traffic volume was less than this rate, and in some areas the current trend is a decline in growth. Consequently, as the City of Maple Valley's expert Natarajan Janarthanan agreed, the use of these background traffic growth rates was conservative, in that they potentially overstated the total amount of traffic at individual intersections and the potential need for future infrastructure improvements.
- H. The FEIS analysis then considered the operations of the 46 study area intersections in the year 2025, assuming the total numbers of assigned trips described in Finding No. 5(G) above. The intersection operations analysis considered the average level of service for the entire intersection, rather than analyzing the level of service of individual intersection legs (although the TTR did analyze individual turning movements). As Mr. Perlic and the SEPA Appellants' expert Ross Tilghman testified, it is standard practice to analyze the entire intersection because mitigation is tied to failure of the whole intersection. Tr. pages 1,527 and 607. The FEIS analysis concluded at pages 3-17 and 3-18 that 22 of 46 intersections would have failing levels of service. The year 2025 projected levels of service are shown in Exhibit 3-6 of the FEIS, and in Table 16 (pages 3-53 - 3-54) of the TTR. The year 2025 projected levels of service for the Lawson Hills and Villages MPD projects combined are shown in Table 18 (pages 3-55 - 3-56) and accompanying text on pages 3-56 - 3-57 of the TTR.
- I. The FEIS and TTR analyses described above contain a reasonably thorough discussion of significant adverse transportation impacts of the Lawson Hills MPD. The choice of methodology and engineering decisions made therein are all within the parameters of reasonably justified professional engineering judgment. The FEIS and TTR analyses are adequate and sufficient to support approval of the Lawson Hills MPD with conditions.
- J. The FEIS analysis also identified infrastructure improvements as mitigation for the projected LOS failures. These improvements are listed in Exhibit 3-7 of the Lawson Hills FEIS. In addition to these improvements, the Applicant has also committed under certain conditions to pay a specified percentage of additional improvements located within the City of Maple Valley. The improvements listed in the FEIS, together with the additional improvements offered by the Applicant, are sufficient to mitigate the LOS failures projected by the Lawson Hills FEIS and TTR as well as the impacts projected by the City of Maple Valley, and are

therefore adequate, appropriate and sufficient to support approval of the Lawson Hills MPD with conditions. Additional review of transportation impacts will be performed and potential additional mitigation identified in conjunction with specific projects, as called for by conditions of MPD approval.

K. Challenges to the FEIS and TTR analyses by parties of record are not supported by the balance of the evidence, for the following reasons:

i. Use of the PSRC Travel Demand Model. The FEIS and TTR appropriately utilized the PSRC regional model, rather than the City of Maple Valley's model:

a. The Maple Valley model's trip distribution was based on an incorrect split between trips generated by residential uses and trips generated by commercial uses. Because trips from these kinds of different land uses have different travel patterns, this error increased the percentage of MPD project trips that would be distributed along SR-169 into Maple Valley and overstated the extent of traffic impacts in Maple Valley. This error and its significance are explained in the Declaration of John Perlic at pages 10 - 13 and 17 - 18.

b. The Maple Valley model also incorrectly distributed more trips northward along SR-169 vs. west and northwest along Covington-Lake Sawyer Road and 216<sup>th</sup> Avenue SE. The PSRC regional model accounts for trips traveling to major employment centers in the Kent Valley, Seattle and Bellevue. Mr. Perlic adjusted the PSRC trip distribution manually to account for the fact that these longer regional trips would make a choice to avoid the congested SR-169 and travel west and northwest to take a different route. This will be particularly true for trips originating from Lawson Hills, because those trips would essentially have to "backtrack" to get out to SR-169 rather than taking a more direct route west or northwest. The Maple Valley model, by contrast, is "cordoned off" with respect to regional work trips, and therefore could not take them properly into account. Further, the Maple Valley model did not take intersection delay along SR-169 into account, and automatically assigned trips to that route if capacity existed. These erroneous assumptions artificially inflated the percentage of trips distributed to SR-169, and inflated the extent of projected impacts in Maple Valley.

c. The Maple Valley distribution and assignment was then analyzed using inappropriately low peak hour factors, which artificially worsened intersection levels of service. In some cases the Maple

Valley model used a peak hour factor ("PHF") lower than existing peak hour factors, when available literature documents that PHF increases as traffic volumes increase.

- d. Other flaws in the Maple Valley model's analysis are detailed in Mr. Perlic's Declaration, which the Council finds credible.
- ii. Internal Trip Capture. The FEIS analysis' internal trip capture rate was based on the ITE Trip Generation Handbook, which both Mr. Perlic and Matt Nolan of King County agreed (Tr. at 520 - 523) was the standard method for determining trip generation. Further, in its written comments on the DEIS, the City of Maple Valley expressed concern that the internal trip capture rate was actually too low and would thus overstate impacts from the project.
- iii. Background Traffic Growth. The FEIS and TTR background traffic growth projections were conservative and therefore reasonable, and within the bounds of professional engineering judgment. The other parties did not demonstrate that the background traffic growth rates were erroneous. To the extent that actual growth in background traffic turns out to be lower than projected, this can be addressed in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.
- iv. Peak Hour of Analysis. Use of the PM peak hour analysis was sufficient to establish necessary mitigation for traffic increases. While some SEPA Appellants would have preferred the FEIS address other times, including AM peak hours, it is customary to use the highest travel hour so mitigation is imposed for the worst-case traffic scenarios. Mr. Perlic testified to this effect.
- v. Level of Service Intersection Analysis. It was not necessary for the FEIS and TTR to discuss the anticipated increases in travel times resulting from increased traffic. The FEIS and TTR addressed levels of service and contained a reasonable and appropriate discussion of the impacts resulting from increased traffic volumes and decreased levels of service. The LOS analysis, rather than a travel time analysis, is the more customary manner to address traffic issues. The Growth Management Act requires an LOS analysis to gauge the performance of local transportation systems. RCW 36.70A.070(6)(a)(iii)(B). City and County elected officials deal with level of service on a regular basis in their review of planning documents required by the Growth Management Act and their review of land use applications. Mitigation is based on level of service; thus a discussion of LOS is more meaningful than increased travel times. Mitigation is shown when the levels of service become unacceptable. It is reasonable to conclude

that decision-makers are familiar with LOS analysis; additional analysis of anticipated increases in travel time was not necessary.

- vi. Peak Hour Factor. Application of the 0.97 peak hour factor does not invalidate the FEIS and TTR analyses. While there was some testimony that a 0.92 peak hour factor is the accepted standard, applying that factor to an intersection already at 0.92 or higher would be superfluous, and a higher factor is appropriate. 85% of the 39 study area intersections existing today (7 of the study area intersections will be created as a result of the MPD) have an existing peak hour factor of .92 or higher. There was also testimony that peak hour factors increase over time as congestion increases, and that an increase of .05 is an appropriate rule of thumb for planning purposes. In addition, the peak hour factor can be adjusted based on actual conditions in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.
- vii. Queueing Analysis. Queue analyses are more appropriately done at the project level, because the determination of whether there is a significant adverse impact will occur in conjunction with construction, rather than as part of a projection of impacts 15 years into the future. Queue analyses at the project level will allow consideration of signal timing, actual volumes, intersection design, and will more accurately predict what the specific mitigation needs would be, such as whether a left turn lane is needed to be added, and the necessary length of that left turn lane. Tr. pages 1,472-1,512.
- viii. Railroad Avenue. The City's Comprehensive Plan designates Railroad Avenue as a collector road, with a level designation of C, and whose purpose is to collect and distribute traffic between local roads and arterial system. Railroad Avenue has sufficient capacity to handle projected increases in traffic, even with on-street parking. Tr. pages 1,535-1,536. While Railroad Avenue is part of the City's Old Town historic district overlay, and Black Diamond Comprehensive Plan policies state that the historical character "should be retained and enhanced, and this area should become the focus of tourist and specialized retail activities," there are several other roads in the area, such as the main roads through North Bend and Snoqualmie, with historical characteristics similar to Railroad Avenue (including parking) that have been able to retain their rural character in spite of development and increases in traffic. Moreover, analyzing impacts to a road's "rural character" would be speculative and subjective.
- L. Future Transportation Analysis. Notwithstanding the above Findings concerning the reasonableness and appropriateness of the FEIS and TTR's analyses of potential transportation impacts and identification of

mitigation for them, all travel demand models and transportation impact analyses rely upon engineering assumptions and the exercise of engineering judgment about future conditions. As such, neither the PSRC model nor the City of Maple Valley model is optimally suited to predict the long-term traffic impacts for the Black Diamond community. And, the length of the Lawson Hills MPD's 15-year build out period increases the risk that one or more assumption could turn out to be incorrect. This risk, which may be exacerbated by the scale of the MPD development, warrants the preparation of additional transportation analyses at appropriate, future intervals, as called for by conditions of the MPD approval in Exhibit C below.

6. Traffic Safety.

- A. As a general matter, it is reasonable to expect the number of accidents to increase in proportion to increases in traffic volumes. This general proposition does not always hold true, however. Exhibit H-22 is a Washington State Department of Transportation accident history detail report, showing reported collisions that occurred on Southeast Green Valley Road from Auburn/Black Diamond Road to SR-169, January 1, 2001 through 2009. Ex. H-22 includes a period during 2008 during which traffic volumes increased substantially due to a detour resulting from a bridge closure; however, despite the increased traffic during that period, the number of accidents did not increase above the average for this nine-year reported period. Tr. at 1,541 - 1,543. Exhibit H-22 demonstrates that vehicle accident rates are somewhat random and are not necessarily directly tied to increases in traffic volumes.
- B. There are no high incident accident intersections in the FEIS transportation study area. Those accidents that did occur in the study area were random and not tied to any particular, identified hazards on the roads. Some of the safety impacts will be mitigated by the improvements called for in the FEIS, and the randomness of the accidents makes it difficult to predict and impose more specific mitigation that would decrease the risk. There is no known way to analyze safety impacts except to evaluate the particular configuration of a high incident location. Tr. at 1,541 - 1,543.
- C. Green Valley Road has been designated under King County's Historic Heritage Corridor. Traffic on Green Valley Road is projected to increase by as much as 300 - 400%. Tr. at 476. Green Valley Road currently has very low traffic volumes, and although the anticipated increase in traffic volumes resulting from the project will not exceed Green Valley Road's capacity, increased traffic may result in safety concerns. Green Valley Road has limited or no roadway shoulders, trees and fences in very near proximity to the roadway, and very curvilinear alignment. Additionally,

some witnesses testified that Green Valley Road has a high number of large animals that regularly cross the road, as well as a high volume of bicyclists, hikers, joggers, tubers, swimmers, outdoor groups, and fishermen using the shoulder of the road. These factors justify a study of traffic impacts and recommended mitigation to provide for safety and compatibility between the varied uses of Green Valley Road. The study should include an analysis of measures designed to discourage and/or prevent MPD traffic from utilizing the road, such as the installation of traffic calming devices, while ensuring that such measures can be designed in a manner consistent with the road's designated status.

7. Stormwater Quality.

A. Lake Sawyer. Lake Sawyer is a significant water body. It is the fourth largest lake in King County, covering 280 acres. Ex. NR-TV-11, p. ES-1. Its watershed encompasses 8,300 acres. Ex. H-9, p. vii. Over 200 people live upon its shorelines. The lake is used extensively for recreational purposes such as sailing, water skiing, scuba diving, swimming, picnicking, wildlife observation and aesthetic enjoyment. Ex. NR-TV-11, p. ES-1. Public access is provided by two city parks, one on the northwest side of the lake and another on the southern end of the lake. The lake provides habitat for three federally listed species: Steelhead, Coho and Chinook salmon. TV FEIS at 4-71, 4-73.

B. Phosphorus. Phosphorus poses a significant threat to Lake Sawyer water quality. In lakes of the Puget Sound Lowlands, phosphorus is often the nutrient in least supply, meaning that biological productivity is often limited by the amount of available phosphorus Lake Sawyer Water Quality Implementation Plan (Ex. H-9) at 6 (*citing* Abella, 2009). Thus, for lakes such as Lake Sawyer, phosphorus is usually the main nutrient that drives the eutrophication process. When lakes are polluted with excessive levels of nutrients and have high biological activity, they are considered eutrophic. When a lake reaches a eutrophic state the consequences are serious. Blue-green algae bloom, creating toxics that are lethal to aquatic life, birds and shore animals, including cats and dogs. The blue-green algae form a scum over lake surfaces, causing beach closures. Testimony of Abella, 3/8/10, p. 555. The toxins are also under study as a cause for liver ailments in humans. *Id.* A eutrophic state also harms coldwater fish. Coldwater fish need to stay in the lower, colder layers of a lake. A eutrophic state deprives the lower waters of necessary oxygen and leaves it in the warmer upper layers. Zisette testimony, 3/6/10, pp. 72 - 73.

C. Previous Lake Sawyer Water Quality Problems. In the 1970's, evidence of failing septic systems in the Lake Sawyer watershed resulted in a decline in water quality in Lake Sawyer and the rivers that feed into it. To

correct this problem, the City of Black Diamond constructed a sewage treatment plant in 1981. Treated effluent was discharged into a natural wetland, which ultimately discharged into Lake Sawyer. Lake Sawyer Water Quality Implementation Plan ("Implementation Plan") Ex. H-9 at 1. The treated effluent caused a significant degradation of Lake Sawyer water quality. As phosphorous levels went up, algae blooms occurred. According to witnesses, a green scum covered the lake, rendering the lake virtually unusable for recreational and other public activities. Testimony of Wheeler, Tr. 3/19, pp. 3647 - 3648. Due to the water quality problems caused by the treated sewer water, the Department of Ecology required the diversion of the effluent from the natural wetland to a secondary treatment plant in Renton via a King County sewer line. Ex. H-9 (Implementation Plan) at 1. This diversion was completed in 1992. *Id.*

- D. Lake Sawyer Listing. As a result of Lake Sawyer's water quality problems, DOE listed Lake Sawyer as an "impaired water body" pursuant to the requirements of the Clean Water Act. The Clean Water Act requires a total maximum daily load (TMDL) to be developed for impaired water bodies. The TMDL is subject to approval by the US Environmental Protection Agency. The TMDL sets a limit to the amount of phosphorous that is allowed into a water body. Implementation Plan, Ex. H-9 at 3. The Lake Sawyer TMDL for phosphorous approved by the EPA in 1993 established a target in-lake, summertime average phosphorus concentration of 16 micrograms per liter. Ex. H-9 (Implementation Plan) at 1, 9, and 12. To meet this target, the TMDL also established a loading capacity, expressed in volume, of 715 kilograms of phosphorous per year. *Id.* at 9 (Table 1). This means that all sources of phosphorous may not exceed a total of 715 kilograms per year.
- E. Current Lake Sawyer Water Quality. Lake Sawyer had average summertime (June-August) phosphorous concentrations of 12 to 23 micrograms/L from 1990 to 1998. Ex. H-9 at 1, 12 (Figure 5). From 1999 to 2007 the average summertime phosphorous levels have been in the 8 to 16 microgram/L range. *Id.* The TMDL target of 16 micrograms/L has been met since 1998, with levels down to 8 or 9 micrograms/L in 2007. Ex. H-9 at 12. The Implementation Plan shows that this current state of the lake, with a total phosphorus concentration of 8 or 9 micrograms/L, is not temporary but is anticipated to be stable, absent further development.
- F. King County Lake Sawyer Management Plan. In 2000 King County prepared the Lake Sawyer Management Plan, Ex. NR-LH-9 ("LSMP"). It is considered a supporting document of the Lake Sawyer TMDL. Ex. H-9 at 1. The purpose of the LSMP was to complete a Phase I study initiated in 1989-90. LSMP at 1 - 5. The primary purpose of the Phase I Study was to assess the impact of the water treatment plant diversion on water quality, update the lake's nutrient and water budgets, and to evaluate and

recommend restoration alternatives that will maintain and protect Lake Sawyer's water quality and beneficial uses. *Id.* The LSMP was based upon years of data collection and employed the input of several stakeholders representing public and private organizations. It included a detailed projection of phosphorous levels at full build out of the Lake Sawyer watershed, with and without recommended mitigation. The LSMP identifies several mitigation measures directed at the Lake Sawyer watershed to control phosphorous loading. LSMP, Chapter 6. If these measures fail to reach or maintain lake management goals, the LSMP identifies "contingency in-lake measures" to improve water quality. LSMP at 6 - 22. These measures consist of buffered alum treatment (treating the lake with alum) and hypolimnetic aeration and circulation (pumping oxygen into the lake through a piping system).

- G. Department of Ecology Lake Sawyer Water Quality Implementation Plan. In 2009 DOE released the Lake Sawyer Total Phosphorous Maximum Daily Load Water Quality Implementation Plan ("Implementation Plan"), Ex. 9. It is considered the follow up document to the Lake Sawyer Total Phosphorous TMDL. Ex. H-9 at 2. It provides a framework for corrective actions to address sources of phosphorous pollution in Lake Sawyer and the surrounding watershed. Unlike the LSMP, it did not include any modeling of future lake conditions. Like the LSMP, the Implementation Plan was based upon the input of several stakeholders participating in the Lake Sawyer Steering Committee, consisting of representatives of: DOE; King County; City of Black Diamond; King County Conservation District; Washington Department of Fish and Wildlife; the Muckleshoot Indian Tribe; and local watershed residents. The corrective actions identified in the Implementation Plan largely mirrored the mitigation recommended in the LSMP, with the important distinction that the Implementation Plan also contemplated the City's adoption of the 2005 Stormwater Management Manual for Western Washington. The Implementation Plan concludes that with compliance with the Western Washington Phase II Municipal Stormwater Permit, the adoption of and compliance with the 2005 DOE Manual, and a monitoring program for the implementation projects, the City of Black Diamond would meet the requirements of the TMDL. Ex. H-9 at 31 - 32. There is no evidence to suggest that these measures, including the 2005 DOE manual, are inadequate.
- H. Credibility of the LSMP and the Implementation Plan. The LSMP and the Implementation Plan build upon years of research and hundreds of pages of scientific analysis. The plans are the result of significant collaboration of all major stakeholders. The Implementation Plan's conclusions that compliance with the 2005 Stormwater Management Manual for Western Washington will constitute compliance with the TMDL were made by the Department of Ecology, whose primary mission and expertise are the protection of environmental resources, such as Lake Sawyer. Given

DOE's mission and expertise, the City Council finds the Implementation Plan's conclusions credible. There is nothing in the record to suggest that DOE would have any self-interest or political reason to find TMDL compliance when that was not the case. The Applicant raised the issue of DOE approval prior to the Appellants' rebuttal and nothing was offered by the Appellants to explain why DOE would reach such a conclusion if there was no reasonable basis for it. While some parties of record argued that the data and methodology shows that the MPD projects will load phosphorous in excess of TMDL and that this phosphorous loading will approach (but not exceed on its own) the eutrophication point for Lake Sawyer, these parties did not dispute the data or methodology used in the LSMP or the Implementation Plan to assess the effectiveness of mitigation. Therefore, their arguments and evidence are insufficient to refute the conclusions of DOE's Implementation Plan.

I. The Lawson Hills MPD is Within LSMP's Total Phosphorous Loading Assumptions.

- i. Reliance on LSMP Loading Assumptions. Although the Applicant has not chosen to conduct its own analysis of how much phosphorous the MPD's will discharge to Lake Sawyer, the Applicant has relied upon the phosphorous loading estimates of the Lake Sawyer Management Plan ("LSMP"), prepared by King County in 2000. Through extensive analysis and testimony, the Applicant established that the MPD projects are consistent with the assumptions used by the LSMP in predicting total phosphorous loading.
- ii. LSMP Overstates Potential Total Phosphorus Loading. The record of this proceeding conclusively establishes there are three (and potentially four) factors that result in an overstatement of phosphorous loading in the LSMP model:
  - a. The LSMP overstates the amount of the MPD development area that drains to Lake Sawyer. The Applicant's geotechnical consultants performed 110 test borings to determine the location of impermeable surfaces and the resultant subsurface flows of stormwater. Tr. 2641. Through this geotechnical analysis the Applicant determined that 30% of the project area does not drain into Lake Sawyer as assumed in the LSMP. Kindig Testimony, 3/12/10, pp. 2032 - 2033. No party rebutted this testimony or geotechnical analysis.
  - b. The LSMP overstates the amount of potential development in the MPD project area. As shown in Exhibit H-8 and as testified by Al Fure, the LSMP overstates the development of the MPD's by 25%. Tr. at 2,007 (Fure testimony, 3/12).

- c. The LSMP model utilized an inappropriately high total phosphorus baseline. The LSMP model relied upon the in-lake phosphorous concentrations from March 1994 through April 1995. Wheeler Ex. 20(e), Appendix C, Figure E6. The concentrations during this base period ranged from 20 to 60 micrograms/L, significantly higher than the TMDL concentration of 16 microgram/L. As shown at p. 12 of the Implementation Plan, the 2007 phosphorous concentration was 8 or 9 micrograms/L. *Id.* The "typical year" baseline used in the LSMP model was 84% over the TMDL concentration. Wheeler Ex. 20. The significant disparity between current phosphorous concentrations and those used in the baseline of the LSMP model is probably due to the five year recovery period of the lake from the treatment plant diversion in 1992. *Id.* Yet, Table 6-7 of the LSMP, which provided the projections on future phosphorous loading, noted that "it is assumed that internal loading will not change in the future," when more recent data (shown in the Implementation Plan) demonstrates that internal loading has, in fact, changed.
- d. A fourth factor may be the City's adoption of the 2005 DOE Stormwater Manual. The LSMP was based upon the assumption that new development would be regulated by the Department of Ecology's 1992 Stormwater Manual. Tr. at 558 (Abella testimony, 3/8/10). Development of the Lawson Hills MPD, however, will be regulated by the DOE 2005 Manual. As Ms. Abella testified, the 2005 DOE Manual provides "better by far" phosphorous safeguards than the 1992 manual. Tr. at 564 (Abella Testimony, 3/8/10). However, some of the benefits of the 2005 Manual may already be integrated into the LSMP model. One of the recommended stormwater controls in the LSMP is the adoption of the 1998 King County Surface Water Design Manual. LSMP, p. 6-6 to 6-7. In the alternative, the LSMP recommends adoption of the "Lake Protection Standard", a component of the King County Surface Water Design Manual. In recommending these standards, the LSMP focuses upon the fact that they have a phosphorous treatment reduction goal of 50%, which is the same standard required under the 2005 DOE Manual. If the 2005 DOE Manual does not provide any level of phosphorous protection better than the 1998 King County Manual, the City's adoption of the 2005 DOE Manual is simply an adoption of one of the LSMP mitigation measures and its actions fall squarely within the LSMP modeling. However, if the 2005 DOE Manual provides better protection than the 1998 King County Manual, as Ms. Abella testified is the case, this is a fourth reason why the LSMP model overstates the potential phosphorous loading from future build out.

e. There is no evidence in the record that identifies any factors that would result in an underestimation of phosphorous loading in the LSMP. While Ms. Abella testified that the LSMP was outdated, she could only conclude that an updated LSMP could "go either way" in changing the outcome of phosphorous loading predictions. Ms. Abella testified that the LSMP is based upon data and development regulations from 1995. Tr. at 174. She noted that development projections in the LSMP may not be accurate, due to possible changes in Black Diamond comprehensive plan policies and development regulations and Black Diamond annexations that occurred subsequent to 1995. *Id.* at 179. The Applicant addressed Ms. Abella's concerns about projected MPD development in the preparation of Ex. H-8 and the testimony of Al Fure, which, as discussed above, demonstrated that the LSMP actually overestimated potential development within the MPD project areas and, therefore, overestimated potential phosphorus loading from new development.

J. The Lawson Hills MPD Will Comply With DOE Manual Requirements and the TMDL.

- i. The Lawson Hills MPD will comply with the requirements of the DOE 2005 Manual, and will therefore be within the TMDL. Dr. Kindig testified that, as designed, the Lawson Hills MPD meets the DOE conditions for consistency with the TMDL. Tr. at 2,025-26. Not only was Dr. Kindig's testimony on this point unrefuted, but Robert Zisette, the SEPA Appellants' water quality expert, agreed that the mitigation implementation measures identified in the Implementation Plan are incorporated into the Lawson Hills MPD proposal. Tr. at 3,625 (Zisette testimony, 3/19/10). Therefore, according to DOE's conclusion in the Implementation Plan, the Lawson Hills MPD will comply with the TMDL.
- ii. The SEPA Appellants asserted that compliance with the mitigation measures outlined in the LSMP (and presumably the Implementation Plan) would not be sufficient to comply with the Lake Sawyer TMDL or to prevent Lake Sawyer from reaching eutrophic status. The SEPA Appellants' expert, Mr. Zisette, performed an interpolation of the modeling used to predict phosphorous loading for total build out, and determined that the phosphorous loading attributable to the MPD proposals, with LSMP stormwater controls, would generate an additional 353 kg/yr above the 715 kg/year TMDL limit. See Wheeler Prehearing Ex. 20. In making this calculation, Mr. Zisette used approximately the same MPD area calculated by the Applicant as draining into Lake Sawyer, employing the area outlined in Exhibit H-

7. Mr. Zisette's TMDL calculations, however, did not reveal any new information not readily apparent to DOE when it concluded (in the Implementation Plan) that development in accordance with the 2005 Stormwater Manual would comply with the TMDL. Additionally, beyond adjusting downward for development area, Mr. Zisette's calculations did not alter any of the assumptions used in the LSMP model which, as found above, significantly overstated the potential total phosphorus loading to Lake Sawyer. The LSMP model predicted a total phosphorous load of 2,255 kg/yr at build out, which is 1,540 kg/yr above TMDL; the baseline "typical year" in the LSMP model was already 627 kg/yr above the TMDL. Mr. Zisette's calculation merely showed that the MPD's proportionate share of this excess phosphorous is 353 kg/yr. Mr. Zisette's interpolation was not the kind of analysis of the total phosphorus volume loading of the Lawson Hills MPD to Lake Sawyer that he testified (Tr. at 3,596) that the Applicant should have performed. Given the objectivity and expertise of DOE, and the significant improvement in the current Lake Sawyer water quality that was not factored into the LSMP modeling, the City Council finds credible DOE's conclusions that compliance with the NPDES Phase II Stormwater Permit and the 2005 DOE Manual, and with additional monitoring and conditions of approval noted above, the Lawson Hills MPD will comply with the TMDL. Those conclusions are hereby adopted.

- iii. The SEPA Appellants also asserted that the MPD could cause Lake Sawyer to exceed 24 micrograms/L, which they alleged, based on Table 4-10 of the LSMP, is the scientific dividing line between a mesotrophic and eutrophic lake. The meaning or eutrophic risk of this "dividing line" is not explained in the LSMP, however. The TMDL is set at a point where there is a 5% chance of reaching eutrophic status. See LSMP, Appendix F, 2/11/93 Wong Memo. And, the 24 micrograms/L is significantly more than the TMDL, which at 16 micrograms/L has a 50% less phosphorous concentration. Further, while the SEPA Appellants point to Table 6-3 of Appendix I to the LSMP, which provides that the current condition of Lake Sawyer is at 23 micrograms/L and that build out of the watershed, with watershed controls, will reach 31 micrograms/L, neither Table 6-3 nor Table 4-10 reflects current conditions. As discussed previously, the Implementation Plan shows the current state of the lake at 8 or 9 micrograms/L, and these levels are anticipated to be stable, absent further development. The lake concentration has been under 16 micrograms/L since 1998. There is nothing in the record to suggest that the Lawson Hills and Lawson Hills MPDs, alone, will push the Lake Sawyer total phosphorous concentration beyond 24 micrograms/L, given the lake's current conditions.

- K. Estimation of Total Phosphorus Volume Loading. The Applicant did not determine the total volume of phosphorous the Lawson Hills MPD would add to Lake Sawyer. This phosphorus volume loading is not unreasonably difficult to compute, because the Applicant has data on both projected stormwater volumes and expected phosphorous concentrations. The Applicant did not rebut testimony on this point. Information as to the annual projected total phosphorus volume load from the Lawson Hills MPD to Lake Sawyer would assist the City in meeting the future water quality monitoring called for by the TMDL, and in determining whether the Lawson Hills MPD is, in fact, in compliance with the TMDL established for Lake Sawyer.
- L. Total Phosphorus Concentrations in Rock Creek. Mr. Rothschilds, one of the members of the public who testified on water quality issues, raised concerns over phosphorous impacts to Rock Creek that had not been discussed during the SEPA appeals. The Applicant submitted a rebuttal declaration by Dr. Kindig, Ex. 121, which detailed that Mr. Rothschilds had not considered the impacts of additional flows from development in his estimates of Rock Creek phosphorous concentrations. Dr. Kindig established that the resulting phosphorous concentrations after the build out of both MPDs would be 0.026 milligrams/L. There is no evidence in the record to suggest that these concentrations would be adverse to Rock Creek.
- M. Low Impact Development. Low-impact development techniques are also proposed as part of the Lawson Hills MPD, and are recommended conditions of approval. These techniques will also significantly mitigate stormwater impacts. The MPD project site contains permeable soils that are amenable to low-impact development techniques.

8. Stormwater Quantity. One party of record, Jack Sperry, shared photos of, and others shared concern over, past flood events. The added stormwater generated by the MPDs will not make a significant difference in the quantity of water that reaches Lake Sawyer during storm events. As discussed in the declaration of Al Fure, Ex. 123, the developed areas of the Villages and Lawson Hills MPDs occupy only 4% of the Lake Sawyer watershed. A little more than a third (326/922 acres) of the MPD developed areas are within the Lake Sawyer watershed. Using the volumes generated by the January 7, 2009, flooding events, the MPDs would have added an additional depth of 1.85 inches to the storm event, if the storm quantity was instantaneously delivered to the Lake. It would take several days for all of the water from such storm event to reach Lake Sawyer from the MPDs. Therefore, the Lawson Hills MPD does not serve as a significant flood threat to Lake Sawyer properties.

9. Noise.

- A. Existing noise levels. As summarized in the Lawson Hills FEIS at page 3-25, existing noise levels along SR-169 in the vicinity of the Lawson Hills MPD project area have been measured between 54 and 66 decibels (dBA), depending largely on the speed of vehicles. Noise levels have been measured at 62 dBA on Roberts Drive/Auburn-Black Diamond Road at the City offices, but noise levels in residential areas at a distance from major roads drop to between 46 and 53 dBA, with noise levels in more rural and undeveloped areas as low as 31 dBA. Appendix C to the Lawson Hills FEIS identified the five locations where sound level measurements (SLMs) were taken to establish the base line or existing environmental noise level along SE Auburn-Black Diamond Road/Roberts Drive. Richard Steffel, the Applicant's noise expert, testified in a rebuttal declaration that the SLMs were taken after a traffic detour on SR-169 was discontinued to ensure that unusual traffic conditions were not present to influence the findings of the noise analysis. The Lawson Hills FEIS and its technical appendix addressing noise impacts (Appendix C) do not disclose the anticipated duration of each of the construction activities listed in the table in the Lawson Hills FEIS Exhibit 3-12. Tr. at 795-96.
- B. Projected Noise Impacts from Lawson Hills MPD. As discussed in the Lawson Hills FEIS at Exhibit 3-12, MPD construction noise is estimated to be 80 to 96 dBA at 50 feet from the source, 74 to 90 dBA at 100 feet from the source, and 68 to 84 dBA at 200 feet from the source.
- C. Noise Standards. Generally speaking, 55 dBA is an acceptable level of outdoor noise in a residential area pursuant to the "environmental designation for noise abatement" classification system utilized by Washington State and the U.S. Department of Housing and Urban Development Index. Lawson Hills FEIS at 3-27. The Federal Highway Administration Noise Criteria indicate that 52 dBA is an acceptable noise level for the interior of a residence. *Id.* at 3-28. Construction noise originating from temporary construction sites is exempt from noise regulation by the Department of Ecology. Because the Lawson Hills MPD is anticipated to be built out over a fifteen-year period, the noise standards adopted by DOE and other agencies do not adequately address construction noise impacts associated with the scale and construction duration of the Lawson Hills MPD.
- D. Parties Affected by Noise Impacts. The parties most likely to be affected by construction noise include residents adjacent to the site and adjacent to off-site infrastructure. Lawson Hills FEIS at 3-29; testimony of Jerry Lilly (SEPA Appellants' expert) and Richard Steffel (Applicant's expert).

E. Duration of Construction Noise Impacts. The Lawson Hills MPD application (page 1-6) indicates that it is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for development of the main Lawson Hills site. Because dirt removed must be used as fill, trucks will not be used to export the entire 4.7 million cubic yards of dirt. If the Applicant performs 4.7 million cubic yards of cut, and retains the 1.685 million cubic yards on site as required, approximately 3,680,000 cubic yards of dirt would have to be removed from the site. This is equivalent to approximately 153,000 truckloads of exported material. If ten truckloads are removed per hour, eight hours per day, five days per week, that would be 400 truckloads a week for about 7.35 years. As acknowledged by Exhibit 3-12 of the Lawson Hills FEIS, dump trucks generate 82 – 94 dBA of noise when measured 50 feet from the source and 76 – 88 dBA when measured 100 feet from the source. The 90 dBA clearing activities will likely be of short duration, since there are only so many trees adjacent to the three residential properties that will most likely to be affected by such noise.

F. Noise Mitigation. During its rebuttal presentation, the Applicant volunteered to provide certain specified mitigation to address construction noise impacts. City staff also recommended a condition requiring establishment of a construction haul route, with a corresponding prohibition of construction haul use of specified City streets. The City Council finds that incorporation of the Applicant's volunteered mitigation, and the construction haul requirements recommended by staff as conditions of MPD approval, will appropriately mitigate the construction noise impacts of the Lawson Hills MPD.

#### 10. Schools.

A. School District. The Lawson Hills MPD project area is located in the Enumclaw School District ("District"). The District's schools are already over capacity, according to testimony by school officials.

B. School site standards. The District's capital facilities plan ("CFP") identifies acreage needs for new schools. Ex. 14, attached Ex. A, p. 15. However, the CFP appended to Ex. 14 fails to identify an explanation/justification for the acreage standards. Nevertheless, it is the most suitable standard provided in the record because it is incorporated into the City's Comprehensive Plan. In addition, BDMC 18.98.080(A)(19) requires that:

*[t]he number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build out, using school sizes based upon the applicable school district's adopted standard....*

This standard links the size of the "school" to adopted District standards, but does not expressly tie the size of the "site" to the CFP acreage needs used to calculate District school impact fees. Because the acreage requirements in the CFP are used to calculate school impact fees and are not necessarily intended to serve as minimum site standards for the construction of all schools, the acreage standard can be applied in a flexible manner, so long as sufficient acreage is provided to meet the District's adopted school size standard incorporated in BDMC 18.98.080(A)(19).

- C. District/Applicant School Mitigation Negotiations. The District and the Applicant have been involved in extensive negotiations on a school mitigation agreement since August, 2006. The record reflects that the latest draft is satisfactory to both the District and the Applicant.
  
- D. School Facilities Needed. The draft school mitigation agreement (Ex. NR-LH-6) indicates that the District identified the need for new schools to serve 1,800 elementary students, 1,100 middle school students, and 1,200 high school students. Likewise, Ms. Graham testified that during the process of preparing the DEIS, Parametrix identified the need for seven schools to serve the project areas of the Lawson Hills and Lawson Hills MPDs. The District identified the school needs and the District and Applicant "firmed up" the location of the elementary and middle schools in April 2009, and the location of the high school in late August or early September 2009. Tr. at 878-79. If the District proposes to locate a school in unincorporated King County, a conditional use permit must be obtained from King County.
  
- E. Analysis of Traffic Impacts of School Construction. The FEIS and TTR transportation analysis addressed the cumulative, AM peak hour traffic impacts of schools needed to serve approximately the same number of students contemplated by the draft school mitigation agreement. FEIS, Appendix B at Table 10, p. 3-7; Tr. at 2,535 (Perlic testimony). Because school-generated traffic does not affect the PM peak hour, any change in the AM peak hour school traffic analysis due to a change in school site location would likely not affect the FEIS and TTR impact analysis and mitigation for PM peak hour conditions. Tr. at 2,541-42. (Perlic testimony). The SEPA Appellants and other parties of record did not demonstrate that this analysis was deficient, in that they did not provide any evidence suggesting which, if any, of Mr. Perlic's calculations would be rendered inadequate and how that may affect the proposed MPD construction and the associated planned road and intersection improvements.

- F. Alleged Water Quality Impacts from School Construction. One party of record, Gil Bortleson, alleged that building the twin school sites south of the Villages MPD along Green Valley Road would create a "high risk" of drying out approximately ten shallow wells serving neighboring residents in rural King County. Tr. at 137. In addition, Mr. Bortleson alleged that increased runoff from the school sites would drain to the west, potentially flooding septic systems located in that area. Tr. at 144. Mr. Bortleson's allegations are speculative. Mr. Bortleson did not review any site plan for the proposed school construction prior to giving his testimony and assumed that the entire twin school site, 70 acres of land, would be paved or graded, creating 70 acres of new impervious surface. Tr. at 148. Mr. Bortleson also was not able to give any testimony with respect to the quantity of water that currently infiltrates to the wells that would not infiltrate to the wells after the project. Tr. at 153. He also was not able to answer any question regarding the amount of surface water infiltration needed to sustain the operation of the at-risk wells. Tr. at 154. Further, these alleged impacts can be more effectively evaluated when a specific proposal for school construction is submitted for permit review.
- G. Lake Sawyer Park. Some parties of record objected to the potential use, contemplated in the draft school mitigation agreement among the Applicant, the School District, and the City, for joint school/City use of Lake Sawyer Park. Such joint use is consistent with Black Diamond Comprehensive Plan Policy CP-14, which calls for the City to "Maintain a joint-use agreement for all facilities and land."

11. Fiscal Impacts.

- A. FEIS Analysis. The FEIS Fiscal Impact Analysis ("FIA") determined that the Lawson Hills MPD would be "essentially balanced," or fiscally neutral. FEIS FIA at 4; Lawson Hills FEIS at 3-95. The FIA assumes \$152 retail sales per square foot, and a \$354,000 value for single-family homes and a \$125,000 value for multi-family units, based upon house sales in Black Diamond four to five years ago. The Villages and Lawson Hills MPD proposals may only build residences in the first phases of development. See Villages and Lawson Hills MPD Applications, Chapter 9. As noted in the ECS 11/16/09 memo (Ex. J to the Lawson Hills FEIS), single-family residential developments typically produce deficits, and it is therefore likely that the first phases of MPD development will produce deficits if those phases are limited to residential development.
- B. Applicant Analysis. Mike Whipple, the Applicant's fiscal expert, provided written comment regarding the divergent results reached by the Applicant's FIA and that adopted into the Lawson Hills FEIS. See MPD Ex. 124. Mr. Whipple's analysis found that the fiscal impacts for both MPDs would be positive. MPD Ex. 124, p. 4. As reflected in the Lawson

Hills FEIS, pp. 3 - 96, Mr. Whipple noted that slight changes in assumptions can lead to differing results in the fiscal impact analysis. The primary differences in assumptions appear to concern retail sales and housing values. Mr. Whipple wrote that the FEIS FIA dollar amount of retail sales per square foot is significantly below the average for retail sales and is not supported by any market study. Mr. Whipple based his retail sales estimates upon the lower end of estimates prepared utilizing the Urban Land Institutes' "Dollars and Cents of Shopping Centers, 2002" and "2007 Retail Taxable Sales Estimates" prepared by HDL Companies. For housing values, Mr. Whipple assumed that single-family homes would sell for \$420,000 and multi-family homes for \$150,000. Mr. Whipple stated these housing values were based upon current market studies, although he did not mention whether these studies were conducted before the recent downturn in real estate sales.

- C. Parametrix Sensitivity Analysis. The City also subjected the FEIS FIA to peer review by Parametrix in a "sensitivity analysis." Parametrix employed the methodology of both Mr. Whipple and the FEIS FIA to determine what would happen under four scenarios: (1) adjusting housing values; (2) assuming all parks maintained by an HOA; (3) assuming all streets maintained by an HOA; and (4) reducing police costs (the DEIS incorrectly calculated the number of new police officers needed; it is unclear if this error was remedied for the FEIS). Parametrix made these changes to assess both short- and long-term impacts on each MPD individually and cumulatively. Under each scenario, Parametrix found a net positive fiscal impact, although the amount of the change in anticipated housing values was not identified.
- D. Comparison of Fiscal Analyses. Neither study makes any assumptions or employs any methodology that could be considered unreasonable or excessively self-serving. The primary difference in the models used by the Applicant and for the FEIS are the assumptions made about future housing values and commercial activity for the City of Black Diamond over the next 15 years. Selecting one FIA over another would require a determination of which FIA more accurately predicts the performance of the economy for Black Diamond during the FIA's duration. Predicting the economy is an impossible task, or at least beyond the capabilities of current economic science. The FIAs only serve as a general guide to economic impacts, and those impacts must be considered inconclusive given the limitations of predicting economic performance 15 years in advance.
- E. Fiscal Neutrality Factors. There are several factors that put the City in a good position to assure fiscal neutrality.

- i The Applicant has agreed to a condition that will make it responsible for any fiscal shortfalls projected after each phase of development. The Applicant proposes the following condition:

The applicant shall be responsible for addressing any projected city fiscal shortfall that a fiscal analysis, prepared at each phase, shows is a result of the Lawson Hills MPD. The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

- ii. The sensitivity analysis conducted by Parametrix determined that under both FIAs, measures such as HOA ownership and maintenance of roads and/or parks would result in a net positive fiscal impact. Consequently, it is reasonable to conclude that any long term projected shortfalls could be addressed by privatizing infrastructure. Combining Applicant responsibility with the options of privatization provides reasonable assurance that the projects will not have an adverse fiscal impact upon the current residents of Black Diamond. In order to ensure that the MPD does not lower staffing levels of service as required by BDMC 18.98.050(A)(5), a condition of approval could be worded to also require that the projects generate sufficient revenues to maintain required staffing levels.
- iii. Additional fiscal analysis is required every five years, and at the start of each phase. The Applicant's recommended condition will be combined with that of the Staff's. As recommended by Staff, a fiscal analysis will be required five years into the project when it is likely that the Applicant's development is mostly residential and hence impacts may be most severe.
- F. Table 3.4 of the MPD application shows proposed land uses, and shows that a school uses are conditionally permitted within the office and retail designations. If a high school were located in an office or retail designation, because the amount of land a high school would occupy the amount of retail/office development would be significantly reduced. For this reason, Exhibit C below contains a requirement for preparation of an updated fiscal analysis for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use. This condition will also assist in assuring fiscal neutrality.

## 12. Wildlife.

- A. Wildlife Species Likely to be Found on MPD Project Site. In order to determine the types of wildlife and habitat present on the sites for the purposes of the FEIS analysis, a resource study was conducted, which involved multiple site investigations throughout several different months and years, in addition to research of records and documents from DFW and other agencies. Tr. at 178 - 180 and 2,407. This included days of site investigations in 2005, 2007, and 2008. The results of this study are presented in the FEIS, which contains at page 4-72, Ex. 4-14 a summary of wildlife species expected to inhabit the Lawson Hills MPD site. The appendix to the FEIS contains a detailed list of all species considered. FEIS Appendix N; at July 16, 2008 WRI Memorandum pp. 11 - 15 and App. B thereto. Jason Knight, the consultant who prepared the technical analysis included in the FEIS, also noted that band tailed pigeons need mineral springs at their breeding site, and such springs are not found at the MPD project sites. While the band tailed pigeons may be found there during their migration, evidence presented support the findings that they do not inhabit or nest at the sites. Tr. at 60 - 61 and 2410-11. Mr. Knight added that no endangered or threatened species were found at the sites, which is also consistent with the findings by the DFW. He opined that development may benefit elk population because elk feed on landscaping plants that are more likely to be present as a result of development.
- B. Wildlife Corridors. The width of the wildlife corridors on the Villages MPD site will be between 300 and 900 feet. The King County network biologist's minimum recommended width for a wildlife corridor is 150 feet. The width of the wildlife corridors proposed as part of the Lawson Hills MPD is also adequate because the land use plan allows for the continued existence of existing north-south and east-west elk and other wildlife travel corridors. Lawson Hill FEIS, Appendix N (May 6, 2008 Wetland Resources, Inc. Report) at 34.
- C. Impacts to Wildlife. Wildlife impacts are an inevitable impact of development. The only way to completely mitigate them is to provide for a one-to-one replacement of lost habitat with new habitat. Most development could not proceed under these conditions, and such a requirement would not be reasonable. The Lawson Hills MPD proposes to retain 41% of the project area in open space, a large portion of which will serve as a wildlife corridor. This open space retention is a relatively large set-aside for any development project, and the wildlife corridor within the open space is of sufficient width to provide for wildlife migration. This provides appropriate mitigation for any significant, adverse impacts to wildlife. And, significantly, the record also establishes that there is no threatened, endangered or otherwise protected species that has a habitat within the project area.

13. Wetlands. No evidence was presented on the issue of impacts to Core Wetlands or that the City's Sensitive Areas Ordinance is inadequate to protect these wetlands.

14. Landslide Hazards. Although at least one party of record asserted that landslide hazards had been inadequately analyzed, no evidence of landslide hazards was presented other than photographs of landslides. There also was no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address landslide hazards. Further, the Lawson Hills FEIS identifies landslide hazard areas and provides an in-depth assessment of mitigation for such hazards. See Lawson Hills FEIS Appendix D, AESI Technical Report, p. 3-54, 4-2, 4-3, 4-11, 4-18, 4-21, 4-28-29, and 6-13 and 6-14. There was no evidence presented to show this analysis was inadequate.

15. Mine Hazards. The TV FEIS identifies mine hazard areas and concludes that only a small number of low-hazard mine areas are located within the Lawson Hills MPD. Lawson Hills FEIS at 4-8, 4-14, 4-15 and Exhibit 4-6. The City's Sensitive Areas Ordinance will ensure that these hazards will be sufficiently addressed. Some parties of record asserted that mine hazards had been inadequately addressed. One party of record in particular was primarily concerned with the dumping of toxic waste at mine sites. However, there was no evidence presented on mine hazards by any parties of record other than the Applicant, and there is no evidence in the record to suggest that the FEIS was inadequate on its analysis of mine hazards, including toxic waste issues at mine sites. Several people testified about mine hazard issues during the MPD portion of the hearing, but there was no evaluation provided of the adequacy of the FEIS on this issue. There was also no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address mine hazards. A condition of approval requiring a notice on title disclosing the existence of present and former mine hazard areas will provide disclosure to potential buyers of homes within the MPDs.

16. Health Care Services. The Lawson Hills FEIS and the Lawson Hills FEIS indicate at page 3-89 that three hospital/medical care facilities operate near the City of Black Diamond, including Enumclaw Community Hospital in Enumclaw, Valley Medical Center in Renton, and Auburn General Hospital in Auburn. Advanced Life Support services are provided by King County Medic and are funded through a separate county-wide tax assessment. In addition, emergency medical care is provided by Mountain View Fire and Rescue (also known as King County Fire District No. 44). Specifically, the Villages and Lawson Hills FEISes locate medical facilities on the map in Exhibit 3-39. The FEIS analysis also indicates that additional fire fighters or volunteer EMTs will be required to serve the Lawson Hills MPD population, and that updated facilities as well as increased staff and infrastructure may be required for other medical facilities. Lawson Hills FEIS and the Villages FEIS, p. 3-90 - 3-91. Although one party of record alleged that Black Diamond has been identified by King County Public Hospital District #1 as an "underserved" area for health care, there was no additional testimony or evidence presented on health services other than the bare assertion in the Clifford Appeal that the FEIS was inadequate with respect to health services.

17. Historic and Cultural Resources. One party of record asserted that the Villages MPD will have an adverse impact upon historic and cultural resources, specifically a collapsed mine site that still contains the remains of some miners, and the potential existence of some Native American archaeological sites. That party did not pursue these claims during the hearings (beyond alleging traffic impacts to historic downtown areas, dealt with elsewhere in these Findings of Fact). There is no evidence in the record to establish that the Lawson Hills MPD has any significant adverse impacts upon cultural and historic resources.

18. Trails and Parks.

- A. Amount of Parks. The Lawson Hills MPD exceeds the amount of parks required by the 2008 Black Diamond Parks, Recreation and Open Space Plan. The Lawson Hills MPD provides double the amount of neighborhood and community parks required by the Plan, and the number of pocket parks meets the Plan's standard.
- B. Amount of Open Space. There are two prior agreements relating to open space: the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Protection Agreement ("BDAOSPA"). The open space called for by these agreements has been provided. The BDUGAA called for conveyance to King County of 645.2 acres of land located in the unincorporated county and 63.3 acres to the City as an offset for the West Annexation Area; and conveyance of 339 acres in unincorporated King County to the County and 81.7 acres as an offset for the South Annexation Area; and approximately 50 acres of "In-City Forest Land" within the then-existing City limits as an offset for the East Annexation Area. The BDUGAA also required protection or conservation of 347 acres of potential in-city open space on or before annexation of the West Annexation Area, and protection or conservation of 195 acres of potential in-city open space on or before annexation of the South Annexation Area. The potential in-city open space was to be protected conserved through purchase or transfer of development rights, or dedication or conveyance of conservation easement to the City or County. BDUGAA (City Staff report, Ex. 7) at 12-13. The BDAOSPA identified the specific lands and provided for mechanisms for their transfer and/or dedication at closing, which was the effective date of annexation of the west annexation area. Consequently, the lands identified in the BDUGAA for conveyance, protection and/or conservation have been so conveyed, protected and/or conserved. The Lawson Hills MPD itself, as conditioned in Exhibit C below to require the provision of an additional 14.8 acres of open space, includes 113.8 acres of open space, trails and parks, 16 acres of sensitive areas, and 29 acres of buffers, for a total of 152.8 acres (or 41% of the MPD project site) as open space. Figure 3-1 (July 8, 2010) Land Use Plan map.

- C. Timing of Proposed Parks and Trails Construction. The phasing plan proposed by the Applicant calls for park construction at various stages of specified occupancy. Lawson Hills MPD Application at 9-10. This timing is contrary to BDMC 18.98.080(A)(4)(a), which requires that all park improvements be completed prior to any occupancy or final site or plat approval, whichever occurs first. This noncompliance is remedied by inclusion of a condition in Exhibit C below to require construction of parks prior to occupancy or final site or plat approval. For on-site trails and other recreational facilities other than parks, timing of construction is governed by p. 9-3 of the MPD applications, which generally requires that they must be built prior to occupancy. This requirement does not apply to off-site trails.
- D. Integration Into Trail Network. A condition clarifying that off-site trails and recreational facilities may be required as a condition of phased development, as authorized by law, to mitigate the impacts of a particular phase, will enable the City to require off-site trail improvements and connections to facilitate the immediate integration of each phase into an area-wide trail network.

19. Water Availability. As to water availability, the Water Supply and Facilities Funding Agreement ("WSFFA") (Exhibit 9) dated August 11, 2003, provides for water supply through major property owner upgrades of the Black Diamond water system, including upgrades to the city springs, and delivery of city spring water to Black Diamond, and the purchase of new water supply from the City of Tacoma, with a requirement for reimbursement of costs incurred for the upgrades by credits on future capital facility charges. The project has also been designed, generally, through infiltration systems and circumvention of wetlands, to avoid any risk of adverse impact to private wells and springs that could be affected by the Lawson Hills MPD, as established in the AESI reports in Appendix D to the Lawson Hills FEIS. There is no evidence to suggest that the use of these water sources will impact or impair existing water rights of other residents.

20. Tree Removal. The Applicant has agreed to comply with the tree preservation ordinance. See MPD Ex. 114, p. 21. The tree preservation ordinance has a comprehensive replacement program for trees that are removed, except for properties that have 40% open space. See BDMC 19.30.070. The City's tree preservation ordinance sets the standard for tree protection in Black Diamond, and is sufficient to protect the community from the removal of trees.

21. Greenhouse Gas Emissions.

- A. Quantity of Emissions. Vehicle emissions are a significant source of greenhouse gases. Lawson Hills FEIS Appendix Q, "Air Quality", p. 10. The FEIS estimates the volume of vehicle emissions by using the average

number of vehicle miles per day in Washington State per person. Lawson Hills FEIS, Appendix Q, "SEPA GHG Emissions Worksheet", at 10. While some parties of record (the SEPA Appellants) argued that this state-wide average grossly understates the average mileage of MPD residents because the MPDs are far from employment and commercial centers, as noted by the Applicant the use of the state-wide average is required by King County for assessment of green house gases in King County unincorporated areas. Applicant Closing Brief, pp. 77 - 78. It is also not necessarily intuitive that average daily trips for Black Diamond residents would be significantly higher than the state-wide average. Due to the long distance from commercial and employment centers, Black Diamond residents are probably more likely to carpool, take transit, telecommute, otherwise work from home, or not work at all. The state-wide average also includes all of the other rural areas of the state, including Eastern Washington, where distances to commercial and employment centers exceed those of Black Diamond. The SEPA Appellants presented no evidence of what average daily trips Black Diamond residents would take, or the length of those trips. The record does not support the assertion that the state-wide vehicle mileage used in the greenhouse gas estimates is significantly less than the average mileage of future Black Diamond residents.

- B. Parametrix Peer Review. In cross-examination of Steve Pilcher, the SEPA Appellants also asserted that the greenhouse gas analysis was not consistent with the peer review requirements of Parametrix. Tr., pp. 3342 - 3344. SEPA Appellants' counsel referenced a Parametrix statement that no alternative land use scenario was analyzed in the air quality analysis. The Lawson Hills FEIS, however, does examine air quality impacts under an alternative land use scenario, consistent with the concerns expressed by Parametrix. Lawson Hills FEIS at 4-93 - 4-95, alternative 3.
- C. Mitigation for Greenhouse Gas Emissions. The SEPA Appellants identified several mitigation measures they asserted should be required to reduce greenhouse emissions. Wheeler Prehearing Ex. 19. Many of these recommended measures are already identified in the Lawson Hills FEIS, both in the text of the FEIS and in its technical appendices. Lawson Hills FEIS at 6-14; Appendix Q, "Air Quality," at 14 - 15. The project design already incorporates several elements that will help reduce greenhouse gases, such as an emphasis upon mixed use; bicycle and pedestrian trails; low impact development; and Built Green and LEED certified/Energy Star homes. Appendix Q, "Air Quality," at 14. As noted in the Lawson Hills FEIS technical discussion on greenhouse impacts, there is no standard for greenhouse emissions associated with development projects and the extent to which a single project affects climate change is unknown. Given this context, the mitigation outlined in the Lawson Hills FEIS and technical appendices for green house gases is reasonable, appropriate, and adequate.

22. Employment.

- A. The Black Diamond 2009 Comprehensive Plan includes the City's employment targets for 2025. The Comprehensive Plan at pages 5-31 – 5-32 states that the City's target employment for the year 2025 is 2,952 jobs, an increase of 2,525 jobs over the year 2000 job total of 427 jobs. Comprehensive Plan at 5-31, Table 5-3 (2025 Target Employment). These jobs correspond to a total household target of 6,032 households. Comprehensive Plan at 5-29 – 5-30, Tables 5-1 and 5-2. Considering Tables 5-1, 5-2 and 5-3 together yields a job/household ratio of 0.468 ( $2,952 \div 6,032 = 0.468$ ).
- B. Table 3-9 of the Comprehensive Plan indicates a goal of attaining 0.5 jobs per household by the year 2025. This roughly corresponds to the 0.468 jobs per household that results from Tables 5-1, 5-2 and 5-3.
- C. Page 3-11 of the Comprehensive Plan states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base. . . ." Comprehensive Plan at 3-11 – 3-12. Therefore, the Comprehensive Plan indicates that the City's updated projection is to have 2,677 new jobs by 2025. Comprehensive Plan at 3-12. These jobs are to be allocated among "833 acres of employment land. . . proposed in the City limits . . ." *Id.* This equates to 3.21 jobs per acre of employment land.
- D. The Comprehensive Plan also indicates that "development capacity was calculated for the commercial and industrial designations within the City, as shown in Figure 5-1. . . . The data indicate the City contains the capacity for 5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.
- E. The Lawson Hills FEIS Fiscal Analysis in Appendix J contains an analysis of the amount of retail/office square footage to be developed, and projects that such development will generate 642 employees. Lawson Hills FEIS, Appendix J (ECS Technical Report, App. D at Table 3b).

23. Findings Deemed Conclusions of Law. Any Findings of Fact set forth herein that are deemed to be conclusions of law should be considered as such. Any Conclusions of Law set forth in Exhibit B below that are deemed to be Findings of Fact are adopted herein by reference as if fully set forth.

EXHIBIT A

Attachment 1

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BLACK DIAMOND  
EXHIBIT LIST

("E" Documents)

EXHIBIT A

April 15, 2010

No.	Provided by	Description
H-1	Rogers	DEIS Scoping Meeting Attendance List
H-2		Villages and Lawson Hills Staff Report Amendments
H-3	Maple Valley	Declaration of Janarthanan dated 3/12/10 (same as Ex. 15 in MPD Hearings Exhibit List)
H-4		Peak Hour Factor Spread Sheet
H-5		Elk Photos
H-6	Davidson	Wildlife Journals (2)
H-7		Lake Sawyer Basin Map
H-8		Lake Sawyer Tributary Basin Exhibit
H-9	Rogers	Lake Sawyer Total Phosphorous TMDL, Water Quality Implementation Plan, dated 6/09
H-10 (u-c)	Bricklin	Intersection Photos
H-11	Judith Carrier	10/27/09 Letter from Colin Lund, Yarrow Bay Holdings, to Leonard Smith, Black Diamond
H-12 - 19	Bricklin	Queue Analysis (Provisionally admitted)
H-20	Bricklin	King County DOT Level Three Traffic Impact Analysis
H-21	Bricklin	Design Manual Traffic Analysis p. 610-1 through 610-10
H-22	Clifford	WSDOT Accident History Detail Report dated 3/15/10
H-23 (a-m)	Rogers	ASI Technical Report Documents
H-24 (a)	Maple Valley	Sterbank to Taraday e-mail dated 3/16/10, 3:23 pm Barney to Sterbank e-mail dated 3/17/10, 2:14 pm Barney to Sterbank letter dated 3/17/10 Barney to Jonarthanan letter dated 3/17/10 Barney to Taraday letter dated 3/17/10
H-24 (b)	Maple Valley	E-mails from Examiner to SEPA Appellants re subpoena
H-24 (c)	Maple Valley	Lawson Hills and Villages Revised Schedule
H-24 (d)	Maple Valley	Prehearing Order
H-24 (e)	Maple Valley	City of Black Diamond Hearing Examiner Rules of Practice and Procedure

{PA0775670.DOC;2/13/09;9060001 }

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H-24 (f)	Maple Valley	Clark to Todd 3/5/10 e-mail re Records Request from Black Diamond
H-25	Sterbank	3/16/10 Voice of the Valley Article (MV Councilmember calls for support to BD appellants)
H-26		Cumulative Volumes on Local Roads with Lawson Hills and the Villages MPD
H-27 (a)		
H-27 (b-f)	Bricklin	Queue analysis
H-28	Bricklin	NCHRP Report 599 (cover and Table 19 and Figure 14 only)
H-29		Synchro Studio 7 User Guide
H-30	Bricklin	NCHRP Report 599 p. 47-49 plus cover and foreword

{PA0775670.DOC;213049.900500 }

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BLACK DIAMOND MPD HEARINGS EXHIBIT LIST  
 The Villages/Lawson Developments SEPA Appeals  
 April 15, 2010

EXHIBIT 13

No.	Type of Record	Date	Sender	Recipient(s)	Subject
1	Handwritten note	Undated	Kristen Bryant	Black Diamond	MPD Hearings - Desire to submit comments
2	Article with photograph	11/05	Angela Taeschner	Black Diamond	Bald Eagle Protection in Washington State
3	Comment letter	03/11/10	Steven R. Garuch	Black Diamond	The Village MPD Application Comments
4	Comment letter	03/11/10	Mike and Wendy Ward	Black Diamond City Council & Mayor Olness	Concerns about FEISs for MPDs
5	Comment letter	03/07/10	Sue and Robert Fish	City of Black Diamond Hearing Examiner	Opinions and concerns
6	Comment letter	Undated	Richard R. Ostrowski	-	Written testimony on MPDs
7	Comment letter	03/10/10	Justin Giger and Tyler Ward	Black Diamond City Council	For the abolishment of the plan to build the Yarrow Bay Housing Communities
8	Comment letter	03/07/10	Lynne Christie	Black Diamond Mayor and City Council	Opinions and concerns
9	Comment letter	Undated	Rick and Nanette Stocks	-	Yarrow Bay Development in Black Diamond - Village and Lawson Impacts
10	Oral Testimony Notes with Map	03/11/10	Tom Hanson	-	Villages/Black Diamond - Needed Mitigations
11	Comment letter with attachments	03/11/10	Jack C. Sperry	The City of Black Diamond, Washington	The Villages and Lawson Hills MPDs (Potential for Lake Sawyer Flooding)
12	Comment letter	-	Jay and Kelley McElroy	-	Villages and Lawson Hills MPDs
13	Comment letter	03/11/10	Carric Hartman	City of Black Diamond	Public Comments, Yarrow Bay MPDs

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
14	Comment letter with attachments	03/11/10	Denise L. Stiffarm (K&L Gates) for Emmaclaw School District	City of Black Diamond Hearing Examiner	
15	Declaration and written testimony with attachments	03/12/10	Natarajan "Jana" Janarthanan, Ph.D.	--	In Re: Applications for Lawson Hills and The Villages MPDs
16	Comment letter	03/15/10	Kevin Snyder, City of Auburn	City of Black Diamond Hearing Examiner	City of Auburn Public Testimony for Lawson Hills MPD and The Villages MPD
17	Public Testimony with attachments	03/15/10	Robbin Taylor	--	Lawson Hills/The Villages re: mine sites and sink holes
18	Comment letter	03/15/10	Lisa Garvich	City of Black Diamond/ Hearing Examiner	Comments offered during public comment section of Lawson Hills/Villages MPD Hearing
19	Comment letter	03/15/10	Lisa Garvich	City of Black Diamond/ Hearing Examiner	Comments offered during public comment section of Lawson Hills/Villages MPD Hearing - BD Regional Park
20	Testimony re: Lawson Hills MPD Application	Undated	Ron Taylor	--	Use of Botis Drive
21	Testimony notes	Undated	William Wheeler	Hearing Examiner for the City of Black Diamond	Comments on The Villages and Lawson Hills MPD application
22	Comment letter	03/15/10	Leah Grant and Michael Royston	Hearing Examiner Olbrechts, City Council members Hanson, Goodwin, Boston, Saas, Mulvihill, Mayor Olness	Comments on the MPDs for The Villages and Lawson Hills Developments
23	Comment letter with attachments	03/15/10	Judith Carrier	City of Black Diamond/ Yarrow Bay MPD Hearings	Villages South Connector/SR 169 Intersection, FEIS, Yarrow Bay Development

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
24	Comment letter with attachments	03/10/10	Bill and Vicki Harp	Mr. Phil Olbrechts, Hearing Examiner, and Steve Pilcher, Director of Planning, City of BD	Comments on MPD - The Villages, Article on Yarrow Bay Development Hearing, Photographs
25	Comment letter with attachments	02/28/10	Erika Morgan	An open letter to our greater community	Black Diamond, Photographs of Black Diamond Lake
26	Comment letter	03/15/10	Ulla Kemman	The Hearing Examiner, Phil Olbrechts; The City Council, Black Diamond	Proposed MPD for the Villages and Lawson Hills
27	Comment letter	03/15/10	Daniel H. Rynning	Hearing Examiner; To Whom It May Concern	MPD Comments on Yarrow Bay proposals for "The Villages" and "Lawson Hills"
28	Comment letter	03/15/10	Ron and Pam Tomich	--	Black Diamond Master Plan Development Hearings
29	Comment letter with attachment	03/10/10	Jacqueline Paolucci Taeschner	Hearing Officer, Mayor, City Council	Stewardship for the Land, the Animals and the People
30	Comment letter	03/15/10	Helen Jacobson	--	Black Diamond Master Plan Development Hearings
31	Comment letter	03/15/10	Andrew & Karen Benedetti	Black Diamond; Hearing Examiner, Phil Olbrechts	City of Black Diamond Master Plan Development Hearing
32	Comment letter	03/12/10	Angela Therese Taeschner	To the Hearing Officer	Letter to be added to 3/11/10 testimony regarding Yarrow Bay Developments/Need to Rethink
33	Comment letter with attachments	03/15/10	Dan Shipley, President, Horseshoe Lake HOA	City of Black Diamond Hearing Examiner	The Villages Master Plan Development PLN09-0017
34	Comment letter	03/15/10	Robert J. Rothschilds	Submitted to the Hearing Examiner	Lawson Hills and The Villages MPDs, Lake Sawyer water quality
35	Comment letter	03/15/10	Alan Gangl	Black Diamond Hearing Examiner	Master Plan Hearings - Yarrow Bay Development
36	Comment letter	03/15/10	Romana McManus	Hearing Examiner; Black Diamond City Council	Yarrow Bay MPD in Black Diamond
37	English Sonnet	--	Carol Lynn Harp	--	"Master Plan Development Folly"

No.	Type of Record	Date	Sender	Recipient(s)	Subject
38	Comment letter	03/15/10	Bob and Janie Edelman	Black Diamond Mayor Olness and City Council	The Villages and Lawson Hills MPDs
39	Comment letter	03/12/10	Gene Duvernoy, President, Cascade Land Conservancy	Hearing Examiner Olbrechts	Lawson Hills and The Villages Master Planned Developments
40	Public Testimony	03/15/10	Karen Bryant	--	Statements for Public Hearings on MPD from Yarrow Bay
41	Comment letter with attachment	03/15/10	Ericka Morgan	Mr. Examiner	MPD for Black Diamond
42	Comment letter	03/15/10	Eric, Cindy, Leah and Elyssa Sizemore	Black Diamond Council members	MPD Hearings
43	Comment letter	Undated	Richard C. Stewart	--	The Villages and Lawson Hills Master Planned Developments
44	Comment letter	03/15/10	Jeff Merrill	--	Black Diamond Master Plan Development Hearings
45	Comment letter	--	Cheri Merrill	--	The Villages and Lawson Hills Projects - Resident Concerns
46	Comment letter	--	Glenis Richardson	Hearing Examiner	Black Diamond Development by Yarrow Bay
47	Comment letter	03/13/10	Eric Eknes	Phil Olbrechts, Hearing Examiner	Lawson Hills and The Villages MPDs
48	Comment letter	03/15/10	Glen E. Ross	--	Lawson Hills and The Villages MPDs
49	Comment letter	--	Kurt & Ann Kulesza	--	Lawson Hills and The Villages MPDs
50	Comment letter	--	Rick and Nancette Stocks, Joanni Scott, Brent and Sheri Miller, Sandra Denison, Robert Kendrick, Kim Rector, Jason and Renee Brealey	--	Lawson Hills and The Villages MPDs

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
51	Comment letter	03/15/10	Melanie Gauthier	Phil A. Oibrechts, Hearing Examiner	Lawson Hills and The Villages MPD Comments
52	Article, Voice of the Valley	03/09/10	--	--	"KC concerns with proposed Black Diamond MPDs"
53	Amendments and Errata Sheets	Undated	City of Black Diamond	--	The Villages and Lawson Hills Staff Report Amendments
54	Letter	02/24/10	Mayor Margaret Harto, City of Covington	Steve Pilcher, AICP	The Villages and Lawson Hills MPD Public Hearings
55	Letter	03/01/10	Susan F. Ball	City of Black Diamond Hearing Examiner	Reference #PLN09-0017 and PLN09-0016
56	Letter	03/02/10	Judy Taylor, President, Upper Green Valley Preservation Society	Steve Pilcher	Final EIS for Lawson Hills and Villages MPDs
57	Letter	03/04/10	Jacqueline Paolucci Taeschner	Mayor and City Council of Black Diamond	Stewardship for the Land, the Animals, and the People
58	Letter	03/04/10	Mayor Rebecca Olness	Jacqueline Paolucci Taeschner	"Stewardship" letter has been forwarded to the Hearing Examiner
59	Email	03/05/10 10:19 am	Steve Pilcher	Stacey Borland	Forwarding 03/04/10 email from Shari Weiding regarding Lawson Hills and The Villages MPDs
60	Email	03/05/10 10:35 am	Cindy Hartzler	Steve Pilcher, smokejumper	Yarrow Bay Developments
61	Letter	03/03/10	Ty and Janic Inglis	--	Upcoming meetings for Yarrow Bay
62	Letter	03/04/10	Larry Neilson and Randy Hamblin	City of Black Diamond Hearing Examiner	The Villages and Lawson Hills MPD Public Hearings
63	Letter	02/24/10	Pam Linden	City of Black Diamond Hearing Examiner	Appeal of FEIS and MPD Permit
64	Letter	02/25/10	Larry Fisher, WA State Dept of Fish & Wildlife	Steve Pilcher, City of Black Diamond	DEIS, The Villages MPD, Rock Creek and others, Tributary to Lake Sawyer, King County WRIA 09.0085

No.	Type of Record	Date	Sender	Recipient(s)	Subject
65	Email	03/02/10	Steve Pilcher	Stacey Borland	Forwarding 03/02/10 email string from Larry D. Fisher
66	Letter	03/05/10	Daryl and Barbara Rush	City of Black Diamond Hearing Examiner	The Villages Master Plan Development
67	Second Declaration with attachments	03/17/10	Natarajan "Jana" Janarthanan, Ph.D.	-	In Re: Applications for Lawson Hills and The Villages MPDs. Exhibit contains as an attachment "City of Maple Valley Brief on Compliance with MPD Permit Decision Criteria" and Appendices A through G
68	Email Exhibit from Proctor	06/10/09	Loren Combs	Dawn Ketter	Changes from our last work session/Complete Mitigation Section
69	King Co. Comp Plan Appendix B with Chart	03/08	Proctor Exhibit	-	Cost Burden Homeownership
70	Proctor MPD Exhibit Letter	03/04/10	David Bricklin	Black Diamond City Council	Amendments to Zoning Ordinance with Enclosure
71	Kent Reporter Newspaper article with photographs	02/26/10	Proctor Exhibit		"Public hearing Wednesday for major commercial project on Kent's East Hill" by Steve Hunter
72	Minutes	06/18/09	Proctor Exhibit		Black Diamond City Council Minutes
73	Memorandum with attachments	03/10/10	Bill and Vicki Harp	Phil Olbrechts, Hearing Examiner, and Steve Pilcher, Black Diamond Director of Planning	Comments on MPD - The Villages and Exhibit and four photographs
74	Written testimony	03/19/10	Robert J. Rothschilds	Hearing Examiner	Lawson Hills MPD application
75	Written testimony	03/19/10	Robert J. Rothschilds	Hearing Examiner	The Villages MPD application
76	Five photographs	03/18/10	????	Hearing Examiner	Five photographs of deer
77	Comment letter	03/12/10	Jim Kuzaro	Hearing Examiner	Lawson Hill MPD Development
78	Comment letter	03/15/10	Ramin Pazooki	Steve Pilcher, Director	Lawson Hills MPD (PLN09-016)
79	Comment letter	03/15/10	Ramin Pazooki	Steve Pilcher, Director	The Villages MDP (PLN09-017)

No.	Type of Record	Date	Sender	Recipient(s)	Subject
80	Email	03/15/10	Kristen Bryant	Stacey Borland	Comments for Public Hearings on MPD proposal from Yarrow Bay
81	Email	03/07/10	Sue Waller	Rebecca Olness, Kristine Hanson, Bill Boston, Leigh Mulvihill, William Saas, Craig Goodwin	Yarrow Bay MPD in Black Diamond
82	Email	03/15/10	Eric Sizemore	Black Diamond Council members	Black Diamond MPD hearings
83	Newspaper	03/16/10	?????	--	Tuesday, 3/16/10, edition of Voice of the Valley
84	Comment letter	03/15/10	Ty Peterson, Director of Comm. Dev., City of Maple Valley	Hearing Examiner, City of Black Diamond	Open record hearing comments re: The Villages and Lawson Hills MPD applications
85	Synopsis of written testimony of 3/15/10	03/17/10	Clarissa Metzler Cross	To Whom It May Concern	Proposed development for Lawson Hills and The Villages
86	Comment letter	Undated	Burr W. Mosby	City of Black Diamond	Proposed traffic on Green Valley Rd.
87	Comment letter	03/11/10	Gretchen and Michael Buet	Yarrow Bay and the City of Black Diamond	Comments on traffic, rural nature, existing trees, Green Valley Road
88	Comment letter	Undated	Richard C. Stewart	--	The Villages and Lawson Hills Master Planned Developments
89	Comment letter	Undated	Monica Stewart	--	The Villages and Lawson Hills Master Planned Developments
90	Comment letter	Undated	Donna Gauthier	--	Presentation submitted by Jack Sperry and Lawson Hill home
91	Comment letter	03/17/10	Kristen Bryant	--	The Villages MPD
92	Comment letter	Undated	Cindy Sizemore	To Whom It May Concern	Proposed Yarrow Bay developments of Lawson Hills and The Villages
93	Comment letter with exhibits	03/17/10	Mark and Harriett Dalos	Hearing Examiner Phillip Olbrechts	The Villages and Lawson Hills MPDs
94	Written testimony	Undated	Kelley McElroy	Mr. Olbrechts	Black Diamond quality of life re:

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
					Master Planned Developments
95	Written testimony	Undated	Cynthia Wheeler	--	MPD Comments for Both Lawson Hills and The Villages Projects
96	Letter w/attachments	3/17/10	Erika Morgan	Hearing Examiner	Addendum to previous statements about MPD on Villages Project
97	E-mail, w/ attachments and Public Comments	2/2/10	Cynthia Wheeler	B. Martinez	Comments Re Planning and Community Services Committee Notes and Andy Williamson
98	Written testimony	3/15/10	Cindy Proctor	Hearing Examiner	"Technical Talking Points"
99	Written testimony	3/17/10	Marlene Bortleson	Hearing Examiner	Stewardship of Green Valley Road
100	Statement	3/17/10	Laure A. Iddings	Hearing Examiner	Comments for MPDS Hearing
101	Statement	3/17/10	Beverly Harrison Tonda	--	Comments Re "gravel dirt road" this is a public ROW
102	Letter	3/4/10	Larry Neilson and Randy Hamblin	Hearing Examiner.	The Villages and Lawson Hills MPD Public Hearings
103	"English Sommet"	No date	Carol Lynn Harp	--	"Master Plan Development Folly" - Duplicate of Exhibit No. 37
104	Commentary - Land Use Law	09/90	--	--	"Rural Cluster Zoning: Survey and Guidelines"
105	Article from Community Farming and Agriculture	6/10/08	--	--	"What is Rural Cluster Development?"
106	Black Diamond City Council Minutes	4/2/09	--	--	Regarding Council concern about up-zoning to 30 DU/AC
107	Black Diamond City Council Minutes	6/18/09	--	--	With various attachments
108	Report -King Co Historic & Scenic Corridors Project	Dec. 09	Karen Mcader	--	Green Valley Road and Osceola Hoop Heritage Corridors; Chapter 4, Corridor Management

No.	Type of Record	Date	Sender	Recipient(s)	Subject
109	Resolution No. 10-675	3/4/10	--	--	Considerations Authorizing Amendment No. 1 to the RH2 Contract for Technical Review of Services, w/attachments
110	"English Sonnet" "New/Improved"	No date	Carol Lynn Harp	--	"Master Plan Development Folly"
111	<i>Law Seminars International</i>	11/19/09	Tim Trohimovich, Co-Director of Planning and Law, author	--	"What Role Does the FMA Play in Reducing Greenhouse Gas Emissions?"
112	Petition to Oppose Joint Use of Lake Sawyer Regional Park	Numerous dated signatures	--	--	42 pages
113	Letter	3/18/10	Bruce Earley	City of Black Diamond	City Council and MPD Hearing Examiner of Yarrow Bay Developments
114	Memorandum	3/22/10	Nancy Bainbridge Rogers	Phil Olbrechts	Applicants' Rebuttal to Public Testimony on the Lawson Hills and The Villages MPDs
115	Written Testimony	3/22/10	Marlene Bortleson	Hearing Examiner	"Proposed Massive Yarrow Bay development" and "Rural Concerns"
116	Letter	3/17/10	Barbara Rush	Hearing Examiner	The Villages Master Plan Development
117	E-mail chain	3/22/10	Phil Olbrechts	Nancy Rogers, et al	Revised Scheduling
118	Memo	3/22/10	Cory and Diane Olson	Members of the Black Diamond City Council	Comments for the 3/22/10 MPD Application Hearing
119	Letter w/ attachment	3/22/10	Kelley and Jay McElroy	Phil Olbrechts, City Council	"The Villages mainly but Lawson Hills as well"
120	Pleading	3/17/10	Jim Johnson	Hearing Examiner	Declaration of Jim Johnson re: Lawson Hills/The Villages SEPA Appeals

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
121	Pleading	3/17/10	Andrew Kindig, Ph.D.	Hearing Examiner	Declaration of Andrew C. Kindig, Ph.D re Lawson Hills and The Villages SEPA Appeals
122	Pleading	3/22/10	Alan Fure	Hearing Examiner	Declaration of Alan Fure re: Sammamish Critical Areas Ordinance
123	Pleading	3/22/10	Alan Fure	Hearing Examiner	Declaration of Alan Fure regarding testimony of Jack Sperry
124	Pleading, w/attachment	3/18/10	Mike Whipple	Hearing Examiner	Declaration of Mike Whipple
125	Villages Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Conditions - The Villages MPD"
126	Lawson Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Conditions - Lawson Hills MPD"
127	Villages Revised Conditions	3/19/10	--	--	"Applicant's Requested Revised Mine Hazard Condition - The Villages MPD"
128	Lawson Revised Conditions	3/22/10	--	--	"Applicant's Requested Revised Mine Hazard Condition - Lawson Hills MPD"
129	Applicant Proposed Condition	Undated	--	--	Midpoint Review of Cumulative Transportation Impacts from The Villages MPD and Lawson Hills MPD
130	"Funding Responsibility" Table	Undated	--	--	Villages and Lawson Hills - Proportionate Share for Intersection and Roadway Improvements
131	Recording Cover Sheet w/attachments	12/17/09	--	--	"Conservation Easement Deed"- Grantor, BD Village Partners LP
132	Handwritten "Comments"	3/21/10	Rick and Jailya Bradbury	--	Comments on both Villages and Lawson Hills

No.	Type of Record	Date	Sender	Recipient(s)	Subject
133	Letter	3/22/10	David A. Bricklin	Phil Olbrechts	MPD Applications: The Villages and Lawson Hills - Supplement to previous letter
134	King County Countywide Planning Policies	October 2008	--	--	Document approved by "Growth Management Planning Council"
135	King County Comprehensive Plan 2008	October 2008	--	--	Published by King County
136	Report 599	2008	--	--	National Cooperative Highway Research Program -- Default Values for Highway Capacity and Level of Service Analyses
137	Handwritten comments	3/22/10	Cindy Wheeler	--	MPD Comments
138	Handwritten note	3/22/10	Cindy Wheeler	--	Section 18.98.080 (12) "Open Space"
139	Handwritten comments	3/22/10	Cindy Procter	--	Rebuttal of Sterbank
140	Memo	3/22/10	Carrie Hartman	City of Black Diamond	Yarrow Bay Developments
141	Memo, w/attachments	3/22/10	William & Cynthia Wheeler	Hearing Examiner and Black Diamond City Council	Yarrow Bay MPDs for the Villages and Lawson Hills
142	Handwritten note	--	--	--	A note addressing fixing "traffic issues before you proceed."
143	Letter	3/22/10	Robert Kirschbaum and Rob Zisette, Herrera Environmental Consultants, Inc.	David Bricklin	Mitigation for the Villages and Lawson Hills MDPs (sic)
144	Memo	3/22/10	Ross Tilghman	David Bricklin	Confirmation of Future LOS Results on SR-169 in Black Diamond

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
145	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills
146	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills - Transportation 2040
147	Public Testimony	--	Peter Rimbo	--	MPD Applications for the Villages and Lawson Hills - "Rural by Design" - Some Key Features
148	Memo, w/attachments	3/22/10	Cindy Proctor	Phil Olbrechts, Steve Pilcher	The Villages Master Planned Development
149	Memo	3/22/10	Bill and Vicki Harp	Phil Olbrechts, Steve Pilcher	The Villages Master Planned Development
150	Letter, w/attachments	3/2/10	Jerry G. Lilly, PE, President, FASA	Cindy Proctor; William and Vicki Harp	The Villages, Black Diamond, FEIS Noise Study Review
151	Written testimony	3/22/10	Erika Morgan	--	Comments re "Staff Report" on the EIS
152	Written testimony	3/22/10	Steve & Linda Chase	--	"In regards to: BD/YB MPD Hearings"
153	Letter	3/22/10	Howard & Sharon Meece	Phil Olbrechts; Black Diamond City Council	MPD Yarrow Bay Villages
154	Letter	3/22/10	Melanie Gauthier	Phil Olbrechts	Lawson Hills and Villages MPD oral comments and additional written comments
155	Testimony, w/attachments	3/22/10	Judith Carrier	Phil Olbrechts; Black Diamond City Council	Black Diamond / Yarrow Bay urban development
156	Letter (to be added to testimony of 3/11/10)	3/22/10	Angela Therese Taeschner	Hearing Officer	Yarrow Bay Developments and the Need to Rethink
157	Handwritten testimony	3/16/10	Sean Taeschner	Hearing Commissionner	The Villages, Mine and Lawson Hill proposed developments
158	Memo	3/22/10	Christopher P.	Hearing Examiner and	Yarrow Bay MPDs for the Villages

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
			Clifford	Black Diamond City Council	and Lawson Hills
159	Memorandum w/attachment	3/22/10	Ross Tilghman	David Bricklin	Confirmation of Future LOS Results on SR-169 in Black Diamond <b>DISREGARD</b> - Duplicate of previous Exhibit No. 144
160	Public Testimony	Undated	Julie Early	Mr. Examiner and Black Diamond City Council	Lawson Hills and The Villages MPDs
161	Letter with attachments	03/18/10	David Bricklin	Phil A. Olbrechts	MPD Applications: The Villages and Lawson Hills
162	Public Testimony	03/18/10	Nanette & Rick Stocks	Hearing Examiner	Yarrow Bay developments
163	Public Testimony	03/17/10	Joe May	Honorable Hearing Examiner, Phil Olbrechts	Proposed MPDs for The Villages and Lawson Hills
164	Agenda and attachments	01/25/10	--	--	Planning and Community Service Committee Meeting - 01/25/10
165	Comments	03/17/10	Cindy Proctor	Phil Olbrechts and Steve Pilcher	Comments on MPD - The Villages
166	Letter	Undated	Sheri Miller	Mr. Hearing Examiner and City Council Members	Lawson Hills and The Villages impacts on Black Diamond
167	Email	03/22/10	Brian A. Clintworth	Permit Center	Yarrow bay development
168	Public Testimony	Undated	Peter Rimbo	--	Black Diamond MPD Applications
169	Public Comments	Undated	Cindy Wheeler	--	MPD Public Comments
170	Email	03/22/10	Dave Bricklin	Chris Clifford, Phil Olbrechts, appellants, et al.	MPD Comments
171	Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief	--	Nancy Rogers	--	No. 1 on Applicant's Exhibit List (The Villages)

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
172	Regional map showing open space areas	--	Nancy Rogers	--	No. 3 on Applicant's Exhibit List (The Villages) (Used during Applicant's MPD Presentation)
173	Enlargements from EIS diagrams	--	Nancy Rogers	--	No. 5 on Applicant's Exhibit List (The Villages) (In record) (Ex 2-3 of Villages Alt 2 MPD; Ex. 3-25 of Villages Alt 2 Proposed Stormwater Facilities, Fig. 1 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 7, 9, 10A, 10B, 11A, 11B, 12, 13, 14, 24, 27 and 28 from FEIS Appendix D, AESI Report
174	Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief	--	Nancy Rogers	--	No. 1 on Applicant's Exhibit List (Lawson Hills)
175	Regional map showing open space areas	--	Nancy Rogers	--	No. 3 on Applicant's Exhibit List (Lawson Hills) (Used during Applicant's MPD Presentation)
176	Enlargements from EIS diagrams	--	Nancy Rogers	--	No. 4 on Applicant's Exhibit List (Lawson Hills) (In record) (Ex 2-2 of Lawson Hills Alt 2 MPD; Ex. 3-24 of Lawson Hills Proposed Stormwater Facilities, Fig. 5 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 3, 4, 5a, 5b, and 13 from FEIS Appendix H (Visual)
177	Two Letters	10/20/09,	Nancy Rogers	--	Letter from Leonard Smith, dated

No.	Type of Record	Date	Sender	Recipient(s)	Subject
		10/27/09			10/20/09 and Letter from Colin Lund, dated 10/27/09 with Attachment A (NR-TV-16 on Prehearing Exhibit List ("PEL"))
178	Tech Memo	1/29/10	Nancy Rogers	--	Technical Memo from AESI re: The Villages Water Level Monitoring Data (NR-TV-19 on PEL)
179	KC Zoning Code	--	Nancy Rogers	--	KCC 21A.08.050 - Sections of King Co. Zoning Code, regarding schools in rural area (NR-TV-20 on PEL)
180	Agreement	11/30/07	Nancy Rogers	--	City of Black Diamond, Yarrow Bay - SEPA Processing Agreement (NR-TV-9 and NR-LH-7 on PEL)
181	Notice Package	--	Nancy Rogers	--	Black Diamond Agency Scoping Notice Package, including Legal Notices, Meeting Attendees, Letters, Minutes, Revised Determination of Significance, Request for Comments (NR-TV-14 and NR-LH-12 on PEL)
182	Condition Language	--	Nancy Rogers	--	Applicant's Proposed Condition Language - Lawson Hills MPD Large Wet Pond Total Phosphorus Monitoring Program (NR-LH-5)
183	Map	--	Nancy Rogers	--	Section view showing topographic change from Flaming Geyser State Park and Lawson Hills MPD (NR-LH-15)
184	Map	--	Nancy Rogers	--	Topographical Map with City boundaries of The Villages site and Lawson Hills site overlaid on aerial photo (NR-TV-2 and NR-LH-2)
185	Map	--	Nancy Rogers	--	Section view showing topographic

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
					change from Flaming Geyser State Park to the Villages site (NR-TV-18)
186	Condition Language	--	Nancy Rogers	--	Applicant's Proposed Condition Language - The Villages MPD Large Wet Pond Total Phosphorus Monitoring Program (NR-TV-7)
187	Photograph	--	Nancy Rogers	--	Aerial photo of wildlife corridor map (red line shows corridor) (NR-TV-4)
188	Wet site page	--	Nancy Rogers	--	Washington State Parks' web site page on park hours at Flaming Geyser (NR-TV-10, NR-LH-8)
189	Tech Memo	1/22/08	Nancy Rogers	--	Tech Memo from AESI, MPD Open House Comments Received (NR-TV-13 and NR-LH-11)
190	Maps	--	Nancy Rogers	--	Maps from EIS and MPD application re: South Connector to SER 169 (excerpts from 7/17/08 Wetland Assessment for The Villages, including Fig. 6c; Black Diamond Villages EIS Map - Main Property - Parcel F - Fig. 7e; MPD Application pg. 4-3, Fig. 4-1 - Circulation Plan (NR-TV-6)
191	Email exchange	1/28/10	Nancy Rogers	--	Email exchange among Nancy Rogers, Dave Bricklin, and Mike Kenyon re: Hearings (NR-TV-15, NR-LH-13)
192	Report	1/15/10	Nancy Rogers	--	Lake Sawyer Water Quality Report prepared by the King Co. Lake Stewardship Program (NR-TV-12, NR-LH-10)

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No.	Type of Record	Date	Sender	Recipient(s)	Subject
193	Map	--	Nancy Rogers	--	City of Black Diamond colored 1996 Comprehensive Land Use Map (Fig. 5-7) (NR-TV-17 and NR-LH-14)
194	Agreement	--	Nancy Rogers	--	Comprehensive School Mitigation Agreement with Exhibits A - V (NR-TV-8 and NR-LH-6)
195	Report	07/2000	Nancy Rogers	--	Lake Sawyer and Its Watershed Management Plan prepared by King County Surface Water Management (NR-TV-11, NR-LH-9)
196	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Development Context Plan - created by Dahlin Group
197	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Development Landuse Plans - created by Dahlin Group
198	Map/Diagram 11" x 17"	Undated	Nancy Rogers	--	Lawson Hills - Yarrowbay Development proposed designs - created by Dahlin Group
199	Map/Diagram 11" x 17"	03/06/09	Nancy Rogers	--	Lawson Hills - Yarrowbay Holdings, Black Diamond Open Space Exhibit
200	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Context Plan - Created by Dahlin Group
201	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Landuse Plan - Created by Dahlin Group
202	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Plan - Created by Dahlin Group
203	Map/Diagram 11" x 17"	03/05/09	Nancy Rogers	--	The Villages - Yarrowbay Development Village Center -

No.	Type of Record	Date	Sender	Recipient(s)	Subject
					Created by Dahlin Group
204	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Overall Phase One Landscape Plan - Created by Dahlin Group
205	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Village Green - Created by Dahlin Group
206	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Civic Park - Created by Dahlin Group
207	Map/Diagram 11" x 17"	03/01/10	Nancy Rogers	--	The Villages - Yarrowbay Development Pocket Park and Common Green - Created by Dahlin Group
208	Map/Diagram 11" x 17"	12/14/09	Nancy Rogers	--	The Villages - Yarrowbay Development Village Square, Alternative 1 - Created by Dahlin Group
209	Map/Diagram 11" x 17"	03/06/10	Nancy Rogers	--	The Villages - Yarrowbay Holdings, Black Diamond Open Space Exhibit
210	Map/Diagram 11" x 17"	Undated	Nancy Rogers	--	Wildlife Corridors
211	Declaration of Natarajan "Jana" Janarthanan	04/02/10	Natarajan Janarthanan (sent by Jeff Taraday)		Third Declaration of Natarajan "JANA" Janarthanan, Ph.D., PTP; Exhibits A through G
212	Pleading	04/02/10	Jeff Taraday for Maple Valley		City of Maple Valley's Second Brief on Compliance with MVD Criteria

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**BLACK DIAMOND  
PRE-HEARING EXHIBIT LIST**

Lawson Hills/The Villages

**EXHIBIT**   C  

April 15, 2010

No.	Provided by	Description
JC-1-A	Judith Carrier	Area Road Map
JC-1-B	Judith Carrier	South Annexation Area O, King County GIS Data, 2007
JC-1-C	Judith Carrier	King Co. DEIS letter dated 9/30/09, Attachment One Transportation Technical Report, author - Kurt Triplett's staff
JC-1-D	Judith Carrier	South Annexation Area G, King County GIS Data, 2007
JC-1-E	Judith Carrier	Black Diamond Development Department Letter 2-16-2009, author - Steve Pilleher
JC-1-Fa	Judith Carrier	FEIS 2007 Exiting PM Peak Hour Traffic Conditions
JC-1-Fb	Judith Carrier	FEIS 2025 Alternative 2 PM Peak Hour Traffic Conditions
JC-1-G	Judith Carrier	FEIS Table 18: 2025 Baseline and Cumulative Alternative 2 PM Peak Hour LOS Summary
JC-1-H	Judith Carrier	FEIS p. 214 Comment letter and Black Diamond Response
JC-1-J	Judith Carrier	WSDOT Standard Accident History Detail Report 1-01-2001 through 5/31/2009 (6 pgs)
JC-1-Ja	Judith Carrier	Page 1 of 4 - WSDOT Detail Report
JC-1-Jb	Judith Carrier	Page 2 of 4 - WSDOT Detail Report
JC-1-Jc	Judith Carrier	Page 3 of 4 - WSDOT Detail Report
JC-1-Jd	Judith Carrier	Page 4 of 4 - WSDOT Detail Report
JC-1-Je	Judith Carrier	Page 1 of 1 - WSDOT Standard Accident History Report 6/01/09 through 09/30/09
JC-1-Jf	Judith Carrier	WSDOT Reported Collisions That Occurred on Green Valley Road, From Auburn Black Diamond Rd. to State Route 169, 1/12/01 through 3/31/09
JC-1-K	Judith Carrier	Pictures of Green Valley Road instability
JC-1-Ka	Judith Carrier	Green Valley Road Slide onto Roadway
JC-1-Kb	Judith Carrier	Slide area to top of slope
JC-1-Kc	Judith Carrier	Slide onto roadway
JC-1-L	Judith Carrier	Picture of eroded or poor Green Valley Road conditions
JC-1-M	Judith Carrier	Pictures of elk trails and tracks into timber from green Valley Road edge
JC-1-M-2	Judith Carrier	Green Valley Road Game Trail #1
JC-1-M-2a	Judith Carrier	Game Trail #2a
JC-1-M-2b	Judith Carrier	Game Trail #2b
JC-1-M-e	Judith Carrier	Deer Tracks in Woods closely paralleling Green Valley Road Edge
JC-1-M-f	Judith Carrier	Green Valley Road Game Trail #3
JC-1-M-h	Judith Carrier	Green Valley Road Game Trail #4

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No.	Provided by	Description
JC-1-M-j	Judith Carrier	Green Valley Road Game Trail #5
JC-1-M-k	Judith Carrier	Green Valley Road Game Trail #6
JC-1-M-l	Judith Carrier	Green Valley Road Game Trail #7
JC-1-M-m	Judith Carrier	Green Valley Road Game Trail #8
JC-1-M-n	Judith Carrier	Green Valley Road Game Trail #9
JC-1-M-o	Judith Carrier	South Side Green Valley Road Game Trail #10
JC-1-M-p	Judith Carrier	Green Valley Road Game Trail #1 Elk Track
JC-1-M-q	Judith Carrier	Game Trail #4
JC-1-M-r	Judith Carrier	South Side Green Valley Road Game Trail #10 Elk Track
JC-1-N	Judith Carrier	12/2009 Final Report of the King County Historic Scenic Corridors Project
JC-1-Na	Judith Carrier	Green Valley Road Heritage Corridor, p. 35
JC-1-Nb	Judith Carrier	Green Valley Road Heritage Corridor, p. 36
JC-1-Nc	Judith Carrier	Green Valley Road Heritage Corridor, p. 37
JC-1-O	Judith Carrier	DEIS Agriculture Commission Comment Letter (3 pgs)
JC-1-Pa	Judith Carrier	Pictures of Green Valley Road Preserved Farmland: Vukich Farm
JC-1-Pb	Judith Carrier	Pictures of Green Valley Road Preserved Farmlands including roadway characteristics: Sweet Brian Farm Organic Fruits and Vegetables, Honeytree Christmas Trees, Canterbury Farms (uses both sides of road), Heifer Farm (uses both side of road)
JC-1-Pc	Judith Carrier	Pictures of Green Valley Road Preserved Farmlands including roadway characteristics: Moseby Brothers Farms (uses both sides of the road)
JC-1-Qa	Judith Carrier	WSDOT SR 169 Route Development Report
JC-1-Qb	Judith Carrier	WSDOT SR 169 Route Development Map
JC-1-Qc	Judith Carrier	WSDOT SR 169 Route Development: Urban Planning Manager Letter, dated 2/12/10, Richard Warren, author
JC-1-R	Judith Carrier	WSDOT Urban Planning Manager Letter, dated 3/2/10, Chris Picard, author
CBD-1	City of Black Diamond	Staff Report - Lawson Hills MPD - File No. PLN09-0016
CBD-1-i	City of Black Diamond	Lawson Hills - Master Application
CBD-1-2	City of Black Diamond	Lawson Hills - MPD Application Binder dated 12-31-09
CBD-1-3	City of Black Diamond	Lawson Hills - City of Black Diamond Ordinance No. 08-885
CBD-1-4	City of Black Diamond	Lawson Hills - Notice of Application
CBD-1-5	City of Black Diamond	Lawson Hills MPD #EIS
CBD-1-10	City of Black Diamond	Lawson Hills - Public Hearing Notice

No.	Provided by	Description
CBD-1-11	City of Black Diamond	Lawson Hills - Land use plan/constraints map overlay
CBD-1-12	City of Black Diamond	Lawson Hills - Parametrix Alternative Roadway Analysis
CBD-1-13	City of Black Diamond	Lawson Hills - Letter from City of Covington, dated 7/30/09
CBD-1-14	City of Black Diamond	Lawson Hills - Letter from Enumclaw School District dated 7/31/09
CBD-1-15	City of Black Diamond	Lawson Hills - E-mail communication from Greater Maple Valley Area Council dated 1/11/10
CBD-1-16	City of Black Diamond	Lawson Hills - Letter from WSDOT dated 1/25/10
CBD-1-17	City of Black Diamond	Lawson Hills - Letter from King County DDES dated 2/9/10
CBD-2	City of Black Diamond	Staff Report - The Villages MPD - File No. PLN09-0017, including Exhibit Nos. 1-25
CBD-2-1	City of Black Diamond	The Villages - Master Application
CBD-2-2	City of Black Diamond	The Villages - MPD Application Binder dated 12-31-09
CBD-2-3	City of Black Diamond	The Villages - City of Black Diamond Ordinance No. 08-885
CBD-2-4	City of Black Diamond	The Villages - Notice of Application
CBD-2-5	City of Black Diamond	The Villages MPD FBIS
CBD-2-10	City of Black Diamond	The Villages - Public Hearing Notice
CBD-2-11	City of Black Diamond	The Villages - Land use plan/constraints map overlay
CBD-2-12	City of Black Diamond	The Villages - City of Black Diamond Ordinance No. 515
CBD-2-13	City of Black Diamond	The Villages - Parametrix Alternative Roadway Analysis
CBD-2-14	City of Black Diamond	The Villages - Letter from City of Covington dated 7/30/09
CBD-2-15	City of Black Diamond	The Villages - Letter from Enumclaw School District dated 7/31/09
CBD-2-16	City of Black Diamond	The Villages - E-mail communication from Bill & Vicki Harp dated 8/3/09
CBD-2-17	City of Black Diamond	The Villages - Letter from City of Black Diamond to Bill & Vicki Harp dated 8/14/09
CBD-2-18	City of Black Diamond	The Villages - E-mail communication from Cindy Proctor dated 9/9/09
CBD-2-19	City of Black Diamond	The Villages - Letter from Lynn McArthur dated 10/21/09

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No.	Provided by	Description
	Diamond	
CBD-2-20	City of Black Diamond	The Villages - Letter from King County DDES dated 11/19/09
CBD-2-21	City of Black Diamond	The Villages - E-mail communication from Greater Maple Valley Area Council dated 1/11/10
CBD-2-22	City of Black Diamond	The Villages - Letter from WSDOT dated 1/25/10
CBD-2-23	City of Black Diamond	The Villages - E-mail communication from Lorraine & William Seaman dated 2/7/10
CBD-2-24	City of Black Diamond	The Villages - E-mail communication from City of Black Diamond to Lorraine & William Seaman dated 2/8/10
CBD-2-25	City of Black Diamond	The Villages - Letter from King County DDES dated 2/9/10
CBD-3	City of Black Diamond	Shared Exhibit No. 6 to Staff Report - Draft School Mitigation Agreement
CBD-4	City of Black Diamond	Shared Exhibit No. 7 to Staff Report - Black Diamond Urban Growth Area Agreement
CBD-5	City of Black Diamond	Shared Exhibit No. 8 to Staff Report - Black Diamond Area Open Space Protection Agreement
CBD-6	City of Black Diamond	Shared Exhibit No. 9 to Staff Report - Water Supply and Facilities Funding Agreement
CBD-7	City of Black Diamond	Lawson Hills DEIS, including exhibits and appendices
CBD-8	City of Black Diamond	The Villages DEIS, including exhibits and appendices
CBD-9	City of Black Diamond	Joe May, Appeal of the FEIS for The Villages, dated 12/28/09
CBD-10	City of Black Diamond	William and Vicki Harp, Appeal of the FEIS, The Villages MPD, dated 12/28/09
CBD-11	City of Black Diamond	Cynthia and William Wheeler, Appeal of the FEIS, Lawson Hills, dated 12/28/09
CBD-12	City of Black Diamond	Melanie Gauthier Appeal of FEIS for Lawson Hills
CBD-13	City of Black Diamond	Christopher Clifford's Lawson Hills EIS Appeal Statement
CBD-14	City of Black Diamond	Christopher Clifford's The Villages EIS Appeal Statement
WH-1	Wheeler/Proctor	Final and Draft EIS for both The Villages and Lawson Hills
WH-2	Wheeler/Proctor	City of Black Diamond Project Files for The Villages and Lawson Hills
WH-3	Wheeler/Proctor	City of Black Diamond Sensitive Areas Ordinance Best Available Science Report
WH-4	Wheeler/Proctor	City of Black Diamond Sensitive Areas Ordinance 08-875

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0027384

No.	Provided by	Description
WH-5	Wheeler/ Proctor	Black Diamond Urban Growth Area Agreement
WH-6	Wheeler/ Proctor	WA State Dept. of Fish and Wildlife Habitat Map; letter from Larry Fisher, WDFW, to City of Black Diamond, dated 2/28/10
WH-7	Wheeler/ Proctor	Wildlife Documentation Photographs ( six double-sided sheets)
WH-8	Wheeler/ Proctor	2005 DOE Stormwater Manual (Supplied online at <a href="http://www.ecy.wa.gov/programs/wq/stormwater/manual.html">http://www.ecy.wa.gov/programs/wq/stormwater/manual.html</a> )
WH-9	Wheeler/ Proctor	Lake Sawyer Regional Park School Facilities Joint Use Petition
WH-10	Wheeler/ Proctor	Washington State DOT Letter (from Ramin Pazooki, dated 1/25/10)
WH-11	Wheeler/ Proctor	King County DDES Letter (from Stephanie Warden to Steve Pilcher, 11/19/09)
WH-12	Wheeler/ Proctor	Governmental Agencies Letters/Reports (Not a separate exhibit)
WH-13	Wheeler/ Proctor	ESD Tri-Party Agreement
WH-14	Wheeler/ Proctor	King County DDES Letter (from Miles to Pilcher, 2/9/09, with attachments)
WH-15	Wheeler/ Proctor	Medical Impact Letter Re: Noise Stress (from Dr. G.R. Magley, dated 2/10)
WH-16	Wheeler/ Proctor	Email correspondences re: EIS/ MPD/SEPA (various dates and authors)
WH-17	Wheeler/ Proctor	ESD Tri-Party Agreement obtained through Public Disclosure Requests (PDRs); various letters: Combs to Botts, 9-17-09 (2 pgs); Nix to Davis, 11-16-09 (2 pgs); Combs to Ketter, 6-10-09 (1 pg); Combs to Balint, 9-25-09 (1 pg); Combs to Ketter, 9-24-09 (2 pgs); Unidentified sender, 2-8-10 (1 pg); Balint to Pilcher, 12-02-09 (1 pg); Pilcher to Kohl-mann, 12-02-09 (1 pg); Same as Exhibit 11
WH-18	Wheeler/ Proctor	SR 169 Corridor Plan (supplied online at <a href="http://www.wsdot.wa.gov/Projects/SR169/RDP/Report.htm">http://www.wsdot.wa.gov/Projects/SR169/RDP/Report.htm</a> )
WH-19	Wheeler/ Proctor	Greenhouse Gas Emission Report, by Tim Trohmovich, AICP, JD., 12/09
WH-20	Wheeler/ Proctor	Lake Sawyer 2009 Water Quality report, dated January 15, 2010; also other water quality reports provided by Herrera/Lake Sawyer Management Technical Appendices
WH-20A	Wheeler/ Proctor	Memo from Herrera Consultants (Kirschbaum and Zisette) to Bricklin Newman (3/3/10)
WH-20B	Wheeler/ Proctor	Triad memo from Matt to Lund, 9-11-08
WH-20C	Wheeler/ Proctor	"Appendix O" - Response to Comments on the Lake Sawyer Draft Management Plan

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No.	Provided by	Description
WH-20D	Wheeler/ Proctor	Memo from Silva to Thrasher, dated 12-29-99 (Water sample results attached); Appendix L: Land Use Parameters for Modeling; Appendix M: Ecology Equivalency Review Matrix; Appendix N: Conceptual Stormwater Plan for Rock Creek/Ginder Creek Drainage Area
WH-20E	Wheeler/ Proctor	Water Quality Sampling Results; Appendix C: Modeling and Water/Nutrient Budget Methods and Assumptions; Appendix D: Aquatic Plant Management Plan; Appendix E: Public Access Inventory; Appendix F: TMDL; Appendix G: Lake Sawyer Watershed Bioassessment Case Study: 1995; Appendix H: Timing of Juvenile Coho Salmon Emigration from the Lake Sawyer Drainage Basin; Appendix I: Contingency In-Lake Measures for Phosphorus Control in Lake Sawyer; Appendix J: QA/QC Plan; Appendix K: Watershed Sampling
WH-20F	Wheeler/ Proctor	Lake Sawyer Management Plan Title Page, Appendix A: SEPA Checklist; Appendix B: Lake Sawyer Data: 1994-95
WH-21	Wheeler/ Proctor	Noise Reports, by Jerry Lily, 3/2/10; WHO Noise Guidelines
WH-22	Wheeler/ Proctor	Transportation Report of Ross Tilghman of Tilghman Group, dated 2/26/10
WH-22a	Wheeler/ Proctor	Chapter 7 Transportation from the 2009 City of Black Diamond Comprehensive Plan
WH-23	Wheeler/ Proctor	Morgan Karnic Terrace Mine DEIS (supplied online at <a href="http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/Morgan%20Karnic%20DEIS/Draft%20DEIS-Morgan%20Karnic%20Terrace.pdf">http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/Morgan%20Karnic%20DEIS/Draft%20DEIS-Morgan%20Karnic%20Terrace.pdf</a> )
WH-24	Wheeler/ Proctor	Black Diamond Environmental Partners Comments and Attachment, letter from Jason Paulson to Steve Pilcher, 12/15/09
WH-25	Wheeler/ Proctor	PSRC 2040 Transportation Plan, Appendix B: Program and Project List
WH-26	Wheeler/ Proctor	King County Growth Management Planning Council Motion No. 09-2 (GMC Growth Target Plan)
WH-27	Wheeler/ Proctor	King County Comprehensive Plan (supplied online at <a href="http://www.your.kingcounty.gov/mkcc/compplan/2008/2008-0124.2_AttachB.pdf">http://www.your.kingcounty.gov/mkcc/compplan/2008/2008-0124.2_AttachB.pdf</a> )
WH-28	Wheeler/ Proctor	Relevant newspaper articles and publications ("Public hearing Wed. for major commercial project on Kent's East Hill," by Steve Hunter, 2/26/10)
WH-29	Wheeler/ Proctor	King County Growth Management Planning Council's Countrywide Planning Policies (no citation of URL)
WH-30	Wheeler/ Proctor	School siting Map/Board (this is a Board exhibit)

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No.	Provided by	Description
WH-31	Wheeler/ Proctor	City of Black Diamond Pre-DEIS/FEIS letter and Yarrow Bay's Response (PDR), Steve Pilcher letter to Lund, 6/23/09; Pilcher letter to YB Holdings, 8/11/09; Rogers letter to City of Black Diamond, 8/18/09
WH-32	Wheeler/ Proctor	Various Villages South Connector Maps (this is a Board exhibit)
WH-33	Wheeler/ Proctor	City of Covington letter from Mayor Margaret Harto to Steve Pilcher, dated 2/24/09
WH-34a	Wheeler/ Proctor	1996 Black Diamond Comprehensive Plan
WH-34b	Wheeler/ Proctor	SEPA Addendum issued for 2009 Black Diamond Comp Plan update
WH-35	Wheeler/ Proctor	ESD - Impact Fee Request, Capital Facilities Plan 2008 & 2009; Letter from Superintendent Mike Nelson to Mayor Botts, 8-25-09; letter from Nelson to Pilcher, 7/31/09; Enumclaw School District Capital Facilities Plans excerpts: 2008-2013 and 2009-2014
WH-36	Wheeler/ Proctor	Miscellaneous Open Space Letter (PDR); County Executive Triplett to County Council Chair Constantine, 11-23-09
BD-1	David Brioklin	CVs/Resumes and Witness List (as listed on Pre-Hearing Brief-rest of exhibits submitted by Wheeler/Proctor)
NR-TV-16	Nancy Rogers	Letter from Leonard Smith, dated 10/20/09 and Letter from Colin Lund, dated 10/27/09 with Attachment A
NR-TV-19	Nancy Rogers	Technical Memorandum dated 1/29/10 from AESI re: The Villages Water Level Monitoring Data
NR-TV-20	Nancy Rogers	KCC 21A.08.050 - Sections of King County Zoning Code, regarding schools in rural area
NR-TV-9 NR-LH-7	Nancy Rogers	City of Black Diamond - Yarrow Bay - SEPA Processing Agreement, dated 11/30/07
NR-TV-14 NR-LH-12	Nancy Rogers	Black Diamond Agency Scoping Notice Package, including Legal Notices, Meeting Attendees, Letters, Minutes, Revised Determination of Significance and Request for Comments on Scope of EIS
NR-LH-5	Nancy Rogers	Applicant's Proposed Condition Language - Lawson Hills MPD Large Wet Pond Total Phosphorus Monitoring Program
NR-LH-15	Nancy Rogers	Section View show topographic change from Flaming Geyser State Park and Lawson Hills MPD
NR-TV-2 NR-LH-2	Nancy Rogers	Topographical Map with City boundaries of The Villages Site and Lawson Hills Site overlaid on an aerial photo.
NR-TV-18	Nancy Rogers	Section view showing topographic change from Flaming Geyser State Park to the Villages Site
NR-TV-7	Nancy Rogers	Applicant's Proposed Condition Language - The Villages MPD Large Wet Pond Total Phosphorus Monitoring Program
NR-TV-4	Nancy Rogers	Aerial photo of wildlife corridor map (red line shows regional corridor)

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No.	Provided by	Description
NR-TV-10 NR-LH-8	Nancy Rogers	Washington State Parks web site page on park hours and updates at Flaming Geysers
NR-TV-13 NR-LH-11	Nancy Rogers	Technical Memorandum dated 1/22/08 from AEST, MPD Open House Comments Received
NR-TV-6	Nancy Rogers	Maps from EIS and MPD application regarding South Connector to SER 169 (Excerpts from 7/17/08 Wetland Assessment for The Villages, including Figure 6c; Black Diamond Villages EIS Map - Main Property - Parcel F - Figure 7e; MPD Application Fig. 4-3, Figures 4-1 - Circulation Plan)
NR-TV-15/ NR-LH-13	Nancy Rogers	Email exchange among Dave Bricklin, Nancy Rogers and Mike Kenyon re: Hearings dated 1/28/10.
NR-TV-12/ NR-LH-10	Nancy Rogers	Lake Sawyer Water Quality report prepared by the King Co. Lake Stewardship Program, January 15, 2010
NR-TV-17/ NR-LH-14	Nancy Rogers	City of Black Diamond colored 1996 Comprehensive Land Use Map (Fig. 5-7)
NR-TV-8/ NR-LH-6	Nancy Rogers	Comprehensive School Mitigation Agreement with Exhibits A - V
NR-TV-11/ NR-LH-9	Nancy Rogers	Lake Sawyer and Its Watershed Management Plan prepared by King County Surface Water Management dated July 2000
NR-AL-1	Nancy Rogers	No. 1 on Applicant's Exhibit List (The Villages) - Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief
NR-AL-2	Nancy Rogers	No. 3 on Applicant's Exhibit List (The Villages) - Regional Map showing open space areas
NR-AL-3	Nancy Rogers	No. 5 on Applicant's Exhibit List (The Villages) - Enlargements from EIS diagrams (Ex 2-3 of Villages Alt 2 MPD; Ex. 3-25 of Villages Alt 2 Proposed Stormwater Facilities, Fig. 1 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 7, 9, 10A, 10B, 11A, 11B, 12, 13, 14, 24, 27 and 28 from FEIS Appendix D, AEST Report
NR-AL-4	Nancy Rogers	No. 1 on Applicant's Exhibit List (Lawson Hills) - Cited excerpts from FEIS and supporting documents as referenced in Prehearing Brief
NR-AL-5	Nancy Rogers	No. 3 on Applicant's Exhibit List (Lawson Hills) - Regional Map showing open space areas
NR-AL-6	Nancy Rogers	No. 4 on Applicant's Exhibit List (Lawson Hills) Enlargements from EIS diagrams (Ex 2-2 of Lawson Hills Alt 2 MPD; Ex. 3-24 of Lawson Hills Proposed Stormwater Facilities, Fig. 5 from Appendix P, Fisheries Tech. Report, Stormwater facility maps, Figs 3, 4, 5a, 5b, and 13 from FEIS Appendix II (Visual)
MG-1	Melanie Gauthier	Lawson Hills DEIS, including appendices
MG-2	Melanie Gauthier	Lawson Hills FEIS, including appendices

No.	Provided by	Description
MG-3	Melanie Gauthier	Lawson Hills MPD, including appendices
MG-4	Melanie Gauthier	The Villages DEIS, including appendices
MG-5	Melanie Gauthier	The Villages FEIS, including appendices
MG-6	Melanie Gauthier	The Villages MPD, including appendices
MG-7	Melanie Gauthier	Morgan Kame Terrace Mine Expansion DEIS
MG-8	Melanie Gauthier	Melanie Gauthier Appeal of FEIS Lawson Hills, dated 12/28/09
MG-9	Melanie Gauthier	Christopher Clifford, et al., Lawson Hills and Villages Appeal, dated 12/28/09
MG-10	Melanie Gauthier	King Co. Dept. of Development and Environmental Services letter to Steve Pilcher, dated 2/9/10
MG-11	Melanie Gauthier	Two letters to Steve Pilcher from Ramin Pazooldi, WSDOT, re Yarrow Bay Developments (The Villages and Lawson Hills)
MG-12	Melanie Gauthier	Miscellaneous letters between City and BD Lawson Hills Partners and BD Villages Partners, concerning adequacy of information provided in the DEIS and MPD
MG-13	Melanie Gauthier	City of Black Diamond letters to interested parties, dated 12/11/09, re: availability of FEIS documents
GB-1	Gil Bortleson	Aerial photograph showing view of Flaming Geyser State Park and proposed Villages
GB-2	Gil Bortleson	Aerial photograph showing vertical view of Flaming Geyser State Park and proposed Villages
GB-3	Gil Bortleson	Illustration showing vertical view of Flaming Geyser State Park and proposed Villages
GB-4	Gil Bortleson	Illustration showing proponent map of visualization from off-site Green Valley Road
GB-5	Gil Bortleson	Photograph showing visual corridor of Flaming Geyser State Park from hillcrest of proposed Villages
GB-6	Gil Bortleson	Table showing petition to preserve visual corridor of Flaming Geyser State Park
GB-7	Gil Bortleson	Letter from local resident of King County asking for visual corridor protection for Flaming Geyser State Park from rimtop development on south side of the Green River in 19874
GB-8	Gil Bortleson	Soils map showing area of high erosion potential below and above Green Valley Road. AkF on map.
GB-9	Gil Bortleson	Geology map showing area susceptible to sliding below Green Valley Road. Qm on map.
GB-10	Gil Bortleson	Photograph showing landslide debris on Green Valley Road
GB-11	Gil Bortleson	Photograph showing soil creep above Green Valley Road
GB-12	Gil Bortleson	Photograph showing incidence of under-mining and slippage of

{PA0778976.DOC;613049.900000}

9

4/16/2010 1:54 PM

JC = Judith Carter; CBD = City of Black Diamond; WH = Wheeler/Proctor; NR = Nancy Rogers; MG = Melanie Gauthier; GB = Gil Bortleson; DB = David Bricklin

0027389

No.	Provided by	Description
		Green Valley Road
GB-13	Gil Bortleson	Photograph showing road crew repair of undermining and slippage of Green Valley Road
GB-14	Gil Bortleson	Map showing proposed school sites in DEIS and FEIS
GB-15	Gil Bortleson	Map showing proposed school sites from Ennmclaw School District website (Tri-Party School Agreement)
GB-16	Gil Bortleson	King County letter of response to school sites located outside the Urban Growth Area
GB-17	Gil Bortleson	King County letter of response to school sites located outside the Urban Growth Area (continued)
GB-18	Gil Bortleson	Table showing petition to keep Black Diamond schools in 2009 Black Diamond Urban Growth Area
GB-19	Gil Bortleson	Map showing a large infiltration pond locate outside Black Diamond Urban Growth Area
GB-20	Gil Bortleson	Aerial photograph of representative area near Green River Gorge susceptible to ground saturation during storms causing mudslides
GB-21	Gil Bortleson	Photograph showing a downhill view of mudslide near Green River Gorge during intense storm causing ground saturation in January 2009
GB-22	Gil Bortleson	Photograph showing washout during the high-intensity rainfall of January 2009 in area shown in Exhibit 19
GB-23	Gil Bortleson	Photograph showing washout during the high-intensity rainfall of January 2009 in area shown in Exhibit 19 - continued
GB-24	Gil Bortleson	Photograph showing domestic water supply from a spring in area shown in Exhibit 19. Shallow spring supplies 4 households with a low yield of ~2.5 gal. per min. during wet season.
GB-25	Gil Bortleson	Photograph of year-round spring entering the Green River in area shown in Exhibit 19
GB-26	Gil Bortleson	Photographs showing resident elk herds near Green Valley Road and Flaming Geyser State Park
GB-27	Gil Bortleson	Map showing King County Core-Wetland Open Space/Cranberry Slough in relation to proposed land use in FEIS alternative 2
GB-28	Gil Bortleson	Photograph showing Cranberry Slough located in King County Space near the proposed Triangle
GB-29	Gil Bortleson	Graph showing Lake Sawyer Total Maximum Daily Load criteria versus time shown by year.
GB-30	Gil Bortleson	Position Paper of Rural Green Valley Road Residents

SIXTH REVISED EMAIL EXHIBIT LIST  
List of Emails for Black Diamond  
 The Villages/Lawson Developments SEPA Appeals  
 April 15, 2010

EXHIBIT D

No.	Date	Time	Sender	Subject
1	01/08/10	8:12 am	Steve Pilcher	MPD Hearings/SEPA appeal
2	01/08/10	9:50 am	Phil Olbrechts	MPD Hearings/SEPA appeal
3	01/08/10	10:08 am	Steve Pilcher	MPD Hearings/SEPA appeal
4	01/08/10	10:12 am	Steve Pilcher	MPD Hearings/SEPA appeal
5	01/08/10	10:26 am	Phil Olbrechts	MPD Hearings/SEPA appeal
6	01/08/10	11:00 am	Phil Olbrechts	MPD Hearings/SEPA appeal
7	01/08/10	11:44 am	Steve Pilcher	Ordinance No. 08-857, Hearing Examiner Position - Adding and Amending Chapters in BDMC.pdf
8	01/08/10	3:10 pm	Phil Olbrechts	Proposed Procedural Rules
9	01/08/10	3:11 pm	Phil Olbrechts	Proposed Procedural Rules
10	01/11/10	9:19 am	Steve Pilcher	Materials arriving
11	01/11/10	10:01 am	Steve Pilcher	Proposed Procedural Rules
12	01/12/10	9:42 am	Steve Pilcher	Proposed Procedural Rules
13	01/12/10	9:54 am	Nancy Rogers	Proposed Procedural Rules
14	01/12/10	10:02 am	Steve Pilcher	Proposed Procedural Rules
15	01/12/10	11:33 am	Bill Wheeler	Hearing Examiner Email of January 8, 2010
16	01/12/10	11:56 am	Phil Olbrechts	Hearing Examiner Email of January 8, 2010
17	01/12/10	11:59 am	Steve Pilcher	Hearing Examiner Email of January 8, 2010
18	01/12/10	12:25 pm	Steve Pilcher	Hearing Examiner Email of January 8, 2010
19	01/12/10	2:25 pm	Chris Clifford	Hearing Examiner Email of January 8, 2010
20	01/12/10	2:46 pm	Steve Pilcher	Proposed Procedural Rules
21	01/13/10	2:12 pm	Cindy Proctor	Proposed Procedural Rules
22	01/13/10	8:54 pm	Cindy Proctor	City of Black Diamond Attorney Request
23	01/14/10	11:26 am	Cindy Proctor	Response to Proposed Procedural Rules - Appeal of Villages FEIS
24	01/14/10	4:21 pm	Nancy Rogers	Response to Proposed Procedural Rules - Appeal of Villages FEIS
25	01/19/10	2:09 pm	Joe May	Villages Appeal, Rules Procedures
26	01/19/10	3:12 pm	Gil Bortleson	Appellant Notice
27	01/19/10	3:29 pm	Bill Wheeler	Response to Hearing Examiner
28	01/19/10	3:36 pm	Bill Wheeler	Response to Hearing Examiner
29	01/19/10	4:05 pm	McLanie Gauthier	Response to BD Proposed Procedural Rules - Appeal of Lawson FEIS

No.	Date	Time	Sender	Subject
30	01/19/10	4:23 pm	Gil Bortleson	Appellant Notice
31	01/19/10	4:28 pm	Judith Carrier	Appeals Hearing for The Villages / Lawson Hills Developments
32	01/19/10	4:49 pm	Nancy Rogers	Updated proposed hearing schedule
33	01/19/10	4:57 pm	Bill Wheeler	Confirm Receipt of Response
34	01/19/10	5:01 pm	Cindy Proctor	Updated proposed hearing schedule
35	01/19/10	5:33 pm	Cindy Proctor	Updated proposed hearing schedule
36	01/19/10	11:29 pm	Chris Clifford	Hearing time line
37	01/20/10	12:05 am	Chris Clifford	Hearing time line correction
38	01/20/10	1:19 pm	Mike Kenyon	Hearing time line correction
39	01/20/10	6:18 pm	Phil Olbrechts	Development Reg's
40	01/21/10	10:18 am	Steve Pilcher	Development Reg's
41	01/21/10	11:42 am	Phil Olbrechts	Development Reg's
42	01/25/10	4:34 pm	Phil Olbrechts	Updated proposed hearing schedule
43	01/25/10	4:49 pm	Nancy Rogers	Updated proposed hearing schedule
44	01/25/10	5:30 pm	Cindy Wheeler	Updated proposed hearing schedule
45	01/25/10	5:45 pm	William and Vicki Harp	Updated proposed hearing schedule
46	01/25/10	5:45 pm	Judith Carrier	Updated proposed hearing schedule
47	01/25/10	5:55 pm	Judith Carrier	Updated proposed hearing schedule
48	01/25/10	6:45 pm	Cindy Proctor	Updated proposed hearing schedule
49	01/25/10	8:44 pm	Joe May	Updated proposed hearing schedule
50	01/25/10	9:49 pm	Melanie Gauthier	Updated proposed hearing schedule
51	01/26/10	10:15 am	Gil Bortleson	Updated proposed hearing schedule
52	01/26/10	1:45 pm	Chris Clifford	Updated proposed hearing schedule
54	01/26/10	7:16 pm	Phil Olbrechts	PreHearing Order
55	01/27/10	10:59 am	Kay Richards	PreHearing Order
56	01/27/10	11:05 am	Kay Richards	PreHearing Order
57	01/27/10	12:31 pm	Kay Richards	Prehearing Order; Email Exhibit List
58	01/27/10	1:10 pm	Kay Richards	Prehearing Order; Email Exhibit List
59	01/27/10	4:50 pm	Phil Olbrechts	Pre-Hearing Order Distribution
60	01/27/10	6:07 pm	Kay Richards	Prehearing Order; Email Exhibit List
61	01/28/10	3:10 pm	Kay Richards	Prehearing Order; Email Exhibit List
62	01/28/10	3:27 pm	Kay Richards	Prehearing Order; Email Exhibit List
63	01/28/10	3:41 pm	Kay Richards	Cindy Wheeler's Request for Emails
64	01/28/10	3:44 pm	Kay Richards	MPD Hearings/SEPA Appeal (#3)
65	01/28/10	4:06 pm	Kay Richards	MPD Hearings/SEPA Appeal (#4)
66	01/28/10	4:06 pm	Kay Richards	Ordinance No. 08-857, Hearing Examiner Position/Adding and Amending Chapters (#7)
67	01/28/10	4:07 pm	Kay Richards	Materials Arriving (#10)
68	01/28/10	4:09 pm	Kay Richards	Proposed Procedural Rules (#11)
69	01/28/10	4:11 pm	Kay Richards	Proposed Procedural Rules (#12)

No.	Date	Time	Sender	Subject
70	01/28/10	4:12 pm	Kay Richards	Proposed Procedural Rules (#14)
71	01/28/10	4:13 pm	Kay Richards	Proposed Procedural Rules (#20)
72	01/28/10	4:19 pm	Kay Richards	Development Reg's (#39)
73	01/28/10	4:20 pm	Kay Richards	Development Reg's (#41)
74	01/28/10	4:21 pm	Kay Richards	Development Reg's (#40)
75	01/28/10	4:50 pm	Kay Richards	Villages and Lawson Hills
76	01/28/10	4:54 pm	Steve Pilcher	Steve Pilcher just called with QUESTIONS
77	01/28/10	4:59 pm	Kay Richards	Villages and Lawson Hills - MORE
78	01/29/10	11:38 am	Kay Richards	Villages and Lawson Hills - MORE
79	01/29/10	4:08 pm	Joe May	Permission Request
80	02/01/10	4:16 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
81	02/01/10	4:29 pm	Steve Pilcher	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
82	02/01/10	4:29 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
83	02/01/10	4:41 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
84	02/01/10	4:53 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
85	02/01/10	4:55 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
86	02/01/10	4:59 pm	Steve Pilcher	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
87	02/01/10	5:17 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
88	02/02/10	8:03 pm	Melanie Gauthier	Pre-Hearing Order
89	02/03/10	1:46 pm	Nancy Rogers	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
90	02/03/10	10:35 pm	Chris Clifford	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
91	02/04/10	12:21 pm	Judith Carrier	Adding Appellant e-mail address
92	02/04/10	12:36 pm	Judith Carrier	Steve Sundqvist, Clifford Appeal
93	02/10/10	5:11 pm	Jeff Taraday	Lawson Hills Notice of Appeal with exhibit, signed.pdf; The Villages Notice of Appeal with exhibit, signed.pdf
94	2/11/10	3:30 am	Judith Carrier	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
95	02/11/10	10:32 am	Jeff Taraday	City of Maple Valley's Notice of Appeal
96	02/11/10	11:56 am	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
97	02/11/10	12:07 pm	Jeff Taraday	Maple Valley's Notice of Appeal - Black

No.	Date	Time	Sender	Subject
				Diamond
98	02/11/10	12:18 pm	Phil Olbrechts	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
99	02/11/10	12:29 pm	Dave Bricklin	APPEAL OF THE VILLAGES AND LAWSON HILLS EISs
100	02/11/10	1:34 pm	Kay Richards	Maple Valley's Notice of Appeal - Black Diamond
101	02/11/10	1:56 pm	Nancy Rogers	Maple Valley's Notice of Appeal - Black Diamond
102	02/11/10	2:14 pm	Dave Bricklin	Maple Valley's Notice of Appeal - Black Diamond
103	02/11/10	2:42 pm	Jeff Taradey	Request for Clarification re Black Diamond's refusal to accept appeal fee
104	02/11/10	3:29 pm	Nancy Rogers	Maple Valley's Notice of Appeal - Black Diamond - Applicant's Responses
105	02/11/10	3:57 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
106	02/11/10	4:03 pm	Mike Kenyon	Maple Valley's Notice of Appeal - Black Diamond
107	02/11/10	4:04 pm	Christy Todd	Maple Valley's Notice of Appeal - Black Diamond
108	02/11/10	4:06 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
109	02/11/10	4:27 pm	Phil Olbrechts	Revised Prehearing Order
110	02/11/10	4:29 pm	Phil Olbrechts	Revised Prehearing Order
112	02/11/10	4:33 pm	Phil Olbrechts	Revised Prehearing Order
113	02/11/10	4:34 pm	Christy Todd	Revised Prehearing Order
114	02/11/10	4:39 pm	Mike Kenyon	FW: Maple Valley's Notice of Appeal - Black Diamond - City's Responses
115	02/11/10	4:51 pm	Phil Olbrechts	Revised Prehearing Order
116	02/11/10	4:59 pm	Kay Richards	Revised Prehearing Order
117	02/11/10	5:00 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
118	02/11/10	5:07 pm	Kay Richards	Revised Prehearing Order
119	02/12/10	1:06 pm	Dave Bricklin	Maple Valley's Notice of Appeal - Black Diamond
120	02/12/10	1:45 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond
121	02/12/10	2:51 pm	Mike Kenyon	Revised Prehearing Order
122	02/12/10	2:51 pm	Phil Olbrechts	Revised Prehearing Order
123	02/12/10	2:56 pm	Christy Todd	Maple Valley's Notice of Appeal - Black Diamond
124	02/12/10	3:02 pm	Phil Olbrechts	Maple Valley's Notice of Appeal - Black Diamond

No.	Date	Time	Sender	Subject
--END OF FIRST REVISED EMAIL EXHIBIT LIST--				
125	02/12/10	3:29 pm	Nancy Rogers	Revised Prehearing Order - Motions for Reconsideration
126	02/13/10	6:16 pm	Melanie Gauthier	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
127	02/14/10	9:01 pm	Phil Olbrechts	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
128	02/16/10	7:54 am	Steve Pilcher	Gil Bortleson has a new email address
129	02/16/10	11:35 am	Jeff Taraday	Maple Valley Response to Motion for Reconsideration
130	02/16/10	11:36 am	Jeff Taraday	Maple Valley's Prehearing Brief, Witness List, and CV of Expert
131	02/16/10	11:37 am	Jeff Taraday	Maple Valley's Pre-Hearing Motions
132	02/16/10	11:45 am	Kay Richards	M. Gauthier Pre-Hearing Brief for Lawson Hills FEIS
133	02/16/10	12:23 pm	Peggy Cahill	Black Diamond - Pre-Hearing Brief (Bricklin)
134	02/16/10	3:25 pm	Margaret Starkey	The Villages & Lawson Hills - Black Diamond's Motion to Dismiss and Supporting Declaration (Kenyon)
135	02/16/10	3:56 pm	Kay Richards	Gil Bortleson has a new email address
136	02/16/10	4:31 pm	Jeff Taraday	Maple Valley's Notice of Appeal under BDMC 2.30.085
137	02/16/10	4:31 pm	Kristi Beckham	Applicant's Motions to Dismiss Appeal Issues for The Villages and Lawson Hills (Rogers) - Motions are attachments
138	02/16/10	4:36 pm	Jeff Taraday	Maple Valley's Request for Formal Code Interpretation
139	02/16/10	5:19 pm	Judith Carrier	BD Brief to Conclusion Additional Projects - Brief is attachment
140	02/16/10	10:00 pm	Gil Bortleson	Pre-Hearing Brief - Bortleson - Brief is attachment
141	02/16/10	10:22 pm	Chris Clifford	Clifford et al, Appeals 39 and 40
142	02/16/10	no time/not an email	David Bricklin	Pre-Hearing Brief, Witness List, and Exhibit List of Appellants Wheeler, Proctor, May and Harp
143	02/17/10	9:26 am	Kay Richards	Gil Bortleson has a new email address
144	02/17/10	2:26 pm	Mike Kenyon	Maple Valley's Response to Motion for Reconsideration
145	02/17/10	3:03 pm	Kathy Swoyer	Maple Valley's Response to Motion for Reconsideration
146	02/17/10	7:36 pm	Judith Carrier	BD Brief to Conclusion Additional Projects
147	02/18/10	2:45 pm	Margaret Starkey	Maple Valley's Notice of Appeal (letter)

No.	Date	Time	Sender	Subject
148	02/18/10	2:48 pm	Margaret Starkey	Black Diamond - Request for Formal Code Interpretation (letter)
149	02/18/10	2:50 pm	Ty Peterson	Black Diamond - Request for Formal Code Interpretation
150	02/18/10	3:11 pm	Margaret Starkey	Black Diamond - Request for Formal Code Interpretation (ordinance)
151	02/18/10	4:52 pm	Ty Peterson	Black Diamond - Request for Formal Code Interpretation
152	02/19/10	12:32 am	Phil Olbrechts	Maple Valley Procedural Issues
153	02/19/10	6:02 am	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
154	02/19/10	8:18 am	Mike Kenyon	Black Diamond - Request for Formal Code Interpretation
155	02/19/10	9:56 am	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
156	02/19/10	12:15 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
157	02/19/10	12:42 pm	Mike Kenyon	Request for Pre-Hearing Conference and Suspension of Schedule
158	02/19/10	1:02 pm	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
159	02/19/10	1:16 pm	Nancy Rogers	Request for Pre-Hearing Conference and Suspension of Schedule
160	02/19/10	2:10 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule
161	02/19/10	2:16 pm	Phil Olbrechts	Request for Pre-Hearing Conference and Suspension of Schedule with Revised Schedule
162	02/19/10	3:58 pm	Dave Bricklin	Request for Pre-Hearing Conference and Suspension of Schedule
163	02/19/10	4:05 pm	Dave Bricklin	Scheduling Request
164	02/19/10	4:20 pm	Mike Kenyon	Request for Pre-Hearing Conference and Suspension of Schedule
165	02/22/10	4:15 pm	Kay Richards	Second Revised PreHearing Order
166	02/22/10	4:18 pm	Postmaster on behalf of Mike Kenyon	Second Revised Prehearing Order (Out of the Office)
167	02/23/10	12:34 pm	Nancy Rogers	Second Revised Hearing Order
168	02/23/10	2:24 pm	Steve Pilcher	MPD Staff Reports (attachments)
169	02/23/10	10:19 pm	Melanie Gauthier	Request for Pre-Hearing Conference and Suspension of Schedule
170	02/24/10	9:20 am	Kay Richards	2-19-10 Revised Schedule attachment
171	02/24/10	10:20 am	Dave Bricklin	Second Revised Prehearing Order
172	02/24/10	10:55 am	Nancy Rogers	Second Revised Prehearing Order

No.	Date	Time	Sender	Subject
173	02/24/10	11:04 am	Dave Bricklin	Second Revised Prehearing Order
174	02/24/10	2:08 pm	Stacey Borland	Hearing Examiner Packet Exhibits
175	02/24/10	2:23 pm	Steve Pilcher	MPD Staff Reports
176	02/24/10	2:34 pm	Marsha St. Louis	City of Maple Valley Declaration of Service
177	02/24/10	3:14 pm	Phil Olbrechts	Hearing Examiner Packet Exhibits
178	02/24/10	5:09 pm	Cindy Wheeler	MPD Staff Reports
179	02/25/10	7:53 am	Dave Bricklin	Request to Allow Jerry Lilly to Testify on Monday, March 8
180	02/25/10	10:22 am	Phil Olbrechts	Request to Allow Jerry Lilly to Testify on Monday, March 8
181	02/25/10	10:37 am	Phil Olbrechts	Subpoenas
182	02/26/10	11:08 am	Dave Bricklin	Exhibits
183	02/26/10	12:56 pm	Bob Sterbank	Exhibits
184	02/26/10	1:31 pm	Judith Carrier	Second Revised Prehearing Order
185	02/26/10	1:49 pm	Dave Bricklin	Exhibits, Continuance and Consolidation
186	02/26/10	2:23 pm	Chris Clifford	Motion for Clarification
187	02/26/10	2:41 pm	Dave Bricklin	Addendum re Consolidation Clarification
188	02/26/10	3:27 pm	Bob Sterbank	Exhibits, Continuance and Clarification
189	02/26/10	4:04 pm	Nancy Rogers	Exhibits, Continuance and Clarification
190	02/26/10	4:13 pm	Dave Bricklin	Exhibits, Continuance and Clarification
191	02/26/10	4:27 pm	Dave Bricklin	Ex Parte Motion for Issuance of Subpoenas (with attachment)
192	02/26/10	8:13 pm	Melanie Gauthier	MPD Staff Reports
193	02/27/10	12:05 pm	Melanie Gauthier	MPD Staff Reports
194	02/28/10	4:02 pm	Phil Olbrechts	Exhibits, Continuance and Consolidation
195	02/28/10	5:19 pm	Phil Olbrechts	Exhibits
196	02/28/10	10:01 pm	Gil Bortleson	Site Inspection
197	03/01/10	8:20 am	Dave Bricklin	Exhibits
198	03/01/10	9:49 am	Dave Bricklin	Exhibits
199	03/01/10	10:13 am	Phil Olbrechts	Exhibits
200	03/01/10	10:39 am	Steve Pilcher	Exhibits
201	03/01/10	1:06 pm	Bricklin & Newman, LLP (Anne Bricklin)	Response by Appellants William & Cindy Wheeler, et al. to City's & Applicant's Motion to Dismiss; Declaration of Service
202	03/01/10	2:14 pm	Margaret Starkey	The Villages & Lawson Hills: Black Diamond's Response to Appeals; Witness and Exhibit List; Declaration of Mailing
203	03/01/10	2:50 pm	Margaret Starkey	Attachments to City of Black Diamond's Witness & Exhibit List
204	03/01/10	3:06 pm	Margaret Starkey	Declaration of Mailing for Black

No.	Date	Time	Sender	Subject
				Diamond's Witness & Exhibit List
205	03/01/10	5:24 pm	Kristi Beckham	Lawson Hills - Applicant's Exhibit List and Applicant's Responsive Pre-Hearing Brief
206	03/01/10	5:25 pm	Kristi Beckham	The Villages - Applicant's Exhibit List and Applicant's Witness List
207	03/01/10	5:26 pm	Kristi Beckham	Lawson Hills - Applicant's Witness List and Response in Support of Motion to Dismiss
208	03/01/10	5:28 pm	Kristi Beckham	The Villages - Response in Support of Motion to Dismiss
209	03/01/10	5:57 pm	Nancy Rogers	The Villages - Applicant's Responsive Pre-Hearing Brief
210	03/01/10	10:09 pm	Chris Clifford	Response to Motions to Dismiss, Motion in Limine, etc. (attachment)
211	03/02/10	7:57 am	Steve Pilcher	Service Question
212	03/02/10	2:56 pm	Jeff Taraday	Maple Valley Notice of Appeal Pursuant to BDMC 2.30.085
213	03/02/10	3:01 pm	Margaret Starkey	Maple Valley Notice of Appeal Pursuant to BDMC 2.30.085
214	03/03/10	4:13 pm	Kristi Beckham	Notice of Errata - Lawson Hills Prehearing Brief; Applicant's Reply on Motion to Dismiss Appeal Issues (Lawson Hills); Applicant's Reply on Motion to Dismiss Appeal Issues (The Villages)
215	03/03/10	4:34 pm	Dave Bricklin	In re: Master Planned Development Applications for the Villages and Lawson Hills
216	03/03/10	5:00 pm	Margaret Starkey	Black Diamond's Reply on Motion to Dismiss or, in the Alternative, Motion in Limine; Declaration of Mailing
217	03/03/10	5:27 pm	Judith Carrier	Emailing Appeal Exhibits
218	03/03/10	5:28 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 1 of 6
219	03/03/10	5:29 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 2 of 6
220	03/03/10	5:30 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Part 4 of 6
221	03/03/10	5:52 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Resending Email 3 - Pages 1-74 of TV Ex. 8 - LH Ex. 6. pdf
222	03/03/10	5:59 pm	Kristi Beckham (Nancy Rogers)	Exhibits for Villages and Lawson Hills - Resending Email 6 of 6 - Pages 1-70 TV Ex 11 - LH Ex. 9.pdf

No.	Date	Time	Sender	Subject
223	03/03/10	6:22 pm	Phil Olbrechts	Motions to Dismiss
224	03/03/10	6:23 pm	Nancy Rogers	Re: Motions to Dismiss
225	03/03/10	6:46 pm	Steve Pilcher	Re: Motions to Dismiss
226	03/03/10	9:21 pm	Judith Carrier	Re: Emailing Appeal Exhibits
227	03/04/10	8:59 am	Judith Carrier	Sending exhibits electronically
229	03/04/10	9:21 am	Judith Carrier	Carrier Exhibits #1
230	03/04/10	9:21 am	Judith Carrier	Carrier Exhibits #2
231	03/04/10	9:55 am	Judith Carrier	Carrier Exhibits #3
232	03/04/10	10:28 am	Judith Carrier	Carrier Exhibits #4
233	03/04/10	10:40 am	Steve Pilcher	Wheeler Exhibits
234	03/04/10	10:51 am	Steve Pilcher	1996 BD Comp Plan EIS - Wheeler Exhibits
235	03/04/10	10:53 am	Steve Pilcher	SEPA Addendum for 2009 Comp Plan Update - Wheeler Exhibit
236	03/04/10	10:59 am	Dave Bricklin	Wheeler Exhibits
237	03/04/10	11:02 am	Judith Carrier	Carrier Exhibits #5
238	03/04/10	11:29 am	Kay Richards	1996 BD Comp Plan EIS - Problems Opening WORD documents
239	03/04/10	11:31 am	Kristi Beckham (Nancy Rogers)	Email 1 of 6 - Problems Opening and Printing Documents
240	03/04/10	11:34 am	Judith Carrier	Carrier Exhibits #6
241	03/04/10	11:34 am	Steve Pilcher	1996 BD Comp Plan EIS - Problems with WORD documents
242	03/04/10	12:06 pm	Judith Carrier	Carrier Exhibits #8
243	03/04/10	12:06 pm	Judith Carrier	Carrier Exhibits #7
244	03/04/10	12:27 pm	Dave Bricklin	Scheduling
245	03/04/10	12:40 pm	Nancy Rogers	Scheduling
246	03/04/10	12:48 pm	Steve Pilcher	Scheduling
247	03/04/10	1:02 pm	Dave Bricklin	Scheduling
248	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #11
249	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #10
250	03/04/10	1:03 pm	Judith Carrier	Carrier Exhibits #9
251	03/04/10	1:23 pm	Steve Pilcher	Wheeler Exhibits
252	03/04/10	1:26 pm	Nancy Rogers	Scheduling
253	03/04/10	2:09 pm	Bob Sterbank	Scheduling
254	03/04/10	2:31 pm	Kristi Beckham (Nancy Rogers)	Resending of Exhibits LH Ex 15 and RV Ex 18
255	03/04/10	2:54 pm	Bob Sterbank	Maple Valley 2/16/10 Notice of Appeal
256	03/04/10	3:26 pm	Stacey Borland (City)	City Exhibits for Lawson Hills (already have copies)
257	03/04/10	3:30 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 2 (already have copies)
258	03/04/10	3:33 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 3 (already have copies)

No.	Date	Time	Sender	Subject
259	03/04/10	3:35 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 4 (already have copies)
260	03/04/10	3:36 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 5 (already have copies)
261	03/04/10	3:37 pm	Stacey Borland (City)	City Exhibits for Lawson Hills 6 (already have copies)
262	03/04/10	3:41 pm	Stacey Borland (City)	City Exhibits for The Villages (already have copies)
263	03/04/10	3:43 pm	Stacey Borland (City)	City Exhibits for The Villages 2 (already have copies)
264	03/04/10	3:47 pm	Stacey Borland (City)	City Exhibits for The Villages 3 (already have copies)
265	03/04/10	3:49 pm	Stacey Borland (City)	City Exhibits for The Villages 4 (already have copies)
266	03/04/10	3:50 pm	Stacey Borland (City)	City Exhibits for The Villages 5 (already have copies)
267	03/04/10	3:51 pm	Stacey Borland (City)	City Exhibits for The Villages 6 (already have copies)
268	03/04/10	4:22 pm	Steve Pilcher	FW: Carrier Exhibits #3 (already have)
269	03/04/10	4:23 pm	Steve Pilcher	FW: Carrier Exhibits #4 (already have)
270	03/04/10	4:24 pm	Steve Pilcher	FW: Carrier Exhibits #4 (already have)
271	03/04/10	4:25 pm	Steve Pilcher	FW: Carrier Exhibits #2 (already have)
272	03/04/10	4:26 pm	Steve Pilcher	FW: Carrier Exhibits #2 (already have)
273	03/04/10	4:26 pm	Steve Pilcher	FW: Carrier Exhibits #11 (already have)
274	03/04/10	4:27 pm	Steve Pilcher	FW: Carrier Exhibits #11 (already have)
275	03/04/10	4:27 pm	Steve Pilcher	FW: Carrier Exhibits #10 (already have)
276	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #6 (already have)
277	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #6 (already have)
278	03/04/10	4:28 pm	Steve Pilcher	FW: Carrier Exhibits #3 (already have)
279	03/04/10	4:29 pm	Steve Pilcher	FW: Carrier Exhibits #9 (already have)
280	03/04/10	4:34 pm	Steve Pilcher	FW: Carrier Exhibits #9 (already have)
281	03/04/10	4:41 pm	Steve Pilcher	FW: Carrier Exhibits #10 (already have)
282	03/04/10	8:10 pm	Judith Carrier	Sending Exhibits Electronically (with Exhibit List Yellow as attachment)
283	03/05/10	9:02 am	Dave Bricklin	Scheduling
284	03/05/10	10:19 am	Steve Pilcher	Yarrowbay MPD (Comment)
285	03/05/10	11:11 am	Steve Pilcher	Yarrow Bay Developments (Comment)
286	03/05/10	11:35 am	Phil Olbrechts	Yarrowbay MPD
287	03/05/10	11:46 am	Steve Pilcher	Joe May Appeal (with attachment)
288	03/05/10	11:53 am	Phil Olbrechts	Scheduling
289	03/05/10	12:01 pm	Dave Bricklin	Scheduling
290	03/05/10	12:07 pm	Nancy Rogers	Scheduling
291	03/05/10	12:16 pm	Bob Sterbank	Scheduling
292	03/05/10	12:44 pm	Dave Bricklin	Scheduling

No.	Date	Time	Sender	Subject
293	03/05/10	12:48 pm	Dave Bricklin	Scheduling
294	03/05/10	12:57 pm	Mike Kenyon	Scheduling
295	03/05/10	12:59 pm	Mike Kenyon	Scheduling
296	03/05/10	1:17 pm	Phil Olbrechts	Scheduling
297	03/05/10	1:41 pm	Nancy Rogers	Scheduling
298	03/05/10	1:43 pm	Chris Clifford	Scheduling
299	03/05/10	1:48 pm	Phil Olbrechts	Scheduling
300	03/05/10	3:18 pm	Phil Olbrechts	Motions to Dismiss
301	03/05/10	3:27 pm	Phil Olbrechts	Scheduling
302	03/05/10	3:28 pm	Kay Richards	Order on Motions to Dismiss (PDF)
--END OF SECOND REVISED EMAIL EXHIBIT LIST				
303	03/05/10	4:22 pm	Steve Pilcher	Joe May Appeal
304	03/05/10	4:44 pm	Dave Bricklin	Scheduling
305	03/05/10	5:06 pm	Kay Richards	Second Revised Prehearing Exhibit List (PDF)
306	03/05/10	5:25 pm	Phil Olbrechts	Joe May Appeal
307	03/05/10	6:01 pm	Phil Olbrechts	Exhibit Management
308	03/05/10	7:03 pm	Melanie Gauthier	Motions to Dismiss
309	03/05/10	7:47 pm	Dave Bricklin	Subpoena
310	03/05/10	8:31 pm	Steve Pilcher	Joe May Appeal
311	03/08/10	9:00 am	Kay Richards	Standard of Proof on Motions to Dismiss (second copy of DOC)
312	03/09/10	1:02 am	Bob Starbank	Standing
313	03/09/10	7:44 am	Chris Clifford	Standing
314	03/09/10	9:21 am	Nancy Rogers	Standing
315	03/09/10	10:41 am	Chris Clifford	Standing
316	03/09/10	11:23 am	Phil Olbrechts	Standing
317	03/09/10	11:33 am	Bob Starbank	Standing
318	03/09/10	12:24 pm	Chris Clifford	Standing
319	03/10/10	7:46 am	Nancy Rogers	Witness Scheduling
320	03/10/10	1:22 pm	Phil Olbrechts	Witness Scheduling
321	03/12/10	6:12 pm	Phil Olbrechts	Hearing Schedule
322	03/14/10	11:19 am	Lynne Christie	Black Diamond question
323	03/14/10	8:31 pm	Phil Olbrechts	Black Diamond question
324	03/14/10	8:37 pm	Phil Olbrechts	Black Diamond question
325	03/14/10	9:21 pm	Postmaster at KenyonDisend	Proposed Scheduling (Out of Office)
326	03/14/10	9:19 pm	Phil Olbrechts	Proposed Scheduling
327	03/15/10	10:35 am	Mike Kenyon	Black Diamond question
328	03/15/10	12:26 pm	Nancy Rogers	Proposed Scheduling
--END OF THIRD REVISED EMAIL EXHIBIT LIST--				
329	03/15/10	1:13 pm	Phil Olbrechts	Black Diamond MPD Hearing Exhibits
330	03/15/10	4:09 pm	Phil Olbrechts	Proposed Scheduling

No.	Date	Time	Sender	Subject
331	03/15/10	4:20 pm	Stacey Borland	Proposed Scheduling
332	03/15/10	4:58 pm	Dave Bricklin	Proposed Scheduling
333	03/15/10	5:04 pm	Dave Bricklin	Proposed Scheduling
334	03/15/10	5:20 pm	Nancy Rogers	Proposed Scheduling
335	03/15/10	6:50 pm	Phil Olbrechts	Proposed Scheduling
336	03/15/10	6:54 pm	Dave Bricklin	Proposed Scheduling
337	03/16/10	1:07 pm	Stacey Borland	Exhibits
338	03/16/10	1:08 pm	Stacey Borland	Exhibits
339	03/16/10	3:25 pm	Phil Olbrechts	Black Diamond MPD Hearing Exhibits
340	03/18/10	8:55 pm	Phil Olbrechts	More Scheduling
341	03/19/10	8:10 pm	Bob Sterbank	More Scheduling
342	03/19/10	11:01 am	Christy Todd	More Scheduling
343	03/19/10	1:05 pm	Christy Todd	More Scheduling
344	03/19/10	3:23 pm	Stacey Borland	Additional MPD Exhibits
345	03/19/10	3:25 pm	Stacey Borland	Additional Exhibit 2
346	03/19/10	4:19 pm	Bob Sterbank	More Scheduling
347	03/19/10	5:03 pm	Dave Bricklin	MPD Rebuttal
--END OF FOURTH REVISED EMAIL EXHIBIT LIST--				
348	03/22/10	8:46 am	Nancy Rogers	MPD Rebuttal
349	03/22/10	9:45 am	Phil Olbrechts	MPD Rebuttal
350	03/22/10	9:52 am	Emily Terrell	MPD Rebuttal
351	03/22/10	9:55 am	Emily Terrell	MPD Rebuttal
352	03/22/10	10:17 am	Bob Sterbank	MPD Rebuttal
353	03/22/10	10:35 am	Dave Bricklin	MPD Rebuttal
354	03/22/10	10:41 am	Bob Sterbank	MPD Rebuttal
355	03/22/10	10:46 am	Nancy Rogers	MPD Rebuttal
356	03/22/10	10:53 am	Brenda Martinez	Black Diamond Exhibit List
357	03/22/10	10:53 am	Marsha St. Louis	Black Diamond Exhibit List
358	03/22/10	11:51 am	Dave Bricklin	MPD Rebuttal
359	03/22/10	12:02 pm	Nancy Rogers	MPD Rebuttal
360	03/22/10	12:05 pm	Phil Olbrechts	MPD Rebuttal
361	03/22/10	12:15 pm	Dave Bricklin	MPD Rebuttal
362	03/22/10	12:45 pm	Nancy Rogers	MPD Rebuttal
363	03/22/10	12:59 pm	Bob Sterbank	MPD Rebuttal
364	03/22/10	2:10 pm	Phil Olbrechts	MPD Rebuttal
365	03/22/10	2:22 pm	Chris Clifford	MPD Comments
366	03/22/10	2:24 pm	Brenda Martinez	MPD Comments
367	03/22/10	2:42 pm	Brenda Martinez	Latest Exhibit List
368	03/22/10	2:42 pm	Phil Olbrechts	Latest Exhibit List
369	03/22/10	2:50 pm	Stacey Borland	Question about Exhibits
370	03/22/10	3:13 pm	Dave Bricklin	Latest Exhibit List
371	03/22/10	3:20 pm	Phil Olbrechts	Revised Scheduling
372	03/22/10	4:02 pm	Stacey Borland	Sign in sheets for public comments
373	03/22/10	4:22 pm	Phil Olbrechts	Hearing Exhibit List ("H" Documents)

No.	Date	Time	Sender	Subject
374	03/22/10	8:50 pm	Dave Bricklin	MPD Comments
375	03/22/10	11:22 pm	Dave Bricklin	LOS
376	03/23/10	8:40 am	Judith Carrier	Hearing Exhibit List ("H" Documents)
377	03/23/10	9:07 am	Phil Olbrechts	Email Comment
378	03/23/10	9:28 am	Phil Olbrechts	Email Comment
379	03/23/10	11:33 am	Stacey Borland	Latest Exhibit List
380	03/23/10	2:17 pm	Phil Olbrechts	Hearing Exhibit List ("H" Documents)
381	03/23/10	2:29 pm	Phil Olbrechts	Email Exhibit List
382	03/23/10	2:48 pm	Stacey Borland	Email Exhibit List
383	03/23/10	3:01 pm	Phil Olbrechts	Email Exhibit List
384	03/23/10	3:07 pm	Stacey Borland	Email Exhibit List
385	03/23/10	3:23 pm	Phil Olbrechts	Email Exhibit List
386	03/23/10	4:21 pm	Bob Sterbank	LOS
387	03/23/10	5:12 pm	Nancy Rogers	LOS
388	03/23/10	6:14 pm	Dave Bricklin	LOS
389	03/23/10	7:45 pm	Jason Paulsen	LOS
390	03/24/10	9:54 am	Nancy Rogers	LOS
391	03/24/10	12:17 pm	Bob Sterbank	LOS
392	03/24/10	1:55 pm	Dave Bricklin	LOS
393	03/24/10	2:36 pm	Emily Terrell	Question
394	03/24/10	3:34 pm	Emily Terrell	Question
395	03/24/10	4:06 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
396	03/24/10	4:47 pm	Brenda Martinez	Updated Exhibit List
397	03/24/10	5:08 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
398	03/24/10	5:15 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
399	03/24/10	5:54 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
400	03/24/10	5:57 pm	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
401	03/24/10	5:59 pm	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
402	03/25/10	8:06 am	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
403	03/25/10	9:08 am	Dave Bricklin	Ruling on Applicant/City Objections to

No.	Date	Time	Sender	Subject
				Documents Submitted after Close of Record
404	03/25/10	9:59 am	Phil Olbrechts	Index of H Documents
405	03/25/10	10:22 am	Bob Sterbank	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
406	03/25/10	10:32 am	Nancy Rogers	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
407	03/25/10	11:18 am	Stacey Borland	Index of H Documents
408	03/25/10	11:18 am	Stacey Borland	Email Exhibit List
409	03/25/10	1:21 pm	Stacey Borland	Black Diamond Exhibit #10: Problem
410	03/25/10	3:20 pm	Phil Olbrechts	Timeliness of Bricklin 3/22/10 email objection
411	03/26/10	5:02 pm	Jeff Taraday	Missing Exhibit
412	03/27/10	4:33 pm	Jeff Taraday	Missing Exhibit
413	03/29/10	10:27 am	Phil Olbrechts	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
414	03/29/10	10:32 am	Nancy Rogers	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
415	03/29/10	11:07 am	Dave Bricklin	Ruling on Applicant/City Objections to Documents Submitted after Close of Record
416	03/29/10	11:08 am	Jeff Taraday	Missing Exhibit
417	03/29/10	11:13 am	Stacey Borland	MPD Hearing Exhibit List
418	03/29/10	11:21 am	Phil Olbrechts	MPD Hearing Exhibit List
419	03/29/10	1:01 pm	Jeff Taraday	Black Diamond Demand Model
420	03/29/10	2:12 pm	Bob Sterbank	Black Diamond Demand Model
421	03/29/10	3:28 pm	Jeff Taraday	Black Diamond Demand Model
422	03/29/10	3:39 pm	Phil Olbrechts	Please communicate with me via this email address
423	03/29/10	3:42 pm	Phil Olbrechts	Please communicate with me via this email address
424	03/29/10	4:04 pm	Chris Clifford	Closing for Clifford et al
425	03/29/10	4:18 pm	Peggy Cahill for David Bricklin	Post-Hearing Brief of SEPA Appellants, Declaration of Service
426	03/29/10	4:19 pm	Bob Sterbank	Re: Black Diamond Demand Model
427	03/29/10	4:23 pm	Cindy Proctor	Supplemental Post Hearing Brief Wheeler Proctor
428	03/29/10	4:28 pm	William and Cindy Wheeler	Supplemental Post Hearing Brief Wheeler Proctor
429	03/29/10	4:35 pm	Melanie	Post Hearing Brief of SEPA appellant M.

No.	Date	Time	Sender	Subject
			Gauthier	Gauthier
430	03/29/10	4:37 pm	Jeff Taraday	Re: Black Diamond demand model
431	03/29/10	4:54 pm	Kristi Beckham for Nancy Rogers	Applicants' Closing Brief and Applicants' Rebuttal to Additional Public Testimony
432	03/29/10	5:34 pm	Judith Carrier	Closing Brief Time Deadline
433	03/29/10	6:13 pm	Bob Sterbank	MPD Applications for The Villages and Lawson Hills - City's Post-Hearing Brief
434	03/29/10	6:50 pm	Chris Clifford	Motion to Strike City of Black Diamond's FEIS Closing - Untimely
435	03/29/10	6:55 pm	Dave Bricklin	Out of Office
436	03/29/10	6:56 pm	Phil Olbrechts	Briefing Deadlines
437	03/29/10	7:00 pm	Bob Sterbank	Re: Motion to Strike City of Black Diamond's FEIS Closing - Untimely
438	03/29/10	7:01 pm	Bob Sterbank	Re: Briefing Deadlines
439	03/29/10	11:48 pm	Bob Sterbank	Black Diamond's MPD Rebuttal Comments; Felt-Hanson; King Co. CPP Excerpts
440	03/29/10	11:50 pm	Judith Carrier	BD Closing Brief
441	03/29/10	11:51 pm	Bob Sterbank	Black Diamond's MPD Rebuttal Comments
442	03/30/10	9:05 am	Judith Carrier	BD Closing Brief
443	03/31/10	2:11 pm	Dave Bricklin	Out of Office
444	03/31/10	2:11 pm	Phil Olbrechts	Prehearing Exhibits
445	03/31/10	3:36 pm	Stacey Borland	Re: Electronic Files - Staff Reports Attachments are staff reports for The Villages and Lawson Hills
446	03/31/10	5:45 pm	Judith Carrier	Re: Prehearing Exhibits; attachment is BD Exhibit List Yellow.docx
447	03/31/10	8:10 pm	Melanie Gauthier	Re: Prehearing Exhibits; attachment is Exhibits for FEIS hearing.doc
448	04/01/10	9:24 am	Stacey Borland	Additional Exhibit
449	04/01/10	10:52 am	Gil Bortleson	"Mr. Olbrechts" (?) report that prehearing exhibits were delivered to the City of Black Diamond
450	04/01/10	1:21 pm	Jeff Taraday	Tomorrow's submission from Maple Valley
451	04/01/10	2:03 pm	Nancy Rogers	Re: Prehearing Exhibits; attachments are Redlined Villages and Lawson Hills SEPA Appeal Exhibit Lists (2)
452	04/01/10	2:05 pm	Nancy Rogers	Re: Prehearing Exhibits; attachment is The Villages Context Plan
453	04/01/10	2:07 pm	Nancy Rogers	Re: Prehearing Exhibits; attachment is Lawson Hills Context Plan

No.	Date	Time	Sender	Subject
454	04/01/10	2:34 pm	Phil Olbrechts	Re: Tomorrow's Submission from Maple Valley
455	04/01/10	3:10 pm	Jeff Taraday	Re: Tomorrow's Submission from Maple Valley
456	04/01/10	3:44 pm	Nancy Rogers	Re: Tomorrow's Submission from Maple Valley
457	04/01/10	4:00 pm	Jeff Taraday	Re: Tomorrow's Submission from Maple Valley
458	04/01/10	8:27 pm	Phil Olbrechts	Re: Tomorrow's Submission from Maple Valley
459	04/02/10	9:15 am	Bob Sterbank	Re: Tomorrow's Submission from Maple Valley
460	04/02/10	10:31 am	Cindy Proctor	Re: Prehearing Exhibits; attachment is Wheeler et al Exhibits List and Electronic Exhibits List
461	04/02/10	11:17 am	Nancy Rogers	Re: Tomorrow's Submission from Maple Valley
462	04/02/10	12:47 pm	Jeff Taraday	Exhibit G to Dr. Janathanan's Third Declaration
463	04/02/10	1:17 pm	Phil Olbrechts	Prehearing Exhibits
464	04/02/10	2:52 pm	Jeff Taraday	Third Declaration of Natarajan Janathanan, Exhibit Nos. B - F; attachments are Exh. B - Parametrix Trip Distribution Sheet for The Villages; Exh. C - Parametrix Trip Distribution sheet for Lawson Hills; Exh. D - PM Trip Distribution Map; Exh. E - Maple Valley 2025 Trip Distribution Map, Exh. F - Figure 11 from TTR
465	04/02/10	9:09 pm	Jeff Taraday	Third Declaration of Natarajan Janathanan and Exhibit A; attachments are Third Declaration and Exhibit a
466	04/02/10	11:33 pm	Jeff Taraday	Maple Valley's Second Brief on MPD Compliance; attachment is MV's Second Brief on MPD Compliance PDF
--END OF FIFTH REVISED EMAIL EXHIBIT LIST--				
467	04/05/10	4:01 pm	Dave Brioklin	Re: Prehearing Exhibits; Wheeler et al Exhibits List as attachment
468	04/09/10	1:20 pm	Phil Olbrechts	Exhibit Lists
469	04/09/10	3:41 pm	Kay Richards	Re: Exhibit Lists; Attachments are Index of H Documents; Index of Prehearing Documents; MPD Hearing Exhibits; Email Exhibit List
470	04/12/10	9:33 am	Phil Olbrechts	Exhibit Lists
471	04/12/10	1:05 pm	Phil Olbrechts	Question on Gauthier Exhibits

No.	Date	Time	Sender	Subject
472	04/12/10	1:33 pm	Melanie Gauthier	Re: Question on Gauthier Exhibits
473	04/12/10	4:10 pm	Kristi Beckham (Nancy Rogers)	In re MPD Applications for Villages/Lawson Hills; attachment is Applicants' 3rd Rebuttal Memo, 4-12-10
474	04/12/10	11:19 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. 1a, 1b, 1c, 1d, 1e, 1f, and 1g as PDFs
475	04/12/10	11:21 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. 2a, 2b, 2c, 2d, 2e, 2f, and 2g as PDFs
476	04/12/10	11:24 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. B1, B2, C, D, E1 and E2
477	04/12/10	11:26 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; no attachments, left off in error
478	04/12/10	11:40 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are Perlic Exhibit Nos. F1, F2, F3, F4, G, H, and I
479	04/12/10	11:55 pm	Bob Sterbank	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
480	04/13/10	12:02 am	Bob Sterbank (sent from home email address due to fear of nondelivery of earlier message)	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
481	04/13/10	12:13 am	Bob Sterbank (sent from home email address due to fear of nondelivery of earlier message)	In re: MPD Apps of Villages/Lawson Hills; attachments are John Perlic Declaration in Support of City's MPD Rebuttal on Transportation Issues and City proposed additional clarifications to the revised MPD conditions
482	04/13/10	8:43 am	Nancy Rogers	Re: In re: MPD Apps for Villages and Lawson Hills; "City's proposed clarifications are acceptable to Applicant"
483	04/13/10	1:22 pm	Dave Bricklin	Re: In re: MPD Apps for Villages and Lawson Hills; Comments on Perlic's supplemental declaration
484	04/13/10	2:06 pm	Bob Sterbank	Re: In re: MPD Apps for Villages and Lawson Hills; Comments on Bricklin's

No.	Date	Time	Sender	Subject
				comments on Perlic's declaration
485	04/13/10	2:09 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills; Ruling on SEPA decision
486	04/13/10	5:02 pm	Nancy Rogers	Re: Another Question re the Exhibit Lists re: transcripts
487	04/13/10	5:45 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Comments on Bricklin's comments on Perlic's declaration
488	04/13/10	5:47 pm	Phil Olbrechts	Re: Another Question re the Exhibits Lists; Transcript emails to be removed
489	04/13/10	8:07 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills re: deadlines for submission
490	04/14/10	12:30 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Perlic Declaration in Support of MDP Traffic Rebuttal attachment
491	04/14/10	12:32 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills; Attachments A - I to the Perlic Declaration
492	04/14/10	12:36 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills
493	04/14/10	12:43 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills
494	04/14/10	8:19 pm	Dave Bricklin	Re: In re MPD Apps for Villages and Lawson Hills
495	04/14/10	10:53 pm	Bob Sterbank	Re: In re MPD Apps for Villages and Lawson Hills
496	04/15/10	11:59 pm	Phil Olbrechts	Re: In re MPD Apps for Villages and Lawson Hills; attachment is The Villages Hearing Examiner Decision

EXHIBIT A

Attachment 2

0027409

BLACK DIAMOND MPD CLOSED RECORD HEARINGS  
EXHIBIT LIST

("C" Documents)

Updated - July 19, 2010

No.	Provided by	Description
C-1	Cindy Proctor	06/21/10 General Affidavit
C-2	Cindy Proctor	03/05/10 email from Leih Mulvihill to Cindy Proctor
C-3	Nancy Rogers	Excerpts from Craig Goodwin's Blog
C-4	Nancy Rogers	Excerpts of Craig Goodwin's Blog
C-5	Robert Edelman	06/22/10 Request for reconsideration regarding Council rules
C-6	City of Black Diamond	Staff Comments and Recommendations concerning HE recommendations
C-7	Councilmember Goodwin	06/24/10 preliminary questions for YarrowBay
C-8	Nancy Rogers	06/22/10 Memorandum to Black Diamond City Council
C-9	David Bricklin	06/24/10 Letter to Mayor Rebecca Olness
C-10	Mike Kenyon	06/25/10 Email exchange from Peter Rimbos and Mike Kenyon
C-11	Bob Sterbank	6/28/10 Email exchange between Jason Paulsen and Bob Sterbank
C-12	Judith Carrier	Copy of comments read into the record
C-13	Lynne Christie	Written Statement
C-14	Ron Taylor	Copy of comments read into the record
C-15	Judy Taylor	Copy of comments read into the record
C-16	Cindy Proctor	Copy of comments read into the record
C-17	Robert Taeschner	Copy of comments read into the record
C-18	Judith Carrier	Maps
C-19	Vicki Harp	Email exchange between Vicki Harp and Mike Kenyon regarding clarification on ex parte communication with Councilmember Hanson
C-20	Cindy Proctor	Melanie Gauthier written statement
C-21	Gomer Evans	Written Statement
C-22	Clarissa Metzler Cross	Copy of comments read into the record
C-23	Mark and Harriet Dalos	Copy of comments read into the record
C-24	Donna Gauthier	Copy of comments read into the record
C-25	Cindy Wheeler	Copy of tree preservation code from City's website
C-26	Robbin Taylor	Copy of comments read into the record, including referenced materials
C-27	City of Auburn	Written Statement

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C-28	Richard Ostrowski	Copy of comments read into the record
C-29	Fred and Polly Rohrbach	Written Statement
C-30	Janie Edelman	Copy of comments read into the record
C-31	Robert Edelman	Written Statement
C-32	Thomas Hanson	Written Statement
C-33	Cindy Wheeler	Copy of comments read into the record
C-34	Bruce Early	Written Statement
C-35	Mike Irrgang	Copy of comments read into the record
C-36	Erika Morgan	Copy of comments read into the record
C-37	David Bricklin	Rural by Design figures 6-2, 6-3
C-38	Gretchen and Michael Buet	Written Statement
C-39	Ulla Kemman	Copy of comments read into the record
C-40	Robert Rothschilds	Copy of comments read into the record
C-41	Vicki and William Harp	Copy of comments read into the record
C-42	Steven Garvich	Copy of comments read into the record
C-43	Lisa Garvich	Copy of comments read into the record
C-44	Lisa and Steve Garvich	Letter to Black Diamond City Council
C-45	Robert Rothschilds	Written Statement
C-46	Jack Sperry	Copy of comments read into the record
C-47	Jack Sperry	Written Statement
C-48	David Bricklin	Written Statement
C-49	Cindy Proctor	Letter to Black Diamond City Council
C-50	Laure Iddings	Suggested Amendments
C-51	G. C. Bortleson	Copy of comments read into the record
C-52	G. C. Bortleson	Written Statement
C-53	Joe May	Copy of comments read into the record
C-54	Carol Lynn Harp	Copy of comments read into the record
C-55	Peter Rimbo	Copy of comments read into the record
C-56	Peter Rimbo	Written Statement
C-57	City of Maple Valley	Proposed Order on Remand
C-58	City of Maple Valley	Maple Valley Brief
C-59	City of Maple Valley	Map - Exhibit No. 15 (Exhibit 7)
C-60	City of Maple Valley	Map - Exhibit No. 211 (Exhibit D)
C-61	City of Maple Valley	Map - Exhibit No. 211 (Exhibit E)
C-62	City of Maple Valley	Map - Exhibit No. 211 (Exhibit F)

C-63	City of Maple Valley	Map - Exhibit No 15 (Exhibit 2)
C-64	City of Maple Valley	Map - Exhibit No. 15 ( Exhibit 3)
C-65	City of Maple Valley	Map - Exhibit No. 15 (Exhibit 4)
C-66	Laure Iddings	Copy of comments read into the record
C-67	Judith Carrier	Written Statement
C-68	Sally Neary - Sierra Club	Copy of comments read into the record
C-69	Steve Hiester - GMVUAC	Copy of comments read into the record
C-70	Rick Bradbury	Copy of comments read into the record
C-71	Dennis Boxx	Written Statement
C-72	Bill Wheeler	Copy of comments read into the record
C-73	Kristin Bryant	Copy of comments read into the record
C-74	Julie Earley	Copy of comments read into the record
C-75	Bonnie Scott	Copy of comments read into the record
C-76	Monica Stewart	Copy of comments read into the record
C-77	City of Black Diamond	Staff Closing Statement
C-78	Nancy Rogers	Applicant Closing Statement
C-79	Mike Kenyon	Objections to Extra-Record Evidence
C-80	Bob Edelman	Objections to evidence outside of the MPD records
C-81	Jeff Taraday	Objections to new evidence submitted during hearing
C-82	Nancy Rogers	Extra Record Objections

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## EXHIBIT B

### CONCLUSIONS OF LAW

1. Authority of City Council. BDMC 18.98.060(A)(6) provides that the City Council shall, following receipt of the hearing examiner's recommendation, schedule a time for consideration of the MPD, and that the council may (a) accept the examiner's recommendation; (b) remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or (c) modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed. The Conclusions of Law set forth below, and the Findings of Fact adopted in Exhibit A above upon which these Conclusions of Law are based, are within the City Council's authority provided in BDMC 18.98.060(A)(6)(c).
2. Conclusions as Findings of Fact. Any Conclusions of Law adopted herein that are findings of fact shall be deemed as such. Any Findings of Fact adopted in Exhibit A above that are conclusions of law are hereby adopted as if set forth herein in full.
3. Review Criteria. BDMC 18.98.060(A)(6) and 18.98.080 require the City Council to base its decision the MPD on the approval criteria set forth in BDMC 18.98.080. However, BDMC 18.98.080(A)(1) also requires compliance with all applicable regulations, and BDMC 18.98.080(A)(10) requires compliance with the purposes outlined in BDMC 18.98.010(B) through (M) as well as the public benefit objectives contained in BDMC 18.98.020. Consequently, these Conclusions of Law address compliance with all the provisions of Chapter 18.98 BDMC, as well as some provisions of the International Fire Code (IFC) required to be addressed at this stage of review. Applicable criteria are quoted in bold italics with corresponding Conclusions of Law assessing compliance.
4. ***BDMC 18.98.010(A): Establish a public review process for MPD applications.***

This purpose is met. The MPDs have been the subject of multiple environmental appeals, over one hundred hours of open and closed record hearings, and hundreds of written comments. Members of the public were given ten minutes each to testify before the Hearing Examiner, and parties of record who so testified or submitted written comments were also provided ten minutes each to present argument to the City Council during its closed record hearing. Although some parties of record nevertheless asserted that there was not enough time for them to review or comment upon the MPD applications, the public was provided ample opportunity to comment on the MPDs. The public review process utilized for the Lawson Hills MPD applications complied with the purpose of BDMC 18.98.010(A).

**5. BDMC 18.98.010(B): Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than eighty acres in size.**

As detailed in Finding of Fact No. 2, the Lawson Hills MPD project comprises 371 acres. It is therefore subject to the MPD review process as per BDMC 18.98.010(B). Although the North Triangle Property is approximately 50 acres in size, and thus potentially eligible for treatment as other than an MPD, it is considered part of the overall Lawson Hills MPD, and was therefore also subjected to the MDP review process in accordance with BDMC 18.98.010(B). Pursuant to Section 18.98.030.C, an MPD commercial area may be geographically separate from the MPD's residential component.

**6. BDMC 18.98.010(C): Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the city's residents.**

As detailed in Finding of Fact No. 2, the Land Use Plan map (Figure 3-1, dated July 8, 2010) and page 3-21 of the MPD application, the project proposes to preserve significant amounts of open space. They include a mix of passive and usable areas comprised of sensitive areas such as wetlands and their associated buffers, trails, parks, and utilities such as stormwater ponds. Figure 3-1 (July 8, 2010) of the MPD application shows a majority of the areas dedicated to open space as a coordinated network. As detailed in Finding of Fact No. 12.B, the wildlife corridors are adequate to minimize impacts to wildlife. The vast majority of open space will be maintained as sensitive areas (primarily wetlands and streams) and their required buffers. Therefore, these open space, trails, parks, wetlands, buffers and wildlife corridors comply with BDMC 18.98.010(C)'s purpose of preserving open space, wildlife corridors and open space lands.

**7. BDMC 18.98.010(D): Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;**

Chapter 3 of the MPD application requests residential and commercial development standards that allow for great flexibility in building design and development layout. In terms of residential development, this includes a variety of housing types at varying densities; alley-loaded lots; clustered residential centered on common greens; and live/work units. The applicant has agreed to a condition requiring detached single-family dwelling units to be "alley loaded," which is not a typical suburban development pattern.

In addition, live/work units are described on page 3-23 of the application materials, and their potential location is now depicted on the Land Use Plan map contained in the Land Use Plan Map in Figure 3-1 (July 8, 2010). Although when researching other large master planned communities in the Puget Sound (such as Issaquah Highlands), staff found the viability of live/work units to be limited.

With the unavoidable exception of several road crossings, avoidance of sensitive areas was a factor in the overall layout of this project. The land use plan/constraints map overlay (Ex. CBD-2-11) shows the relationship between sensitive areas and proposed development parcels. The Lawson Hills MPD application materials indicate that the proposed Lawson Parkway and Lookout Park are designed to enhance views of Mt. Rainier.

As proposed in the Lawson Hills MPD application, the innovative design purpose of BDMC 18.98.010(D) is met. The City Council expects to establish some of the street design features in the Development Agreement and other infrastructure design flexibility through the design deviation process already established within the Black Diamond Engineering Design and Construction Standards.

**8. BDMC 18.98.010(E): *Allow flexibility in development standards and permitted use;***

A. Chapter 3 of the MPD application proposes residential and commercial development standards and uses that allow for flexibility in building design and development layout. The commercial component of the MPD would be located on the North Triangle Property (Parcel B). The residential, schools, and parks components would occur on the Main Property. In some cases, these proposed densities differ from those available under other zoning designations in the remainder of the City, and would therefore be unique to these MPD properties. As such, the development of the MPD will utilize flexibility in development standards and permitted uses, and therefore satisfies the purpose outlined in BDMC 18.98.010(E), as explained in more detail below.

B. The project proposes three residential categories, MPD-L (1-8 du/ac), MPD-M (7-12 du/ac) and MPD-H (13-30 du/ac). (The minimum 1 unit per acre density proposed is not consistent with the BDUGAA, past pre-annexation agreements, or the City's Comprehensive Plan. A minimum density of 4 du/ac for residential properties is therefore a condition of approval.) Chapter 3 of the application requests the MPD "Master Developer" have the ability to propose to change the category of individual residential development parcels as shown on the Figure 3-1 Land Use Plan. The proposal includes the ability to adjust up or down one residential land use category through an administrative review process (this would not apply to the 18-30 du/acre category). The adjustment of land use categories would not allow an increase in the overall unit cap of 1,250. The areas proposed for the highest residential densities (18-30 du/ac) have been depicted on the land use plan.

C. The City Council concludes that if the applicant requests to change the residential category of a development parcel internal to the project, then an administrative process would be appropriate. However, a change in a residential category that abuts the perimeter of the MPD requires a public hearing process as a Major Amendment to the MPD. Additionally, the Development Agreement should also establish a limitation to allow such reclassification of development parcels no more frequently than once per calendar year (consistent with the allowance for Comprehensive Plan amendments).

D. While the applicant has proposed a wide variety of project-specific development standards, not all should be granted. Some of these areas are identified and discussed under the "Functionally Equivalent Standards" portion of these Conclusions. Specifically, decision on a number of the land use development standards (table of allowed uses, setbacks, etc.) should be addressed in the Development Agreement. This will provide the opportunity for further discussions with the applicant. There are several areas in which less stringent standards than required elsewhere in the city are being sought, some of which are requested in the functionally equivalent standards mentioned above. Until the applicant provides greater certainty and clarity to the actual development proposed for the site, these requests are not justifiable even with the flexibility called for by BDMC 18.98.010(E). The amount of flexibility being requested in the proposed project at this time - while the overall plan is highly conceptual - does not result in a compelling reason to allow these different standards. There are numerous concerns, including uses proposed to be permitted in open space areas; a minimum 18' front yard setback to residential garages (20' required by MPD Design Guidelines and in standard zones); inadequate parking lot landscaping, resulting in less required landscaping than the city's nonresidential zones; excessive allowance for compact parking stalls (65% vs. 25% elsewhere in the city); and insufficient required parking for commercial/retail uses (a particular concern when Parcel B's location means it will be heavily oriented to automobile trips).

E. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and storm water comprehensive plan concepts. Staff, the applicant, the hearing examiner and the Council can resolve the large, overarching design issues and establish some of the proposed functionally equivalent construction standards as part of the Development Agreement. In addition to the flexibility of establishing functionally equivalent standards as part of the Development Agreement, the Engineering Design and Construction Standards contain an administrative deviation process (section 1.3 of the standards) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering Design and Construction Standards' administrative deviation process.

**9. BDMC 18.98.010(F): *Identify significant environmental impacts, and ensure appropriate mitigation;***

The MPDs have been subject to extensive and intensive environmental review. The FEIS is supported by hundreds of pages of environmental analysis. The bulk of the hearings on the MPDs was comprised of the testimony of numerous experts addressing the appeals of the FEIS. Through this process several areas of improvement were identified, resulting in Hearing Examiner recommendations for and Applicant offers of extensive additional

mitigation, including additional future impact analysis and mitigation. That mitigation, and the requirements for additional future analysis, are incorporated into the conditions of MPD approval in Exhibit C below. New conditions addressing traffic and noise in particular, will help ensure that all significant environmental impacts are appropriately mitigated. See, e.g., Finding of Fact No. 5.E. For the reasons detailed in the Findings of Fact, the City Council concludes that the requirement of BDMC 18.98.010(F) has been met.

**10. BDMC 18.98.010(G): *Provide greater certainty about the character and timing of residential and commercial development and population growth within the city.***

A. As detailed in the Findings of Fact, the project proposes a maximum of 1,250 units and 390,000 square feet of office and commercial uses to be built out in three phases over a period of approximately 15 years. (It should be noted that the application includes several uses which are typically considered to be industrial uses under the definition of "office"). Chapter 9 of the MPD application indicates the phasing of development, with the initial development focus south of Auburn-Black Diamond Road as part of the Villages MPD, followed later by development on the north side and the commercial area of the proposed Lawson Hills MPD (North Triangle). Development would progress outward from these areas, with the southeastern portion of the Lawson Hills Main Property being the last area likely to be developed.

B. Chapter 3 of the MPD application contains design concepts that illustrate the proposed character of development. Ch. 3 also describes a variety of housing types anticipated to be built and proposes development standards that would apply exclusively within the MPD. Although the level of detail of the MPD does not include typical subdivision or project layouts, per Conclusion No. 8 above and related conditions of approval in Exhibit C below, the Development Agreement will specify details of what product type will be built where and when, and the additional development standards and design guidelines to which the development will be subject. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines adopted in June 2009. In addition, the conditions of approval shall also establish a target unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) be incorporated into the Development Agreement.

Therefore, subject to the conditions of approval in Exhibit C below, the purpose set forth in BDMC 18.98.010(G) is met.

**11. BDMC 18.98.010(H): *Provide environmentally sustainable development.***

A. Low Impact Development. The MPD application discusses implementation of low impact development (LID) techniques, water conservation, clustering development and preserving open space. Because of quality of soils on the Main Property, LID may have limited applicability on the Lawson Hills site. However, LID is essential for improving water quality, reducing urban runoff and preserving natural flow regimes. As

a condition of approval, mechanisms shall be identified to integrate LID into the overall design of the MPD wherever practicable and feasible.

B. Compliance with Environmental Ordinances. The MPD will comply with codes aimed at environmental protection, including but not limited to the Sensitive Areas Ordinance, and will also provide mitigation measures derived from the FEIS designed to prevent the project from having an adverse impact on the environment.

C. Vehicle Trip Reduction. The project includes a number of design features (trails and bike lanes, inclusion of schools within walkable distances to residential areas) that will facilitate non-motorized travel within the Main Property. Because no commercial or significant employment development is proposed on the Lawson Hills Main Property, it will be necessary for individuals residing in the project to make vehicle trips to meet most of their daily and weekly needs

D. The Lawson Hills MPD Provides Environmentally Sustainable Development. In light of the conclusions in 11.A – C above, and subject to the conditions of approval in Exhibit C below, the Lawson Hills MPD complies with BDMC 1898.010(H)'s purpose of providing environmentally sustainable development.

**12. BDMC 18.98.010(I): *Provide needed services and facilities in an orderly, fiscally responsible manner.***

This purpose is met. The MPD application, along with conditions of approval, will ensure that needed services and facilities are provided in an orderly, fiscally responsible manner. Chapters 4-8 of the MPD application discuss transportation, parks, stormwater, sewer, and water facilities; Ch. 9 discusses the project phasing plan and the timing of these improvements. Ch. 9 of the MPD application also discusses several cost recovery mechanisms related to construction of facilities improvements, including local improvement districts, latecomer agreements and other financing mechanisms such as community facility districts. In addition, a proactive transportation monitoring plan, with a list of projects and trigger mechanisms acceptable to the City, is required by Conditions 190 and 24 in Exhibit C below, with the monitoring plan to be further detailed as part of the Development Agreement. Condition 24, in particular, requires traffic mitigation measures to be installed so as to maintain the City's adopted level of service, rather than subsequent to a decline in level of service. And, Condition No. 16 requires periodic review of traffic impacts, and identification and construction of additional mitigation if the mitigation identified in Conditions 14 and 15 is insufficient to mitigate identified traffic impacts from the Lawson Hills MPD. In light of the phased construction of regional public infrastructure projects, the monitoring plan, and periodic review and analysis of traffic impacts and mitigation, to be further specified in the Development Agreement, the Lawson Hills MPD will provide services and facilities in an orderly fiscally responsible manner.

**13. BDMC 18.98.010(J): *Promote economic development and job creation in the city.***

The Lawson Hills MPD also satisfies the purpose of promoting economic development and job creation in the City, as called for by BDMC 18.98.010(J). As shown on the Land Use Map in Figure 3-1 (July 8, 2010), and as detailed in Finding of Fact No. 2, the MPD project has designated approximately 35 acres for a maximum of 390,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail; among other things, it describes office uses as a broad category including such things as general office, business support services, light manufacturing, wholesaling and mini-storage. While the ultimate mix of uses will remain unknown until full build out, the amount of land provided in the MPD for retail and office uses meets the purpose of promoting economic development and job creation.

**14. BDMC 18.98.010(K): *Create vibrant mixed-use neighborhoods, with a balance of housing, employment, civic and recreational opportunities;***

A. The purpose set out in BDMC 18.98.010(K) is also satisfied. As detailed in Finding of Fact No. 2 and as shown on the Land Use Plan map in Figure 3-1 (July 8, 2010) and described in the MPD application, the Lawson Hills MPD includes a mixed-use town center, a variety of housing types and densities, areas for schools and other civic uses, and recreational opportunities in the form of a variety of parks and trails. Chapter 3 of the MPD application describes a variety of housing types including detached single family, duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. With the exception of stacked flats, which are described as a possible housing type within the high-density category, all other types could be built within areas designated for either low or medium density residential uses.

B. The application includes schematic drawings of potential housing types and lot configurations (see Chapter 3). However, the distribution of these various modes of development is not defined; therefore, a condition is included in Exhibit C to require the development agreement to set targets for specified housing types for each phase of development.

C. Because the potential earning potential yielded by jobs that may be created in the MPD project area is unknown, if a significant number of jobs is in the retail and service sector, housing affordability may become a significant issue. Therefore, a condition of approval is included in Exhibit C below to require the project to include a mix of housing types that contribute to the affordable housing goals of the City, and to require that the Development Agreement provide for a phase-by-phase analysis of affordable housing citywide to ensure that housing is being provided at affordable prices.

15. **BDMC 18.98.010(L): *Promote and achieve the city's vision of incorporating and/or adopting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the City's design standards;***

This purpose is also met by the Lawson Hills MPD. As detailed in Finding No. 2, the Land Use Plan map and the MPD application, the Lawson Hills MPD application proposes a mix of residential and commercial type uses, with development located in compact clusters separated by sensitive areas and open space. Parks and schools are proposed to be located on site with a road and trail network to link the residential portions of the project. These will provide opportunities for interaction, socializing and a sense of community. Stands of trees and natural areas are proposed along the main spine road through the project. These natural areas and extensive open space will help preserve rural character.

16. **BDMC 18.98.010(M): *Implement the city's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in the municipal code.***

In June 2009, the City adopted an updated comprehensive plan, zoning code, design guidelines and engineering design and construction standards. The Comprehensive Plan includes the city's vision statement on page 1-2, which envisions "development [that] maintains a healthy balance of moderate growth and economic viability," residential development with "a mix of types, sizes and densities, clustered to preserve a maximum of open space and to access a system of connecting trails/bikeways." The proposed project is generally consistent with the vision statement and the City's development regulations and policies. Further, Page 5-13 of the Comprehensive Plan (Land Use element) discuss the MPD Overlay plan designation. The Lawson Hills MPD is also consistent with that section of the Comprehensive Plan.

These Conclusions of Law address below the MPD proposal's consistency with other provisions of the Black Diamond Municipal Code.

17. **BDMC 18.98.020: *Specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but are not limited to:***

***A. Preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site;***

A. This objective is satisfied. The Lawson Hills MPD provides a greater preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc.) of the site than would typically be available through conventional development. This includes:

i. The MPD preserves 26 more acres of open space and sensitive areas than would conventional development, according to Exhibit 1-3 of the FEIS;

ii. Because the property is being developed via an MPD, roads, utilities and public facilities will be constructed in a coordinated fashion, minimizing disturbance of sensitive areas; with the unavoidable exception of several road crossings, avoidance of sensitive areas was a factor in the overall layout of this project, as shown in the land use plan/constraints map overlay (Exhibit 11). Under conventional development roads and utilities would be constructed incrementally, as Exhibit 1-3 of the FEIS acknowledges, which could result in additional incursions into sensitive areas as permitted by the City's development regulations for road and other public utility construction (BDMC Section 19.10.080(E)(1));

iii. Because the property is being developed in a coordinated fashion, drainage can be coordinated to maximize infiltration where soils permit, as well as utilization of a large drainage area to maximize sediment and phosphorus removal, in manner that would exceed that available under conventional development;

iv. Other than where stormwater ponds, utilities and future active park sites may be proposed, open space areas are to remain untouched, except for trail construction; and

v. The MPD application indicates that the streets and parks are designed to enhance views of Mt. Rainier, which should be significant from the upper portions of the Lawson Hills site. Further, The Visual Quality and Aesthetics section of the FEIS describes a mitigation measure regarding tree retention along the ridgeline of Lawson Hill. This may affect the proposed development layout depicted on the Figure 3-1 Land Use Plan map. This shall be included as a condition of approval in Exhibit C.

B. Chapter 1 of the MPD application discusses clearing and grading for the project. It is estimated that approximately 1,000,000 cubic yards of soil could be exported and 665,000 cubic yards imported. If soil amendments are made on-site, then approximately 540,000 cubic yards could be exported and 165,000 cubic yards imported. Specific areas where this might occur are not identified in the application materials. The City Council recognizes that in order for urban development to occur, some natural undulations and occasional sharp pitches in the natural grade will need to be graded for street and urban living compatibility, and that initial site grading will provide better, more consistent utility depths and minimize retaining walls and steps to homes and other buildings. Further, a condition is also included in Exhibit C below requiring the Lawson Hills MPD to comply with the Framework Design Standards and Guidelines, which require at 3.A.6 that grading be phased to maintain surface disturbance and maintain significant natural contours.

**18. BDMC 18.98.020(B): Protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies;**

A. This objective is satisfied. The development standards adopted by the City, combined with the conditions contained in Exhibit C below, will protect both surface and groundwater quality on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies.

B. The City's adopted standards utilize regional stormwater management technologies. BDMC Ch. 14.04.020 adopts the 2005 Ecology Stormwater Management Manual for Western Washington (SWMMWW), which is consistent with the requirements of the NPDES Phase II Municipal Stormwater Permit for Western Washington. The provisions of BDMC Ch. 14.04 will apply to all development permits until such time as the City may be required by the terms of the NPDES Permit to amend the provisions of the adopted SWMMWW. In addition, the Lawson Hills MPD application proposes a project-wide approach to stormwater management (rather than an individual development parcel approach), which also meets the intent of regional stormwater management.

C. As indicated in Chapter 6 of the MPD application, the stormwater management plan includes incorporation of low impact development (LID) techniques. Given the soils on the Main Property as described in Ch. 4 of the FEIS, LID opportunities may be limited; however, Exhibit C contains a condition of approval requiring identification of mechanisms to integrate LID into the overall design of the MPD wherever practicable and feasible, for the benefit of surface water resources. This meets the intention of the objective's provision for low-impact stormwater management technologies.

D. Exhibit C contains other conditions requiring the Development Agreement to incorporate additional innovative techniques, as follows:

i. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the SMMWW, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

ii. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL

established by the State Department of Ecology for Lake Sawyer. If monitoring conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of T<sub>p</sub>, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in T<sub>p</sub> so as to bring the discharge below the annual maximum identified pursuant to this Condition.

iii. The Development Agreement shall require a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction phase.

iv. The Development Agreement shall ensure that the storm water system does not burden the city with excessive maintenance costs, while assisting the City with maintenance of landscape features in storm water facilities.

v. The Development Agreement shall require a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations. Particular attention should be paid to phosphorous levels in Lake Sawyer.

vi. If roof runoff will be discharged directly to wetlands or streams for recharge and base-flow purposes, include restrictions on roof types (no galvanized, no copper) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharge is suitable for direct entry into wetlands and streams without treatment. These restrictions should be enforced during permitting and also during the life of the project by the Homeowners Association (HOA). The applicant should develop public education materials that will be readily available to all homeowners and implement a process that can be enforced by the HOA.

vii. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent. This condition recognizes the fact that shifts in the discharge points of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments.

**19. BDMC 18.98.020(C): *Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse.***

This objective is satisfied. Chapter 8 of the MPD application describes the proposed water system for the MPD, including details of the required water conservation plan.

Additional conservation measures may be required in the Development Agreement as staff and the applicant develop a specific design.

**20. BDMC 18.98.020(D): *Preservation and enhancement of open space and views of Mt. Rainier.***

A. This objective is satisfied. Chapter 3 of the MPD application contains details regarding open space. Pursuant to BDMC Sections 18.98.120(G), 18.98.140(F) and (G), an MPD shall provide the amount of open space required in any prior agreements, or the applicant may elect to provide 50% of the project area as open space. As detailed in Finding of Fact 18.B, there are two prior agreements, the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Agreement ("BDAOSPA"), and those agreements have been complied with. Those agreements resulted in the preservation of nearly 1,670 acres of open space and, as recited in those agreements, conveyance and/or preservation of the specific acreages set forth in the agreements resulted from a required ratio of 4 acres of open space for every one acre of land allowed for urban development. These include the requirement that 50 acres of in-City forest be dedicated to the City (outside of the MPD boundaries) as an offset for the East Annexation area. Finding of Fact No. 18.B; BDUGAA (Staff Report, Ex. 7) at 5, para. 3.5. The objective in BDMC 18.98.020(D) is therefore satisfied.

B. Even if BDMC Sections 18.98.120.G, 18.98.140.F and .G were construed as applying the prior agreements only to the specific portions of the MPD addressed by those agreements, and that a 50% open space requirement applies to the remainder of the MPD, the objective in BDMC 18.98.020(D) is nevertheless satisfied. The portions of the MPD subject to the prior agreements provided for 50 acres of in-City forest to be dedicated as an offset for the East Annexation area. Under such an interpretation, the portions of the MPD not subject to prior agreements are required to provide 50% of the land area as open space (134 acres) in order to have varied lot dimensions, cluster housing and pursue additional density (see 18.98.140.G). The Figure 3-1 Land Use Plan map (July 8, 2010) shows that 144 acres of sensitive areas, open space, parks and trails are proposed, while page 1-3 of the MPD application states that 123 acres will be provided on the Main Property. However, page 3-10 of the MPD application indicates that the proposal is to have 119.2 acres of open space on the Main Property. The difference is 14.8 acres, which must be provided to comply with the code requirement, assuming that BDMC Sections 18.98.120.G and 18.98.140.F and .G are construed as applying prior agreements only to those specific portions of the MPD specifically addressed by such agreements. Therefore, subject to a condition requiring provision of 14.8 acres of open space in addition to the amount proposed in the Lawson Hills MPD application, the Lawson Hills MPD complies with the open space requirements of the Black Diamond Municipal Code. This also satisfies the objective in BDMC 18.98.020(D).

C. The MPD application materials indicate that the Lawson Connector Road and multiple parks, including the "Lookout Park, at the top of the first hill on the Main Property, are designed to enhance views of Mt. Rainier. Otherwise, the remainder of the

property does not provide very many opportunities for views of Mt. Rainier because of topography or stands of tall trees.

D. Some parties of record argued that the Applicant was "double dipping," because some of the areas included in the open space totals itemized in Finding of Fact 18.B are also regulated under the City's Sensitive Areas Ordinance. Such a result was expressly contemplated by, and complies with, the BDUGAA and the Black Diamond Municipal Code. Section 7.5 of the BDUGAA expressly provides that open space within the West and South Annexation Areas "can only be used for the purposes included in KCC 26.04.020.L, such as preservation of wetlands and other critical areas, buffers, recreational areas and natural areas or as an urban separator and/or urban/rural buffer." BDMC Section 18.98.140(A) expressly defines open space as "wildlife habitat, areas, perimeter buffers, environmentally sensitive areas and their buffers, an trail corridors." It may also include "those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into a public park system."

**21. BDMC 18.98.020(E): *Provision of employment uses to help meet the city's economic development objectives.***

The objective is satisfied. BDMC 18.98.020(E) does not require (nor could it) that the MPD meet all of the City's economic development objectives. Instead, it requires only that the MPD "help meet" them. Consequently, any significant contribution to available employment would satisfy this requirement. As detailed in Finding of Fact No. 2, the project has designated 35 acres for a maximum of 390,000 square feet of retail/commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. The amount of jobs and tax revenues to be generated by this area will be dependent upon the mix of development that occurs, but there is no question that the project will add to the employment base of the City.

**22. BDMC 18.98.020(F): *Improvement of the city's fiscal performance;***

A. The objective is satisfied. The fiscal impacts of the project are addressed in detail in Finding of Fact No. 11. As noted in that Finding, a condition will be imposed in Exhibit C below, utilizing a combination of the conditions proposed by the Applicant and City staff, respectively, requiring repeated reassessment of fiscal impacts and requiring the Applicant to cover any shortfalls. This will ensure that the objective in BDMC 18.98.020(F) is satisfied.

B. Page 12-15 of the MPD application notes that "the city will commission new rate studies to accurately adjust revenue collection for the Special Funds such that all Special Fund expenditures will be fully funded to match the appropriate standards identified in the updated comprehensive plan." While possibly true for the water, sewer and stormwater utilities, street operation and maintenance is currently inadequately funded by the City's share of the gas tax, with the street maintenance function competing for general fund dollars for the balance of funding. Also, the Applicant is proposing the use

of higher risk pervious asphalt in some cases and higher landscape intensive improvements (such as rain gardens). In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, a condition of approval is included in Exhibit C below requiring that all cul-de-sacs and auto courts serving 20 units or less and all alleys be private and maintained by the Master Developer or future Homeowners Association(s).

**23. BDMC 18.98.020(G): *Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and***

A. This objective, which requires provision of facilities, infrastructure and public services in accordance with the more stringent of the existing levels of service within the City of Black Diamond or Black Diamond's adopted levels of service, is satisfied. Chapters 4 and 6 through 9 of the application contain conceptual utility plans and a phasing plan which describes street and utility improvements. These plans assure that infrastructure will be in place at the time and to the extent needed. Details on the proposed timing of improvements are on page 9-3, as well as included in conditions of approval in Exhibit C below, especially for transportation improvements. Page 9-10 indicates the proposed "trigger" for park improvements. Further, the proposed phasing plan of supporting regional infrastructure projects, along with various conditions contained in Exhibit C below and a satisfactory implementing Development Agreement, will provide for the required facilities and infrastructure in time to meet adopted levels of service applicable in other jurisdictions.

B. Further, the conditions of approval in Exhibit C require preparation of a revised transportation demand model, and use of that model at specified points in the future to periodically review traffic impacts of the MPDs as they develop and identify additional mitigation as necessary to meet levels of service for successive phases of development. Mitigation may exceed that identified in the FEIS if necessary to meet level of service standards, so long as the adverse impacts are identified in the relevant environmental document (here, the FEIS), and the mitigation is consistent with an environmental policy adopted by the governmental body and referenced in its decision. WAC 197-11-660(1)(a) and (b); *see also Quality Rock Products, Inc. v. Thurston County*, 139 Wn. App. 125, 140-141 (Div. II 2007). Here, requiring such additional mitigation is consistent with the City's policy set out in BDMC 18.98.020(G), which is adopted by reference as a SEPA policy in BDMC 19.04.240(B)(3). Under these conditions, the first periodic review will be conducted at the point where building permits have been issued for 850 homes for the Lawson Hills and Lawson Hills together; subsequent periodic review will occur at such future points specified by the City Council.

As identified in Finding of Fact 5(L), the future periodic reviews utilizing a revised transportation demand model are warranted because of the length of the project build out, and because the existing models are not optimally suited to predict future traffic impacts 15 or more years into the future, particularly given the scale of the two MPD projects and the models' underlying assumptions. Future periodic reviews will involve re-validation



of the transportation demand model by checking the traffic analysis against actual MPD traffic growth.

**24. BDMC 18.98.020(H): *Development of a coordinated system of pedestrian oriented facilities including, but not limited to, trails and bike paths that provide accessibility throughout the MPD and provide opportunity for connectivity with the city as a whole.***

The objective is satisfied. Chapter 5 of the MPD application contains provisions for a trail network which would connect areas of the MPD and provide points at which future extensions to the rest of the City could be made by others or the City through public projects.

**25. BDMC 18.98.050(A): *MPD Permit Required. An approved MPD permit and Development Agreement shall be required for every MPD.***

This objective is satisfied. These Conclusions of Law are part of an ordinance granting MPD permit approval. The conditions of approval included in Exhibit C require a Development Agreement, consistent with BDMC 18.98.050(A).

**26. BDMC 18.98.050(C): *Implementing Development Applications. An MPD permit must be approved, and a development agreement as authorized by RCW 36.70B completed, signed and recorded, before the city will grant approval to an application for any implementing approval...***

This objective is satisfied, for the reasons explained in Conclusion No. 25 above. The recommended conditions of approval require execution of a development agreement before approval of any implementing land use or development permits.

**27. BDMC 18.98.080(A): *An MPD permit shall not be approved unless it is found to meet the intent of the following criteria or that appropriate conditions are imposed so that the objectives of the criteria are met:***

**1. *The project complies with all applicable adopted policies, standards and regulations. In the event of a conflict between the policies, standards or regulations, the most stringent shall apply unless modifications are authorized in this chapter and all requirements of section 18.98.130 have been met. In the case of a conflict between a specific standard set forth in this chapter and other adopted policies, standards or regulations, then the specific requirement of this chapter shall be deemed the most stringent.***

The criterion is met. As discussed at length below, Comprehensive Plan policies are met. Further, specific MPD regulations and design requirements are also met, as explained and addressed throughout these Conclusions of Law and in the conditions in Exhibit C below.

A. Compliance with Comprehensive Plan policies.

i. The most controversial policies at issue concern those pertaining to preservation of small town character. Many parties of interest argued that the Comprehensive Plan policies require preservation of "rural" character. This is incorrect, and would be inconsistent with the Growth Management Act, the City's Comprehensive Plan, and implementing development regulations in any event. As the Hearing Examiner's Recommendation explained, when it comes to density, "the die has already been cast on this issue." The Growth Management Act, Chapter 36.70A RCW, requires cities to encourage urban densities in order to promote efficient use of infrastructure and contain urban sprawl. See RCW 36.70A.110, 36.70A.020. Under the GMA, cities are not permitted to adopt Comprehensive Plan policies requiring certain areas to remain "rural." See, e.g., Final Decision and Order in *Robison v. Bainbridge Island*, CPSGMHB No. 94-3-0025, at 22-23. In *Robison*, the Board determined that the City of Bainbridge Island's "Overriding Policy No. 1," which called for the City to "preserve the rural character of the Island" violated RCW 36.70A.020(1) and (2), and remanded the policy to the City for revision (the City excised the word "rural"). As the Board explained, "Compact urban development is not "rural" land use. . . . [B]ecause Bainbridge Island has chosen to be a city, it must remain cognizant of its duty under the Act to plan for compact urban development within its boundaries as it grows."

ii. The City Council has implemented the GMA's mandate to provide for urban densities by adopting Comprehensive Plan provisions concerning a "Master Planned Development (MPD) Overlay (pages 5-13 - 5-14) that state that MPD "densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process." (Emphasis added). The Plan acknowledges that all cities (including Black Diamond) are to be included within the Urban Growth Area, which is to include "areas and densities sufficient to accommodate urban growth expected to occur in the City in the next 20 years." Comp Plan at 1-6. As such, the Plan proposed a "village" environment, residential and economic development (including job opportunities for local residents and a long-term tax base for the City) . . . ." Comp Plan at 1-8. The Plan also uses innovative techniques such as density bonuses and MPDs (*Id.* at 1-8 - 1-9) to accommodate a 2025 population of nearly 17,000 people in "compact" (i.e., dense) urban development that preserves 35-40% of the City as open space. *Id.* at 1-10. "Much of this growth will occur as a result of Master Planned Developments in areas annexed to the City in 2005 . . . ." Comp Plan at 3-1.

iii. In light of the above, the Legislature and the Black Diamond City Council have adopted legislation that authorizes projects the size and density of the Lawson Hills MPD if specified criteria are met, and due to those legislative actions, the City Council is not in a position to deny the MPD applications because their densities might be construed as damaging "rural character." The impacts created by those densities, however, may be (and are) addressed through application of the MPD criteria and conditions of approval imposed pursuant to them.

iv. The City's Comprehensive Plan policies do not require preservation of "rural" character, even if such an approach was authorized under the GMA. Instead, the Comprehensive Plan instead refers to protection of "small town" character – and this is to be accomplished by principles that include compact development. *See, e.g.*, Comp Plan at 5-10 (continue compact form); at 5-4 – 5-5 (existing residential areas are developed at density of 4 and 6 dwelling units per acre); at 5-7 – 5-11 (addressing seven principles to preserve "small town character"); at 5-10 (discussing compact development, along with ways to connect "large-scale development" to older sections of town). On page 5-10, the Comprehensive Plan indicates that it calls for the use of "techniques that continue the character of compact form," while design guidelines will help the new, compact development feel like a rural community. This does not mean that the Plan is calling for protection of "rural character" by limiting density. It is only areas designated "Limited" Residential, *i.e.*, areas subject to significant environmental constraints and open space protection," that are to "reflect the informal rural development typical of many portions of the City." Comp Plan at 5-50. And, while the Comprehensive Plan and BDMC 18.98.010(L) do reference the book "Rural by Design," they do so only with respect to the extent that the book identifies ways by which the City can achieve its goal that an MPD "incorporate and/or adapt the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community." The listed planning and design principles are not "rural"; if anything, the reference to "compact form" is a reference to urban rather than rural development.

v. Exhibit 161, prepared by Dave Bricklin, does not require a conclusion to the contrary. Exhibit 161 identifies several comprehensive plan policies that require protection and/or consistency of "community character," "existing character of the historic villages," "natural setting," "rural community," "traditional village community," "small town character" and "existing historical development." *See* Black Diamond Comprehensive Plan, pp. 2-5, 4-1, 5-7, 5-8, 5-33, 5-38, 5-49, 5-50, 7-49. Another policy provides that design guidelines are required to provide methods and examples of how to achieve design continuity and to reinforce the identity of the City as a rural community. *Id.* at 5-10. All of the policies referenced above reflect a strong preference to retain small town character. None require rural densities or suggest that they supersede the more specific comprehensive plan policies and state mandates requiring urban densities within the City. The MPD regulatory framework must and can be applied in a manner that harmonizes the requirement for urban densities with the objective of maintaining small town character. The MPD regulations provide the specific examples of how this is to be accomplished, including but not limited to reference in BDMC 18.98.010(L) to the book "Rural by Design" and its synthesis of the urban density/small town character concepts. The City Council must apply these specific standards, and may not impose conditions upon the MPDs on some vague "feeling" that they are necessary to protect small town or rural character, because such terms are highly subjective and difficult to assess. *See, Anderson v. Issaquah*, 70 Wn. App. 64 (1993) (a statute violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application).

B. Compliance With King County Growth Allocations.

Some parties of record argued that the City has improperly planned for more growth in the MPDs than allocated to the City by King County GMA growth allocations. Cities, however, are not bound by County-adopted growth targets unless specifically required by county-wide planning policies. See *West Seattle Defense Fund v. City of Seattle*, CPSCMHB 94-3-0016, Final Decision and Order (4/4/95), p. 55. It is also worthy of note that even if the GMA growth targets were designed to limit growth in Black Diamond, it is too late to raise that issue now. The same reasoning applies to the applicability of any other county-wide planning policies. Black Diamond's comprehensive plan and development regulations allow master plan developments with the densities and population proposed in the Lawson Hills and Lawson Hills MPDs. If King County or any other party had wanted to challenge those regulations and policies as inconsistent with growth targets, that should have been done via an appeal to the Growth Management Hearings Board within sixty days of adoption of the comprehensive plan and development regulations that required the densities proposed for the MPDs<sup>1</sup>. RCW 36.70A.290(2); *Wenatchee Sportsmen Ass'n v. Chelan County*, 153 Wn. App. 394 (2009).

C. Compliance with MPD Framework Design Standards and Guidelines, Section G.

Some parties of record sought more protection than the five-foot perimeter setbacks that would generally be provided under the City's development regulations. The Framework Design Standards and Guidelines, however, require compatibility with adjoining densities. Through these guidelines, the Lawson Hills MPD will be conditioned to provide for 50 foot buffers along the most sensitive project interfaces where some of the highest densities are proposed. The guidelines require a minimum 25-foot buffer for multi-family and non-residential land uses, and perimeter lots for single-family development may be no less than 75% the size of the abutting residential zone or 7200 square feet, whichever is less. These standards help assure compatibility along perimeter areas.

D. Comprehensive Plan Police T-1. The only comprehensive plan policy found by staff to raise some compliance issues is Comprehensive Plan Policy T-1, which calls for connections to surrounding neighborhoods with roads and trails. The City's Engineering Design and Construction Standards section 3.2.02 D sets a limit of no more than 300 homes on a single point of access before a second connection must be constructed. Based on the comprehensive plan and design standards, the Main Property south of the Auburn Black Diamond Road will be required to connect all the way through to SR 169, regardless if the final phases are ever completed. There are several locations along the main spine road through the project where a parallel road will not be possible.

<sup>1</sup> Some of the Lawson Hills property is zoned R4 and MDR8, and these designations are being amended by the Ordinance approving the MPDs. However, the R4 - MDR8 designation already allows 4 to 8 dwelling units per acre, respectively. Consequently, approved zoning already allows the population proposed in the MPD application.

Additionally, the FEIS modeled the traffic distribution with the spine road connection to SR 169. Therefore, a condition of approval is included in Exhibit C below to require:

- No more than 150 residential units shall be permitted with a single point of access. Three hundred units may be allowed on an interim basis, provided that a location for a secondary point of access is identified.
- The Development Agreement shall define a development parcel(s) beyond which no further development will be allowed without complete construction of the South Connector.

**28. BDMC 18.98.080(A)(2): Significant adverse environmental impacts are appropriately mitigated.**

A. For the reasons explained in the Findings of Fact in Exhibit A above, and in subsections B-I of this Conclusion of Law below, the criterion in BDMC 18.98.080(A)(2) is satisfied by imposition of the FEIS mitigation measures, in addition to the mitigation identified in the Findings of Fact. The Applicant's argument that environmental mitigation is limited to that identified in the FEIS is incorrect. A local jurisdiction's exercise of substantive SEPA authority allows the imposition of environmental mitigation beyond that identified in a threshold environmental determination, if relevant to permitting criteria and otherwise consistent with legal requirements. WAC 197-11-660(1)(a) and (b); *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). Even with the issuance of an EIS, an applicant must still comply with all MPD permit criteria, and the review standard for an FEIS is significantly different than that under MPD permit review. As noted in the FEIS decisions, the Examiner must give substantial weight to the determination of the SEPA responsible official in assessing the adequacy of an EIS. By contrast, the factual findings made by the City Council in finding compliance with MPD criteria must be supported by substantial evidence. See RCW 36.70C.130(c). All FEIS mitigation and modifications thereto incorporated into the conditions of this MPD approval should be considered as imposed pursuant to the City's substantive SEPA authority under RCW 43.21C.060 and WAC 197-11-660, as well as pursuant to the MPD criterion in BDMC 18.98.080(A)(2) governing this Conclusion of Law.

B. As discussed in the Findings of Fact, including but not limited to Findings 5, 7, 9, and 10, there are some environmental impacts for which reasonable mitigation was adequately identified under the rule of reason standard applicable to a challenge to an FEIS, but where additional or more comprehensive mitigation was nevertheless warranted. For the reasons discussed in the applicable Findings of Fact, there is substantial evidence to justify such additional mitigation, including but not limited to additional, periodic traffic analysis based on a revised transportation demand model, additional study of noise impacts and mitigation related thereto, and further study, monitoring, and mitigation for protection of Lake Sawyer water quality.

C. Geologically hazardous areas shall be designated as open space, with roads and utilities routed to avoid such areas. Where avoidance is impossible, the applicant should

utilize the process in BDMC 19.10 (supplied with adequate information as defined in code) and the Engineering Design and Construction Standards to build roads and utilities through these areas.

D. A condition shall be included in Exhibit C below requiring that all houses that are sold in classified or declassified coal mine hazard areas be accompanied by a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement. This Conclusion addresses environmental impacts from classified or declassified coal mine hazard areas by providing notice to potential homeowners of the hazards and creating a market disincentive for construction in such mine hazard areas.

E. The MPD application states that the 2005 Ecology manual is "expected to be adopted." The City adopted this in June 2009 and it will be applicable to this project until such time as the city may be required to adopt an updated stormwater manual by state mandate as a requirement of the City's Phase II Municipal Stormwater General Permit.

F. The proposal meets city standards and with the additional goals and conditions will provide several enhancements:

- Regional infiltration pond will provide a central low maintenance facility that could also provide multipurpose recreational opportunities.
- Regional infiltration pond will provide opportunities for storm water reuse that could further conserve potable water.
- Low impact development proposal with HOA maintenance will provide distributed infiltration that will be closer to natural stormwater flow regimes.

F. Construction must be authorized by an NPDES permit for stormwater treatment and discharge issued by the Department of Ecology. Although permit conditions imposed by NPDES permits are not administered by the City, a condition is included in Exhibit C below reserving to the City the right to enforce the conditions of NPDES permit(s) applicable to the Lawson Hills MPD project. Since the city has a high interest in protecting receiving waters under the city storm water permit, the condition also requires the Applicant to fund necessary costs for training related to inspection services. In addition, a condition of approval will be added to require the Development Agreement to require that the Applicant compensate the City for staff costs incurred in addressing construction runoff discharges that may exceed discharge permit limits; stand-by storage of emergency erosion and sediment control materials; limitations on the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.

G. The MPD application's suggestion (at page 6-5) that the City lacks approval authority for water quality treatment options, and that all options allowed under the 2005 Manual are allowed "without preference," is rejected. Because the City is the approving authority and will ultimately own and be responsible for most of the proposed storm water facilities, the City retains the authority to reject higher maintenance cost facilities when lower maintenance cost options may be available.

H. Given that there are water quality and balance challenges that are addressed in the storm water management concept, and that storm water management is not an exact science, shifts in the distribution of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments. The MPD approval will therefore include a condition in Exhibit C requiring that the Development Agreement include language to allow for adaptive management of the distribution of stormwater when justified by technical analysis and risk assessment, as long as the impacts to on-site and off-site environment are maintained or enhanced.

I. Per BDMC 18.98.195, stormwater ponds, water quality treatment facilities, and other components of the stormwater treatment and conveyance system governed by the City's stormwater regulations shall vest phase by phase, to the extent authorized by the NPDES Phase II Stormwater Permit for Western Washington and state law.

29. BDMC 18.98.080(A)(3): *The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule: [Remainder not listed here; refer to BDMC for complete code text.]*

The criterion is satisfied as discussed in Finding of Fact 11, and as conditioned in Exhibit C below.

30. BDMC 18.98.080(A)(4): *A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:*

*a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build-out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to serve the project, and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and MPD boundaries; provided that, the city may allow the posting of financial surety for all*

*required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and*

*b. At full build-out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.*

A. As modified with the conditions identified below and included in Exhibit C, the criterion is satisfied. In addition, see Conclusion of Law 23 above.

B. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer, water and the project phasing plan. Chapter 9 of the MPD application contains the phasing plan, which also projects which parcels will be developed and associated unit counts. Parks are to be built by phase also. The above provisions (4.a and 4.b) shall also be addressed in the Development Agreement.

C. Chapter 9 of the MPD application states that “[t]he facilities that serve the MPDs as well as development in areas outside of the MPD project boundaries will be a shared responsibility between the City and Master Developer, with the Master Developer contributing a proportionate share.” While other benefiting parties may make use of roads and other infrastructure, it is unrealistic for the Applicant to expect full cost recovery for every implementing project. The City cannot guarantee cost recovery from benefiting non-contributing properties or cost recovery from the City. Absent these developments, there would not be a need to construct some of the improvements identified in the MPD Application. Many new vehicle trips coming from outside the City may make use of roads and intersection improvements funded by the developer, but the City has no ability to collect from the growth in background traffic. Cost recovery for the Applicant can occur where the benefiting parcels can be clearly defined, the benefiting parties are subject to the City’s regulatory authority, and the other parties’ pro rata share is significant. The identification of specific projects to be constructed by the Applicant, the projects to be constructed by the City, the projects for which credits or cost recovery may be available, shall be included in the Development Agreement, pursuant to a Condition No. 10, Exhibit C below

D. On page 9-3 of the MPD application, the Applicant proposes that final design must be approved and constructed, bonded or financially guaranteed prior to occupancy of any structure relying on the facility. This would be inconsistent with the surety requirement established in the City’s Engineering Design and Construction Standards adopted pursuant to BDMC Section 15.08.010. To address this, a condition of approval is included in Exhibit C requiring that, before the first implementing project of any one phase is approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects

should be tied to the number of residential units and/or square feet of commercial projects.

E. The timing of the design and alignment of the Pipeline Road will need to be determined as part of the Development Agreement, as parties other than the Applicant must be involved and the roadway alignment will need to be resolved so that water and sewer alignments to Lawson Hills will not be delayed by preliminary road design issues.

F. With respect to traffic impact mitigation, Page 9-3 of the MPD application proposes to monitor traffic and then implement mitigation projects six months after a loss of level of service is identified. This request is denied; instead, mitigation projects should be in place prior to LOS failure. A condition of approval (No. 25) is included in Exhibit C requiring the Applicant to analyze the traffic impact of a pending phase of development before the start of that phase to determine when a street or intersection is likely to drop below the adopted level of service. Transportation mitigation projects should then be implemented to prevent LOS failure. Traffic mitigation projects may change or additional projects be added to address the traffic issues as they actually develop.

G. As discussed in Finding of Fact No. 18.C above, the phasing plan for the parks is not consistent with the criterion above, and a condition is included in Exhibit C to require compliance. As further discussed in Finding of Fact No. 18.D, off-site trail construction necessary to achieve connectivity will be required prior to occupancy and final plat and site plan approval to the extent allowed by law.

**31. BDMC 18.98.080(A)(5): *The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.***

As conditioned, the project meets the criterion above. The 2009 Comprehensive Plan contains levels of service related to police and fire and emergency medical services. The fiscal analysis indicates that staffing levels should generally be allowed to increase in accordance with population growth. Currently, this area of the city has a minimal level of fire and EMS protection. A condition of approval (No. 100) has been added to Exhibit C to require that the Development Agreement include specific provisions for mitigating fire service impacts to ensure protection concurrent with project build out. The conditions of approval regarding fiscal impacts also include a condition (No. 156) that requires that the fiscal analysis ensure that revenues from the project are sufficient to pay the project's pro rata share to maintain staffing levels of service.

**32. BDMC 18.98.080(A)(6): *Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.***

A. As conditioned in Exhibit C below, the criterion is satisfied. Chapter 3 of the MPD application describes a variety of housing types including detached single family, duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. The Fiscal Analysis (Chapter 12) makes some assumptions regarding housing costs for various potential

housing types. However, there is nothing in the remainder of the application to indicate whether all these housing types will be built. A condition is included in Exhibit C requiring that the Development Agreement include targets for various types of housing for each phase of development, as well as a unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial).

B. As previously noted, the commercial component of the project will most likely include retail, office and personal service uses. The MPD should provide housing opportunities for individuals anticipated to work at those jobs; this may require a greater mix of multifamily housing and/or the construction of housing types that can meet the affordability goals of the Comprehensive Plan. The staff report proposed a condition that requires the Applicant to meet housing targets for purchasers at specified income levels. The Applicant subsequently indicated its agreement to a modified condition that provides more generalized goals for providing affordable housing. This modification complies with BDMB 18.98.050.A.6 and the law governing the extent to which a development applicant may be compelled to address affordable housing goals. That condition is included in Exhibit C as Condition No. 138.

**33. BDMC 18.98.080(A)(7): *If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.***

A. For the reasons detailed in Finding of Fact 18.B, the criterion above is satisfied. The Lawson Hills MPD includes properties that are subject Black Diamond Urban Growth Area Agreement (BDUGAA) (Exhibit 7): the North Triangle Property (a portion of the West Annexation area) and the easternmost portion of the Main Property (East Annexation area). The BDUGAA requires that 50 acres of in-City forest be dedicated to the City (outside the MPD) and a portion of the North Triangle dedicated to view corridor open space. The Black Diamond Area Open Space Protection Agreement (BDAOSPA) (Exhibit CBD - 1-8) discusses the 55 acres of view corridor open space to be set aside along both sides of SR 169. The MPD proposal includes view corridor open space on the North Triangle. The in-City forest has yet to be dedicated to the City, but is in process. As detailed in Finding of Fact No. 18.B, the BDUGAA also requires conveyance or protection and/or conservation of open space properties in unincorporated King County, and in other locations with the City of Black Diamond, and such properties have been conveyed or protected / conserved as provided by the BDUGAA and the BDAOSPA.

B. The BDUGAA also requires that for the East Annexation areas a minimum average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). All development rights to the in-City forest land (100 du) will be transferred to the East Annexation area so that it can achieve an average minimum density of 4 du/ac.

34. **BDMC 18.98.080(A)(8):** *If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.*

NA. The Lawson Hills MPD proposal does not include properties annexed into the City by Ordinances 515 and 517.

35. **BDMC 18.98.080(A)(9):** *The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.*

The criterion is satisfied. The application materials indicate that the Lawson Parkway and multiple parks are designed to enhance views of Mt. Rainier, which should be significant from the upper portions of the site.

36. **BDMC 18.98.080(A)(10):** *The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.*

As detailed in the MPD staff report and the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions.

37. **BDMC 18.98.080(A)(11):** *If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.*

A. The criterion is satisfied. The North Triangle and Main Property are not adjacent to property already developed as an MPD. The North Triangle is adjacent to property located directly south that is Parcel B of the proposed Villages MPD. A soft surface trail connection between Parcel B and the Lawson Hills North Triangle is shown in Chapter 5 of the Lawson Hills and Lawson Hills MPD applications. Chapter 4 of the MPD applications shows the North Connector which will connect Parcel B and the North Triangle with SR 169. The proposed street standards for the two MPD applications are identical, ensuring consistency between the two projects.

**38. BDMC 18.98.080(A)(12): *As part of the phasing plan, show open space acreages that, upon build out, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.***

A. The criterion is satisfied as conditioned. The Land Use Plan map, Figure 3-1 (July 8, 2010) shows the areas intended as open space. Chapter 5 of the Lawson Hills MPD Application also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency shall be verified at the permitting stage.

B. As previously discussed in Conclusion of Law No. 20, even if the Black Diamond Municipal Code is construed as requiring portions of the MPD project area not specifically addressed in the BDUGAA or other prior agreements to provide 50% of their area as open space, the Lawson Hills MPD complies with the criterion above. 50% of the portions of the MPD not subject to prior agreements would be 134 acres; Figure 3-1 (July 8, 2010) shows 144 acres of open space. While the phasing of open space is not included within the MPD Application, conditions have been included in Exhibit C below (Nos. 152 – 155) to require that phasing of open space (which includes parks and is identified within the MPD application) be defined and articulated for timing of final designation within the Development Agreement once acreages have been finalized.

**39. BDMC 18.98.080(A)(13): *Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.***

The criterion is satisfied as conditioned. Analysis of consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of these Conclusions. A recommended condition of approval is to require that this provision be enforced.

**40. BDMC 18.98.080(A)(14): *School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.***

A. Determining compliance with this criterion requires identification of the walkable school standard. This is not straightforward. There is no specific "walkable" standard expressed in the 2009 Black Diamond Comprehensive Plan, or the Enumclaw School District Capital Facilities Plan (2009-2014). However, pages 1-10 of the Comprehensive Plan provide as follows:

The creation of a pedestrian friendly environment is central to the success of the City's plan, and will be implemented by the plan's concept of the "ten-minute walk" The goal is for 80% of City residents have no more than a 0.50-mile walk from a cluster of commercial services, employment, or access to transit.

The half-mile distance is consistent with the maximum distance one would expect a child to walk to school, as well as with the proximity needed in order for schools to provide for joint recreational use as encouraged by Comprehensive Plan Objective CF-14, under School Objectives and Policies, which encourages the use of joint-use agreements for school recreation facilities.

B. Figure 3-1, Land Use Plan, shows a proposed 10-acre elementary school site on development parcel L5. Alternatively, as shown in Table 3.4 of the application, the applicant is requesting that any development parcel may be used for an institutional use (which could include a school site). Figure 3-2, School Proximity Exhibit, shows that the areas of the project intended for residential use are within 0.5-1.0 mile of the proposed school site. To ensure compliance with BDMC 18.98.080(A)(14)'s requirement for compliance with the walkability standard, a condition (No. 98) has been included in Exhibit C below to require that, where reasonable and practicable, all schools shall also be located within a half-mile walk of residential areas.

C. To address the Lawson Hills MPD's compliance with the remainder of BDMC 18.98.080(A)(14)'s requirements, the Applicant and Enumclaw School District staff have been negotiating a draft school mitigation agreement (Ex. MPD 194 and Ex. 6) to address the district's needs for public schools to serve both the Lawson Hills and Lawson Hills MPD. Conditions have been included in Exhibit C require that the Development Agreement include requirements for the Applicant's payment of school impact fees or its proportionate share of school mitigation, based upon the number of school sites and acreage requirements set forth in Exhibit 6.

**41. BDMC 18.98.080(B):** *So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.*

The criterion above is not mandatory. As discussed in Finding of Fact No. 5(F) the Applicant has agreed to cover any short-falls in fiscal impacts attributable to its development. Beyond this the record does not identify any need at this time to advance funds.

**42. BDMC 18.98.090:** *MPD permit - Development Agreement. The MPD conditions of approval shall be incorporated into a Development Agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property*

*only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals.*

The MPD conditions of approval will be incorporated into a Development Agreement as required by this criterion.

43. **BDMC 18.98.110(A): Design Standards.** *The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.*

Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in these Conclusions of Law below. Any subsequent implementing permit or approval will be subject to the MPD design standards.

44. **BDMC 18.98.110(B)(1): MPD Permit.** *The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.*

Analysis of the MPD master plan consistency with Master Planned Development Framework Design Standards and Guidelines is discussed below.

45. **BDMC 18.98.120(A): MPDs shall include a mix of residential and nonresidential use.** *Residential uses shall include a variety of housing types and densities.*

The criterion is satisfied. As previously discussed, the MPD proposes residential and commercial uses and the residential uses are proposed at a variety of densities. Conditions of MPD approval in Exhibit C below also require the Development Agreement to provide specific targets for housing types.

46. **BDMC 18.98.120(B):** *The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and may also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.*

The criterion is satisfied. The Comprehensive Plan designation for the North Triangle is Mixed Use with Master Planned Development Overlay and the Main Property has areas of Low Density Residential, Medium Density Residential and Public with Master Planned Development Overlay. According to the Comprehensive Plan, "an MPD may include residential and commercial uses clustered around private and community open space, supported by adequate services and facilities." The Mixed Use designation identifies a preferable location for mixed use development within an MPD, in specific

areas where the anticipated larger commercial component can also serve the broader community. The potential for mixed uses is permissive, as opposed to being a requirement of development. The Main Property has areas designated for Low and Medium Density Residential uses according to the Comprehensive Plan. The MPD application also includes several parcels designated for high density residential uses in accordance with Section 18.98.120(F). Table 3.4 in the application materials lists neighborhood commercial as a permitted use in low-, medium- and high-density residential areas; however, it is not known if this will actually occur, as the application makes no other mention of it.

47. **BDMC 18.98.120(C):** *The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full build-out of the residential portion of the MPD.*

A. The criterion requires the MPD to provide within the MPD boundary or elsewhere within the City (1) sufficient properly zoned lands; and (2) sufficient incentives as permit conditions to encourage development; (3) so that that the employment targets set forth in the comprehensive plan for the number of residential units within the MPD will with reasonable certainty be met. This criterion requires that the "employment targets set forth in the comprehensive plan" be applied to the MPD as well as "elsewhere within the city." As explained below, because there are properly zoned lands for employment development within the MPD and within the City as a whole sufficient to permit the comprehensive plan's employment targets to be met, this criterion is satisfied.

B. As detailed in Finding of Fact No. 22, the Comprehensive Plan includes the City's updated projection for 2,677 new jobs by the year 2025. Table 3-9 characterizes this as 0.5 jobs per household by the year 2025. This is roughly consistent with the Comprehensive Plan's "Employment Targets" shown on Table 5-3, for a year 2025 jobs target of 2,952 jobs (2,525 new jobs) which, when divided by the household target of 6,302 households, is jobs per household ratio of 0.468.

C. As detailed in Finding of Fact No. 22, the Comprehensive Plan also states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base . . ." Comprehensive Plan at 3-11 - 3-12.

D. Given the Comprehensive Plan's acknowledgement that more conservative targets are being utilized to recognize that population growth must precede employment growth, and in light of the "Employment Targets" specified in Table 5-3 and on page 3-12, the jobs per household target specified by the Comprehensive Plan is 0.5 jobs per household. Applying this standard to the Lawson Hills MPD, the MPD should include sufficient

zoned land either within the MPD boundary or the City as a whole, to provide approximately 2,400 jobs ( $1,250 \times 0.5 = 625$ ).

E. The Appendix J Fiscal Analysis of the FEIS contains an analysis of the amount of retail/office square footage to be developed within the Lawson Hills MPD, which is projected to generate 642 employees. Finding of Fact No. 22.E. As detailed in Finding No. 22.D, the City has sufficient zoned lands within it to generate "5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.

F. The conditions of MPD approval set forth in Exhibit C below also contain a number of incentives for development of the retail/commercial/light industrial lands within the Lawson Hills MPD. These include a requirement for designation of a light industrial area, a requirement that the Development Agreement specify a Floor Area Ratio ("FAR") standard for the retail/commercial/light industrial development, and a limitation that no more than two floors of residential development be constructed on top of any retail or commercial development. Exhibit C, Conditions 140, 145-148.

G. Because the Lawson Hills MPD is projected to generate 642 jobs within the Lawson Hills MPD boundary, because the City has sufficient zoned land within the City as a whole for 5,761 jobs, and because the conditions of approval contain incentives for development of the retail/commercial/light industrial areas, the criterion in BDMC 18.98.120(C) is met.

F. To the extent that a reviewing court may construe the City's Comprehensive Plan employment targets or BDMC 18.98.120(C) otherwise, the Hearing Examiner's observations should also be noted:

[R]equiring a developer to be responsible for job creation is of dubious validity, both because there is no clear nexus between job creation and mitigation of development impacts and also because placing this type of burden on a developer can be construed as unreasonable.

Hearing Examiner Lawson Hills MPD Recommendation at 21, Conclusion 46.

**48. BDMC 18.98.120(E): *Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.***

A. The criterion is satisfied. Portions of the property are subject to the Black Diamond Urban Growth Area Agreement (BDUGAA) (Ex. CBD-2-7) and the Black Diamond Area Open Space Protection Agreement. The BDUGAA requires that the annexation areas achieve a minimum average density of 4 dwelling units/acre. The East annexation area must have a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). All development rights to the In-City Forest Land

(100 du) will be transferred to the East Annexation area so that it can achieve an average minimum density of 4 du/ca.

B. The remaining portion of the Lawson Hills Main Property not subject to the BDUGAA has a Comprehensive Plan Master Plan Development overlay. The MPD Overlay requires a minimum of 4 dwelling units per gross acre. Comprehensive Plan at 5-13. The portion of the Lawson Hills Main property not subject to the BDUGAA also has an underlying Comprehensive Plan designation of Low Density Residential, which has a base density of 4-6 dwelling units du/gross ac. The western portion of the Main Property has a Comprehensive Plan designation of Medium Density Residential which has a base density of 8-12 du/ac. Planned residential development is to consist of approximately 930 single family detached and 320 multi-family attached dwelling units on approximately 165 acres of the site (approximately 7.6 du/ac). The minimum 1 unit per acre density allowance in the Lawson Hills MPD application MPD application (page 3-19, Table 3.2) is not consistent with the BDUGAA or the City's Comprehensive Plan. Therefore, a condition of approval is included in Exhibit C below requiring a minimum density of 4 du/ac.

49. **BDMC 18.98.120(F):** *The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of section 18.98.140(G), or otherwise is providing the open space required by section 18.98.140(F), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of Section 18.98.140(G) or is otherwise meeting the open space requirement of [Section] 18.98.140(F), an effective density of development up to a maximum of eighteen dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of [Sections] 18.98.010 and 18.98.020. A MPD may include multi-family housing at up to thirty dwelling units per gross acre, subject to the following:*

A. This provision establishes an overall density of 12 du/ac for the entire proposal, and does not set a maximum cap for specific parcels within the project boundaries. The areas proposed for medium density residential range from 7-12 du/ac and high density 13-30 du/ac (with certain areas dedicated to 18-30 units in accordance with the additional criteria below). As discussed above, the MPD meets the requirements of both BDMC Sections 18.98.140(F) and 18.98.140(G), even assuming that 18.98.140(G) applies independently to those portions of the MPD that are not covered by a prior agreement. As detailed under the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions

**BDMC 18.98.120(F)(1): Areas proposed for development at more than 18 dwelling units per gross acre shall be identified on the MPD plan; and**

B. Figure 3-1 Land Use Plan in the MPD application shows two areas (development parcels L1 and L3) totaling approximately 8 acres intended for high-density residential over 18 du/ac.

**BDMC 18.98.120(F)(2): Identified sites shall be located within ¼ mile of shopping/commercial services or transit routes; and**

C. Parcel L1 is adjacent to SR 169, which is a transit route and is located within ¼ mile of shopping/commercial services located to the northwest. Parcel L3 is located within ¼ mile of an existing transit route. There are not any existing or planned commercial services within ¼ mile of parcel L3.

**BDMC 18.98.120(F)(3): The maximum building height shall not exceed 45 feet; and**

D. Table 3.8 Residential Development Standards in the MPD application shows 45 feet as a maximum height for high-density residential development. Therefore, this criterion is met.

**BDMC 18.98.120(F)(4): Design guidelines controlling architecture and site planning for projects exceeding 18 dwelling units per gross acre shall be included in the required Development Agreement for the MPD; and**

E. Appendix B of the application contains the high-density residential (18-30 du/ac) supplemental design standards and guidelines. Staff is recommending these guidelines become part of the Development Agreement. Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of this report.

**BDMC 18.98.120(F)(5): Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but area subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.**

F. Mixed use as described above is not proposed in the application.

50. **BDMC 18.98.120(G):** *Unless the proposed MPD applicant has elected to meet the open space requirements of section 18.98.140(G), or is otherwise meeting the open space requirements of section 18.98.140(F), the following conditions will apply, cannot be varied in a Development Agreement, and shall preempt any other provision of the code that allows for a different standard:*

*1-3 [Not listed here; refer to BDMC for complete code text.]*

As set forth in Finding of Fact No. 18.B, the open space requirements of section 18.98.140(F) are met, because the Lawson Hills MPD "contain[s] the amount of open space required by any prior agreement," namely, the BDUGAA and the BDAO SPA. Further, even if Section 18.98.140(G) is construed as applying independently to those portions of the Lawson Hills MPD that were not included within the BGUGAA, the provisions of BDMC 18.98.140(G) are met. Therefore, the prohibitions in BDMC 18.98.120(G)(1)-(3) do not apply to this project.

51. **BDMC 18.98.130: MPD standards - Development standards.**

*A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related Development Agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:*

- 1. Is needed in order to provide flexibility to achieve a public benefit; and*
- 2. Furthers the purposes of this chapter and achieves the public benefits set forth in Section 18.98.010; and*
- 3. Provides the functional equivalent and adequately achieves the purpose of the development standard for which it is intended to deviate.*

*B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.*

A. Chapter 13 of the MPD application lists the Applicant's requests for "functionally equivalent standards." There are 19 separate requests that seek to deviate from adopted city codes and standards. In its closing statement to the City Council, however, the Applicant withdrew its request for deviation from the Tree Preservation Ordinance (BDMC 19.30), and its requests for deviation from required front yard setback from garages, alternate parking lot landscaping, allowance for additional compact parking stalls, and insufficient parking outside of the Town Center area. Applicant's Closing Statement in Response to Council Questions and Parties of Record Statements at Section IX, pp. 1-2.

B. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and stormwater comprehensive plan concepts. Staff and the applicant can resolve the large, overarching design issues and work to establish functionally equivalent construction standards as part of the Development Agreement. The Engineering Design and Construction Standards contain an administrative deviation process (section 1.3) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering Design and Construction Standards' administrative deviation process.

C. The following requests do not need to be considered as "functionally equivalent standards" and can therefore be addressed through the Development Agreement process:

18.100 Definitions—generally, this is not an area where "functional equivalency" is applicable. While adding words that are not already defined in City code may make some sense, in City code, there is no advantage to treating proposed alternative definitions as "functionally equivalent" standards.

18.76 Gateway Overlay District—grading, removal of invasive species, and installation of infrastructure within the public right of way are not subject to the Gateway District overlay (per Section 18.76.020.B). Therefore, the Applicant's request is unnecessary.

18.38—Community Commercial (CC) Zone Standards and Allowed Uses; none of the Lawson Hills property is zoned CC, nor will be zoned DCC.

18.30—R4 Zone Standards—The Main Property will be rezoned to MPD as part of this approval.

52. **BDMC 18.98.140(A):** *Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, playfields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may propose other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by Chapter 19.10.*

The project proposes to preserve amounts of open space as detailed on page 3-10 of the MPD application. They include a mix of passive and active areas comprised of sensitive areas such as wetlands, associated buffers, trails, parks, forested areas and utilities such as stormwater ponds. The Land Use Plan map, Figure 3-1 (July 8, 2010) depicts a majority of the open space areas as a coordinated network. The vast majority of open space will be maintained as sensitive areas and their buffers. The uses proposed for the open space areas shown on Figure 3-1 comply with the requirement of BDMC 18.98.140(A). Further, use of sensitive areas and their associated buffers for development including trails, stormwater management, etc. is regulated by the City's sensitive areas ordinance, BDMC Chapter 19.10. Appropriate mitigation for impacts, if required, as well as other required measures would apply and will be evaluated on a case-by-case basis at the time of implementing project application. Chapter 5 of the MPD application (p. 5-5) also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency would need to be verified at the permitting stage. Storm ponds should only be considered as open space if they are developed as an amenity and incorporated into the public park system. A condition of approval is included in Exhibit C below identifying specific criteria to be applied to determine whether a particular storm pond has been developed as an "amenity."

**53. BDMC 18.98.140(B): *Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.***

A. Figure 3-1 of the application shows that the dedicated open space areas serve as a coordinated network. In order to enhance this coordination for natural areas, a recommended condition of approval is to require that areas shown as natural open space/areas in the figure on page 5-7 of the application to remain natural, with the possibility for vegetation enhancement. No other land clearing shall be permitted other than trails and storm ponds. As previously noted, the figure on page 5-5 depicts some areas as "natural open space" that are also proposed to include stormwater facilities. As noted above, stormwater facilities may be considered as open space only if designed as an amenity. Other than trails and stormwater facilities designed as amenities, the natural areas in the figure on page 5-7 of the Lawson Hills MPD application shall be required to remain natural with the possibility for vegetation enhancement. Retention in the natural state is necessary in order to maintain continuous greenbelt areas as required in the criterion above. The Visual Quality and Aesthetics section of the FEIS describes a mitigation measure regarding tree retention along the ridgeline of Lawson Hill to minimize the visual impact of the development. This may affect the proposed development layout depicted on the Figure 3-1 Land Use Plan map (July 8, 2010).

B. In order to retain currently forested open space areas in their natural condition, the Development Agreement should also include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked

before it must be reforested. And, the Development Agreement should include a narrative of the process and basis for removing selective hazard trees at the project perimeter. The intent of this section will be to leave the majority of the perimeter as designated passive open space, and to have it appear and function as native forest.

**54. BDMC 18.98.140(C): *The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.***

This criterion is met. The Lawson Hills MPD is designed so that open space outlines the sensitive areas and their relevant buffers, so as to minimize impacts on wildlife resources. As noted in Finding of Fact No. 12.B, the wildlife corridors proposed as part of the Lawson Hills MPD are adequate. And, while some development impacts to wildlife are unavoidable, the large amount of open space provided by the Lawson Hills MPD proposal provides appropriate mitigation for any significant, adverse impacts to wildlife. Finding of Fact 12.C. And, mitigation measures related to fish and wildlife are included in Exhibit C as conditions of approval.

**55. BDMC 18.98.140(D): *The approved MPD permit and Development Agreement shall establish specific uses for open space within the approved MPD.***

Chapters 3 and 5 of the MPD application, including tables 3.4 and page 5-6, describe proposed open space uses. For those portions of the open space that are sensitive areas or associated buffers, minimal flexibility exists as it relates to uses within these areas. All activities shall be conducted in accordance with BDMC Chapter 19.10. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided. A condition of approval is included in Exhibit C requiring the Development Agreement to include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

**56. BDMC 18.98.140(E): *The approved MPD permit and Development Agreement shall establish which open spaces shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms.***

Page 5-2 of the MPD application generally describes proposed ownership, but as to sensitive areas only identifies various options rather than any specific type of ownership mechanism. A condition of approval is included in Exhibit C below requiring that specific details on which open space is to be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms be established as part of the Development Agreement. An additional condition of approval will also require language in the Development Agreement that will allow for public access to parks and trails facilities.

**57. BDMC 18.98.140(F):** *An approved MPD shall contain the amount of open space required by any prior agreement.*

As discussed in Findings of Fact No. 18.B and Conclusions of Law Nos. 6, 20, 33, and 49 above, the MPD application contains the amount of open space required by the BDUGAA and the BDAOSPA.

**58. BDMC 18.98.140(F):** *If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120(F).*

The application is seeking to vary lot dimensions, cluster housing and include high-density residential housing. As discussed above, this is permitted pursuant to Section 18.98.120.F, because the Applicant has complied with BDMC 18.98.140(F). Therefore, compliance with BDMC 18.98.140(G) is not required. As discussed above, even if BDMC 18.98.140(G) is construed as applying independently to those portions of the MPD site not included in the BDUGAA, those portions of the Lawson Hills MPD proposal not included within the BDUGAA provide 50% of open space (336.4 ac total). The MPD proposal satisfies this requirement, to the extent that it applies.

**59. BDMC 18.98.150(A):** *An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.*

**(B).** *The MPD permit and Development Agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance.*

A. Chapter 5 of the MPD application contains information regarding proposed recreation areas and facilities. The proposal meets the adopted levels of service with regard to on-site parks and recreation areas and facilities. In addition, as discussed in Conclusions 15 and 24 above, the MPD includes a coordinated system of trails and pedestrian linkages, both within and connecting to existing or planned trail systems outside of the MPD. Therefore, the criteria in BDMC 18.98.150(A) and (B) are satisfied.

B. Based on maps included with the application, it appears that a significant amount of trail systems will be located within the buffer areas and potentially within sensitive areas themselves. The use of sensitive areas and their associated buffers for development including trails and stormwater management requires appropriate mitigation and other requirements in accordance with BDMC Section 19.10. Conditions of approval in Exhibit C below will require that the Development Agreement include a unit trigger for

when trails need to be constructed, and establish the sizes, locations and types of recreation facilities and trails to be built, along with methods of ownership and maintenance. Further, the City, and not the Applicant, must retain discretion concerning when and if a lump sum payment by the Applicant can be accepted in lieu of constructing off-site recreational facilities.

**60. BDMC 18.98.155(A): *The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.***

The Applicant has requested a deviation from Sensitive Area Ordinance standards. This is denied. The general authority under MPD code provisions in BDMC Ch. 18.98 to vary development standards is superseded by the more specific requirement in BDMC 18.98.155(A). The Lawson Hills MPD must at minimum comply with the Sensitive Areas Ordinance. A condition of approval shall be included requiring that the Development Agreement include language providing that areas subject to the Sensitive Areas Ordinance are fixed at the time the mapped boundaries of sensitive areas have been delineated and approved by City staff. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary should prevail. The applicant should neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

**61. BDMC 18.98.155(B): *All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.***

Regarding the proposed "Lawson Parkway at Sensitive Areas" (Figure 4-5 in the MPD application), impacts to sensitive areas and buffers should be mitigated, if necessary, in accordance with BDMC 19.10 at the time of actual development. The Lawson Hills MPD project overall, including road locations, has been designed to minimize impacts to wildlife and migration corridors as set forth above and in the Finding of Fact No. 12.

**62. BDMC 18.98.160(A): *All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and Development Agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site.***

The MPD application is consistent with the City's transfer of development rights program. Specifics as they pertain to development right use and timing shall be included within the Development Agreement.

**63. BDMC 18.98.160(A): *Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or***

*ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.*

This criterion is met. See Conclusion of Law No. 48 above.

**64. BDMC 18.98.170(A):** *Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.*

Functionally equivalent standards are expected be approved on a general level in the Development Agreement and specific deviations can be dealt with at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

**65. BDMC 18.98.170(B):** *The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.*

The criterion is satisfied. The application materials indicate that the Lawson Parkway and Lookout Park are designed to enhance views of Mt. Rainier. There are otherwise minimal site opportunities for Mt. Rainier views, as much of the topography slopes to the west and north or is bounded by forested slopes that would likely block views. However, site design takes advantage of the one location that will have a prime mountain view, "Lookout Park."

**66. BDMC 18.98.170(C):** *The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety.*

Implementing projects shall be designed to foster the development of a street grid system. Functionally equivalent standards are expected be approved on a general level in the Development Agreement and specific deviations will be addressed at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

**67. BDMC 18.98.180(A):** *The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible*

*and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.*

A. The criterion is met. Conditions of approval require use of the most recent DOE stormwater manual (the 2005 SWMMWW). Further, the proposal provides several enhancements by reducing the discharge to the steep slopes to the south, and providing a safe overflow for storms that exceed the 100-year design storm. A condition of approval will be included in Exhibit C requiring a downstream analysis prior to commencement of development on the Main Property to determine the impact of the Lawson Hills development to the flood elevations at Abrams Avenue and the flood peaking impact to the wetlands.

B. Conditions of approval also require that in the event that new phosphorus treatment technology is discovered and is either certified by DOE as authorized for use in meeting requirements of the SMMWW or is in use such that it is considered by the stormwater engineering community as constituting part of AKART, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities. These conditions provide additional compliance with the criterion above, by ensuring that the most up to date standards and technologies are employed to maximize the effectiveness and efficiency of the stormwater system.

**68. BDMC 18.98.180(B):** *The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B).*

The City's storm water codes apply to both public and private improvements. Construction run-off impacts to Lawson Creek, Grinder Creek and Jones Lake should be addressed. Added protections for Lake Sawyer water quality have been included, as discussed above.

**69. BDMC 18.98.180(C):** *Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD.*

The criterion is satisfied. Although the soils on the Main Property (as described in Ch. 4 of the FEIS) are not generally suitable for infiltration, the stormwater management plan proposed as part of The Lawson Hills takes advantage of the soil conditions in and around the project for infiltration, where the soils are conducive.

**70. BDMC 18.98.180(D):** *The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public*

*amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.*

The criterion is satisfied. The stormwater management plan presented uses regional ponds that are designed to maintain sensitivity to existing wetlands and water balance within the basins. A condition of approval requires that stormwater ponds proposed to be included as "open space," and developed as a public amenity (i.e., safe, accessible, and aesthetically pleasing). A condition of approval is included in Exhibit C below to require that mechanisms be identified to integrate LID into the overall design of the stormwater system for the benefit of surface and groundwater resources, provided that future Homeowners' Associations bear the increased cost of landscape maintenance that may be required as a result of use of LID.

**71. BDMC 18.98.190(A):** *An MPD shall be served with public water and sanitary sewer systems that:*

*1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.*

This criterion is satisfied. See Conclusion of Law No. 72 below.

*2. Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.*

This criterion is met. The sewer service plan of the Main Property will serve the majority of the site by gravity. This is consistent with the city's sewer plan. For the North Triangle, the MPD application indicates that there will be a point of connection in Although that connection point will function, abandonment of the Diamond Glen sewer pump station and connection of the new sewer force main to the existing Diamond Glen sewer force main will be required. Continued installations of redundant interim sewer pump stations would be inconsistent with the criterion above, and will not be permitted. A pump station may be necessary to serve the easternmost portion of Parcel F. Alternatively, if the property to the north has developed or easements are obtained, the eastern area of Parcel F can be served by gravity to the existing King County Jones Lake sewer pump station.

**72. BDMC 18.98.190(B):** *Each MPD shall develop and implement a water conservation plan to be approved as part of the Development Agreement that sets forth strategies for achieving water conservation at all phases of development and at full build out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit*

*per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit.*

This criterion is satisfied. The water conservation plan identified on page 8 of the MPD applications meets the requirements of BDMC 18.98.190(B) above. A condition of approval (No. 54) will be included in Exhibit C requiring that the water conservation plan be evaluated for its effectiveness in light of the City's available water resources after 500 dwelling units have been constructed. At that time, additional measures may be imposed.

**73. Master Planned Development Framework Design Standards and Guidelines (MPDFSG) (A)(Environmentally Sustainable)(p. 3): *To provide resource-efficient site design which includes consideration for saving trees, constructing on-site stormwater retention/infiltration features, and building orientation to maximize passive solar heating and cooling.***

This criterion is satisfied. The Lawson Hills MPD application indicates that Low Impact Development techniques will be used for treating and disposing of stormwater. This shall be required as a condition of approval, wherever practical and feasible. Because no specific lot layouts are included in the MPD application, compliance or noncompliance with solar orientation cannot be determined at this time. The City's Tree Preservation Ordinance will assure a significant retention and/or replacement of trees.

**74. MPDFSG (A)(1): *Implement a construction waste management plan to reduce construction waste. Consider life-cycle environmental impacts of building materials.***

This criterion is satisfied, with the condition that the Applicant shall submit a construction waste management plan as part of the Development Agreement.

**75. MPDFSG (A)(2): *Incorporate energy-saving techniques into all aspects of building's design and operation.***

This criterion shall be evaluated at the time of individual building permit applications.

**76. MPDFSG (A)(3): *Maximize water conservation by maintaining or restoring pre-development hydrology with regard to temperature, rate, volume and duration of flow; use native species in landscaping; recycle water for on-site irrigation use.***

This criterion will be satisfied, subject to a condition requiring use of native vegetation in street landscaping and in parks. The Development Agreement will be required to include a water conservation plan with performance measurements; a general landscape plan; and a stormwater management plan.

**77. MPDFSG (A)(4): *Use measures that can mitigate the effects of potential indoor air quality contaminants through controlling the source, diluting the source, and capturing the source through filtration.***

This will be addressed at the time of future building permit applications.

78. **MPDFSG (A)(5):** *Reduce overall community impacts by providing connectivity from the project to the community; by incorporating best management practices for stormwater management; by creating useable public spaces such as plazas and parks; and by protecting important community-identified viewsheds and scenic areas.*

This criterion is satisfied.

79. **MPDFSG (A)(6):** *Grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain significant natural contours.*

This criterion is satisfied, subject to a condition that will be included as a condition of approval in Exhibit C below, requiring compliance with the Framework Standards and Guidelines. Further, a condition of approval will be included requiring that, prior to the approval of the first implementing plat or site development permit within a phase, the Applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%. This will insure that unnecessary mining of material will not occur and reuse of existing materials will be maximized.

80. **MPDFSG (B)(p. 4):** *Black Diamond has a specific history and setting that involves varied topography, an agricultural past, forested areas, mining, and a small town scale. Care should be taken to reflect these patterns in master planned developments. In addition, the MPD chapter of Black Diamond's Municipal Code requires that fifty percent (50%) of the total land area of an MPD be maintained as open space. Proper design and integration of this open space into a development is very important.*

**Guidelines**

1. *All master planned developments shall include a wide range of open spaces, including the following:*
  - a. *Sensitive environmental features and their buffers*
  - b. *Greenbelts*
  - c. *Village greens*
  - d. *Parks and school playgrounds*
  - e. *Public squares*
  - f. *Multi-purpose trails*

*These features should be deliberately planned to organize the pattern of development and serve as centerpieces to development cluster, not merely as "leftover" spaces.*

2. *Open spaces shall be linked into an overall non-motorized network through sidewalks, trails and parkways.*

*The overall network shall be delineated at initial MPD approval and implanted through subsequent plats and permit approvals.*

For reasons previously discussed, this criterion is satisfied, because the Lawson Hills MPD proposal meets the intent of these guidelines.

81. **MPDFSG (B)(3):** *Stands of trees as an element of open space. Due to the propensity of severe wind events in the Black Diamond area, an MPD should incorporate the preservation of larger rather than smaller stands of native trees.*

This criterion is satisfied. There are forested areas proposed for retention as open space (Compare Figure 10-1 with Land Use Plan (Figure 3-1)). In addition, a condition of approval is included that requires a tree inventory prior to the development of implementing projects so that other opportunities to preserve trees may be realized. The City's Tree Preservation Ordinance will also result in significant large tree retention.

82. **MPDFSG (C)(p. 5):** *To allow for an efficient use of land, lower the cost of infrastructure and construction, protect environmentally sensitive areas, and maintain a small town "village" character within an MPD. Development is to be integrated with networks of preserved natural features and developed open space for both passive and active recreational uses.*

#### **Guidelines**

1. *Use of conventional, suburban-style subdivision design that provides little common open space shall be avoided.*
2. *Groupings of primarily residential development of approximately 400-500 units should be contained generally within a quarter mile radius to support walking, bicycling and future transit service. Development clusters shall be surrounded by a network of open space with a variety of recreational uses (including trails) to provide connections between clusters.*
3. *Methodology for Planning Development in clusters.*
  - a. *environmentally sensitive areas to be protected (including streams, wetlands, steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and used as an organizing element for design;*
  - b. *areas for development of housing and commercial development shall be indicated;*
  - c. *streets and public spaces (as well as sites for public facilities such as schools, fire stations and other civic structures) shall be identified;*
  - d. *lots and groups of lots with various ownerships (i.e. fee simple by occupant, condominium, single ownership apartments, etc) shall be integrated with one another throughout all phases of a project;*
  - e. *views of Mt Rainier and other desirable territorial views shall be identified and integrated into site planning to maximize viewing from public spaces (streets, trails, parks, plazas, etc.).*

For reasons previously discussed and as demonstrated in the layout proposed in the MPD applications, the Lawson Hills MPD meets the intent of these guidelines; therefore, these guidelines are satisfied.

83. **MPDFSG (D)(Ensuring Connectivity)(p. 6):** *To promote ease of mobility and access within all portions of the development.*

**1. Pedestrian Connectivity**

**a.** *Similar to a traditional small town, services and common spaces shall be easily accessible to residents on foot. Off-street pedestrian trails are to be provided as a network throughout the development. Pedestrian connections shall be provided where cul-de-sacs or other dead-end streets are used.*

As conditioned, the criterion is satisfied. The City's comprehensive plan policies T-2 and T-8 call for pedestrian connections between neighborhoods and community centers. The Lawson Hills development will ultimately create a pedestrian draw for children walking to the school site and demand for Lawson Hills residents desiring to walk to the historic town center. A condition of approval will be included requiring the Applicant to construct a sidewalk along Lawson Street from the proposed Lawson Parkway to SR 169 (3<sup>rd</sup> Street).

84. **MPDFSG (D)(2)(a):** *The system of streets shall demonstrate a high degree of both vehicular and pedestrian connectivity, allowing residents and visitors multiple choices of movement. Isolated and dead-end pockets of development are not desired.*

As depicted in Figure 4-1 of the MPD applications, the proposals depict only an "approximate" and basic "skeleton" of a future street system and descriptions of street types including cul-de-sacs. The trail networks depicted in Chapter 5 of the applications provide more detail. The pedestrian circulation plans proposed by the Applicant exhibit several connection points to adjoining properties, thus demonstrating a high degree of connectivity as required by the criterion above. Therefore, this criterion is satisfied.

85. **MPDFSG (D)(2)(b):** *Cul-de-sacs shall be avoided unless there are no other alternatives.*

No cul-de-sacs are proposed at this MPD level of design. Regulations and conditions of approval require consistency with the MPDFSG at all stages of development; therefore, this criterion is satisfied.

86. **MPDFSG(E)(Mixing of Housing)(p. 7):** *To encourage a diversity of population and households within Black Diamond through a range of choices in housing types and price.*

**Guidelines**

1. *MPD's shall include various types of housing, such as:  
a.-z. [Not listed here; refer to Design Guidelines for complete text.]*
2. *Each cluster of development shall include a variety of unit types and densities.*

As noted previously, it is not clear what the exact housing mix in the MPD project will be. As previously noted, a condition of approval is included requiring compliance with this guideline. In addition, a condition of approval is also included requiring that the Development Agreement contain specific targets for various types of housing for each phase of development so that this requirement does not become perpetually deferred from one phase to the next. So conditioned, this criterion is satisfied.

87. **MPDFSG(E)(3):** *For Single Family developments, alley access to garages is desired. Direct driveway access to streets should only occur if there are no other alternatives.*

Page 3-30 of the MPD application materials indicates that front loaded single-family homes will, "form the majority of the residential typology" within The Lawson Hills MPD. To assure this, a condition of approval is included requiring that detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. However, while alleys provide convenience and a clean streetscape, the City may not be able to cover the additional cost of policing the alleys and maintaining double public street frontage. Therefore, for alleys or auto courts serving less than 20 lots, the alleys and auto courts be privately owned and maintained.

88. **MPDFSG(E)(4):** *Large apartment complexes and other repetitive housing types are discouraged. Apartments should replicate features found in Single Family Residential areas (i.e., garages associated with individual units, individual outdoor entries, internal driveway systems that resemble standard streets, etc.).*

This level of detail is more appropriate at the Development Agreement and implementing permit issuance. Compliance with this guideline is required as a condition of the Development Agreement. As so conditioned, this criterion is satisfied.

89. MPDFSG(F)(Creating Neighborhood Civic/Commercial Centers)(p. 8): To conveniently concentrate services and activities to serve multiple residential clusters.

*Guidelines*

1. *Civic/Commercial Centers shall be located to serve groupings of clusters as well as pass-by traffic in order to support an array of shops and services.*
2. *Such centers shall be anchored by a public green space and, ideally, a public building such as a school or meeting hall.*

Although the proposed allowed uses in the various land use categories indicate the potential for small scale (neighborhood) commercial development occurring in the residential classifications, actual locations are not defined at this time. Commercial areas should be identified on the Land Use Plan through a future amendment to the MPD. Proposed parks are located in areas which comply with this guideline.

91. MPDFSG(F)(3): Upper story housing above retail or commercial space is strongly encouraged within Civic/Commercial Centers.

See above. Housing could also be provided as a component of commercial development in the North Triangle.

92. MPDFSG(F)(Interface with Adjoining Development)(p. 9): To ensure a transition in development intensity at the perimeter of MPD projects.

*Guidelines.*

1. *Where individual lot residential development is located along the boundary of an MPD, lot sizes shall be no less than 75% the size of the abutting residential zone or 7200 sq. ft., whatever is less.*
2. *Multi-family and non-residential land uses should include a minimum 25 ft. wide dense vegetative buffer when located along the boundary of an MPD.*
3. *When there is no intervening development proposed, a minimum 25 ft. wide dense vegetative buffer should be provided between main entrance or access routes into an MPD and any adjoining residential development.*

The proposal generally complies with this guideline. Parcel L2 has been re-designated as open space.

93. **MPDRSG(A)( Streets)(p. 10):** *To establish a safe, efficient and attractive street network that supports multiple choices of circulation, including walking, biking, transit and motor vehicles.*

**1. Connectivity**

**a. *The street layout shall create a network that promotes convenient and efficient traffic circulation and is well connected to other existing City streets.***

A. The criterion is satisfied, in terms of internal circulation. However, the lack of a second general purpose access to the Main Property situated to the southeast of Lawson Street also means that the project is not well-connected to other city streets. A condition of approval is included in Exhibit C below limiting the amount of development that may occur within this area, unless additional access is provided.

**2. Design**

**a. *The layout of streets should relate to a community-wide focal point.***

B. This criterion is satisfied. The street design does provide for a neighborhood focal point at the elongated roundabout near The Lawson Hills center.

**b. *A consistent overall landscape theme should be utilized, with variations provided to indicate passage through areas of different use, densities, topography, etc.***

C. The MPD application includes a variety of street sections, which can be unified through a landscape theme that emphasizes the use of native plant species.

**c. *Limit the use of backyard fences or solid walls along arterial streets.***

D. Compliance with this standard will be required at the time of implementing projects.

**3. Reduced Pavement Widths**

**a. *Pavement widths should be minimized to slow vehicular speeds and maintain an area friendly to pedestrians and non-motorized users.***

E. The City street standards were adopted in June of 2009, with reduced widths to address this goal. The Lawson Hills proposed streets are very similar to the City's standard streets, but in some cases are wider. The design standards will be established

through the Development Agreement and the administrative deviation process provided for in the City's Engineering Design and Construction Standards.

**4. Low-Impact Design**

*a. Stormwater runoff should be reduced through "natural" techniques: flush curbs, bio-filtration swales, use of drought-tolerant vegetation within medians and planting strips, etc.*

F. This criterion is satisfied as discussed above.

**5. Traffic calming methods should include:**

- Roundabouts
- Traffic Circles
- Chicanes
- Corner bulbs

G. A roundabout is proposed along Lawson Parkway. Traffic calming measures shall be explored with each implementing development action, at the discretion of the Public Works Director.

**6. Lanes and Alleys**

*a. Access to rear residential garages and commercial loading and service areas shall be available through lanes and alleys.*

H. As noted, the application materials indicate that the majority of homes will be "front loaded lots," which is inconsistent with this guideline. The recommended conditions of approval require that homes have alley access except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. Further, as noted above, in order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all alleys and auto courts serving 20 units or less shall be maintained by the Master Developer or future Homeowners Association(s).

**7. Non-motorized Circulation**

*a. All streets shall include either sidewalks or trails on at least one side of the street. Design streets to be "bicycle" friendly.*

**8. Street Landscaping**

*a. All streets shall include native and/or drought-tolerant vegetation (trees, shrubs and groundcover) planted within a strip abutting the curb or edge of pavement. Native and/or drought-tolerant vegetation shall also be used within all medians.*

I. Compliance with these standards will be required at the time of implementing projects. The details of these design features will be resolved through the

Development Agreement and the design deviation process. The City does not have adequate funds to manage street landscaping; a condition of approval included in Exhibit C requires that future Homeowners' Association(s) be required to maintain the street-side landscaping.

**9. On-Street Parking**

*a. Curbside parallel parking shall be included along residential streets. Parallel or angle parking should be included within non-residential areas.*

J. The proposed street standards indicate that parallel parking will be available along residential streets. Compliance with these standards will also be required at the time of implementing projects.

**94. MPDFSG(B)( Sidewalks)(p. 11):**

**B. Sidewalks**

**Intent**

**Guidelines**

**1. Width**

*a. The minimum clear pathway shall generally be between 5 ft and 8 ft, depending upon adjacent land uses and anticipated activity levels.*

**2. Lighting**

*a. All lighting shall be shielded from the sky and surrounding development and shall be of a consistent design throughout various clusters of the development.*

**3. Furnishings**

*a. Street furnishings including seating, bike racks, and waste receptacles shall be located along main streets in Civic/Commercial areas.*

*b. Furnishings serving specific businesses (outdoor seating) will require a building setback and shall maintain a minimum passable width of the sidewalk.*

*c. Mailbox stations shall be designed to be architecturally compatible with the development in which they are located*

The Lawson Hills proposal provides a good network of trails, sidewalks and bike lanes within the project itself. A safe sidewalk link is needed and will be required from The Lawson Hills to Morganville (current west Black Diamond) along the Auburn Black Diamond Road/Roberts Drive. The area of greatest concern is the narrow bridge over Rock Creek. Compliance with these standards will be required at the time of implementing projects.

95. MPDFSG(C)( Walkways and Trails)(p. 12):

*Intent*

*To provide safe, continuous pedestrian linkages throughout and sensitive to the project site, open to both the public and project residents.*

- A. The Lawson Hills proposal meets the intent of this guideline.

*Guidelines*

*1. Location*

*a. Walkways and trails shall be integrated with the overall open space network as well as provide access from individual properties. Trail routes shall lead to major community activity centers such as schools, parks and shopping areas.*

- B. Staff finds that the proposal meets the intent of this guideline.

*2. Width*

*a. Not less than 8 feet wide to allow for multiple modes of use.*

C. Both 8-foot-wide hard and a 6-foot-wide soft surface trail types are proposed within the project (see page 5-29 of the application). A 5-foot-wide boardwalk trail section is also proposed for limited use. The MPD proposal meets the intent of this guideline, with the exception of the soft-surface trail which is proposed to be 6 feet in width.

*3. Materials*

*a. Walkways connecting buildings and landscaped common spaces shall have a paved surface.*

*b. Trails throughout the development and connecting to larger landscaped common spaces shall be of at least a semi-permeable material.*

D. The MPD proposal meets the intent of this guideline as proposed and the requirement will be enforced for implementing projects.

96. MPDFSG(pp. 13-18):

*Text not included.*

The remaining design guidelines in the MPDFSG concern design requirements for site plan and building permit level development that are not addressed at this stage of development review. While the staff report references some specific design standards proposed by the Applicant, these do not warrant analysis at this stage of review because the conditions of approval below exclude those proposals from the scope of the MPD approval. As to land use, the conditions of MPD approval limit the proposal to the land use plan map (Figure 3-1 in the MPD applications), description of categories (beginning

on page 3-18), and target densities. BDMC 18.98.110 and the conditions of approval both require application of the MPDFSG for implementation projects. Deferral of the site plan and building level of MPDFSG review for implementing permits will not compromise the ability to comply with those standards.

**97. International Fire Code, 2006 Edition**

BDMC 18.98.080(A)(1) requires the MPD to comply with all adopted regulations, which includes the International Fire Code. The requirements below are necessary at this stage of project review to assure compliance with the Fire Code.

**Access:** All Fire Department access roads should be required to meet the International Fire Code, specifically Section 503 (Fire Department Access Roads) and Appendix D (Fire Department Access Roads). Generally this requires that all roads be at least 20 feet in unobstructed width with 13 feet 6 inches of unobstructed vertical clearance across the entire road surface. If fire hydrants are located on the Fire Department access road, then the roads must be at least 26 feet in width. The proposed street designs include some elements (e.g., "auto courts") that do not comply with this standard. Per the Fire Code, road grades should not exceed 10 percent. All portions of the first floor exterior walls of structures should be within 150 feet of approved fire apparatus access roads (especially with high density housing, multi-family and commercial occupancies).

More than one means of access and egress is required per the International Fire Code 2006 ed. Appendix D Section D107. Specifically D107.1 states: "Developments of one or two family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3...."

**Parks and Open Spaces:** Separation of combustible structures and vegetation must be provided to prevent potential wildland fires from the east and south from spreading to structures. This separation will vary with types of structures and the natural vegetation and will be evaluated at the time of implementing project approval.

**Access to Park/Open Space Trails:** To allow for Fire Department access to medical emergencies and small fires involving natural vegetation within the open space and park trails, these trails to be wide enough to allow for passage of the Fire Department off-road "Gator" and wheeled stretchers.

**EXHIBIT C**  
**CONDITIONS OF APPROVAL**  
**Lawson Hills MPD**

**GENERAL**

1. Approval of the MPD is limited to the terms and conditions set forth in the City Council's written decision, and does not include approval of any other portion of the MPD set forth in the application.

2. After approval by the City Council at an open public meeting and after a public hearing as required by law, a Development Agreement shall be signed by the Mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the City shall approve any subsequent implementing permits or approvals. Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of any implementing permits or approvals. The Development Agreement shall be binding on all MPD property owners and their successors and shall require that they develop the subject property only in accordance with the terms of the MPD approval.

3. The Phasing Plan of Chapter 9 of the MPD Application is approved, with the exception of the bonding proposal at p. 9-3, the proposal for off-site trails at p. 9-2 (to the extent not already considered a regional facility) and parks at p. 9-10, and except as otherwise noted in these conditions of approval. The Development Agreement shall specify the following additional details: which infrastructure projects from the Phasing Plan and other mitigation obligations the applicant will build; which projects the City will build; and for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

4. The Development Agreement shall specifically describe when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

5. The Development Agreement shall include language that defines and identifies a "Master Developer." A single Master Developer shall be maintained through the life of the Development Agreement. The duties of the Master Developer shall include at least the following: a) function as a single point of contact for City billing purposes; b) function as a single authority for Development Agreement revisions and modifications; c) provide proof of approval of all permit applications (except building permits) by other parties prior to their submittal to the City; and d) assume responsibility for distributing Development Agreement entitlements and obligations and administering such.

6. The City shall have the ability but not the obligation to administratively approve off-site projects that would otherwise be compromised if they cannot be completed prior to approval and execution of the Development Agreement. In these instances, the applicant shall acknowledge in

writing that the approval of any such applicable projects does not in any way obligate the City to incur obligations other than those specifically identified in the approved permits for the applicable project.

7. The applicant shall submit a construction waste management plan for inclusion in the Development Agreement.

8. Homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings. In addition, the CCRs shall include provisions, to be enforced by the HOA, prohibiting washing of cars in driveways or other paved surfaces, except for commercial car washes, and limiting the use of phosphorous fertilizers in common areas, so as to limit phosphorous loading in stormwater.

#### TRANSPORTATION

9. Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 24 and 19 below. The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur. Any "functionally equivalent" realignment that results in a connection of MPD roads to Green Valley Road shall be processed as a major amendment to the MPD.

10. The City shall create, at the expense of the Applicant, a new transportation demand model for this project for use in validating the distribution of project traffic at the intervals specified in Condition No. 15. The new model shall incorporate, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city. The new model shall include the intersections studied in the FEIS, together with the following additions: all existing principal and minor arterials in Black Diamond, Covington and Maple Valley and the unincorporated areas between these cities and specifically including the Kent-Black Diamond Road; additional study intersections at SE 231<sup>st</sup> Street/SR 18 westbound ramps, SR 169/SE 271st Street and SR 169/SE 280th Street in Maple Valley. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation. Key to the success of the new model is a well-coordinated effort and cooperation among the

cities of Black Diamond, Maple Valley and Covington, the Applicant, King County and the Washington State Department of Transportation. Although the specific assumptions ultimately made in the model may be the subject of differences in professional judgment, the City Council's goal is that, notwithstanding these differences in judgment, the model will be comprehensive and therefore acceptable to all parties. The City Council therefore directs staff in preparing the model to work within the spirit of openness and cooperation with these other agencies and the Applicant, and similarly requests that other agencies and the Applicant join with the City of Black Diamond staff in working together in the same spirit for the common good.

11. The new demand model must take into account recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, and existing speed limits on all roadway links included in the model's roadway network. The model must be run with currently funded transportation projects for each affected jurisdiction as shown in the applicable 6 -year Transportation Improvement Plans and with transportation projects shown in the applicable 20-year Transportation Improvement Plans which projects are not funded but are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction.

12. The new model must contain a mode split analysis that reflects the transit service plans of Sound Transit, King County Metro and any other transit provider likely to provide service in the study area. This mode split analysis should include an estimate of the number of project residents likely to use the Sounder and to which stations these trips might be attributed. This analysis must be presented to the City, the applicable transit agencies, and the jurisdictions in which trips are likely to use park and ride, Sound Transit parking garages or other facilities.

13. The new model must include a reasonable internal trip capture rate assumption. The assumed internal trip capture rate must be based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in Western Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.

14. Intersection improvements outside the City limits may be mitigated through measures set forth in an agreement between the developer and the applicable agency. Where agreement is possible, the developer shall enter into traffic mitigation agreements with impacted agencies outside the city that have projects under their jurisdiction in the list below, and the agreement shall be incorporated as part of the Development Agreement, or as an addendum to an adopted Development Agreement. Any agreement so incorporated supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement. If an agreement is not reached, the projects identified below shall be added to the regional project list and included as part of the Development Agreement, and the developer and the City shall agree on reasonable time frames for construction (for projects located within the City of Black Diamond and subject to Condition No. 9), or Applicant payment of its proportional costs toward construction of projects located outside of the City of Black Diamond.

**Exhibit G-1  
Intersection Improvements**

<b>Study Intersection</b>	<b>Jurisdiction</b>	<b>Mitigation</b>
SE 288th Street/216th Avenue SE	Black Diamond	Signalize. Add NBR turn pocket.
SE 288th Street/232nd Avenue SE	Black Diamond	Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.
SR 169/SE 288th Street	WSDOT	Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).
SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.
SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.
SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.
SE Auburn Black Diamond Road/ Morgan Street	Black Diamond	Roundabout.
SR 169/Roberts Drive	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.
SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.
SR 169/Baker Street	Black Diamond/WSDOT	Signalize.
SR 169/Lawson Road	Black Diamond/WSDOT	Signalize. Add SBL turn pocket.
SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.
SR 169/SR 516	Maple Valley/WSDOT	Add second NBL turn pocket.
SR 169/SE 240th Street	Maple Valley/WSDOT	Add additional SBT lane on SR 169 from north of 231st

SR 169/Witte Road	Maple Valley/WSDOT	Street to Witte Road. Add second NBT lane at SR 169/240th Street.
SR 169/SE Wax Road	Maple Valley/WSDOT	
SR 169/SE 231st Street	Maple Valley/WSDOT	
SR 169/SR 18 EB Ramps	Maple Valley/WSDOT	
SR 516/SE Wax Road	Covington/WSDOT	Add second SBL, WBR, and NBL turn pockets.
SR 516/168th Pl SE	Covington/WSDOT	Add NBL and EBR turn pockets.
SR 516/Covington Way SE	Covington/WSDOT	Optimize signal timings.
SE 272nd Street/160th Avenue SE	Covington/WSDOT	Signalize.
SE Kent Kangley Road/ Landsburg Road SE	Maple Valley/King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.
SR 169/SE Green Valley Road	WSDOT	Signalize.
SE Auburn-Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.
SR 169/North Connector	Black Diamond/WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection.
Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.
SE Auburn Black Road/Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.
SR 169/South Connector	Black Diamond/WSDOT	Signalize. Add SBR and NBL turn pockets.

15. If (a) the City of Maple Valley does not appeal or challenge the MPD Approval for the Villages MPD, (b) the City of Maple Valley does not appeal or challenge the MPD Approval for the Lawson Hills MPD, (c) the City of Maple Valley does not appeal or challenge the Development Agreement for the Villages MPD, (d) the City of Maple Valley does not appeal or challenge the Development Agreement for the Lawson Hills MPD, the Applicant shall provide the following mitigation for the City of Maple Valley, which as to the identified mitigation supercedes the mitigation projects listed for the City of Maple Valley in Condition 14 above. For purposes of this condition, the percentage of the mitigation project to be contributed by the Applicant to the City of Maple Valley is shown for each project. All references to percentages constitute the combined contribution share of the Villages and Lawson Hills projects.

Project A: Contribute 25.3 percent toward one additional southbound through lane on SR 169 from SE 231st Street to Witte Road. Add a second eastbound to southbound right-turn lane on SE Wax Road (double right turn lanes). Upgrade signal equipment to be able to run the eastbound right turn phase with northbound protected left turn phase at the same time.

Project B: Contribute 26.1 percent toward one additional southbound through lane on SR 169 from SE Wax Road through the intersection at SR 169/Witte Road SE. The curb lane will become a right turn lane. The southbound approach to this intersection will be one right turn lane and two through lanes.

Project C: Contribute 66.6 percent toward a second northbound to westbound left-turn lane (300 ft) on SR 169 and a second westbound to southbound left-turn lane (400 ft) on SE 240th Street. Widen SE 240th Street west of SR 169 to add a second westbound lane (500 ft).

Project E: Contribute 37.2 percent toward a second southbound lane on SR 169 from Witte Road SE to SE 244th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 240th Street to Witte Road SE.

Project F: Contribute 63.2 percent toward installation of a traffic signal at the intersection of SR 169/SE 244th Street.

Project G: Contribute 50.8 percent toward a second southbound lane on SR 169 from SE 244th Street to SE 264th Street. Construct a second northbound lane on SR 169 from SE 264th Street to 1,000 feet north of SE 264th Street.

Project H: Contribute 59 percent toward a second southbound lane on SR 169 from south of SR 516 to SE 271st Street.

Project I: Contribute 54.6 percent toward a signal equipment upgrade at the intersections of SR 169/SE 264th Street, SR 169/SR516, and SR 169/SE 271st Street to be able to coordinate these three signals, and set the signal cycle length at 140 seconds.

Project J: Contribute 61.25 percent toward a second southbound lane on SR 169 from SE 271st Street to SE 280th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 271st Street to SE 271st Street.

Project K: Contribute 58.4 percent toward a second southbound lane on SR 169 from SE 280th Street to Maple Valley's south City limit.

Project L: Contribute 6.8 percent toward a new three-lane road (one eastbound and two westbound lanes) on the SE 271st Street alignment between SR 169 and SR 516. Add a second northbound to westbound-left turn lane (200 ft) on SR 169 and a signal at SR-516/SE 271st intersection.

Project W: Contribute 29.9 percent toward widening SR 516 to 4/5 lanes from 216th Ave SE to the west City limits of Maple Valley. Add a second westbound lane on SR 516 to 1,000 feet east of 216th Ave SE.

Project X: Contribute 29.9 percent toward reconfiguration of the northbound approach to SR 516/216th Ave SE to include one left-turn lane and one left and right-turn share lane. Increase the left turn pocket length to 270 feet. Modify signal to accommodate eastbound right-turn phase overlapping with northbound phase.

Project Y: Contribute 13.5 percent toward a second westbound lane on SE 240th from 500 feet west of SR 169 (see Project C) to Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Y (except for the contribution of the Applicant).

Project Z: Contribute 13.5 percent toward a 2-to-3 lane extension of SE 240th Street between Wax Road and Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Z (except for the contribution of the Applicant).

16. a. At the point where building permits have been issued for 850 dwelling units at the Villages and Lawson Hills together, and again at such phase or interval determined by the City Council following completion of the review called for by this condition, the City shall validate and calibrate the new transportation demand model created pursuant to Condition 10 above for the then-existing traffic from the Villages and Lawson Hills together. The calibration may include an assumption for internal trip capture rates as set forth in Condition 13 above, rather than actual internal trip capture rates, if an insufficient amount of commercial development has been constructed at the time of the validation/calibration required herein. The City shall then run the model to estimate the trip distribution percentages that will result from the next upcoming phase or interval of MPD development, and to assign the estimated trips from that phase or interval to the intersections identified in Condition 10 above.

b. Using the trip distribution and trip assignment yielded by the transportation demand model validation and calibration required in subsection (a) above, the City shall conduct an intersection operations analysis of the transportation levels of service (LOS) for the intersections identified in Condition 10 above, and shall issue findings, conclusions and a recommendation as provided below. The intersection operations analysis shall determine whether then-existing, adopted PM peak hour intersection levels of service are met, and

whether the then-existing, adopted PM peak hour intersection levels of service are projected to be met by the time of the next validation/calibration/operations analysis identified by the City Council pursuant to subsection (a) above. The intersection operations analysis for existing conditions must take into account the then-existing peak hour factor; the analysis for the next identified phase or interval of development must be based on a reasonable assumption (justified by reasonable traffic engineering practice) as to the future peak hour factor, and contain a sensitivity analysis to identify the effect of such peak hour factor assumption. If the findings and conclusions determine that the then-existing, adopted PM peak hour LOS will not be met, they shall also determine whether the projects set forth in Conditions 14 and 15 above adequately mitigate the impacts resulting from the failure to meet the adopted LOS. If the findings and conclusions determine that failure to meet adopted transportation LOS will not be adequately mitigated, they shall also recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects' failure to meet the adopted LOS.

c. The review identified in subsections (a) and (b) above, may be performed concurrent with a preliminary plat application held on either the Villages or Lawson Hills implementing plat, and the City review may incorporate relevant portions of any SEPA documents prepared for the implementing plat which analyze cumulative MPD impacts.

d. When the review thresholds identified in subparagraph a above have been reached, the City shall issue written notice to the Master Developer(s) to each submit within 90 days review documentation summarizing their respective project impacts and compliance with mitigations and conditions to date, as well as any additional information the City deems necessary to perform the transportation demand model validation/calibration and/or intersection operations analysis. In addition, the Master Developer(s) shall each pay a proportionate share of the validation/calibration/operations analysis costs incurred by the City.

Not later than 90 days following the City's completion of the validation/calibration/operations analysis, the City Director of Community Development shall consult with other affected jurisdictions as to the review analysis results, obtain any input such jurisdictions wish to provide, issue the City's proposed findings, conclusions and recommendation, and at the close of the 90-day period, the City shall meet with the Master Developer(s) to review the proposed findings, conclusions and recommendation and identify what improvements the Master Developer(s) plans to construct. Within 14 days of the City meeting with the Master Developer(s), the City shall finalize its findings, conclusions and recommendation and shall provide mailed notice to all Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the review has been issued.

If a Master Developer fails to submit satisfactory periodic review documentation regarding its project within the 90-day period after notice has been issued as required herein, further permits shall not be approved for that MPD until the required documentation has been submitted.

e. The City's demand model validation and calibration called for by subsection (a) above, and the intersection operations analysis called for by subsection (b) above, (the "periodic review analysis") shall result in written findings and conclusions plus a recommendation for new future permit conditions and mitigations for the Villages and/or Lawson Hills, as required. Proposed conditions and mitigations applicable to future permits and associated mitigation within either or both projects shall be revised if the City finds that the conditions or mitigation measures imposed pursuant to the City's standards in effect at the time of MPD approval have resulted in an unsatisfactory level of mitigation, either because the degree of mitigation is inadequate or the quantity of impact demonstrated to be attributable to MPD development exceeds levels predicted. New permit conditions and mitigations imposed for cumulative impacts through the periodic review process shall comply with the following standards and limitations:

i. No new standards or requirements shall be imposed upon property in any plat recorded within 60 months of MPD approval to the extent that such standards or requirements would affect infrastructure serving said property also constructed within the 60-month timeframe.

ii. Performance standards more stringent than those contained in the original MPD permit shall not be imposed.

iii. No retrofitting or major modification shall be required for facilities properly installed in accordance with MPD permits unless such is determined necessary to avoid a threat to public health or safety or a new significant adverse environmental impact, and such impact or threat cannot be mitigated by requirements imposed upon or downsizing of MPD development yet to be constructed.

iv. New conditions and mitigations shall be limited to those shown to be necessary as a direct result of the MPD development, and such mitigation must be reasonable and achievable without compromising other MPD permit requirements.

v. Conditions and mitigations applicable to a MPD shall be modified only to the extent that cumulative impacts are demonstrated to be the result of development of such project. If cumulative impacts have been demonstrated to exist but cannot be attributed solely to the MPDs, or allocated between the two MPDs, responsibility for mitigation shall be apportioned equitably in a proportionate or pro-rata share. For purposes of this condition, "proportionate share" shall mean the ratio of the combined Villages and Lawson Hills MPD project PM peak hour trips projected to use the intersection compared to the total number of PM peak hour trips expected to use the intersection. Any mitigations or conditions imposed shall specify clearly which project and which portion thereof to which they apply.

f. The Villages Master Developer, the Lawson Hills Master Developer, or any other party of record may appeal the periodic review analysis within 21 days of the date of its issuance by filing an appeal statement with the Community Development Director, plus a fee in the amount then applicable to an administrative appeal of a SEPA threshold determination.

The appeal statement shall specify in detail the errors alleged to exist in the periodic review analysis and any appeal proceedings shall be limited to analysis of such allegations.

g. If one or more timely appeals are filed of the City's periodic review analysis, they shall be heard and decided by the Hearing Examiner within 90 days of the date the appeal is filed. The hearing shall be limited to the issues included within the written appeal statement. Participation in the appeal shall be strictly limited to the City, the Applicant and parties who timely filed complete written appeal statements and paid the appeal fee. The appellant shall bear the burden of proof in the appeal. The periodic review analysis shall be upheld on appeal unless found to be clearly erroneous based on the record as a whole.

h. The Hearing Examiner's decision on the periodic review analysis shall be a final decision appealable under the Land Use Petition Act, Chapter 36.70C RCW.

i. If no timely appeal of the periodic review analysis is received, its findings, conclusions, and recommendation shall become final and non-appealable 21 days after issuance. If an appeal is filed, the time required for determination of such appeal shall be excluded from the approval period for any MPD permit and preliminary plat in effect on the date of issuance of the periodic review analysis.

17. The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts should be based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

18. For each potential signal, first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control. [FEIS Mitigation Measure]

19. A transportation monitoring plan shall be established as part of the Development Agreement using the projects identified in the list included in Condition 14 (and as that list is modified following the periodic review process), and including trigger mechanisms acceptable to the City. To the extent site conditions permit, implementing projects shall be designed to foster the development of a street grid system throughout the Main Property. The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service, provided that for projects within the State right-of-way, the monitoring plan shall establish timing for commencement of only engineering and design of improvements and shall not including deadlines for commencement of construction.

20. Implementing projects shall be designed to foster the development of a street grid system throughout the project.

21. In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all auto courts serving 20 units or less, and all alleys shall be private and maintained by the applicant or future Homeowners' Association(s).

22. The applicant or future Homeowners' Association(s) shall be required to maintain all street-side landscaping, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s). The Development Agreement shall provide that, in the event that the Applicant or future Homeowners' Association(s) fails to maintain such street-side landscaping, the City may enter onto the property, repair or maintain the landscaping as the City determines in its reasonable discretion is necessary, and collect the costs of such maintenance from the Applicant or Homeowners' Association(s), as applicable. The Development Agreement shall also provide that, to secure repayment, the City may lien the individual lots within the subdivision in which the street-side landscaping is located.

23. The applicant shall install a sidewalk along Lawson St. from its intersection with the proposed Lawson Parkway west to SR-169 (3<sup>rd</sup> St) prior to Phase 3 construction as defined in the application. The City and Applicant shall work in good faith to seek grants and other funding mechanisms to construct this improvement prior to holding the Applicant responsible for its proportionate share.

24. The monitoring plan required by these conditions shall require the applicant to model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the City's adopted level of service. The monitoring plan shall provide for the timing of commencement of construction of projects identified in the required traffic modeling, as well as the amendments to the scope of said projects and/or additions to projects as determined by the City in its reasonable discretion as necessary to maintain the City's adopted levels of service in effect at the time of the modeling, to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard. In the event of a disagreement between the applicant and the City about the timing of construction of a transportation project under the monitoring plan, and if the monitoring plan does not already include period modeling, the applicant shall also monitor traffic levels midway through each phase to determine if the traffic generation, trip distribution and assignment patterns are developing as expected.

25. No more than 150 residential units shall be permitted to the area southeast of Lawson Street until a second general purpose access route to this area is approved. Approval shall occur through a Major Amendment to the MPD if a connection other than the SE Connector is proposed. No more than 300 residential units shall be permitted in this area until such time the identified second general purpose access route is constructed. The applicant shall seek approval of the secondary access once approval of 150 units is achieved.

26. Once the applicant has identified a second fully functional access point to the Main Lawson Hill property southeast of Lawson Street, the applicant shall provide a traffic and engineering study to determine the impact of the redistributed traffic and propose mitigation projects to maintain the City level of service standards. The existing public roads that are impacted by the second new connection shall be upgraded as needed to comply with adopted functional and structural standards.

27. Prior to the first implementing project of any one phase being approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

28. The applicant shall apply road design, speed control and traffic calming measures so that inappropriate speeds are avoided on neighborhood streets.

29. The Applicant shall prepare a study, at its expense, for review and approval by the City, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements.

30. A Green Valley Road Review Committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, but only two community members shall have a vote on the committee regarding any matter. The Committee shall meet as needed, and specifically shall meet to review the study required by Condition 28 and attempt to reach agreement on whether any suggested traffic calming devices should be provided. If the community members of the Green Valley Road Review Committee decide against the traffic calming measures, then the Applicant need not construct them. The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road. The Applicant shall be responsible, at its expense, for drafting a report to the City Council regarding the Committee's findings on the traffic calming devices and on Plass Road.

31. If the development of Parcel L22 will provide access to Botts Drive, the Applicant shall be required to build out Botts Drive to Local Access Street standards as defined in the City's Engineering Design and Construction Standards, concurrent with the development of Parcel L22. If the Applicant extends Botts Drive south across Lawson Creek and connects Botts Drive to other roads within the MPD, which extension shall require a Major MPD Amendment per Condition No. 25 above, the Applicant shall build out the entire length of Botts Drive to Neighborhood Collector standards, as defined in the City's Engineering Design and Construction Standards.

#### **NOISE**

32. Each implementing development shall include a plan for reducing short term construction noise by employing the best management practices such as minimizing construction noise with properly sized and maintained mufflers, engine intake silencers, engine enclosures, and turning off equipment when not in use. [FEIS Mitigation Measure]

33. Stationary construction equipment shall be located distant from sensitive receiving properties whenever possible. Where this is infeasible, or where noise impacts would still be likely to occur, portable noise barriers shall be placed around the equipment (pumps, compressors, welding machines, etc.) with the opening directed away from the sensitive receiving property. [FEIS Mitigation Measure]

34. Ensure that all equipment required to use backup alarms utilizes ambient-sensing alarms that broadcast a warning sound loud enough to be heard over background noise, but without having to use a preset, maximum volume. Alternatively, use broadband backup alarms instead of typical pure tone alarms. [FEIS Mitigation Measure]

35. Require operators to lift, rather than drag materials wherever feasible. [FEIS Mitigation Measure]

36. Substitute hydraulic or electric models for impact tools such as jackhammers, rock drills and pavement breakers, wherever feasible. [FEIS Mitigation Measure]

37. Electric pumps shall be specified whenever pumps are required. [FEIS Mitigation Measure]

38. The developer shall establish a noise control "hotline" to allow neighbors affected by noise to contact the City and the construction contractor to ask questions or to complain about violations of the noise reduction program. The noise reduction program is established by conditions 32 through 37 and 39-40. Whether the noise reduction program has been violated shall be reasonably determined by the Designated Official. Failure to comply with the noise reduction program shall result first in a warning and one or more continuing failures may result in cessation of construction activities until the developer provides an acceptable solution to the City that will reasonably achieve the intent of the noise reduction program and allow construction to continue. Nothing in this condition shall be construed as limiting or altering the City's authority to enforce its noise regulations.

39. If pile driving becomes necessary, impact pile-driving shall be minimized in favor of less noisy pile installation methods. If impact pile driving is required, the potential for noise impacts shall be minimized by strict adherence to daytime only. [FEIS Mitigation Measure]

40. Work hours of operation shall be established and made part of the Development Agreement.

41. Install permanent noise mitigation (at a minimum, berms and landscaping) along the Lawson Connector wherever it abuts existing residential uses, pursuant to the protocol set forth in Condition No. 43(b)(ii) below. [FEIS Mitigation Measure]

42. To provide construction noise attenuation for existing residents adjoining the Lawson Hills development, the following condition shall apply to Lawson Hills development parcels L4, L5, and L7. For each of the designated parcels, the Applicant shall:

(a) offer to meet with the affected existing resident(s) to seek a mutual agreement about mitigation to be provided, or if mutual agreement cannot be reached, then,

(b) the Applicant shall have the choice to provide either:

(i) mitigation consisting of a buffer, trail easement or other separator between the edge of the development parcel and the property boundary that is 100-feet wide, provided that trails, recreational facilities, stormwater facilities and similar uses otherwise permitted for the MPD are allowed inside the 100-foot area, or

(ii) mitigation consisting of all of the following:

(A) a construction noise attenuation barrier (i.e., a berm, wall, or combination of the two) on the development parcel, provided that if a buffer or trail easement less than 100-feet wide adjoins the development parcel, the barrier may be placed within that area,

(B) design, sizing and placement of the noise attenuation barrier in a manner intended to reduce noise from long-term construction activities (i.e., activities lasting 6 months or longer, such as construction hauling and including the loading/unloading of dump trucks),

(C) payment of the City's costs incurred in commissioning a study to evaluate the noise barrier design and placement shall be prepared by the Applicant, at its expense, and submitted for review and approval by the City,

(D) the noise study shall evaluate whether noise from long-term construction activities will comply with the environmental noise limits in WAC 173-060-040, and if the noise study concludes that an on-site noise barrier cannot effectively control long-term construction noise to the degree that it complies with the WAC noise limits outside the adjoining existing homes, additional mitigation measures intended to reduce interior sound levels will be evaluated,

(E) any additional noise mitigation measures determined to be effective at reducing interior sound levels (i.e., providing a reduction of exterior-to-interior noise transmission at least 7 dBA more than provided by the existing building envelope) shall be implemented so long as the adjoining owner provides permission if the mitigation requires work on their property, and

(F) at the Applicant's discretion, the noise barrier may be temporary (i.e., removed after construction on one of the designated parcels is complete) or permanent.

Mitigation under section (b)(ii) shall be installed before construction activities begin on the designated development parcel. In the event that lands neighboring any of the designated development parcels are acquired by the developer of the MPD, this condition shall not apply as to the acquired lands.

44. Prior to initiating construction in Phase 2, the Applicant shall locate and pave a construction haul route along the alignment of proposed Lawson Parkway. Although paved, the construction need not be constructed to the standards applicable to a permanent street. Further, construction hauling shall be prohibited on Lawson, Baker and Morgan Streets.

45. A Noise Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Noise Review committee shall review and evaluate compliance with the noise conditions imposed upon the Lawson Hills MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote)

on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

#### **PUBLIC UTILITIES -- WATER**

46. Comply with the terms of the Water Services Future Funding Agreement (WSFFA).
47. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA. [FEIS Mitigation Measure]
48. Construct an appropriately sized Upper Lawson Reservoir. [FEIS Mitigation Measure]
49. Construct a pump station and transmission main adjacent to the 965 reservoir to serve the east annexation area in coordination with the City. Alternatively, in coordination with the City provide water modeling to support a functionally equivalent improvement, upgrade the pump station at the 850 reservoir to pump directly to the 1175 reservoir and remove the 965 reservoir from service. [FEIS Mitigation Measure]
50. Install local water main distribution system within Lawson Hills with appropriate pressure reducing stations in 1175, 965, and 850 pressure zones consistent with the comprehensive plan. [FEIS Mitigation Measure]
51. Extend and loop the 850 zone water main to North Triangle. [FEIS Mitigation Measure] at the North Triangle. [FEIS Mitigation Measure]
52. Install 750 and 850 zone water main distribution main within North Triangle. [FEIS Mitigation Measure]
53. Construct needed water supply and storage improvements in accordance with the City's Comprehensive Plan and necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved by City staff within the MPD. [FEIS Mitigation Measure]
54. Should new water distribution alternatives be desired by the applicant that are not consistent with the recently adopted Water Comprehensive Plan, the applicant shall be responsible for the cost of updating the Plan if needed.

55. The Water Conservation Plan included in the Chapter 8 of the MPD Application is approved. The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings, and the impacts if the required savings targets of 10% less than the average water use in the City by residential uses at the time the MPD was submitted are not achieved.

56. The proposed water conservation plan shall be evaluated for its effectiveness in light of the City's available water resources after the first 500 units have been constructed. At that time, additional measures may be required if goals are not being achieved.

#### **PUBLIC UTILITIES – SEWER**

57. Construct Trunk Line No. 2 in Lawson Hills. [FEIS Mitigation Measure]

58. Upgrade and connect Botts Drive sewer main to Trunk Line No. 2. [FEIS Mitigation Measure]

59. Construct Trunk Line No. 3 in the North Triangle to new Pump Station No. 2. Alternatively, a functionally equivalent improvement, such as locating the interim pump station proposed on the North Triangle, may be considered if determined appropriate and approved by City staff. [FEIS Mitigation Measure]

60. Construct Pump Station No. 2, or construct the pump station on site within the North Triangle, consistent with the preceding condition in which case Pump Station No. 2 need not be constructed. [FEIS Mitigation Measure]

61. Construct Force Main No. 2. [FEIS Mitigation Measure]

a. If a pump station is located on the North Triangle, the applicant shall also abandon the Diamond Glen sewer pump station and connect the sewer flows from Diamond Glen to the new sewer pump station on the North Triangle.

#### **PUBLIC UTILITIES – STORMWATER AND WATER QUALITY**

62. Stormwater runoff that is collected from impervious surfaces shall be mitigated in accordance with the *2005 Stormwater Management Manual for Western Washington*, and stormwater designs shall include low impact development techniques wherever practical and feasible. [FEIS Mitigation Measure]

63. Runoff from basins tributary to Lake Sawyer shall provide water quality treatment in accordance with the phosphorous control menu in the *2005 Stormwater Management Manual for Western Washington*. [FEIS Mitigation Measure]

64. Enhanced water quality treatment shall be provided as required by the *2005 Stormwater Management Manual for Western Washington*. [FEIS Mitigation Measure]

65. All development within the North Triangle shall utilize infiltration for flow control and phosphorous control mitigation due to the well drained soils on-site. [FEIS Mitigation Measure]

66. The applicant shall implement a surface water monitoring plan that identifies locations to monitor surface water upstream and downstream of stormwater pond outfalls. The purpose of the plan is to monitor surface water temperatures during the warmest six months of the year and ensure that stormwater discharge does not cause a temperature increase in receiving water bodies. Monitoring shall occur for a period of two years once discharge occurs. The plan shall describe a threshold and evaluation using state standards and outline possible remedies if negative temperature impacts are found. [FEIS Mitigation Measure]

67. Native plants shall be primarily used as part of the planting palette within the MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation Measure]

68. Where point discharges to streams must occur, design the outfall to minimize impacts to the stream channel and avoid areas of significant vegetation. [FEIS Mitigation Measure]

69. Mechanisms shall be identified to integrate Low Impact Development technologies into the overall design of the MPD and incorporated into the Development Agreement. Future Homeowners' Associations shall bear any increased cost of landscape maintenance.

70. The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. This condition does not constitute approval for direct discharge of roof drainage into wetlands, streams or their buffers; any such direct discharge is authorized only if approved by the Public Works Director as in compliance with Black Diamond Municipal Code Ch. 14.04 and the standards adopted therein. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.

71. Stormwater facilities to be considered as part of required open space shall be designed as an amenity per the Public Works and Natural Resources Directors. Factors to be considered by the Directors in determining whether the facilities are designed as an amenity include, but shall not be limited to, whether the facilities are safe for general public access (i.e., do not have steeply sloped banks requiring fencing), are suitable for active recreational use during at least 3 months per year, are suitable for passive recreational use such as walking, hiking, or bird or other wildlife viewing, and/or provide wildlife habitat. If approved, future Homeowners Association(s) shall be required to provide landscape maintenance of these facilities, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s).

72. The proposed stormwater bypass line from the Main Property to the Jones Lake area shall be sized to accommodate street flows along the proposed route.

73. The Development Agreement shall include language that binds future developers and contractors to a requirement to comply with any NPDES permits issued by the Washington State

Department of Ecology and acknowledge that although permit conditions imposed by NPDES permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer shall fund necessary costs for training related to inspection services.

74. Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.

75. Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities. The City shall have the right to reject higher cost of maintenance facilities when lower cost options may be available.

76. Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations.

77. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

78. The size of storm ponds for hydraulic purposes shall vest on a phase by phase basis to the extent allowed by the City's DOE discharge permit and state law.

79. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the Stormwater Management Manual for Western Washington, or is in use such that it is considered by the stormwater engineering community as constituting part of the "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

80. The Development Agreement shall include language to allow deviations from the stormwater facilities listed in the FEIS when justified by a technical analysis and risk assessment.

81. A downstream analysis shall be performed prior to the first implementing development proposal for the Main Property to determine the impact of the Lawson Hills development to the flood elevations at Abrams Ave and the flood peaking impact to the wetlands.

82. The City shall determine whether the Applicant's reasonable proportionate share participation in any watershed-wide implementation measures identified in Exhibit H-9 would be

of significant benefit in protecting Lake Sawyer water quality. If so, those measures shall be incorporated into the Development Agreement. The Development Agreement shall also integrate the phosphorus and temperature monitoring plan proposed by the Applicant in Exhibit NR-LH-5.

83. When the Applicant builds improvements to existing public road right-of-way inside the City of Black Diamond and which road right-of-way drains to Lake Sawyer, the Applicant is required to treat the stormwater from those improvements to the then current and applicable phosphorus treatment standard, and the Applicant shall also treat the existing stormwater that runs off the existing right-of-way in the immediate vicinity of the improvement.

84. The Applicant agrees to work cooperatively with the City to identify opportunities where the City can reduce phosphorus sources or improve phosphorus treatment on existing City lands and for existing City owned or maintained stormwater facilities.

85. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of Tp, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in Tp so as to bring the discharge below the annual maximum identified pursuant to this Condition.

86. A Water Quality Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Water Quality Review committee shall review and evaluate compliance with the stormwater conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

## VISUAL AND AESTHETICS

87. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.

88. The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.

89. Minimize the aesthetic impacts of grading along the ridgeline of Lawson Hill and promote views from areas of lower elevation that blend rooftops with the surrounding natural environment by implementing one or more of the following:

a. Preserve mature trees in natural open spaces, and if hazardous tree removal is required, replant at a 3:1 ratio with minimum 12-foot-tall evergreen trees.

b. Require design guidelines that include material and color choices that blend with the surrounding environment and preclude materials such as shiny metal roofs.

c. Plant native trees in open spaces, parks, and streetscaping. [FEIS Mitigation Measure]

## HISTORIC AND CULTURAL RESOURCES

90. Prior to demolition of the miners' housing on the project site, the applicant shall complete the National Register of Historic Places nomination process with the Washington State Department of Archaeology and Historic Preservation (DAHP). If any properties are determined eligible for the NRHP, additional consultation with the DAHP shall be documented to determine if additional research and archaeological testing is necessary to determine the limits and contents of the site with respect to NRHP eligibility and controls. [FEIS Mitigation Measure]

## PUBLIC SERVICES - PARKS AND RECREATION

91. If the Lawson Hills school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

92. The Development Agreement shall include provisions to define which parks and trails facilities will be public and which shall be private. The Agreement shall also include language to guarantee public access to privately-owned parks and trails facilities.

93. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities

94. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.

95. Dependant on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement.

96. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

97. Parks within each phase of development shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the phase, whichever occurs first, to the extent necessary to meet park level of service standards for the implementing project.

98. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

#### **PUBLIC SERVICES – SCHOOLS**

99. The Applicant shall enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference. Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws). The agreed number of school sites and associated minimum acreage, both as set forth in Exhibit 6, shall be used to guide any school mitigation alternative. To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs.

## **PUBLIC SERVICES – PUBLIC SAFETY**

100. The Development Agreement shall include specific provisions for providing fire mitigation to ensure protection concurrent with project build out. Fire mitigation may include fire impact fees under a City-wide fire impact fee program for new development, a voluntary fire mitigation agreement, and/or the dedication of land for fire facilities (subject to credit under State impact fee laws).

101. All Fire Department access roads must meet International Fire Code, specifically Section 503 Fire Department Access Roads and Appendix D Fire Department Access Roads, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations

102. Auto courts shall meet the requirements of the International Fire Code 2006 ed. Per IFC Section 503, specifically 503.2.1, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations.

103. Separation of combustible structures and vegetation shall be provided to prevent wildland fires from the east and south from spreading to buildings. This shall be determined at the time of implementing projects.

## **EROSION HAZARDS**

104. Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

105. In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion. [FEIS Mitigation Measure]

106. Bridges or appropriately sized box culverts shall be used for roadway crossings of streams to allow peak flow high-water events to pass unimpeded and to preserve some normal stream processes. [FEIS Mitigation Measure]

107. Design stormwater facilities to avoid discharging concentrated stormwater flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS Mitigation Measure]

108. Utilize stormwater detention facilities that avoid increases in peak stream flows. [FEIS Mitigation Measure]

109. The Applicant shall submit a Temporary Erosion and Sedimentation Control (TESC) plan meeting City standards that will mitigate the potential for construction run-off from the site

prior to grading or land clearing activities. The best management practices in the TESC plan shall include standby storage of emergency erosion and sediment control materials; a limit to the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.

110. Prior to approval of the first implementing project, the applicant shall provide an overall clearing and grading plan that will be subject to additional SEPA review. Separate permits will be submitted for the North Triangle and Main Property.

#### **LANDSLIDE HAZARDS**

111. Development of landslide hazard areas shall be avoided. Sufficient setbacks shall be required to assure or increase the safety of nearby uses, or where feasible grade out the landslide hazard area to eliminate the hazard in compliance with the city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

112. Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides. [FEIS Mitigation Measure]

113. Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.

#### **MINE HAZARDS**

114. Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.

115. Flexible utility lines shall be utilized when developing above mine hazard areas.

116. The most severe mine hazard areas shall be designated as open space; as feasible, roads and utilities shall be routed to avoid such areas. [FEIS Mitigation Measure]

117. All proposed development within mine hazard areas shall occur in conformance with BDMC 19.10.

118. All houses that are sold in classified coal mine hazard areas shall require a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement.

## VEGETATION AND WETLANDS

119. Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas. [FEIS Mitigation Measure]

120. Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees. [FEIS Mitigation Measure]

121. Clean excess water flows shall be routed to Jones Lake and the wetland complex to ensure that summer water levels are not significantly decreased below existing water levels. [FEIS Mitigation Measure]

122. New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. [FEIS Mitigation Measure]

123. A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.

124. The Development Agreement shall include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested.

125. The use of native vegetation in street landscaping and in parks shall be required.

## FISH AND WILDLIFE

126. Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]

127. Potential impacts to Lawson Creek and Jones Lake Creek shall be limited by connecting, when feasible, new stormwater conveyance pipes associated with development to the existing culverts that contain Lawson Creek and Jones Lake Creek under SR 169. This is the preferred discharge location for the proposed stormwater bypass line from the Main Property. Alternative discharge locations may be required based on capacity analysis of existing culverts and permitting issues associated with this connection. [FEIS Mitigation Measure]

128. Prior to commencing construction, wildlife crossing signs shall be installed along Lawson Street to warn drivers of elk crossing the road. [FEIS Mitigation Measure]

129. Mast-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food

sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.

#### **CLIMATE CHANGE**

130. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

131. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

#### **LAND USE**

132. Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1 as updated July 8, 2010); description of categories (beginning on page 3-18); a maximum of 1,250 total residential units and 390,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Corner store-style neighborhood commercial uses within residential land use categories shall be defined in the Development Agreement and shall only be allowed through minor amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

133. Parcel L2 shall be designated either Low or Medium Density Residential, or open space.

134. The project shall provide a mix of housing types in conformance with the MPD Design Guidelines. The Development agreement shall set targets for various types of housing for each phase of development.

135. Identification of specific areas where live/work units can be permitted shall be done as part of the Development Agreement or through an MPD minor amendment.

136. A minimum density of 4 du/per net acre for residential development shall be required for implementing projects, and shall be calculated for each development parcel using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010).

137. If the applicant requests to increase a residential category that abuts the perimeter of the MPD, it shall be processed as a Major Amendment to the MPD. Residential land use categories can otherwise be adjusted one category up or down through an administrative approval process

provided they also otherwise meet the requirements for minor amendments outlined in BDMC 18.98.100.

138. The Development Agreement shall limit the frequency of proposed reclassification of development parcels to no more frequently than once per calendar year.

139. Project specific design standards shall be incorporated into the Development Agreement. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines. All MPD construction shall comply with the Master Planned Development Framework Design Standards and Guidelines, whether or not required by the Development Agreement.

140. A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement.

141. All commercial/office uses (other than home occupations and identified live/work areas) shall only occur on lands so designated. Additional commercial areas shall be identified on the Land Use Plan through future amendment to the MPD.

142. The project shall include a mix of housing types that contribute to the affordable housing goals of the City. The Development Agreement shall provide for a phase-by-phase analysis of affordable housing Citywide to ensure that housing is being provided at affordable prices. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis.

143. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis referenced in the preceding condition.

144. A distinct land use category shall be created to recognize potential light industrial uses or the "office" category shall be renamed to properly indicate the range of potential uses. Areas intended to have light industrial type uses shall be identified on the Land Use Map that is made part of the Development Agreement.

145. An additional 14.8 acres of open space shall be provided and designated as such on the Land Use Plan or a plan for providing the acreage shall be provided in the Development Agreement.

146. The high density residential (18-30 du/ac) supplemental design standards and guidelines (MPD application Appendix E) shall become part of the Development Agreement.

147. Detached single family dwelling units shall be predominantly alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in his/her reasonable discretion.

148. Homeowners Association conditions, covenants and restrictions (CCRs) or the Architectural Review Committee shall review, but shall not preclude, the use of green technologies such as solar panels.

149. Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement.

150. A FAR standard shall be established through the Development Agreement process.

151. Prior to approval of the Development Agreement, the legend on Figure 3-1 (Land Use Plan) must be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area.

152. All requests for deviation in Chapter 13 of the MPD application should be denied except for those deviations, mostly utility and street standards, that are identified in the recommendation as amenable to further review in the development agreement process. Any MPD deviations to the Sensitive Areas Ordinance should be denied, since BDMC 18.98.155(A) provides that the Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs.

#### **SENSITIVE AREAS/OPEN SPACE**

153. The use of sensitive areas including but not limited to wetlands, landslide and mine hazard areas and their associated buffers for development including trails, stormwater management, etc. shall be regulated by BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts as well as other required measures shall be evaluated on a case-by-case basis at the time of implementing project application.

154. Areas shown as natural open space in the figure on Page 5-5 of the application are required to remain natural with the possibility for vegetation enhancement. Modifications to these areas may be approved by the City in its reasonable discretion, on a case-by-case basis, only if necessary for construction of required infrastructure such as roads, trails or stormwater facilities. Any areas disturbed pursuant to such approval shall be replanted with native plants. Nothing in this condition shall allow grading or modifications in the sensitive areas and buffers, except as provided in the Sensitive Areas Ordinance.

155. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

156. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

157. Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

158. Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement.

159. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

#### ADMINISTRATION

160. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

a. If any phase has not been completed within five years, a new fiscal analysis must be completed with regards to that phase before an extension can be granted; and

b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding.

161. The Applicant and other property owners may petition for the formation of a Community Facilities District to provide a mechanism for funding the costs of "facilities" as defined in Section 501 of SSB 6241. The City Council will review the petition as provided in

SSB 6241 and, as set forth in Section 205, determine in its sole discretion whether the petitioners will benefit from the proposed district and whether the formation of a district will be in the best interest of the City and comply with the requirements of the Growth Management Act, Ch. 36.70A RCW.

162. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

163. The Development Agreement shall document a collaborative design/review/permitting process that allows City staff to participate in the conceptual stage of project planning in order to provide input on designs and choices that benefit the City as well as the applicant.

164. The Development Agreement shall specifically identify which rights and entitlements are vested with each level of permitting, including but not limited to the MPD Application approval, the Development Agreement approval, and Utility Permit approvals.

165. Reclassification of development parcels shall occur no more frequently than once per calendar year.

166. A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement.

167. Proposed reclassification of development parcels located at the project perimeter to a higher density shall only occur through a Major Amendment to the MPD.

168. The Development Agreement shall define the proposed phasing plan for the various matters (utility and street infrastructure, parks, transferred development rights, etc.) subject to phasing standards.

169. Prior to the approval of the first implementing project of a defined phase, a detailed implementation schedule of the regional projects supporting that phase shall be submitted to the City for approval. The timing of the projects shall be tied to the number of residential units and/or square feet of commercial projects.

Exhibit D

Legal Description of Rezone Parcels

0027494

PARCEL NO. 132108-0048 AND 132106-8007 (FROM PHASE 1 BEB "PARCEL F") (R4)

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING WESTERLY AND NORTHWESTERLY OF A LINE BEGINNING ON THE NORTH LINE OF SAID SUBDIVISION AT A POINT BEARING NORTH 03°40'00" WEST FROM A POINT DESIGNATED AS 1438.12 FEET SOUTH AND 680.73 FEET EAST OF THE NORTHWEST OF SAID SECTION 13;

THENCE SOUTH 03°40'00" EAST TO SAID DESIGNATED POINT;  
THENCE SOUTH 68°32'19" WEST A DISTANCE OF 108.19 FEET;  
THENCE SOUTH 52°18'00" WEST A DISTANCE OF 412.62 FEET;  
THENCE SOUTH 18°50'00" WEST A DISTANCE OF 144.72 FEET;  
THENCE SOUTH 66°50'00" WEST TO THE SECTION LINE; ALSO

EXCEPT THAT PORTION THEREOF LYING EASTERLY AND NORTHERLY OF A LINE BEGINNING 472.70 FEET SOUTH AND 807.87 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 178.85 FEET;  
THENCE NORTH 89°28'00" WEST A DISTANCE OF 116.74 FEET;  
THENCE SOUTH 00°09'00" WEST A DISTANCE OF 438.25 FEET;  
THENCE SOUTH 03°40'00" EAST A DISTANCE OF 348.10 FEET;  
THENCE SOUTH 73°44'00" EAST A DISTANCE OF 338.10 FEET;  
THENCE SOUTH 89°48'42" EAST A DISTANCE OF 667.36 FEET, MORE OR LESS, TO A POINT 20 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF SKID ROAD;  
THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION;

ALSO

EXCEPT THAT PORTION THEREOF LYING WITHIN THE RIGHT OF WAY OF 262ND AVENUE SOUTHEAST.

PARCEL NO. 132108-0034 (FROM PHASE 1 BEB "PARCEL G") (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.87 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 178.85 FEET;  
THENCE NORTH 89°43'00" WEST A DISTANCE OF 116.74 FEET;  
THENCE SOUTH 00°09'00" WEST A DISTANCE OF 438.25 FEET;  
THENCE SOUTH 03°40'00" EAST A DISTANCE OF 348.10 FEET;  
THENCE SOUTH 73°44'00" EAST A DISTANCE OF 336.10 FEET;  
THENCE SOUTH 89°48'42" EAST A DISTANCE OF 667.35 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 20.00 FEET WESTERLY FROM THE CENTERLINE OF A SKID ROAD;  
THENCE NORTHERLY ALONG SAID PARALLEL LINE A DISTANCE OF 1110.00 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO LEONARD AND DONALD KUZARO BY DEED RECORDED UNDER RECORDING NUMBER 3794671;  
THENCE NORTH 89°48'42" WEST A DISTANCE OF 1060.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;



17112 115<sup>th</sup> Avenue NE, Everett, Washington 98031-9623  
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EXCEPT THEREFROM THE FOLLOWING DESCRIBED TRACT:

A PARCEL FROM THE ABOVE TRACT BEGINNING AT A POINT 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13, SAID POINT BEING IDENTICAL WITH THE SOUTHWEST CORNER OF THE TRACT SOLD TO JOHN MAK, AND RUNNING AS FOLLOWS:

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 178.86 FEET;  
THENCE NORTH 89°28'00" WEST A DISTANCE OF 116.74 FEET;  
THENCE SOUTH 00°09'00" WEST A DISTANCE OF 381.40 FEET;  
THENCE SOUTH 89°53'42" EAST A DISTANCE OF 814.10 FEET;  
THENCE NORTH 00°20'42" WEST A DISTANCE OF 538.30 FEET;  
THENCE NORTH 89°48'42" WEST A DISTANCE OF 381.30 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 132108-8083/132108-9068/132108-9087 (FROM PHASE 2 BEE "PARCEL A") (R4)

THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON.

PARCEL NO. 122108-8011 (FROM PHASE 2 BEE "PARCEL C") (R4)

THAT PORTION OF THE WEST HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY MARGIN OF SOUTHEAST GREEN RIVER GORGE ROAD.

EXCEPT THAT PORTION THEREOF LYING WITHIN THE LANDS CONVEYED TO JOHN MAK, AND MARY MAK BY DEED RECORDED UNDER RECORDING NUMBER 2088851, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 12, AND THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 13 IN SAID TOWNSHIP AND RANGE DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST A DISTANCE OF 489.84 FEET;  
THENCE NORTH 89°49'00" EAST A DISTANCE OF 311.26 FEET;  
THENCE SOUTH 89°48'42" EAST A DISTANCE OF 728.86 FEET;  
THENCE SOUTH 00°33'00" WEST A DISTANCE OF 718.72 FEET;  
THENCE NORTH 89°48'42" WEST A DISTANCE OF 210.01 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 132108-9014 (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 43°05'17" EAST 1,862.67 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION AND THE TERMINUS OF THE HEREIN DESCRIBED LINE.

PORTIONS FROM PARCEL NO. 132108-9013, 132108-9057, 132108-9062, AND 132108-9003 (R4)

LOT B OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. 10910055, RECORDED UNDER RECORDING NO. 20100688900003, SITUATE IN SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON.

PARCEL NO. 132106-9024 (FROM DEED) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 473.50 FEET SOUTH AND 1051.38 FEET EAST OF NORTHWEST CORNER OF SAID SECTION 13, SAID POINT BEING THE ORIGINAL NORTHEAST OF JAMES L. MANOWSKI'S AND JULIE MANOWSKI'S PROPERTY, AS SET FORTH IN A DEED RECORDED UNDER RECORDING NUMBER 8523809;

THENCE SOUTH 89°19'00" EAST A DISTANCE OF 10.00 FEET TO THE NEW NORTHEAST CORNER OF MANOWSKI PROPERTY, PURSUANT TO A BOUNDARY LINE AGREEMENT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 06°54'16" WEST A DISTANCE OF 180.19 FEET, SAID LINE BEING THE NEW BOUNDARY BETWEEN MANOWSKI AND KUZARO PARCELS BY AGREEMENT, TO THE SOUTHEAST CORNER OF MANOWSKI PROPERTY WHICH BEARS NORTH 89°49'00" WEST AT A DISTANCE OF 10 FEET FROM THE ORIGINAL SOUTHEAST CORNER OF MANOWSKI PROPERTY;

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 15.00 FEET;  
THENCE SOUTH 89°49'00" EAST A DISTANCE OF 60.85 FEET;  
THENCE SOUTH 00°20'42" EAST A DISTANCE OF 187.65 FEET;  
THENCE SOUTH 88°46'42" EAST A DISTANCE OF 100.00 FEET;  
THENCE NORTH 00°20'42" WEST A DISTANCE OF 387.00 FEET;  
THENCE NORTH 89°40'42" WEST A DISTANCE OF 137.88 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO KNOWN AS A PORTION OF BLACK DIAMOND SHORT PLAT NUMBER 79-734, RECORDED UNDER RECORDING NUMBER 7908059009);

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE NEW SOUTHEAST CORNER OF THE MANOWSKI PROPERTY AS DESCRIBED ABOVE;

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 15.00 FEET;  
THENCE NORTH 89°49'00" EAST A DISTANCE OF 350 FEET, MORE OR LESS, TO THE EAST LINE OF 262ND AVENUE SOUTHEAST AS ESTABLISHED;  
THENCE NORTH ALONG SAID EAST LINE A DISTANCE OF 15 FEET, MORE OR LESS, TO A POINT WHICH BEARS NORTH 89°49'00" WEST FROM THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 89°49'00" EAST TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 132108-8037 (FROM DEED) (R4)

THE SOUTH 100 FEET OF THE FOLLOWING DESCRIBED TRACT:

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 211.84 FEET SOUTH AND 880.70 FEET EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION, SAID POINT BEING THE INTERSECTION OF THE EAST AND SOUTH LINES OF TWO ROADWAYS;  
THENCE SOUTH 89°51'00" EAST A DISTANCE OF 118.88 FEET;  
THENCE SOUTH 00°32'00" WEST A DISTANCE OF 439.69 FEET;  
THENCE NORTH 89°28'00" WEST A DISTANCE OF 118.74 FEET TO THE EAST LINE OF A 30 FOOT ROADWAY;  
THENCE ALONG SAID ROADWAY LINE NORTH 00°09'00" EAST A DISTANCE OF 439.74 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 132108-8040 (FROM DEED) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHEASTERLY LINE OF THE FRANKLIN HOWARD COUNTY ROAD NO. 1018 AT A POINT WHICH IS 877.39 FEET SOUTH AND 278.50 FEET EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION;

THENCE SOUTH 0°16' EAST 264.21 FEET;  
THENCE SOUTH 14°54' EAST 97.70 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 14°54' EAST 112.02 FEET; THENCE SOUTH 24°20' EAST 88.84 FEET;  
THENCE NORTH 71°45' EAST 315.72 FEET TO THE WEST LINE OF A 30 FOOT ROADWAY;  
THENCE ALONG SAID ROADWAY LINE NORTH 3°40' FEET WEST 33.28 FEET;  
THENCE NORTH 0°29' EAST 173.05 FEET; THENCE SOUTH 89°26' WEST 237.81 FEET;  
THENCE SOUTH 76°18' WEST 141.86 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 132106-8016 (FROM UNUSED PHASE 3 BEE OPTION 1 "PARCEL A" AND PHASE 4 BEE "PARCEL A"). (R4)

THE NORTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;  
EXCEPT THAT PORTION THEREOF LYING WITHIN THE FOLLOWING DESCRIBED TRACT:  
BEGINNING AT A POINT 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;  
THENCE NORTH 00°33'00" EAST 489.94 FEET;  
THENCE NORTH 38°49'00" EAST 311.28 FEET;  
THENCE SOUTH 89°48'42" EAST 725.85 FEET;  
THENCE SOUTH 00°33'00" WEST 719.72 FEET;  
THENCE NORTH 89°48'42" WEST 865 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 132106-8053 (FROM UNUSED PHASE 3 OPTION 1 BEE "PARCEL B" AND PHASE 4 BEE "PARCEL C"). (PUBLIC)

THAT PORTION OF SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;  
THENCE SOUTH 0°22'10" EAST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, 530 FEET;  
THENCE NORTH 89°37'50" EAST 116 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 89°37'50" EAST 180 FEET;  
THENCE SOUTH 0°22'10" EAST 121 FEET;  
THENCE SOUTH 89°37'50" WEST 180 FEET;  
THENCE NORTH 0°22'10" WEST 121 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 122106-8012 (FROM UNUSED PHASE 3 OPTION 2 BEE "PARCEL A"). (R4)

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY MARGIN OF SOUTHEAST GREEN RIVER GORGE ROAD;  
EXCEPT THAT PORTION THEREOF LYING WITHIN THE LANDS CONVEYED TO JOHN MAKES AND MARY MAKES BY DEED RECORDED UNDER RECORDING NUMBER 2058861, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 12, AND THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 13 IN SAID TOWNSHIP AND RANGE DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST 489.94 FEET;  
THENCE NORTH 38°49'00" EAST 311.28 FEET;  
THENCE SOUTH 89°48'42" EAST 725.85 FEET;  
THENCE SOUTH 00°33'00" WEST 719.72 FEET;  
THENCE NORTH 89°48'42" WEST 810.01 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 132106-8008 (FROM PHASE 4 BEE "PARCEL B"). (R4)

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING NORTHERLY AND WESTERLY OF A LINE BEGINNING 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;  
THENCE SOUTH 00°32'00" WEST 170.98 FEET;  
THENCE NORTH 89°28'00" WEST 116.74 FEET;

THENCE SOUTH 00°09'00" WEST 438.26 FEET;  
THENCE SOUTH 03°40'00" EAST 348.10 FEET;  
THENCE SOUTH 73°44'00" EAST 336.10 FEET;  
THENCE SOUTH 89°48'42" EAST 887.35 FEET, MORE OR LESS, TO A POINT 20 FEET WEST OF  
AND PARALLEL WITH THE CENTERLINE OF BKID ROAD;  
THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE TO THE NORTH LINE OF THE  
SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; AND

EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE  
NORTHWEST QUARTER;  
THENCE SOUTH 0°22'10" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF  
THE NORTHWEST  
QUARTER, 530 FEET;  
THENCE NORTH 89°37'50" EAST 116 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 89°37'50" EAST 180 FEET;  
THENCE SOUTH 0°22'10" EAST 121 FEET;  
THENCE SOUTH 89°37'50" WEST 180 FEET;  
THENCE NORTH 0°22'10" WEST 121 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 132106-9033 (FROM ALTA DATED 09-30-08) (R4)

THE MOST SOUTHERLY HALF OF THE FOLLOWING DESCRIBED TRACT:  
BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE  
NORTHWEST CORNER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE  
MERIDIAN, IN KING COUNTY, WASHINGTON;  
THENCE NORTH 00°33'00" EAST 468.94 FEET;  
THENCE NORTH 26°48'00" EAST 311.28 FEET;  
THENCE SOUTH 89°48'42" EAST 726.88 FEET;  
THENCE SOUTH 00°33'00" WEST 719.72 FEET;  
THENCE NORTH 89°48'42" WEST 910.01 FEET TO THE POINT OF BEGINNING;  
TOGETHER WITH THAT PORTION OF THE NORTH HALF OF SAID SECTION 13 CONVEYED TO  
JOHN MAK, JR. AND AMELIA MAK, HIS WIFE, BY QUIT CLAIM DEED RECORDED UNDER  
RECORDING NUMBER 4884498, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE  
NORTHWEST CORNER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 8 EAST, WILLAMETTE  
MERIDIAN, IN KING COUNTY, WASHINGTON;  
THENCE NORTH 00°33'00" EAST 347.27 FEET;  
THENCE SOUTH 89°48'22" EAST 270 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 89°48'22" EAST 640 FEET;  
THENCE NORTH 00°33'00" EAST 23.74 FEET;  
THENCE NORTH 89°48'22" WEST 640 FEET;  
THENCE SOUTH 00°33'00" WEST 23.74 FEET TO THE TRUE POINT OF BEGINNING;  
EXCEPT THAT PORTION THEREOF CONVEYED TO THOMAS H. MAK, JR. AND GLORIA MAK, HIS  
WIFE, BY QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 4884498, MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT 807.97 FEET EAST AND 472.7 FEET SOUTH OF THE NORTHWEST  
CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST 291 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 00°33'00" EAST 58.27 FEET;  
THENCE SOUTH 89°48'22" EAST 270 FEET;  
THENCE SOUTH 00°33'00" WEST 58.27 FEET;  
THENCE NORTH 89°48'22" WEST 270 FEET TO THE TRUE POINT OF BEGINNING OF THIS  
EXCEPTION.

PARCEL NO. 132106-8029 (FROM BEE DATED 08-08-08) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF  
SECTION 13, TOWNSHIP 21 NORTH RANGE 8 EAST, WILLAMETTE MERIDIAN, IN KING  
COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 182.15 FEET SOUTH AND 810.57 FEET EAST OF THE  
NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°32'00" EAST A DISTANCE OF 189.47 FEET TO SAID NORTH LINE OF  
SECTION 13;  
THENCE NORTH 89°48'42" WEST, ALONG SAID NORTH LINE OF SECTION 13, A DISTANCE OF  
37.73 FEET TO THE SOUTHEASTERLY MARGIN OF THE RIGHT OF WAY OF FRANKLIN  
HOWARD ROAD NO. 1018;  
THENCE SOUTH 37°11'00" WEST A DISTANCE OF 237.34 FEET, ALONG SAID RIGHT OF WAY;  
THENCE SOUTH 89°51'00" EAST A DISTANCE OF 174.10 FEET TO THE POINT OF BEGINNING.

THENCE SOUTH 88°22'00" EAST A DISTANCE OF 818.60 FEET TO THE POINT OF BEGINNING;  
ALSO

EXCEPT THAT PORTION THEREOF LYING WITHIN LAWSON HILL ESTATES, ACCORDING TO  
THE PLAT THEREOF, RECORDED IN VOLUME 162 OF PLATS, PAGES 20 THROUGH 24, IN KING  
COUNTY, WASHINGTON.

PARCEL NO. 142106-9001 (FROM BEE DATED 07-26-06) (R4)

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION  
14, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY,  
WASHINGTON, LYING NORTHERLY OF THE NORTH LINE OF LAWSON HILL ESTATES,  
ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 162 OF PLATS, PAGES 20  
THROUGH 24, IN KING COUNTY, WASHINGTON, AND SOUTHWESTERLY OF THE  
SOUTHWESTERLY LINE OF BLACK DIAMOND SHORT PLAT NUMBER 011-08-83 REV,  
RECORDED UNDER RECORDING NUMBER 8808039001.

PARCEL NO. 142106-9186 (FROM BEE DATED 07-26-06) (R4)

THAT PORTION OF LOT 1, BLACK DIAMOND SHORT PLAT NUMBER 011-08-83 REV,  
RECORDED UNDER RECORDING NUMBER 8308299001, AS REVISED UNDER RECORDING  
NUMBER 8808039001, LYING WITHIN THE NORTHEAST QUARTER OF THE NORTHEAST  
QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN  
KING COUNTY, WASHINGTON.

PARCEL NO. 132106-9054 (FROM BEE DATED 07-26-06) (R4)

THAT PORTION OF LOT 1, BLACK DIAMOND SHORT PLAT NUMBER 011-08-83, RECORDED  
UNDER RECORDING NUMBER 8308299001, AS REVISED UNDER RECORDING NUMBER  
8808039001, LYING WITHIN SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE  
MERIDIAN, IN KING COUNTY, WASHINGTON.

PARCEL NO. 132106-3036 (FROM DEED) (R4)

LOT 1, CITY OF BLACK DIAMOND SHORT PLAT NO. 03-SP-01 RECORDED UNDER RECORDING  
NUMBER 20030224900001;

BEING A PORTION OF:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF  
SECTION 12, AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION  
13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY,  
WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 13;  
THENCE SOUTH 72°38'50" EAST 117.22 FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 54°10' EAST 483.53 FEET TO THE NORTHWESTERLY MARGINAL LINE OF THE  
FRANKLIN HOWARD ROAD;  
THENCE NORTH 37°11' EAST ALONG SAID LINE 189.6 FEET, MORE OR LESS, TO THE  
SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO PAUL SAWICKE BY DEED  
RECORDED UNDER RECORDING NUMBER 1802304, IN KING COUNTY, WASHINGTON;  
THENCE WEST 24 FEET;  
THENCE NORTH 0°18' WEST ALONG THE WEST LINE OF SAWICKE TRACT 253.48 FEET TO  
THE CENTERLINE OF THE GRADE OF AN ABANDONED RAILROAD SPUR;  
THENCE NORTHEASTERLY ALONG SAID GRADE 915 FEET, MORE OR LESS, TO A POINT ON A  
LINE PARALLEL WITH AND 20 FEET SOUTHERLY FROM THE CENTERLINE OF THE  
ABANDONED PACIFIC COAST RAILROAD, BRUCE BRANCH;  
THENCE SOUTHWESTERLY ON SAID LINE, PARALLELING THE CENTERLINE TO A POINT  
WHICH BEARS NORTH 35°56' EAST FROM THE POINT OF BEGINNING;  
THENCE SOUTH 35°56' WEST 440 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS ACROSS TRACT "X" OF SAID  
SHORT PLAT; AND

TOGETHER WITH AN EASEMENT FOR UTILITIES ACROSS OR UNDER THE EASTERLY 60 FEET  
OF TRACT "X" AS MEASURED A RIGHT ANGLE TO LAWSON STREET.

COMMENCING AT A POINT 807.87 FEET EAST AND 472.7 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST 291 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 00°33'00" EAST 58.27 FEET;  
THENCE SOUTH 89°48'22" EAST 270 FEET;  
THENCE SOUTH 00°33'00" WEST 55.27 FEET;  
THENCE NORTH 09°48'22" WEST 270 FEET TO THE TRUE POINT OF BEGINNING.

POR. OF PARCELS NO. 112106-8122, 112108-8044, 112108-8016, 112106-9110, 112106-9111, 112106-9112, 112106-9113, 112106-9114, 112106-9020, AND 122106-8049 (HAMMERHEAD) (MDR#)

LOT 3 OF CITY OF BLACK DIAMOND BOUNDARY LINE ADJUSTMENT NO. PLN-10-0010, RECORDED UNDER RECORDING NO. 20100713800008, SITUATE IN SECTIONS 11 AND 12, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON.

PARCEL NO. 142106-9002 (FROM BEE DATED 07-28-08) (MDR#)

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THOSE PORTIONS THEREOF LYING SOUTHERLY OF THE NORTHERLY MARGIN OF PARK STREET (NOW KNOWN AS SOUTHEAST 323RD STREET) AND WESTERLY OF THE EASTERLY MARGIN OF 4TH AVENUE (NOW KNOWN AS 254TH AVENUE SOUTHEAST), AND SOUTHERLY OF THE NORTHERLY MARGIN OF JAMES STREET (NOW KNOWN AS SOUTHEAST 321ST STREET), AND SOUTHERLY AND WESTERLY OF THE NORTH AND EAST LINES OF BLOCK 2, ALL AS PLATTED IN BLACK DIAMOND TOWNSITE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 35 OF PLATS, PAGES 23 THROUGH 27, AND WESTERLY OF THE EASTERLY MARGIN OF THE RIGHT OF WAY OF STATE ROAD NO. 6 (THIRD AVENUE); ALSO

EXCEPT THAT PORTION THEREOF LYING EASTERLY OF THE WESTERLY MARGIN OF THE ABANDONED BRUCE BRANCH OF THE COLUMBIA & PUGET SOUND RAILROAD COMPANY RIGHT OF WAY, AS DESCRIBED IN RECORDING NUMBER 543408, AND

TOGETHER WITH THAT PORTION OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 14 LYING EASTERLY OF THE EASTERLY MARGIN OF THE ABANDONED BRUCE BRANCH OF THE COLUMBIA & PUGET SOUND RAILROAD COMPANY RIGHT OF WAY, AS DESCRIBED IN RECORDING NUMBER 543408, AND LYING NORTHERLY OF THE NORTH LINE OF LAWSON HILL ESTATES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 182 OF PLATS, PAGES 20 THROUGH 24, IN KING COUNTY, WASHINGTON.

PARCEL NO. 142106-9063 (FROM BEE DATED 07-28-08) (RAILROAD)

THAT PORTION OF THE PACIFIC COAST RAILROAD COMPANY RIGHT OF WAY (FORMERLY KNOWN AS THE ABANDONED BRUCE-LAWSON TRACK OF THE COLUMBIA AND PUGET SOUND RAILROAD) LYING WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING SOUTHERLY OF THE NORTHERLY MARGIN OF SOUTHEAST 323RD STREET (ALSO KNOWN AS PARK STREET); ALSO

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF BLACK DIAMOND FOR STREET AND UTILITY PURPOSES BY QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 9208160254; ALSO

EXCEPT THAT PORTION THEREOF LYING WITHIN THE TRACT CONVEYED TO A. P. KINKADE BY DEED RECORDED UNDER RECORDING NUMBER 3008428, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH IS 609.24 FEET SOUTH AND 878.61 FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION 14;  
THENCE SOUTH 01°38'00" WEST A DISTANCE OF 211.25 FEET;  
THENCE NORTH 88°22'00" WEST A DISTANCE OF 818.80 FEET;  
THENCE NORTH 01°38'00" EAST A DISTANCE OF 211.25 FEET ALONG A LINE PARALLEL WITH AND 20 FEET EAST OF THE CENTERLINE OF THE RIGHT OF WAY OF THE BRUCE BRANCH OF THE PACIFIC COAST RAILROAD;

PARCEL NO. 132108-8623 (FROM BEE DATED 06-11-07) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 211.84 FEET SOUTH AND 690.70 FEET EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION, SAID POINT BEING THE INTERSECTION OF THE EAST AND SOUTH LINES OF TWO ROADWAYS;  
THENCE SOUTH 88°51'00" EAST A DISTANCE OF 119.68 FEET;  
THENCE SOUTH 00°32'00" WEST A DISTANCE OF 439.69 FEET;  
THENCE NORTH 88°28'00" WEST A DISTANCE OF 116.74 FEET TO THE EAST LINE OF A 30- FEET ROADWAY;  
THENCE ALONG THE EASTERLY MARGIN OF SAID ROADWAY NORTH 00°08'00" EAST A DISTANCE OF 438.74 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 180 FEET THEREOF CONVEYED TO ALFRED R. SHAY AND ELSIE E. SHAY, HIS WIFE, BY STATUTORY WARRANTY DEED RECORDED UNDER RECORDING NUMBER 6430457.

PARCEL NO. 132108-8010 (FROM PHASE 3 BEE "PARCEL A") (R4)

LOT A, CITY OF BLACK DIAMOND BOUNDARY LINE ADJUSTMENT NO. LLA 07-061, RECORDED UNDER RECORDING NUMBER 20080610900012.

PARCEL NO. 132108-8011 (FROM IN FOREST BLA DATED 09-30-08) (R4)

LOT B, CITY OF BLACK DIAMOND BOUNDARY LINE ADJUSTMENT NO. LLA 07-001, RECORDED UNDER RECORDING NUMBER 20080610900012.

PARCEL NO. 132108-9000 (FROM IN FOREST BLA DATED 05-30-08) (R4)

LOT C, CITY OF BLACK DIAMOND BOUNDARY LINE ADJUSTMENT NO. LLA 07-001, RECORDED UNDER RECORDING NUMBER 20080610900012.

PARCEL NO. 132108-8021 (FROM ALTA STAMPED 11-29-06) (R4)

THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12, AND OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 13, ALL IN TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST 468.84 FEET;  
THENCE NORTH 38°49'00" EAST 311.26 FEET;  
THENCE SOUTH 89°48'42" EAST 726.96 FEET;  
THENCE SOUTH 00°33'00" WEST 718.72 FEET;  
THENCE NORTH 89°48'42" WEST 910.01 FEET TO THE POINT OF BEGINNING;

EXCEPT THE MOST SOUTHERLY HALF THEREOF CONVEYED TO JOHN MAKES JR. BY DEED RECORDED UNDER RECORDING NUMBER 3833110; AND

EXCEPT THAT PORTION THEREOF CONVEYED TO JOHN MAKES, JR. AND AMELIA MAKES, HIS WIFE, BY QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 4984489, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH IS 472.70 FEET SOUTH AND 807.97 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13;  
THENCE NORTH 00°33'00" EAST 347.27 FEET;  
THENCE SOUTH 89°48'22" EAST 270 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 89°48'22" EAST 840 FEET;  
THENCE NORTH 00°33'00" EAST 23.74 FEET;  
THENCE NORTH 89°48'22" WEST 840 FEET;  
THENCE SOUTH 00°33'00" WEST 23.74 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH THAT PORTION OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 13 CONVEYED TO THOMAS H. MAKES AND GLORIA MAKES, HIS WIFE, BY QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 4984490, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 132106-9038, 132106-9022 (FROM DEED) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHEASTERLY MARGIN OF THE FRANKLIN-HOWARD COUNTY ROAD NO. 1018 (GREEN RIVER GORGE ROAD), AS SAID MARGIN WAS ESTABLISHED BY DEED RECORDED UNDER RECORDING NUMBER 1107076, AT A POINT WHICH IS 877.39 FEET SOUTH AND 278.50 FEET EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION, WHICH POINT IS ALSO THE MOST NORTHERLY CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO JOHN NEIMCZYK BY DEED RECORDED UNDER RECORDING NUMBER 1449328;

THENCE SOUTH 00°18'00" EAST, ALONG THE EAST LINE OF SAID NEIMCZYK TRACT, A DISTANCE OF 284.21 FEET;

THENCE CONTINUING ALONG THE EAST LINE OF SAID NEIMCZYK TRACT, SOUTH 14°54'00" EAST A DISTANCE OF 87.79 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND SOLD TO STANLEY V. HAWKINS AND DONNIE L. HAWKINS, HUSBAND AND WIFE, BY REAL ESTATE CONTRACT RECORDED UNDER RECORDING NUMBER 6702196;

THENCE NORTH 75°18'00" EAST, ALONG THE NORTH LINE OF SAID HAWKINS TRACT, A DISTANCE OF 141.88 FEET;

THENCE CONTINUING ALONG THE NORTH LINE OF SAID HAWKINS TRACT, NORTH 69°26'00" EAST A DISTANCE OF 237.81 FEET TO THE WESTERLY MARGIN OF A 30-FOOT ROADWAY (282<sup>ND</sup> AVENUE SOUTHEAST);

THENCE ALONG SAID ROADWAY MARGIN NORTH 00°28'00" EAST A DISTANCE OF 704.82 FEET TO THE SOUTHERLY MARGIN OF A 30-FOOT ROADWAY;

THENCE NORTH 89°81'00" WEST A DISTANCE OF 39 FEET TO THE SOUTHEASTERLY MARGIN OF THE FRANKLIN-HOWARD COUNTY ROAD;

THENCE ALONG SAID ROAD MARGIN SOUTH 37°11'00" WEST A DISTANCE OF 584.45 FEET TO THE BEGINNING.

PARCEL NO. 132106-9047 (FROM DEED) (R4)

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 473.60 FEET SOUTH AND 1061.38 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 13, AND CONSIDERING THE NORTH LINE OF SAID NORTHWEST QUARTER TO BEAR NORTH 89°48'43" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 08°54'16" WEST A DISTANCE OF 180.19 FEET;

THENCE SOUTH 00°32'00" WEST A DISTANCE OF 15 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89°49'00" EAST A DISTANCE OF 60.88 FEET;

THENCE SOUTH 00°20'42" EAST A DISTANCE OF 167.55 FEET;

THENCE SOUTH 85°40'42" EAST A DISTANCE OF 100.20 FEET;

THENCE SOUTH 00°20'42" EAST A DISTANCE OF 171.87 FEET;

THENCE NORTH 89°53'42" WEST A DISTANCE OF 614.10 FEET;

THENCE NORTH 00°09'00" EAST A DISTANCE OF 187.82 FEET;

THENCE SOUTH 89°28'00" EAST A DISTANCE OF 200.04 FEET;

THENCE NORTH 00°09'00" EAST A DISTANCE OF 148.00 FEET;

THENCE SOUTH 89°49'00" EAST A DISTANCE OF 150.23 FEET TO THE TRUE POINT OF BEGINNING.

(ALSO KNOWN AS LOT "A", CITY OF BLACK DIAMOND LOT LINE ADJUSTMENT NUMBER 00-01, RECORDED UNDER RECORDING NUMBER 20000301000735.)

WRITTEN BY: ARJ

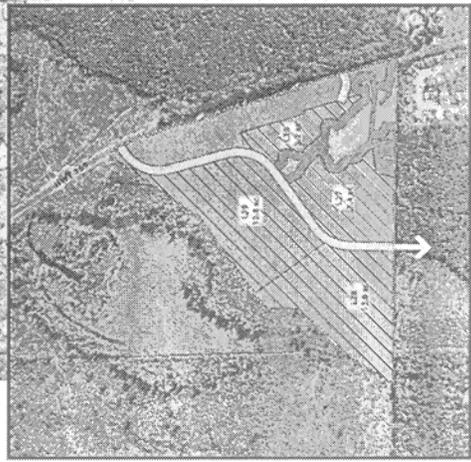
CHECKED BY: MSH



DESIGN CONCEPT AND LAND USE PLAN  
 FIGURE 3-1 LAND USE PLAN



Land Use - (07-08-2010)	Approx AC
Low Density Residential	79
Medium Density Residential	63
High Density Residential	17
Commercial/Office/Retail	35
Schools	10
Streets	23
Parks, Trails and Open Space	99
Buffers	29
Sensitive Areas	16
<b>Total</b>	<b>371 AC</b>
Potential Locations for High Density Residential Over	Approx. 4 AC
18 du/ac	
L#: Development Parcel Number	
Potential Locations for Light Industrial Overlay	

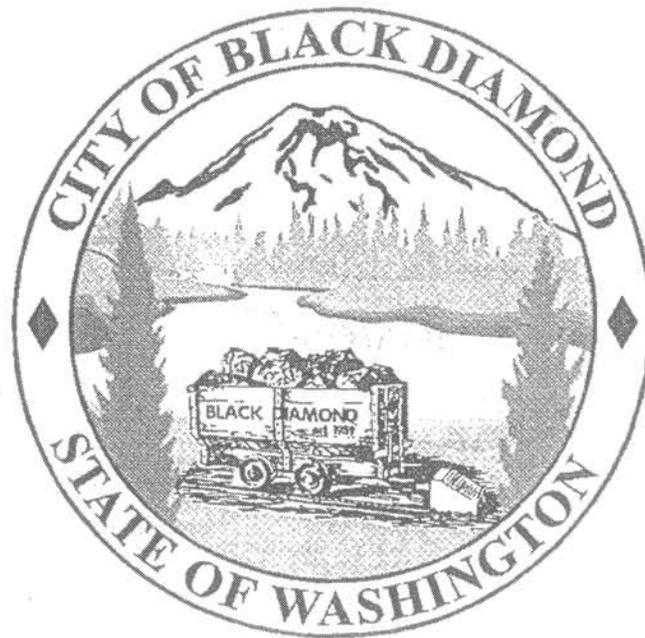


APPENDIX C

CITY OF BLACK DIAMOND  
COMPREHENSIVE PLAN

JUNE 2009

# City of Black Diamond Comprehensive Plan



June 2009

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## Abbreviations and Acronyms

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AgC	Alderwood gravelly sandy loam, 6-15% slope
AgD	Alderwood gravelly sandy loam, 15-30% slope
AgF	Alderwood gravelly sandy loam, with Kitsap Silty Loam
AkF	Alderwood and Kitsap soils, 25% to 70% slope
ALEA	Aquatic Land Enhancement Account
ALS	Advanced Life Support
BDAOSPA	Black Diamond Area Open Space Protection Agreement
BDUGAA	Black Diamond Urban Growth Area Agreement
BeC	Beausite gravelly sandy loam, 6 - 15% slope
BeD	Beausite gravelly sandy loam, 14 to 30% slope
Bh	Bellingham silt loam, 0% slope
Bu	Buckley silt loam, 0% slope
CAO	Critical Areas Ordinance
CDs	compact discs
cfs	cubic feet per second
City	City of Black Diamond
CMS	Concurrency Management System
CPPs	Countywide Planning Policies
CSPA	Coalition of Small Police Agencies
D.A.R.E.	Drug Abuse Resistance Education
DNR	Department of Natural Resources
Ecology	Washington State Department of Ecology
EIS	Environmental Impact Statement
EMT	emergency medical technician

EvB	Everett gravelly sandy loam, 0- 6% slope
EvC	Everett gravelly sandy loam, 6-15% slope
EvD	Everett gravelly sandy loam, 15- 30% slope
FAZ	Forecast Analysis Zone
FERC	Federal Energy Regulatory Commission
FTE	full-time equivalent employee
FWHCAs	fish and wildlife habitat conservation areas
GIS	geographic information systems
GMA	Growth Management Act
HB	House Bill
HOV	high-occupancy vehicle
HSS	Highways of Statewide Significance
ILA	inter-local agreement
IMap	Interactive Map Folio
JPA	Joint Planning Area
LIDs	Local Improvement Districts
LOS	level of service
Ma	Mixed Alluvial, less than 2% slope
MG	million gallons
MPD	Master Planned Development
mph	miles per hour
MVFT	Motor Vehicle Fuel Tax
NFPA	National Fire Protection Association
No	Norma sandy loam
NRCS	U.S. Department of Agriculture Natural Resources Conservation Service

NWPPC	Northwest Power Planning Council
OFM	State of Washington Office of Financial Management
PAA	Potential Annexation Area
PCC	Palmer Coking Coal
PM <sup>10</sup>	Particulate Matter
pph	persons per household
PRVs	pressure-reducing valves
PSAPCA	Puget Sound Air Pollution Control Agency
PSE	Puget Sound Energy
PSRC	Puget Sound Regional Council
PWTF	Public Works Trust Fund
Qvt	Vashon Till
RCW	Revised Code of Washington
RdC	Ragnar-Indianola
RECD	Rural Economic Community Development
REET	Real Estate Excise Tax
RM	river mile
SAO	Sensitive Areas Ordinance
SCS	Soil Conservation Service
SDCs	System Development Charges
SEPA	State Environmental Policy Act
Sk	Seattle muck, less than 1% slope
Sm	Shalcar muck
SMA	Shoreline Management Act
SMP	Shoreline Master Program
SOV	single-occupancy vehicle

Comprehensive Plan Update

SR	State Route
SRF	State Revolving Fund
SSPL	Second Supply Pipe Line
TDM	Transportation Demand Management
TDR	Transfer of Development Rights
TIA	Traffic Impact Analysis
TIP	Traffic Improvement Program
TSM	transportation system management
UGA	Urban Growth Area
Ur	Urban land
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WRIA	Water Resource Inventory Area
WSDOT	Washington State Department of Transportation
WTU	Wholesale, Transportation, Utilities
WUTC	Washington Utilities and Transportation Commission

# Chapter 1. Overview

## 1.1. The Vision

The City of Black Diamond (City) was originally founded in the 1880s as a resource-based residential community, and it is currently in transition to a rural village center in southeast King County. The City has a unique development pattern as a result of its origin and development as a coal company town. The City is composed of several single-family residential areas, separated by rolling topography, streams, forested lands in various stages of regrowth and open meadows. Small commercial uses are situated in three general areas. The overall development pattern is similar to a small European or rural east-coast village rather than traditional west-coast small towns which are developed around a central commercial core with a grid street pattern.

The City implemented a moratorium on formal subdivisions and Master Planned Developments (MPDs) several years ago to provide an opportunity for the updating of the City of Black Diamond Comprehensive Plan and development regulations. As a result, little economic growth has occurred in recent years, though residential in-fill development has been steady since the mid 1990s as land prices have escalated in Southeast King County. However, the moratorium is expected to be lifted in 2009 and the City's objective is to prepare for and manage its growth so it protects its natural resources but also becomes a fiscally balanced community, with more jobs for local residents and a better tax base to support City government and high quality services.

Regional land use policies, and growth of the regional economy, suggest that significant growth will occur over the next twenty years. Urban areas surrounding the City have been steadily adding new residents and jobs. The cities of Covington

and Maple Valley both incorporated in the 1990s and today contain approximately 37,200 people. King County projects that by 2022, South King County will contain more than 600,000 people, approximately one-third of the county's total population. The south county area is also projected to contain almost one-third of new countywide jobs. In the face of this anticipated growth, the citizens of the City want to ensure that the quality of life is maintained and enhanced, and that City government continues to be financially sound. The City of Black Diamond Comprehensive Plan is being updated to anticipate these future conditions and to establish desirable patterns of growth.

One of the City's primary concerns is to balance new growth and development with stormwater management and maintenance of surface water quality. Given historical concerns with water quality in Lake Sawyer, protection of surface and groundwater quality within the City's drainage basins will be a key issue into the future.

The City has a rich and long history and strong community identity. A collective vision statement was prepared through a public process when the City's comprehensive plan was adopted in 1996. This vision is carried forward in this updated comprehensive plan through the year 2025. The City's vision is:

*In the year 2025, Black Diamond will be a beautiful, friendly community based on a rich historic heritage and exceptional natural setting, and with a small-town atmosphere. Forested areas and open space remain, while development maintains a healthy balance of moderate growth and economic viability.*

*The economic base will be a mix of retail, industrial/business park, office, tourist and local cottage industries. Residential development will be a mix of types, sizes and densities, clustered to preserve maximum open space and to access a system of trails/bikeways/greenbelts which connect housing, shopping, employment and recreation areas with nearby regional parks and recreational facilities.*

*Citizens actively participate in an effective and open government decision-making process that reflects community values. There will be good cooperation among nearby jurisdictions, and adequate public services and environmental protection to provide a safe and healthy quality of life for all citizens, from children to seniors.*

The comprehensive plan is intended to reflect the community's vision and to plan to accommodate expected change. Change will require the community to make choices—often hard choices—about its future and to attempt to minimize the adverse

aspects and maximize the positive aspects of expected growth. Through its comprehensive plan, the City intends to effectively manage its future.

The comprehensive planning process should be approached as continuous, with ongoing review and updating as necessary to reflect changes that occur over time. This plan should be reviewed annually and amended as appropriate.

## 1.2. History of the City of Black Diamond

The City lies in the heart of the Green River Region, about 30 miles southeast of Seattle on a flat bench of gravel and glacial till. Millions of years ago, an array of geologic occurrences converged on this area to create pitching and expensive-to-mine coal beds, and limited possibilities for farming and forestry. Over its 100-year history, the City has evolved from one of the earliest and largest towns and employment centers outside Seattle, to a local center for resource activities (primarily resource extraction), to its current status as a residential center and bedroom community for the new employment centers located to the north and west.

The City was founded, developed and operated as a coal company town for almost fifty years. As an isolated company town, with a company store and surrounded by large land holdings, the City never developed as a commercial center for nearby farming and residential areas as did other small King County towns. This history resulted in development pattern of small dispersed residential and commercial areas with linear residential development along road corridors.

The City's history coincides with the growth of the Puget Sound region and begins with the Black Diamond Coal Company of Nortonville, California in 1864 and the Green River Coal Company in 1873. The City's present day location was established in 1880 with the location of the rich McKay coal vein which stretched from Franklin to Ravensdale, with the City in the middle. By 1882, the pattern of the "Green River field" was determined when the Black Diamond Coal Company and Oregon Improvement Company, along with the Northern Pacific Railroad, developed the mines and dominated the Green River field throughout its history.

The first miners in the area (1885) were Welsh miners from the Black Diamond Coal Company's depleted Mt. Diablo mine in Nortonville, California. Soon, miners came from many nations including Italy, Austria, Yugoslavia, Finland, Belgium, France and Poland. A sign found lying outside an abandoned mine had a message written in sixteen different languages.

The first shipment of high quality coal left the City for Seattle's port in March 1885. This high quality coal was difficult to mine, however. Gas, faults, dust, and steeply pitched beds added to production costs. The major market for coal was San

Francisco, and transportation costs were high. International competition was also significant. By the mid-1890s, the entire Green River field had a reputation for failure. The peak years were, however, yet to come.

At the turn of the century, the City's population was estimated at 3,500 people. With the rapid growth of Seattle, a local market for the City's coal became available. Pacific Coast Coal Company began purchase of the mines in 1896 and 1897, and infused east-coast capital into the mines, allowing more efficient workings. The year 1907 was the peak year of coal production with over 907,000 tons produced. In 1915, 1,400 workers were employed at the mines. High levels of production continued until the early 1920s, with 1919 being another peak production year. These levels of production and employment were never reached again.

Numerous coal mines were located in town, with the Franklin mines about three miles to the east. Black Diamond's Mine #11 was over 1 mile deep before bumps and intense pressures in the lower levels forced its closing in 1927. In 1926, Mine #11 was reputed to be the deepest underground coal mine in the United States.

During World War I, substantial wage increases were achieved by the miners, and the Black Diamond area became even more susceptible to national economic trends. Nationwide coal strikes together with replacement of coal by oil and electricity contributed to both a declining market and weakening of the United Mine Workers Union. The 1920s witnessed some of the most tragic and violent labor disputes in the history of Washington. In 1921, striking miners in the Black Diamond area were evicted from their homes and would have been forced to leave altogether had it not been for Tim Morgan, a local farmer, who supplied the workers with land that was developed with over 200 homes. This area is still known as Morganville and lies in the western portion of the City.

Mine #11 was closed in 1927, and the new Indian mine was opened about 6 miles south of Renton. Many of the miners transferred to that area. By the late 1930s, over half the homes in the City were empty. Highway 169 was built through the City at this time, possibly saving the community from extinction.

In the late 1930s, the Pacific Coast Coal Company sold the City's land and its residences, bringing to an end the total domination of the community's economic and social life. Miners were given the opportunity to purchase their homes. If they did not choose to buy, the homes were sold to any interested party. The town's infrastructure (water system, roads) was given over to the town's residents by the coal company. In the late 1940s and early 1950s, the remaining Pacific Coast Coal Company land holdings were acquired by the Palmer Coking Coal Company (Palmer). Some of this land was sold to local residents, but much was retained by Palmer for mining and investment purposes. A portion of these lands located within the City have recently been sold to private development interests.

A small coal boom during and after World War II kept the coal mining tradition alive. Coal mining then continued a gradual decline until 1986 and the opening of the John Henry Mine, just northeast of the City.

Following the end of the company town period at the completion of major mining activities, community services were provided by King County and the community residents.

City residents initiated an incorporation petition and presented this petition to King County in 1958. The incorporation was approved by a favorable vote on January 20, 1959 and the first Black Diamond City Council meeting was held March 3, 1959.

In 1998, the City significantly increased its size and population through the annexation of the Lake Sawyer neighborhood. This annexation increased the City's size by approximately 786 acres, and its population by approximately 1,480 people.<sup>1</sup> Additional annexations of large parcels within the City's Urban Growth Area (UGA) occurred in 2005 in accordance with the Black Diamond Urban Growth Area Agreement (BDUGAA) and the related Black Diamond Area Open Space Protection Agreement.

### 1.3. City Planning Area

The planning area encompassed by this comprehensive plan includes the land within the City limits and the designated UGA of the City.

In the decade since the City completed its 1996 comprehensive plan, the City and King County came to an agreement on designation of an UGA with the BDUGAA. This agreement outlines mutually acceptable urban growth boundaries and conditions under which these areas may be annexed to the City. The UGA approved in this agreement includes several of the large ownership parcels which surround the City, providing opportunities for creating a fiscally balanced city while maintaining the City's unique character.

Designation of a UGA is a key element in the City's long-term planning. The City is located at the edge of the King County Urban Growth Boundary. Per county policies, and the approved BDUGAA, unincorporated lands not included in an UGA may be developed for low density (5-acre tracts or larger) rural/ residential uses, or preserved for commercial resource activities (agriculture, forestry and mineral extraction). Consistent with the BDUGAA, the City annexed its "West Annexation

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<sup>1</sup> Washington State Office of Financial Management; Annexations Approved by the Office of Financial Management from 01/01/90 through 12/31/99.

Area” and the “North Triangle Annexation” in December 2005. The “South Annexation Area,” the “East Potential Annexation Area”, and the Lake 12 Annexation Area are the remaining areas that will be considered for annexation in the future subject to compliance with the BDUGAA.

## 1.4. Planning Authority

### 1.4.1. Growth Management Act

The City of Black Diamond Comprehensive Plan meets the requirements of the Growth Management Act (GMA), which was adopted by the Washington State Legislature on March 9, 1990 (Substitute House Bill 2929, Chapter 17, 1990 Laws of Washington), and as subsequently amended. The GMA required the state’s fastest growing counties and cities within those counties to prepare comprehensive plans which guide conservation and development for a 20-year period.

The GMA makes the City’s comprehensive plan the legal foundation and guide for all subsequent planning, zoning and development, all of which must be consistent with and implement the plan. The comprehensive plan must be both internally consistent and consistent with the plans of other jurisdictions which share either a common boundary or related regional issues. The GMA also requires that appropriate public facilities and services must be in place, or funds committed for their provision, “concurrent” (within 6 years) new development.

The GMA requires counties, in cooperation with cities, to designate UGAs. All cities are to be within an UGA, which is to include areas and densities sufficient to accommodate urban growth expected to occur in the City over the next 20 years. The GMA guidelines for defining urban boundaries state that urban growth is to be “...located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas that are provided by either public or private sources.” The UGA may include “...territory that is located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.” Finally, UGAs “...shall include greenbelt and open space areas.”

The GMA establishes mandatory elements for local comprehensive plans. Required elements of comprehensive plans include land use, housing, capital facilities, utilities and transportation. Optional elements of comprehensive plans include solar energy, conservation, recreation, economic development and sub-area plans. The state legislature added Economic Development and Parks and Recreation as additional required elements once funding has been put in place for cities to develop these elements. Such funding has not been authorized as of this update.

The GMA also establishes 14 goals to guide local governments in preparing comprehensive plans. These goals are as follows:

- GOAL 1. Urban Growth. Encourage development in urban areas where adequate public facilities and public services exist or can be provided in an efficient manner.
- GOAL 2. Reduce Sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- GOAL 3. Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- GOAL 4. Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- GOAL 5. Economic Development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services and public facilities.
- GOAL 6. Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- GOAL 7. Permits. Applications for both state local government permits should be processed in a timely and fair manner to ensure predictability.
- GOAL 8. Natural Resource Industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- GOAL 9. Open Space and Recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

- GOAL 10. Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- GOAL 11. Citizen Participation and Coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to resolve conflicts.
- GOAL 12. Public Facilities and Services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- GOAL 13. Historic Preservation. Identify and encourage the preservation of lands, sites and structures that have historical or archeological significance.
- GOAL 14. Shoreline Management. For shorelines of the state, the goals and policies of the shoreline management act as set forth in the Revised Code of Washington (RCW) 90.58.020 are added as one of the goals of the GMA as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

The GMA directs the City to identify the concerns and goals of the community, to prioritize these goals, and to plan for how these goals will be achieved. The law gives the City the authority and discretion to make the key decisions relating to its future growth; the outcome of the planning effort is in the City's hands, consistent with state requirements. To accomplish this mandate, the City is creating a comprehensive plan that establishes a clear intent and policy base, which can be used to develop and interpret City regulations, and which is consistent with the purpose and intent of the GMA.

The comprehensive plan seeks to balance the GMA's 14 planning goals cited above. The plan proposes a "village" environment, residential and economic development (including job opportunities for local residents and a long-term tax base for the City), while retaining those significant features of the natural environment which constitute environmentally sensitive areas and contribute to the City's quality of life and identity. The plan also uses *innovative techniques* -- including density bonuses,

cluster housing, MPDs and the transfer of development rights, as encouraged by the GMA (RCW 36.70A.090) – to creatively address local concerns and issues.

## 1.5. Consistency with County Plans and Policies

### 1.5.1. King County Countywide Planning Policies

The GMA mandates that counties, in cooperation with cities, adopt the King County Countywide Planning Policies (CPPs). The GMA defines CPPs as written policy statements used for establishing a countywide framework from which county and city comprehensive plans are developed and adopted. That framework is to ensure that city and county comprehensive plans are consistent with each other. At a minimum, the CPPs must address:

- implementation of UGAs,
- promotion of contiguous and orderly development and provision of urban services,
- siting of public capital facilities,
- transportation facilities and strategies,
- affordable housing,
- joint county and city planning within UGAs,
- countywide economic development and employment, and
- analysis of fiscal impact.

For King County, the CPPs established a UGA. Most future growth and development is to occur within the UGA to limit urban sprawl, enhance open space, protect rural areas and more efficiently use human services, transportation and utilities. The intent of these policies is to reduce future infrastructure costs and maintain a high quality of life by encouraging concentrated development in those areas where services already are or are planned to be provided. Cities are expected to absorb the largest share of future growth. Each city has the authority to make decisions regarding its local character and density.

The City finds that this comprehensive plan is consistent with the purpose and intent of the King County CPPs. The City includes the UGA agreed upon in the BDUGAA, and is consistent with the King County CPPs updated in July 2006. The City is also updating its population and employment targets to reflect growth that is anticipated over the next 20 years.

## 1.6. Comprehensive Plan Features

The City of Black Diamond Comprehensive Plan is based upon the premise that sustainable development is based upon a trilogy of ecology, sociology and economics. The plan embodies a holistic approach to treatment of nature and the human spirit. The extensive natural beauty and intricate ecosystem that comprise the planning area have been considered in determining lands that are appropriate for development at different intensities.

Planning for natural resources and open space are the cornerstone of the City of Black Diamond Comprehensive Plan. The plan supports recognition and protection of quality habitat including: the protection of key riparian corridors, wetlands, wildlife habitats and the design of green spaces between habitats; water quality protection measures and support for an environmental education area and program to build a strong community commitment to conservation and habitat improvement. Stewardship of the environment is supported by the plan.

The City's developed areas will be compact, preserving 35% to 40% of the entire City as open space. Interspersed among the built areas will be large connected areas of open space that act as a green necklace. Creeks, wetlands and significant wildlife habitat will be protected as part of the open space network. Trails, parks, community facilities will also define the open space network.

By the year 2025, the City is planning to be able to accommodate a population of 16,980 people. The community will also contain areas for retail and personal services, community parks, schools, churches, community buildings, other public services, and business and industrial parks. The plan emphasizes the need for a balance of jobs and housing, and sustainable economics for the growing community. Job growth is an essential part of the plan. Employment opportunities will grow as new companies and their support services are attracted to the City, and as existing companies expand.

Amidst this change, the City will also preserve the best of its past, including historical buildings and treasured community places. The essence of the historical community will be perpetuated through the use of design guidelines for new development. A village center concept has been included to bring together a visual, social and geographic center of the City. An innovative transfer of development rights program will be used to help preserve open space and direct new development to where it is best suited.

The creation of a pedestrian friendly environment is central to the success of the City's plan, and will be implemented by the plan's concept of the "ten-minute walk". The goal is for 80% of City residents have no more than a 0.50-mile walk from a cluster of commercial services, employment, or access to transit.

Phasing of development over time will be essential to achieve the plan's vision. Capital facilities are identified for both the short and long term growth anticipated by the plan. The City will use the Capital Facilities and Land Use Elements to manage development.

## 1.7. Master Planned Developments

An MPD is another key concept that the City is using to implement its vision for the future. A significant portion of the City's land area is within several large parcels and their planned development presents unique opportunities and challenges. In 2005, consistent with direction in the BDUGAA, the City adopted MPD regulations (Black Diamond Municipal Code Chapter 18.98) to provide flexibility in attaining City goals, to protect the environment and preserve open space, to maintain adequate facilities, to achieve a balance of jobs and housing, and to maintaining fiscal health. The specific purposes of the MPD regulations are to:

- Establish a public review process for MPD applications;
- Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than 80 acres in size;
- Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for the enjoyment of the City's residents;
- Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment. Allow flexibility in development standards and permitted uses;
- Identify significant environmental impacts and ensure appropriate mitigation;
- Provide greater certainty about the character and timing of residential and commercial development and population growth in the City;
- Encourage environmentally sustainable development;
- Provide needed services and facilities in an orderly, fiscally responsible manner;
- Promote economic development and job creation in the City;
- Create vibrant mixed-use neighborhoods, with a balance of housing, employment, and recreational opportunities;
- Promote and achieve the City's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and

sense of community; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in the book *Rural By Design* by Randall Arendt; and

- Implement the City's vision statement, comprehensive plan, and other applicable goals, policies and objectives set forth in municipal code.

The MPD ordinance outlines specific public benefit objectives, application requirements, public review process, and criteria for approval.

The Comprehensive Plan Future Land Use Map contained in Chapter 5 includes an MPD overlay to identify those areas in which development proposals are expected to use the MPD zoning process to guide their future development.

## Chapter 2. Urban Growth Area

The Urban Growth Area (UGA) Element of the City of Black Diamond Comprehensive Plan was initially adopted in 2001 as an amendment to the City of Black Diamond's (City's) 1996 plan. It identified the City's UGA, which was determined based on a joint planning process and formal agreement (the Black Diamond Urban Growth Area Agreement [BDUGAA]) between the City, King County and several large property owners. It is intended to guide future land use and annexations in the Urban Growth Area consistent with the Growth Management Act (GMA). Although major portions of the UGA have been annexed as of the 2008 City of Black Diamond Comprehensive Plan Update, the UGA Element will continue to provide guidance and useful historical information until the balance of the UGA is annexed. The UGA Element has been incorporated unchanged into the 2008 Update.

### 2.1. Introduction

The City and its residents worked with King County to define a UGA for the City since the latter part of the 1970s. For the City, the chief goals of these efforts reflect the plan vision of a healthy economy, improved housing, protection of the treasured natural resources in and around the City, and a better quality of life. The county's objectives were to limit urban sprawl and protect rural resource lands.

The GMA was the final impetus in deciding the Black Diamond UGA. The GMA established a framework for coordinated and comprehensive planning to help local communities manage their growth. It also led to the creation of the Black Diamond-King County Joint Planning Area (JPA). The 1996 comprehensive plan identified the Black Diamond UGA as an issue that was not resolved before the plan was adopted. Hence, Chapter 2 was reserved to address the UGA when it was determined.

### 2.1.1. Establishing an Urban Growth Area

The City and King County formed a JPA in 1991 to identify a UGA for the City. Several alternative combinations of county lands were evaluated in that process, including the proposal identified in Figure 2-1. This option proposed to annex six subareas to the historic central portion of the City. These subareas are referred to as the: North, John Henry, Lake 12, West, South, Black Diamond Lake, and East. However, due to the large amount of land involved in this proposal, the county did not view it as consistent with the GMA and its objectives of protecting rural land and avoiding the annexation of excessively large areas for future growth.

In its 1995 Joint Planning Ordinance, the King County Council addressed this issue by requiring use of the county's Four to One Program concept as a guide in determining Black Diamond's UGA. This concept is a way to determine a balance between annexed areas and protected open space in the county. It requires that for every acre included in an urban area, four acres are to be dedicated to permanent open space or natural resource land. In this decision, the King County Council also directed the City, county, and the property owners of the land involved to draft an agreement for the King County Council to consider in establishing the Black Diamond UGA. This effort resulted in BDUGAA that the King County Council approved on December 5, 1996 (Ordinance 12534). While awaiting this decision, the City chose to adopt the completed portions of the City of Black Diamond Comprehensive Plan. In doing so, they included one subarea of the JPA, the Black Diamond Lake subarea, within the City.

The BDUGAA covers 792 acres of land. Following annexation, 593 of these acres could be developed and 189 acres would be preserved as open space. The area involved in the agreement is also referred to as the Potential Annexation Area (PAA) to distinguish it from the Lake Sawyer and the Black Diamond Lake areas, also in the City's UGA. A copy of the BDUGAA is located in the City UGA Comprehensive Amendment file.

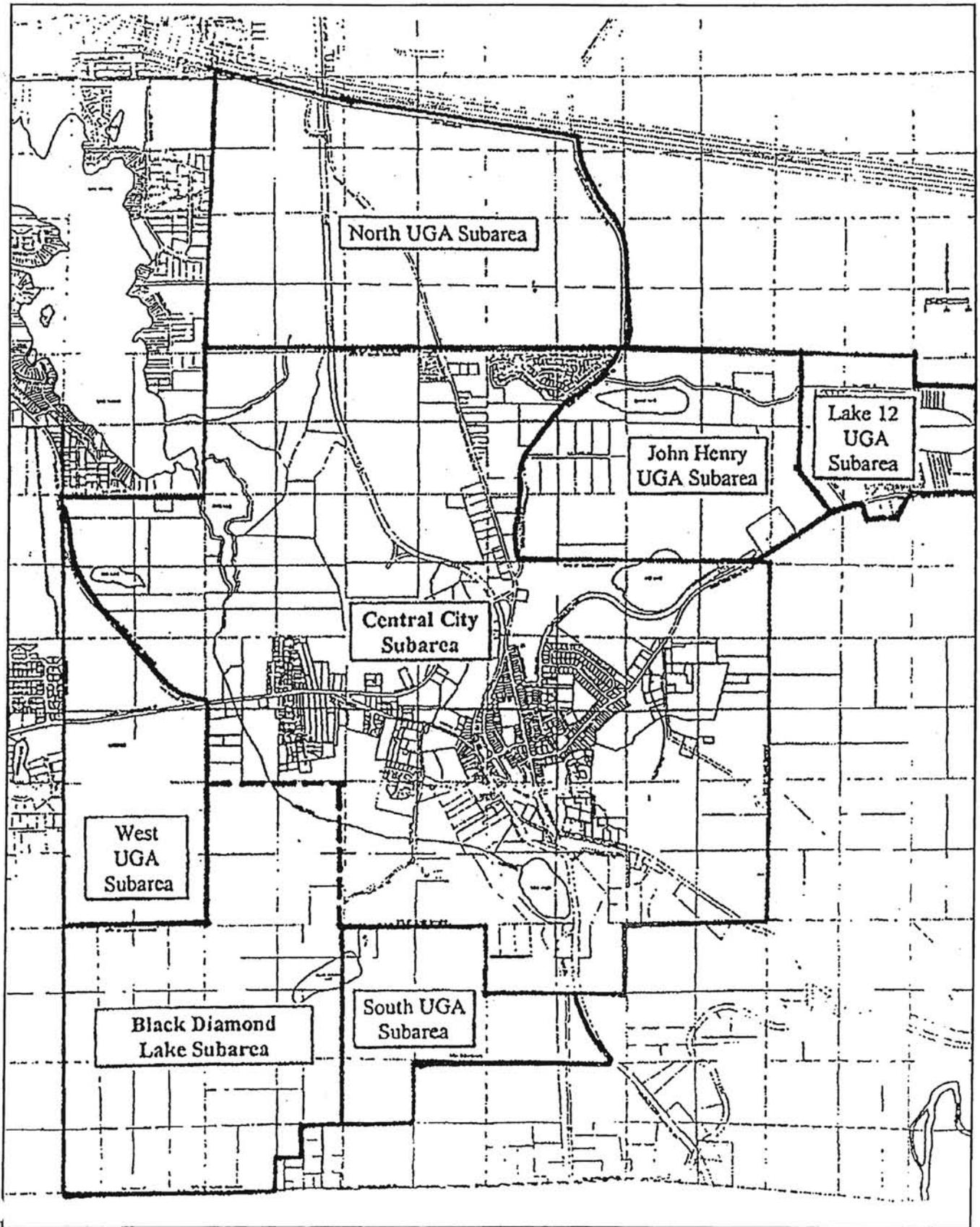


Figure 2-1  
Black Diamond / King County 1991 Joint Planning Area

## 2.2. Black Diamond Urban Growth Area Agreement

### 2.2.1. Background

The BDUGAA is a comprehensive document outlining the process and requirements for the City to annex the PAA. The Agreement represents a non-traditional approach to establishing UGAs, which typically are drawn based on 20-year population forecasts prepared by the State of Washington Office of Financial Management (OFM) and estimates of the land required to accommodate the projected growth. It is also unique because it was cooperatively crafted by the county, the City, and the affected property owners: Palmer Coking Coal Company, Plum Creek Timber Company, and residents of the Lake 12 area.

### 2.2.2. Goals and Concepts

The BDUGAA is guided by four main goals:

- Protect the Rock Creek/Lake Sawyer Watershed and the Rock Creek/Lake 12 Basin
- Protect and Maintain the Community Character
- Provide A Healthy Jobs-Housing Mix
- Make Efficient Development A Priority

The following is a discussion of the City's rationale and intent in using these criteria to define its UGA.

#### *Protect the Rock Creek/Lake Sawyer Watershed and Rock Creek/Lake 12 Basin*

The principal drainage in the City is Rock Creek (09-0085) which flows northwest into Lake Sawyer. Ginder Creek, Lawson Creek, and three smaller creeks also drain into this system. Existing development in the City is situated in the central portion of the basin.

Historically, this creek received drainage from the City's septic tank drain fields, cesspools and surface runoff. With construction of the sewer plant and marsh treatment system in 1983, septic tanks within the City were eliminated, but Rock Creek (and ultimately, Lake Sawyer) was the receiving water from treated effluent discharged from the facility. Beginning in 1984, phosphorus concentrations and large blooms of blue-green algae occurred regularly in Lake Sawyer. After determining

the marsh treatment system was not functioning as designed and that the sewage effluent was contributing to the algae blooms in Lake Sawyer, the City conducted a lengthy study (e.g., Comprehensive Sewage Plan) to identify solutions to the problem. As part of this process, and through the development of the Groundwater Management Plan (part of the South King County Coordinated Water System Plan), the City committed to maintain surface and groundwater quality within the Rock Creek/Lake Sawyer watershed. The plan required that all development within the Rock Creek/Lake Sawyer drainage (including that area outside the existing City limits) needed to be served by public sewer. Land use control within the basin was also deemed critical in order to promote the clustering of residential units and preservation of significant tracts of open space to maintain the City's identity.

In contrast to the majority of water bodies in the City that flow westward into Lake Sawyer, Lake 12 drains north to the Cedar River via another Rock Creek (tributary 08-0833), the Rock Creek/Lake 12 watershed. Lake 12 is a 44 acre water body that drains approximately 500 acres. Historically, it had good water quality. However, due to septic system failures around the lake, unacceptably high fecal coliform levels have resulted (Seattle-King County Department 1997). Additional phosphorus inputs entering the lake from stormwater runoff, are also expected to increase algal growth and lower water quality (Metro, 1994). These circumstances necessitate the extension of sewer, water, and stormwater facilities around the lake, if it is to meet or exceed state water quality standards.

### *Protect and Maintain Community Character*

Residential growth in unincorporated King County has increased significantly along the State Route (SR) 169 and SR 516 corridors. As new large subdivisions have been built in areas from Maple Valley to Enumclaw, the City has been affected by increased traffic and new construction in the surrounding area. The City desires to have more control over development decisions in the area and thereby shape the kind of land use between the City and rural lands into the future.

By encouraging an environment for quality development, the existing character of the historic villages (as found in Morganville and the Black Diamond townsite) would be repeated throughout the City and into the UGA. Development of clustered small scale neighborhood villages is also encouraged to promote a sense of community while encouraging pedestrian and bicycle mobility and reducing the number and length of shopping trips. Community shopping opportunities and community employment are planned to support the residential growth.

In identifying a substantial UGA, the City is attempting to resolve significant and long-standing concerns about the future and preservation of its unique identity. The City of Black Diamond Comprehensive Plan reflects community choices by addressing local circumstances and traditions. Because of the City's origin as a

company town and little subsequent growth, the City has never evolved into a balanced community. As resource-related activities change and mineral extraction diminishes, these activities provide less of an economic/employment base. Also, development as a commercial center has to date been precluded by the commercial development in Maple Valley. In order for the City to remain viable in the future, additional commercial growth and development is necessary in order to create a healthy tax base and sustainable revenues for the City that are needed to fund community services and amenities.

### *Provide a Healthy Jobs-Housing Mix*

The City needs to achieve a healthy job-housing mix, where the population is sufficient to support community shopping, services, and business activities. In turn, an increased population base is better able to contribute to a more self-sufficient economy. Achieving a healthy housing mix is expected to result from the eventual addition of medium to high income housing in the PAA. This will balance with the existing low and moderate income housing available in the City.

Development of higher income housing inside the City has historically been slow, but has increased with the annexation of the Lake Sawyer area. New in-city housing in other areas is expected to provide for a wider range of housing types for more income levels. The UGA provides the opportunity for planning medium and high income housing developments. There the amenities of greenbelts, neighborhood parks and schools can be planned and provided. Residential development targeted to higher income levels is also seen as the support for and the trigger to stimulate the commercial and industrial employment sectors, so that economic self-sufficiency can be achieved.

Growth within the City is expected to provide both employment and shopping opportunities in addition to expanding the residential housing mix. The City recognizes that its economic health will be achieved through the development of commercial, business and industrial uses that will add jobs and broaden its tax base. Increased tax revenue will support new City services for the expanding population.

### *Make Efficient Development A Priority*

Efficient use of resources will result from the appropriate location of development so that public water, sewer, storm drainage, police and fire protection service costs are minimized. Clustering development rather than spreading it over large areas will not only save utility costs, it will also preserve open space, both of which are cornerstone goals of this plan.

As documented in the financial analysis of the 1996 plan, the economic vitality of the City will depend largely on its ability to attract industrial and business park

developments to the vacant land in industrial and business park areas. The plan will need to provide a sufficient supply of industrial land to support its future revenue needs.

Additional population in the City will help to achieve the economies of scale needed for system-wide utility improvements. By phasing growth, development can proceed in an orderly fashion. Public services and facilities would not be over-burdened and constantly at or exceeding their capacity. Fewer roads would be needed, while local residential roads would be downsized to save costs and meet the neighborhood scale. Nearby trails would also be accessible to link residential areas with employment, civic, business, and recreation areas elsewhere in the City.

### **2.2.3. Terms of Annexation**

The UGA Agreement required that the City, King County, and the landowners meet specific conditions before any portion of the PAA was brought into the City. These provisions ensured that annexations conformed to the City and county comprehensive plans and the GMA.

#### *Open Space*

Three types of open space are identified in the BDUGAA: County Open Space, UGA Open Space, and In-City Open Space. Figure 2-2 shows the open space and natural resource lands associated with the PAA. These lands provide for trails and natural resource areas, such as critical wildlife corridors. County Open Space would remain in unincorporated King County after annexation. UGA Open Space was/will be included in the annexed areas. In-City Open Space includes the Primary Open Space and Secondary Open Space land shown in Figure 2-3.

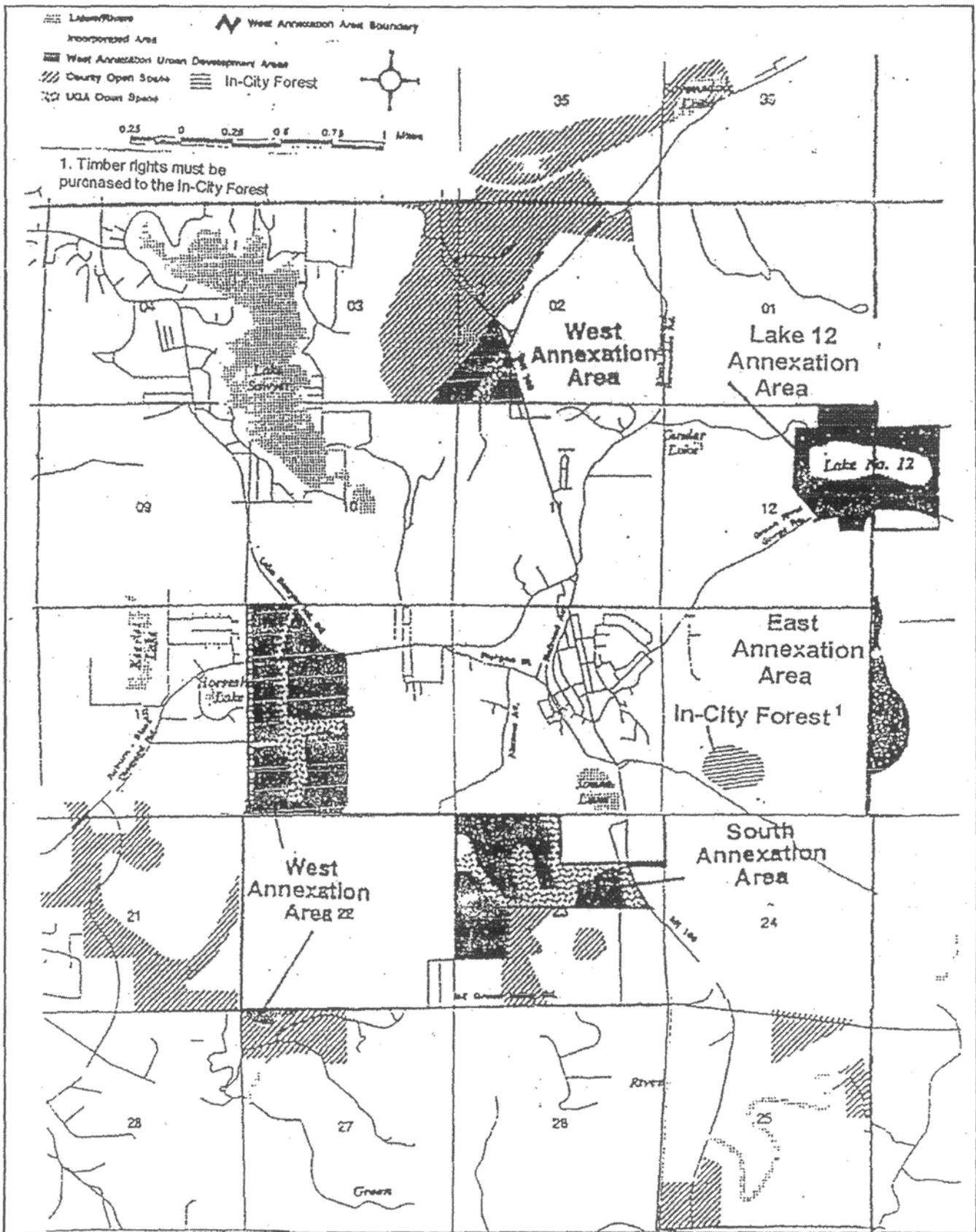


Figure 2-2  
PAA City and County Open Space

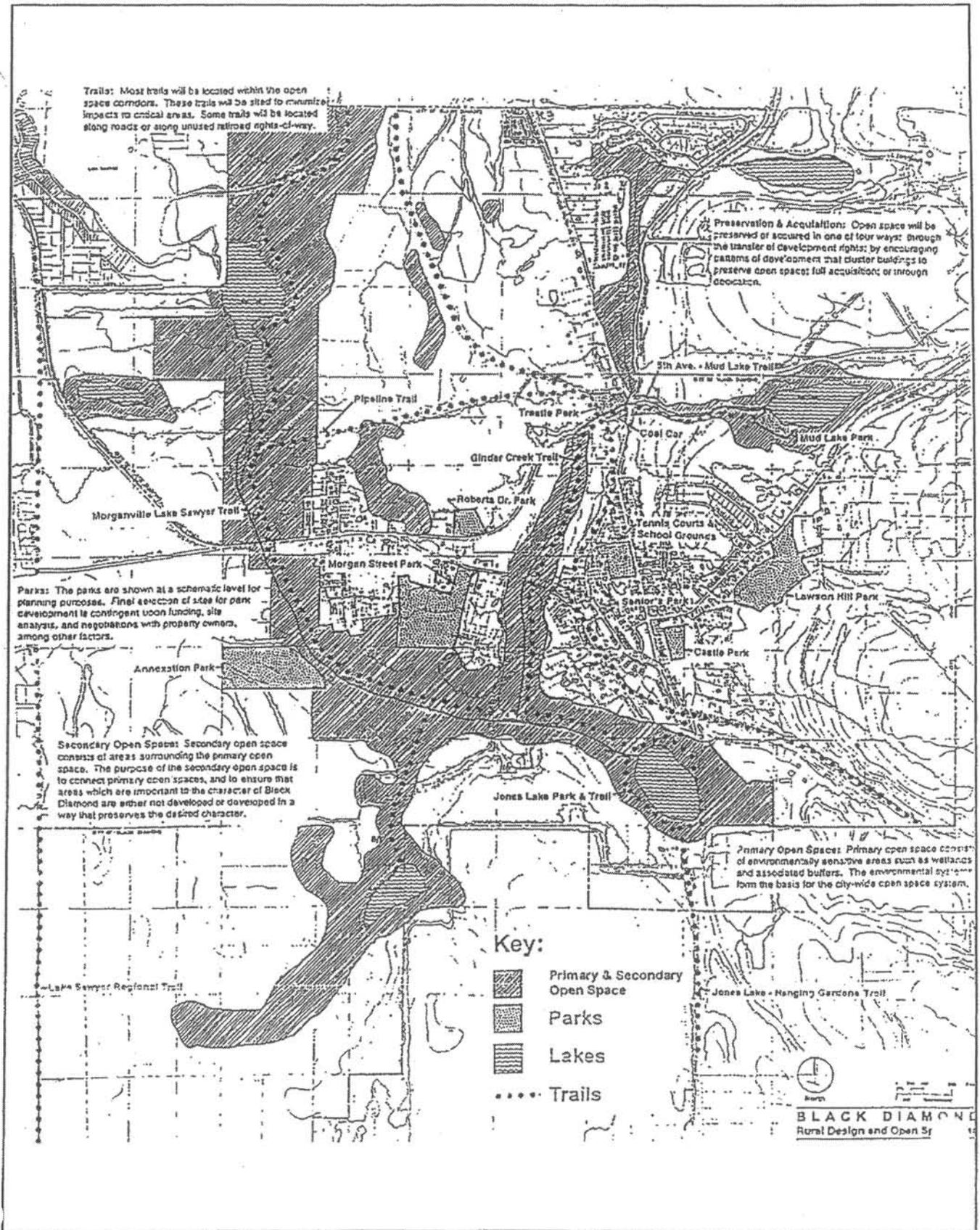


Figure 2-3  
Black Diamond Primary and Secondary Space

Open space requirements differed among the annexation areas. The open space needed for the West and South Annexation Areas was generally based on King County's Four-to-One concept. To achieve densities exceeding the base density of two units per acre, developers must purchase the equivalent development credits from the Primary and Secondary Open Space land through the City's Transfer of Development Rights (TDR) Program. The credits would then be transferred to the designated receiving lands for the added density. In turn, the City's designated open space would be permanently preserved.

As Table 2-1 shows, there are a total of 1,765 acres of open space distributed among the three types of open space created by annexing the various areas within the PAA. Bringing the 275 acres in the West Annexation area into the City resulted in 1,056 acres of new open space. The South Area has 152 acres of developable land that would yield 616 acres of City and county open space. In exchange for developing the East Area, Palmer was required to set aside 50 acres for an in-city forest. Palmer could not harvest the timber on the site for five years (until December 2001) while the City and the county sought funds to purchase its timber rights.

The UGA Agreement does not include an open space requirement for developing the Lake 12 Annexation Area since the purpose of this annexation would be to relieve a public health problem due to poor water quality.

**Table 2-1. PAA Acreage and Open Space Allocation**

Site	Developable Acres	Public Open Space/ Natural Resource Land			
		UGA	In-City	County	Total
South Annexation Area	151.9		195.0	339.0	615.7
East Annexation Area	50.0	0	50.0	0	50.0
Lake 12 Annexation Area	116.0	44.0	0	0	44.0
Totals	317.9	189.0	245	338.5	709.7

The 10 acres in the Boundary Adjustments does not require an open space contribution since it may be annexed for utilities or services.

Conservation of the in-city open space, referred to as the In-City Forest is subject to the City acquiring the timber rights.

The UGA Agreement does not require open space acreage for the Lake 12 Annexation Area. The lake is 44 acres, but would be private open space.

### *Lake 12 Annexation Area*

The Lake 12 Annexation Area can only be annexed after the following steps are completed:

- The City may extend sewer and water service to the Lake 12 Annexation Area before it is annexed provided that City funds are not required to do so and that this action does not affect the City's ability to provide these services within the existing City limits;
- The lake meets or exceeds state water quality standards (pursuant to Washington Administrative Code [WAC] 173-201A-030 (5)(c)); and
- The City completes a traffic study to determine the City road standards needed to improve the Green River Gorge Road.

### *Sequence of Annexations*

When the conditions of annexation were achieved, annexation of the PAA began, in the following sequence:

- West Annexation Area (completed December 8, 2005)
- East Annexation Area
- South Annexation Area
- Lake 12 Annexation Area

Two or more of these areas may be annexed simultaneously, except that the East Annexation Area could not be annexed unless the West Annexation Area was annexed, the South Annexation Area could not be annexed unless the West Annexation Area and East Annexation Area were annexed, and the Lake 12 Annexation Area could not be annexed unless the West Annexation Area was annexed. Pursuant to these terms, the annexation of the South Annexation Area and Lake 12 Annexation Area may now occur when conditions are favorable.

#### **2.2.4. Consistency with the Plans and Policies**

In accordance with the GMA, the UGA must be consistent with other related plans and policies and the City of Black Diamond Comprehensive Plan. The following discussion analyzes the Agreement in light of the relevant plans; the King County Comprehensive Plan and the City of Black Diamond Comprehensive Plan.

## *King County Comprehensive Plan and Policies*

In adopting the BDUGAA, the King County Council found that the Agreement was consistent with the Joint Planning Ordinance and other applicable county plans and policies, as described below in that the BDUGAA:

- substantially includes all areas specified, except the John Henry Mine site;
- allows for minor adjustments in designated areas consistent with the agreement;
- requires amendments to the City of Black Diamond Comprehensive Plan to meet objectives for affordable housing, economic development, natural resource management, clustering development, and preserving open space;
- provides for the extension of City infrastructure to the PAA; and
- includes a mechanism for phasing growth.

## *Countywide Planning Policies*

In adopting the PAA, the King County Council found that it conforms to the applicable policies of the King County Countywide Planning Policies (CPPs): CCP LU-38 and CCP R-301. The policies, as stated below, implement the GMA when establishing UGAs in the county.

### **King County CCP LU-38**

"In recognition that cities in the rural area are generally not contiguous to the countywide Urban Growth Area, and to protect and enhance the options cities in rural areas provide, these cities shall be located within Urban Growth Areas. These Urban Growth Areas generally will be islands separate from the larger Urban Growth Area located in the western portion of the county. Each city in the Rural Area and King County and the Growth Management Planning Council shall work cooperatively to establish an Urban Growth Area for that city. The Urban Growth Areas for cities in the Rural Area shall:

- Include all lands within the existing city in rural areas;
- Be sufficiently free of environmental constraints to support rural city growth without major environmental impacts;
- Be contiguous to city limits;
- Have boundaries based on natural features such as wetlands, topographic features and edge of areas already characterized by urban development;

- Be maintained in large lots at densities of one unit per five acres, or less, with mandatory clustering until the City annexes it;
- Be implemented through inter local agreements between King County, the cities and special purpose districts, as appropriate, to ensure that annexation is phased, nearby open space is protected and development within the Urban Growth Area is compatible with surrounding Rural and Resource areas; and
- Not include designated forest or Agricultural District lands unless conservation of those lands and continued resource-based use, or other compatible use, is assured."

### **King County Comprehensive Plan Policy R-307**

"Rural cities and their agreed-upon Urban Growth Areas shall be considered part of the UGA for purposes of planning land uses and facility needs. King County should work with rural cities to plan for growth consistent with long term protection of significant historic resources, the surrounding Rural Area, and Natural Resource Lands."

### *King County Growth Targets*

King County CPPs establish growth targets for the City. In 1998, the county adopted growth targets for all cities in the county, in accordance with the GMA. These were subsequently updated in 2005. The targets establish the upper limits of growth which the City must plan to accommodate in 2022.

The 2022 target is 1,099 additional households, which equates to 2,945 individuals. However, the population and household allocation does not take into account the large Master Planned Developments (MPDs) anticipated to occur within the City during that time frame. The City expects to significantly surpass its household and population targets. This is discussed in greater detail in the Land Use Element of the plan.

## **2.3. UGA Policies**

The objectives and policies identified in this section will be used to guide decisions that determine the pattern, timing, and impact mitigation of development in the UGA. They are intended to supplement the relevant policies and objectives elsewhere in this plan.

## *UGA Natural Environment Objectives and Policies*

UGA Objective NE 1: Preserve the diversity and distribution of habitat types in sufficient quantities to sustain species populations, especially rare or unusual habitats.

UGA Objective NE 2: Incorporate the mitigation measures identified in the Final Environmental Impact Statement (EIS) for the PAA to protect environmentally sensitive areas.

### **Water Quality**

UGA Policy NE 3: Protect, and where appropriate, enhance ground and surface water quality to meet or exceed state water quality standards within the drainage basins that may be affected by development in the UGA.

UGA Policy NE 4: Prior to annexation of the Lake 12 Annexation area, Lake 12 water quality must meet or exceed state water quality standards pursuant to WAC 173-201A-030 (5)(c).

### **Critical Areas**

UGA Policy NE 5: Naturally occurring processes such as runoff, stream channel migration, etc., should be maintained by designing stream crossings to pass floods and debris, as well as fish.

UGA Policy NE 6: Development of headwater catchments should be limited to protect streams from temperature increases, sediment, and fish habitat degradation.

UGA Policy NE 7: Where linkages between habitats have been severed or interrupted, connections should be restored by replacing culverts with bridges, revegetating riparian areas, and improving in-stream habitat.

UGA Policy NE 8: Developed portions of all annexation areas, especially in the Lake 12 Annexation Area, should protect the maximum amount of native vegetation to enhance stormwater management.

UGA Policy NE 9: New residential development in the Lake 12 Annexation Area should be sited and clustered away from the adjacent rural and resource lands and sensitive areas.

UGA Policy NE 10: Coordinate with King County and the Muckleshoot Indian Tribe to develop management plans that preserve County Open Space identified in the BDUGAA primarily for its open space values, as opposed to timber values.

UGA Policy NE 11: Mitigation measures identified in the City of Black Diamond Potential Annexation Area Final EIS and Comprehensive Plan Amendments should be used, with other city requirements, as development standards for the UGA.

## *UGA Land Use Objectives and Policies*

### **Land Use**

UGA Objective LU 1: Accommodate projected growth, protect the critical drainage areas from inappropriate development, protect and retain the community character, and efficiently provide urban services within UGA lands.

UGA Objective LU 2: Ensure that the site development process for the UGA provides flexibility in locating uses, establishes a unified development plan for each site, and adequate opportunities for public involvement.

UGA Objective LU 3: Insure that the City maintains an overall and fiscally sound balance between revenues and expenditures during each phase of development of the UGA.

### **Open Space**

UGA Policy LU 4: The TDR Program should transfer development rights from the priority open space areas identified in the City Open Space Program for use in designated "receiving areas" within the UGA.

UGA Policy LU 5: Prior to annexation of any portion of the surface mining pits, landowners will be required to confirm to the City that the PAA and County Open Space Areas have been permanently protected under the City and County Open Space programs, as appropriate.

UGA Policy LU 6: Approval of the annexation of the Lake 12 Annexation Area should include permanent public access to the lake.

UGA Policy LU 7: Approval of the annexation of the East Annexation Area should include provision of permanent public access to the in-city forest.

### **Commercial and Mixed Use Development**

UGA Policy LU 8: Prior to annexation of any portion of the PAA., the City should adopt a development agreement with the PAA landowners to establish zoning and vested rights, to determine the process by which the site plans for developing the area are reviewed and approved, and to identify the roles and responsibilities of each party in providing capital facilities and public services.

UGA Policy LU 9: Utilize an MPD process in the UGA to determine the specific location of structures and uses, phases of development, and the design features of each site and its structures. If the Lake 12 Annexation Area continues to develop by individual lot ownership, it should not be subject to an MPD process.

UGA Policy LU 10: The affect of the new commercial activity in the UGA should be evaluated to minimize possible negative financial impacts on the City's existing business sector.

### **Phasing Development**

UGA Policy LU 11: The growth-phasing schedule of the capital improvement program should determine the timing and sequence of development in the UGA.

UGA Policy LU 12: The City should determine the as-built cumulative impact of UGA development on the City's capital improvement program, its fiscal position, and its natural resource policies when each phase is completed. Ensure that adverse impacts are mitigated before the beginning of a subsequent phase.

### **Community Design and Character**

UGA Policy LU 13: Utilize the Black Diamond Design Guidelines and Standards as the standards to determine the design features of commercial, office, and industrial uses and as guidance in designing residential development in the UGA.

UGA Policy LU 14: In developing the UGA, protect significant view corridors, especially views of Mt. Rainier.

### **Housing**

UGA Policy LU 15: Residential development in the UGA shall contribute to meeting the City's fair share of affordable housing in accordance with current King County Affordable Housing Policy.

### **Fiscal Management**

UGA Policy LU 16: Revenues shall exceed expenditures for each development phase of the UGA to provide a sufficient fiscal reserve for financial circumstances.

UGA Policy LU 17: Prior to annexation of any portion of the PAA, its landowners shall, at a minimum, confirm that they have made commitments to carry out construction contracts for extending water, sewer, stormwater, and major road facilities to these areas.

## **UGA Parks and Recreation Objectives and Policies**

UGA Policy PR 1: Provide park and recreation facilities in the UGA concurrent with the development of this area and consistent with the standards of the Parks Plan.

UGA Policy PR 2: Avoid locating active park and recreation facilities (other than trails and viewing areas) in environmentally sensitive areas. Where it is necessary to do so, substantial buffers should be maintained to minimize human disturbance of these resources.

## **UGA Utilities and Public Services Objectives and Policies**

UGA Objective U 1: Integrate all public facility and service plans for the UGA into appropriate City plans and programs:

UGA Policy U 2: The mix of residential and employment land uses in the UGA, should achieve the "economies of scale" needed to support quality public services and schools in a cost-efficient manner.

UGA Policy U 3: City revenues should not be used to fund private facility extension in the UGA.

UGA Policy U 4: The City Capital Improvement Program should integrate public facility and service extensions for water, sanitary sewers, roads, schools, stormwater management, fiber optic communications, fire and emergency services, police, and parks and recreation infrastructure for all phases of UGA development.

UGA Policy U 5: UGA landowners should provide sufficient land to meet the utility and educational facilities needs projected for this area.

UGA Policy U 6: Water and sewer service should be extended to the Lake 12 Annexation Area only if these service extensions will not adversely impact the ability of the City to provide these services to development within the existing city, and if extending water or other urban services to the area does not require the use of City revenues.

UGA Policy U 7: If the Lake 12 Annexation Area is to be annexed, the City should enter into a pre-annexation agreement with the county to establish a funding package that includes a combination of local improvement district revenues, and federal, state, and county resources.

UGA Policy U 8: Prior to annexing the Lake 12 Annexation Area, a traffic study should be completed to determine the appropriate City road standards that apply to the Green River Gorge Road upon annexation.

UGA Policy U 9: Sewer and water facilities extended to the UGA will not serve adjacent rural or resource lands.

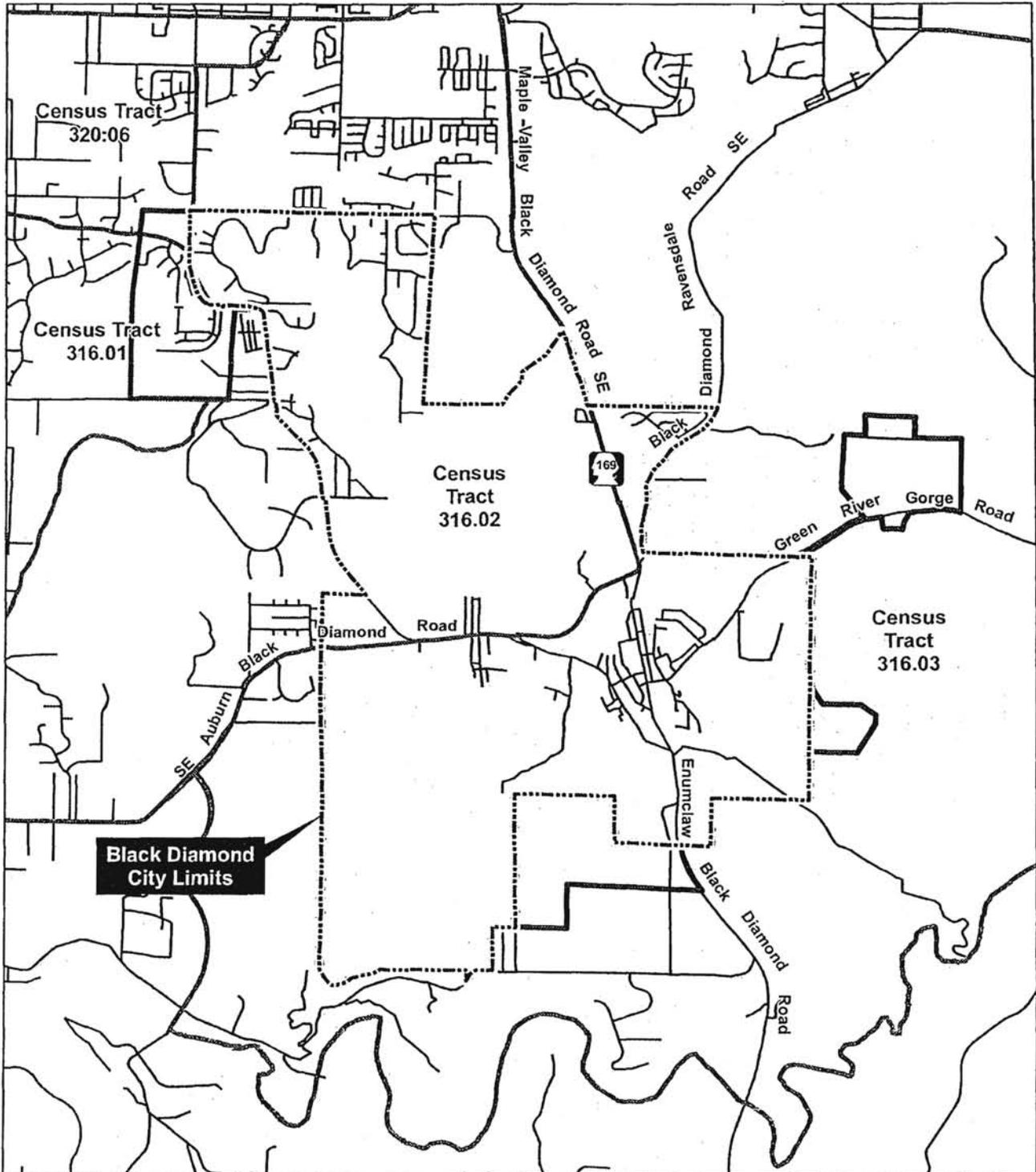
UGA Policy U 10: Identify appropriate programs and technologies to reduce solid waste and conserve supplies and energy resources.

# Chapter 3. Population and Employment Character

## 3.1. Population

At the turn of the twentieth century, the City of Black Diamond (City) was a thriving coal mining town and contained a population of 3,000 persons. In the early years of the twenty-first century, the City has passed that threshold again and is a thriving village community with a population of 4,085 (2007). By 2025, the City is expected to grow to a population of 16,980 residents. Much of the growth will occur as a result of Master Planned Developments (MPDs) in areas annexed to the City in 2005 and areas slated for future annexation consistent with the Black Diamond Urban Growth Area Agreement (BDUGAA).

For the 2000 Census, the Black Diamond area consists of portions of three Census tracts: Tract 316.01, which covers the area surrounding Lake Morton; Tract 316.02, which includes the northwest quadrant of the City, as well as Lake Keevies, Lake Sawyer, and part of Maple Valley; and Tract 316.03, which covers most of the City, as well as territory south, east and north, extending to Ravensdale (Figure 3-1). The collective outer boundary of the tracts coincides with the Puget Sound Regional Council's (PSRC's) Forecast Analysis Zone (FAZ) 3310, and the three tracts continue to be closely tied. (Some discussion in the comprehensive plan refers to them collectively as "Tract 316," and combines data for the three separate census tracts.)



Sources: City of Black Diamond (2006); King County (2007)

- Road
- - - City Limits
- ▭ Potential Annexation Area
- ▭ Parcel Boundary
- ▭ Census Tract (2000) Boundary

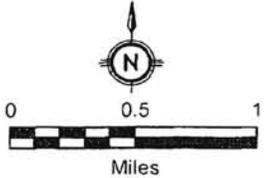


Figure 3-1. Census Tract Map  
Black Diamond Comprehensive Plan  
May 2009

Much of the increase in population in the City between 1990 and 2000 can be attributed to the annexation of the Lake Sawyer neighborhood in 1998, which added 1,480 residents to the City. However, as can be seen from Table 3-1, development in this portion of the county has also been proceeding more rapidly than the county or state as a whole for the past 30 years.

### 3.1.1. Current Population

The State of Washington Office of Financial Management (OFM) estimated the April 2008 population of the City at 4,155 people and the population of King County, as a whole, at 1,884,200 people. The combined 2000 population of Census Tracts 316.01, 316.02, and 316.03 was 13,158 people, 3,970 residents which located within the City.

The City was incorporated in 1959. The 1960 population was 1,026. Population growth is shown below in Table 3-1 for years 1970 to 2006. Between 1970 and 1980, the City experienced slow growth of less than 1%. From 1980 to 1990, the City experienced 21.5% growth, followed by a boom in population growth between 1990 and 2000, most of which was due to the annexation of the Lake Sawyer neighborhood in 1998. During this period, the City more than doubled in population, from 1,422 residents in 1990 to 3,970 residents in 2000, an increase of 179%. Growth since 2000 has been slower, with population increasing 2.9% from 2000 to 2006. Development moratoria were in effect for much of this period.

**Table 3-1. 1970–2006 Population Growth**

	1970	1980 % change	1990 % change	2000 % change	2008 % change
Washington State	3,143,250	4,132,353 31.5%	4,866,669 17.8%	5,894,121 21.1%	6,587,6000 11.8%
King County	1,145,314	1,269,749 9.8%	1,507,319 18.7%	1,737,046 15.2%	1,884,200 8.4%
Census Tract 316/ FAZ 3310	4,185	6,858 63%	9,083 32.4%	13, 158 44.9%	--
Black Diamond	1,160	1,170 0.86%	1,422 21.5%	3,970 179%	4,1554.7%

Source: U.S. Census for 1970-2000. Washington State OFM Estimate for 2008.

2000 Population estimate for Tract 316 represents combined totals for Tracts 316.01, 316.02, and 316.03.

Approximately 46% of City residents lived in the same house in 2000 as they did in 1995, which is comparable to a residency pattern of 48% in King County as a whole.

### *Sex and Age Distribution*

According to the 2000 Census, the City's median age was 36 years, which is equal to the median age for King County as a whole. Tracts 316.01 –316.03 had median ages of 38 years, 33 years, and 35 years, respectively. A comparison of age cohorts in the City and Tract 316 and King County is illustrated in Table 3-2.

**Table 3-2. Summary Age Distribution**

Age Group	Black Diamond	Census Tract 316	King County
< 18 years	28.5%	30.2%	22.5%
18 - 64 yrs.	63.3%	63.7%	67.1%
65 + years	8.3%	6.2%	10.5%

Source: US Census 2000, Summary File 1.

This age distribution is generally consistent with information from the 1990 census and shows that the City has both a significant percentage of children and elderly persons. The community, thus, encompasses all age groups.

The City and Census Tract 316 have 50.9% to 49.1% male to female composition. King County is 49.8% male and 50.2% female.

### **Education**

According to data from the 2000 Census, 87.5% of City residents have at least a high school diploma (vs. 90.3% of the county as a whole) and 21.8% at least a Bachelor's degree (vs. 40.0% for the county).

### **Ethnicity**

Composition of racial and ethnic groups is illustrated in Table 3-3. Proportionally, the Census Tract and the City are very similar. The predominant ethnic group is White (93.4%) with the next largest ethnic group American Indian/Alaskan Native (1.6%).

**Table 3-3. Ethnic Origin**

Ethnic Group	King County	Census Tract 316	Black Diamond
White	75.7%	92.7%	93.4%
Black	5.4%	0.5%	0.08%
American Indian, Alaskan Native	0.9%	0.9%	1.6%
Asian and Pacific Islander	11.3%	1.8%	1.1%
Other	2.6%	1.1%	0.9%

Source: US Census 2000, Summary File 1.

Given the history of the City, great ethnic diversity exists within the white population. The City had a history of a wide ethnic population mix that came to work the mines, including Italian, Welsh, Austrian, Yugoslavian, Finnish, Belgian, French, and Polish.

### Income

At the time of the 1990 Census, nearly 45% of City households were considered low-income (\$24,999 per year or less), and the City's median household income was only 79% of that of King County as a whole. As of the 2000 Census, the percentage of low-income households has dropped to 16.6%, while that of King County is approximately 20%. The median household income in the City has increased dramatically as well, rising 138% from \$28,155 in 1990 to \$67,092 in 2000. During the same period, King County's median household income increased 47%. Much of this increase can likely be attributed to the annexation of the Lake Sawyer neighborhood in 1998.

### 3.1.2. Population Forecast

Population forecasting is an integral part of the planning process. The King County Countywide Planning Policies (CPPs) require jurisdictions to estimate the number of new households and jobs that will be accommodated during the 20-year period. The Growth Management Act (GMA) requires jurisdictions to plan for no less than a 20-year period; hence, population and household forecasts for this comprehensive plan extend to 2025, as this plan update process began in 2004. Through the comprehensive planning process, each jurisdiction must, at a minimum, provide adequate land, transportation, capital facilities, and utilities to accommodate this growth target over the 20-year period. The 20-year target, however, is just that—a target that expresses the intent of the comprehensive plan. The plan also recognizes that many variables can cause a somewhat higher or somewhat lower actual population.

## King County Overview

King County as a whole contained 1,737,046 residents as of the 2000 Census, and the OFM estimates a 2008 population of 1,884,200. OFM forecasts that King County's population will increase by 460,000 residents by the year 2025. Per the 2004 King County Comprehensive Plan, 96% of this household growth from 2001 to 2022 is expected to locate within the designated Urban Growth Area (UGA), which makes up about one-fifth of the county.<sup>2</sup> How this growth will be distributed within the county will be a function of the King County CPPs, plans of individual jurisdictions, the regional economy, and the private marketplace.

King County CPPs allocated 1,099 new households (for the period 2001–2022) to be built in the City. This represents the amount of growth the City is obligated to plan for during that period of time. However, due to several large development proposals likely to occur during the upcoming 10 to 15 years, this plan assumes greater increases in the number of households and in population (Table 3-4).

**Table 3-4. Comparison of New Household and New Employment Allocations and Projections**

King County Allocation (2022)	King County CPP Allocation (2022)	Black Diamond Projection (2025)	
		New Households	New Employment
1,099	2,525	5,426	2,677

Note: Black Diamond projections are for the year 2025.  
 CPP = Countywide Planning Policies

## City of Black Diamond Building Activity

The City has had a moratorium on subdivisions in place since 2001 in order to update required plans and regulations. Thus, there has been little formal subdivision development in the last five years outside of what was vested prior to 2001. Residential in-fill development has continued over the past ten years, however, as population growth and increases in land prices have occurred throughout southeast King County.

## Land for Future Growth

In December 1994, the City annexed 783 acres of land to the southwest of the City limits, near Black Diamond Lake. This annexation area is designated for development as an MPD, including single-family and multifamily residential development, along with a small commercial area, recreation, and a 50% open space

<sup>2</sup> King County, 2004 King County Comprehensive Plan, "Household Growth Targets by Subregion" table, page 2-6.

requirement. In December 2005, the City annexed the West Annexation Area, an area designated in the BDUGAA. This annexation added 338.6 acres of vacant land to the City's land supply which can be developed with a mix of commercial, residential and mixed-use development types through application of the City of Black Diamond Master Planned Development Ordinance and the Pre-Annexation Development Agreements adopted for these properties. MPD, residential subdivision, and building permit activity for the City is anticipated to increase beginning in 2009, following the lifting of the development moratorium. There is significant pent up demand and development potential within these recently annexed areas.

The City of Black Diamond Comprehensive Plan contemplates significant residential growth in the City limits. Growth is seen as a key to creating a balanced and fiscally sound community and will be managed pursuant to the plan and development regulations.

### *City of Black Diamond Population Forecast*

The updated comprehensive plan is based on an extended 20-year planning period. In order to determine a population forecast for the year 2025, the City reviewed the PSRC preliminary 2003 forecasts for FAZ 3310, King County forecasts, existing City plans and policies, and forecasts regarding the long-term state of the regional economy. The City believes that considerable growth could occur within the City in the next 20 years, given its significant amount of developable land, GMA and King County CPPs directing growth to existing urban areas (i.e., cities), and a strong economy. Table 3-5 identifies population counts for 2000 and 2006, and the City's population projections for 2025.

**Table 3-5. City of Black Diamond Population Projections**

Year	Population	Households	Annual Population Increase
2000	3,970	1,456	---
2006	4,085	1,578 (2.6 pph)	0.47%
2015	10,437	3,740 (2.79 pph)	9.8%
2020	15,770	5,776 (2.73 pph)	7.1%
2025	16,980	6,302 (2.68 pph)	1.2%

Note: Projections for population and households include 2006 Black Diamond City limits and 2006 Potential Annexation Areas.

pph = persons per household. Error! Bookmark not defined. for 2015-2025 was derived from the 2006 PSRC FAZ (Forecast Analysis Zones) forecasts.

For purposes of the 2025 projection, the number of persons per household is projected to gradually decline to 2.68 persons per household (pph), and is reflected in the estimate.

The amount of growth the City plans for in its comprehensive plan should be consistent with the CPPs including the household allocation. Section 3.3.1 and Table 3-4 show the relationship between the City's projection and the CPP's household and employment allocation. It should be noted that the CPP projections and targets do not currently reach the year 2025, and the City has derived its own projections for a portion of this time period.

Population growth in the City is encouraged by the comprehensive plan provided it is consistent with the City's vision, respects the natural environment, and pays its "fair-share" of the costs associated with growth. Growth that is managed and occurs consistent with these principles will contribute to a more balanced and fiscally sound community.

There are many uncertainties inherent in population forecasting. In planning for its future growth, the City has intentionally planned for more land than is estimated to be needed for growth over the next 20 years. If substantial growth does occur at a significantly higher or lower rate than anticipated, adjustment of some aspects of this plan (particularly growth phasing) may be necessary.

The City uses a formula for calculating the amount, use, and density of land within the City to ensure that the forecast of population, housing, and employment is met and so that limitations of available land supply will not artificially drive up prices. This is important so that the fluctuations in population and employment growth can be absorbed, and unmet demand for housing and jobs is not displaced into rural unincorporated areas. To accomplish these objectives, King County recommends and uses a land supply factor of 140% (i.e., 40% more land should be provided above that calculated to be needed for projected growth based on land use designations, zoning regulations and household size). Existing comprehensive plan designations would supply enough land for approximately a 9% increase over the forecasted population of 16,980, which is significantly less than the 140% land factor recommended by King County. However, this smaller margin is considered to be acceptable for the City due to the fact that substantial developable land in large single-ownership tracts is expected to be coming on the market in the near future, is anticipated to build out during the planning period, and the resulting amount of population and household growth is significantly greater than allocated through the King County CPPs. This supply of land is anticipated to be built-out within the lifetime of this comprehensive plan's planning horizon (2008-2025), which will also remove a larger than usual share of the City's developable land supply from the vacant land inventory.

## 3.2. Employment

### 3.2.1. Current Employment

According to Census data, 2,122 City residents were employed as of 2000. The City has little local employment, however. The 2003 King County Annual Growth Report estimated a total of 427 jobs within the City limits in 2000. These jobs were categorized as follows:

**Table 3-6. 2000 Employment**

Industry	2000 Jobs
Retail	105
Finance, Insurance, Real Estate, Services	42
Governmental & Education	132
Wholesale, Transportation, Utilities (WTU)	*
Manufacturing	*
Agriculture, Forestry, Fishing, and Mining/Construction	113
TOTAL	427

PSRC tally of jobs covered by state unemployment insurance, as reported in King County 2005 Annual Growth Report.

\* Sector detail is suppressed to protect confidentiality.

The 427 jobs represent a ratio of approximately 0.3 jobs per household.<sup>3</sup> Given that the City is not in immediate proximity to a major employment center, most residents must travel to the western portion of King County or to Pierce County for work.

The 2000 mean travel time to work for City residents was 38.3 minutes (versus 26.5 minutes for King County as a whole). This lack of local jobs contributes to lower incomes for City residents, a reduced tax base for the City and increased vehicular commuting.

The 2000 unemployment rate for the City was 1.8% compared to 4.5% for the county as a whole.

In 2000, the jobs-to-household ratios for the City was compared to other King County rural small towns listed below, as well as neighboring Covington and Maple Valley. As shown in Table 3-7, the City currently has a significantly lower ratio of jobs-to- households than neighboring or similarly sized cities.

<sup>3</sup> 2000 U.S. Census: 1,456 households in Black Diamond

**Table 3-7. Jobs per Household Ratios**

Black Diamond	0.3 jobs per household
Rural Small Towns	
Carnation	0.9 jobs per household
Duvall	0.7 jobs per household
Enumclaw	1.0 jobs per household
North Bend	1.1 jobs per household
Snoqualmie	2.1 jobs per household
Neighboring Jurisdictions	
Covington	0.6 jobs per household
Maple Valley	0.6 jobs per household

*Employment Forecasts*

Between 2000 and 2020, the PSRC forecasts that employment in King County will increase by 328,000 jobs. The composition of the county economy is shifting as manufacturing employment declines, and employment in the retail, services, and government/education sectors increases.\*

The City supports local job growth and, through its comprehensive plan, is attempting to achieve a better "jobs-housing balance" for both existing and future residents. The City's goal is to ensure that land use planning allows the achievement of one local job per household for the year 2025 and beyond. These reasons for the anticipated employment growth are elaborated in the Table 3-8.

**Table 3-8. Employment Sector Growth**

Employment Sector	Reason for job growth
Retail & Services	Services residential areas. Anticipated to grow with residential growth.
Governmental & Education	Jobs will increase as new community facilities are located within the City.
WTU & Manufacturing	The jobs will correspond to the existing industrially zoned land and converted mineral extraction area.

A total of 2,525 new jobs are planned to be accommodated in the City by 2025.

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\* Puget Sound Regional Council 2006 Sub-County Forecasts of Population and Employment, Central Puget Sound Region. (Released October 26, 2006).

**Table 3-9. City of Black Diamond Employment Projection**

Year	Households	Jobs	Annual Increase
1990	541	177	--
2000	1,456	427 (0.30 jobs/hh)	13.7%
2015	3,740	1,404 (0.38 jobs/hh)	7.7%
2025	6,302	3,147 (0.50 jobs/hh)	7.6%
Buildout	7,105	11,557 (1.62 jobs/hh)	--

Note: Projections for households and jobs include 2006 Black Diamond City limits and 2006 Potential Annexation Areas.

hh = household

### 3.3. Implications of Population and Employment Growth

#### 3.3.1. Population and Households

The GMA requires that each county accommodate a population allocation which is based upon OFM 20-year growth forecasts. Adequate land must also be identified for commercial and industrial uses to meet local employment needs. The 2004 King County Comprehensive Plan has planned to accommodate 1,993,000 residents in the County by the end of its 2022 planning period. The CPPs allocate 1,099 new households to the City by the year 2022; this is the amount of growth the City is obligated to plan for according to the GMA. The GMA requires that the connection between projections and the plan ensure that adequate urban levels of service for public facilities and services can be provided.

In contrast, the City expects to gain 2,162 new households by the year 2015 and an additional 2,562 new households by the year 2025, for a total of 4,724 households. The City's extended projections would exceed the targets established in the CPPs. However, the CPP targets have not been updated at this time to include the year 2025. Similarly, the CPPs do not factor in current (and recently changed) local conditions regarding land ownership, the presence of several large land parcels with significant development potential, and pent-up demand due to recent development moratoria. In sum, these factors support a significant increase in the City's growth projections.

#### 3.3.2. Employment

Attaining a healthy housing-jobs mix is central to the City's future growth and to accomplishing its vision. The City's employment target is to provide one job per

household within the City by the year 2025 which would translate to a jobs target of approximately 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so it provides a larger market base that can attract and support a higher level of commercial development, including the services needed by a larger population. The plan will be monitored and can be adjusted to account for more aggressive job growth, as economic conditions change in future updates. This monitoring will need to be in addition to that required of MPD projects as part of their required fiscal analyses.

The City is expected to have 977 new jobs in the year 2015 and 1,743 new jobs in the year 2025. The 2022 CPP allocation of 2,525 new jobs can be accommodated within the 2006 City limits based on existing land use designations and anticipated development. The City's updated projection is for 2,677 new jobs by 2025. About 833 acres of employment land are proposed in the City limits, including the conversion of interim mineral extraction land that is expected to be depleted.

### **3.3.3. Allocating Land for Household and Employment Growth**

The following Chapters provide the basis for the comprehensive plan to direct and accommodate future household and employment growth within the City and its UGA.

# Chapter 4. The Natural Environment

## 4.1. Introduction

### 4.1.1. Preserving the Natural Beauty

The first 100 years of the City of Black Diamond's (City's) history were based on extraction of the natural resources. The next 100 years of the City's future will be characterized by the preservation of the quality of its natural setting, its scenery and views, and the preservation of its historic treasures.

From the local fishing hole, to the field where deer graze, to the beaver dams, to the eagle flight overhead; these resources are a tangible part of living in the City. The extensive natural beauty and intricate ecosystem of the City form the basis for a natural resource and open space network. The network serves to define the edges for the existing and future development areas.

This Natural Environment chapter provides the framework for protection of natural resources. The City's forests and fields—along with the natural drainage system and its connections with lakes, streams and forests—form a rich habitat for fish and wildlife that is unlike any other city in King County.

Information contained within the Natural Environment chapter is based upon sensitive areas inventories conducted by the City in the early 1990s to locate, identify, and categorize sensitive areas within the City's jurisdiction. The City uses King County Map data as a basis for developing existing sensitive areas maps. Therefore, the King County Interactive Map Folio was used to provide sensitive areas inventory information for the current City boundaries. The City's current Environmentally Sensitive Areas regulations (Chapter 19.12, Black Diamond

Municipal Code) were adopted in 1993 and are in the process of being updated in 2008.

## 4.2. Existing Natural Features

### 4.2.1. Water and Natural Drainage

Drainage within the planning area is an interrelated system of surface water, groundwater, and wetlands. In order to identify existing drainage characteristics and potential impacts from urbanization, an understanding of the site-specific hydrologic interaction among the components of the drainage system is required.

#### *Surface Water Drainage Basins*

Nearly all of the planning area is located in the Rock Creek and Ravensdale Creek Drainage Basins. Rock Creek and Ravensdale Creek are two headwater drainage systems of Lake Sawyer and Covington Creek. Rock Creek drains to the south and southwest portion of Lake Sawyer, while Ravensdale Creek drains to the north and northwest portion of the Lake Sawyer area. Lake Sawyer is the fourth largest natural lake in King County. Lake Sawyer's outlet is Covington Creek which flows west into the Big Soos Creek drainage system. The Big Soos Creek discharges into the Green River about 1 mile east of the City of Auburn and about 7 miles west of the City. The southern and western most portions of the planning area touch upon watersheds oriented toward Green River and the Crisp Creek drainage basin (including Horseshoe Lake), respectively. The Lake 12 Annexation Area drains to the middle Cedar River indirectly via the lake and wetlands extending east from the lake.

Types of land cover presently found in the Rock Creek and Ravensdale Drainage Basins include remnant forest stands (second and third generation growth); grass; and limited impervious surfaces (roads and a few structures). Forest covered surfaces typically display higher infiltration capacity and less surface runoff potential than grass covered surfaces because the root system of trees is more extensive and deeper than that of grass. The flat to moderate topography of the Rock Creek Drainage Basin further reduces surface runoff potential.

Surface impoundments caused by lakes, wetlands, and streams influence surface runoff by providing storage that helps attenuate the peak rate of discharge. The storage effect of streams is less pronounced than that of lakes and wetlands. In streams, increased surface runoff volumes and prolonged duration of peak rates of discharge results in more impact.

The surface water drainage system in the planning area is shown in Figure 4-1.

Basin boundaries were identified from the 1990 King County Soos Creek Basin Plan (1992). Much of the area near the City is designated as Regionally Significant Resource Areas in the Soos Creek Basin Plan because of the relatively pristine condition of the watershed, including the streams, lakes, wetlands and surrounding forested upland areas.

The Rock Creek and Ravensdale Creek drainage basins received special attention in the City's resource planning.

### *Streams and Lakes*

Both the Rock Creek and Ravensdale Creek basins drain to Lake Sawyer and ultimately to the Green River. A small portion of the planning area drains either to the Green River via an unnamed drainage network or via Lake Keevies and Crisp Creek, or to Horseshoe Lake, which has no outlet.

Major creeks in the City were inventoried in 1991 using guidelines provided by the Washington State Department of Natural Resources (DNR), in compliance with the Growth Management Act (GMA).

There are eight creeks located in the planning area—Covington Creek, Rock Creek, Jones Lake Creek, Ginder Creek, Lawson Creek, Mud Lake Creek, an unnamed tributary to Black Diamond Lake, and Ravensdale Creek. These water bodies are listed in Appendix A. Stream classifications shown in Appendix A are based on a water typing system used by DNR and are for information purposes only. Stream types are classified in the City's Sensitive Areas Ordinance (SAO) under "Water Typing System," which defines streams from Type 1 to Type 5 depending on the presence of fish, whether intermittent or year round, and other factors. Stream type will be determined using the definitions and criteria of the City's SAO.

Covington Creek is also classified as a Shoreline of the State, subject to the Shoreline Management Act (SMA). There is only a small segment of Covington Creek where it exits Lake Sawyer within the existing City limits.

In their present state, all of the larger streams are moderately important for water supplies, recreation, fish and wildlife habitat, and protection of water quality. Lawson Creek influences water quality in Jones Lake and the Rock Creek wetlands, and Mud Lake Creek influences the water quality of Ginder Creek. All other drainage courses within the Rock Creek watershed are considered minor.

There are eight existing lakes within the planning area — Lake Sawyer, Jones Lake, Black Diamond Lake, Oak Lake (also known as Lake Marjorie), Frog Lake, Horseshoe Lake, Lake Number 12, and Mud Lake.

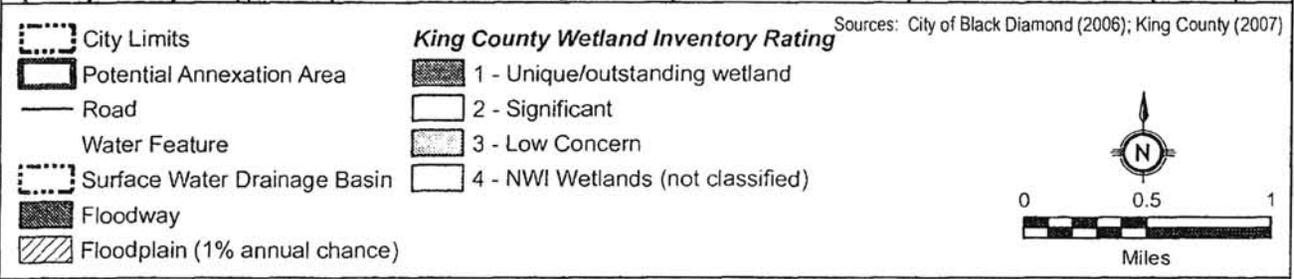
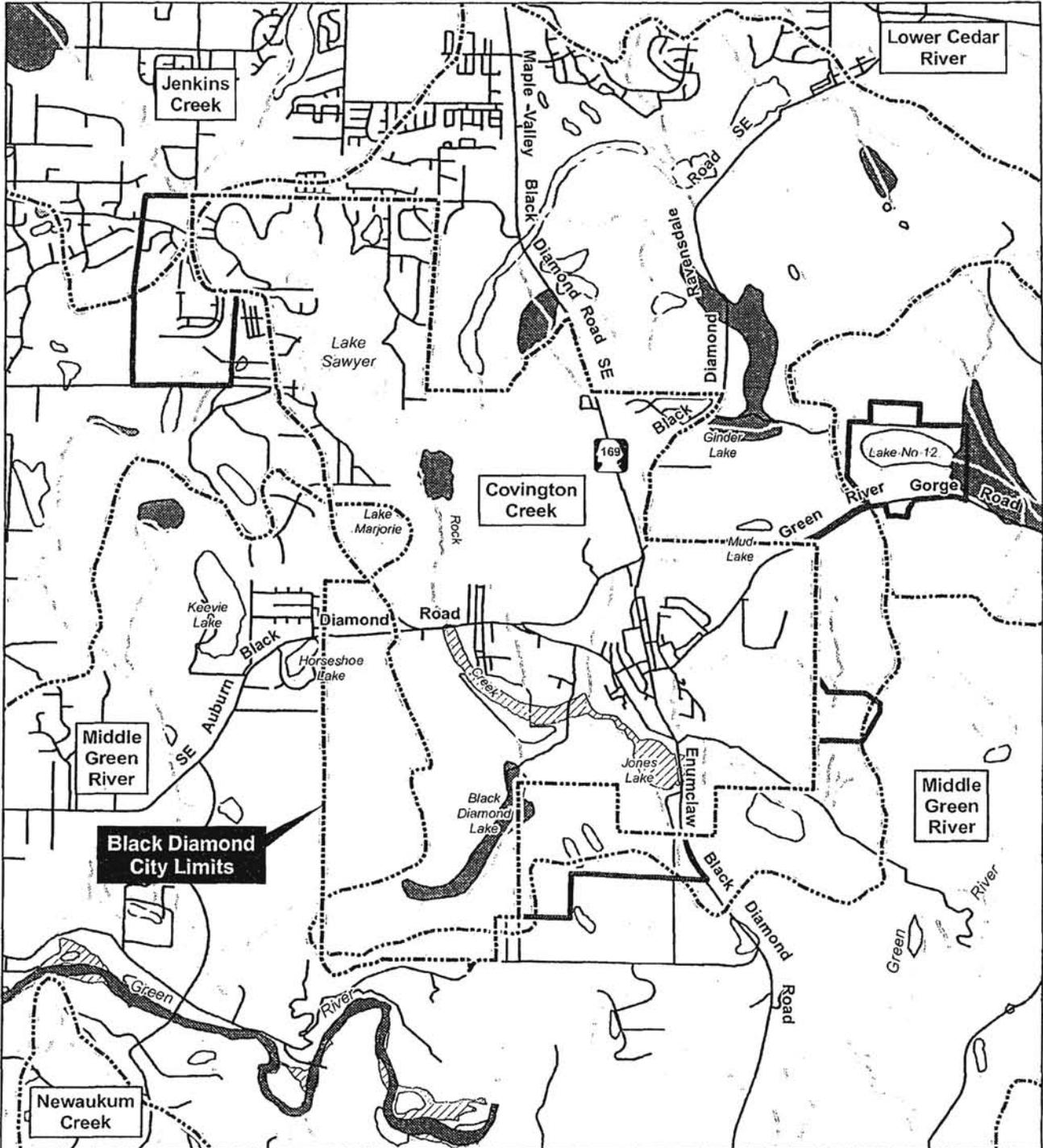


Figure 4-1. Drainage Basins, Flood, and Wetlands Map  
Black Diamond Comprehensive Plan  
May 2009

Lake Sawyer is the fourth largest natural lake in King County at 286 acres with a watershed of 13 square miles. Lake Sawyer is considered a “shoreline of the state” and is subject to the SMA and the City’s Shoreline Master Program. The lake is fed by the Rock Creek and Ravensdale Creek drainage systems. Lake Sawyer has experienced water quality problems from various sources, including discharge of inadequately treated sewage from the decommissioned the City’s sewage treatment plant located in the Rock Creek drainage. A lake management plan for Lake Sawyer was completed by King County in 2000. The City and King County have conducted stormwater monitoring in the lake’s watershed to help identify sources of phosphorus. Data collected by volunteer lake monitors indicate that Lake Sawyer is low to moderate in primary productivity with very good water quality.<sup>5</sup> Ravensdale Creek has a disproportionately high discharge to drainage area ratio likely due to a high influx of groundwater. Although its drainage area is about half that of Rock Creek’s drainage area, Ravensdale Creek has a discharge about 3 times greater than that of Rock Creek during the dry summer months. The phosphorus concentrations in Ravensdale Creek are relatively low during the wet season but exceed those of Rock Creek during the dry season when most of the flow is comprised of naturally phosphorus rich groundwater. Consequently, Ravensdale Creek contributes about half as much phosphorus to Lake Sawyer as Rock Creek. Lake Sawyer is an important migration corridor for a late run of coho salmon that pass upstream shortly after Christmas. The fish spawn in upper Ravensdale Creek. Lake Sawyer also provides year-round recreational fishing for stocked rainbow trout and warm water fish. The lake is also used extensively for boating, water-skiing, and other recreation. Public access is provided at a boat launch on the northwest side of the lake. An undeveloped 168 acre park is located along the southern part of the lake.

Frog Lake is located in the northwestern part of the planning area at the southeastern portion of Lake Sawyer. Frog Lake is approximately 25 acres in size. It is largely a forested wetland with an open water area, identified as Wetland 2 by the City or as Covington Creek 22 by King County’s Interactive Map Folio Sensitive Areas layer. As a wetland related to Lake Sawyer, Frog Lake is considered a shoreline of the state regulated by the SMA.

Jones Lake is 23 acres in size with a watershed of 740 acres. It is fed by Lawson Creek and two other unnamed tributaries, but is a highly groundwater-dependent lake that displays a seasonal fluctuation in water level. Jones Lake is classified as a dystrophic lake, characterized by relatively high concentrations of acidic organic materials in solution. These chemical conditions can reduce the rate or prevent the processes of bacterial breakdown that would otherwise recycle nutrients from dead

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<sup>5</sup> King County Lake Monitoring Report, Water Year 2004.

organic material at the bottom. The bottom deposits of Jones Lake consist largely of unrated organic material which accumulates as peat. The area of Jones Lake is identified as a peat deposit in the Tahoma Raven Heights Community Plan. Jones Lake and the surrounding land have been identified and partially acquired by the City using funds from the King County Open Space Bond Fund. Jones Lake has recreational fishing values. Stocking records available for Jones Lake (previously known as Lake 14) show the following plantings: 1915 - yellow perch; 1922, 1926, 1928, 1929 and 1930 - eastern brook trout; 1932 - kokanee; 1950 - rainbow trout; and 1956 - rainbow trout. Bass, crappie and brown bullheads have also been introduced into this system. Warm water species such as yellow perch, bass, crappie, and bullheads can spawn in lakes and establish self-reproducing populations.

Black Diamond Lake is part of an extended high quality wetlands system. Black Diamond Lake is approximately 11 acres in size with an average depth of 6 feet and a maximum depth of 8 feet and is fed by surface water from a roughly 700-acre watershed and groundwater. Black Diamond Lake has recreational fishing values provided by bass and other warm water fish. The lake was stocked with rainbow trout by the Washington Department of Fish and Wildlife in 1958, 1963, and 1965. There is a high quality peat wetland area located upstream from the open water lake. Black Diamond Lake and its associated world-class bog have been extensively researched by the Nature Conservancy and represent a valuable natural asset for the City.

Oak Lake has not been researched other than to identify it as an open water wetland. Oak Lake is approximately 5 acres in size. It is described as a groundwater depression and is isolated from the other lakes and Rock Creek drainage system.

Horseshoe Lake, located just west of the City limits, is situated in a topographic depression with no outlet. It is fed by both surface water and groundwater and is particularly sensitive to local changes in the shallow groundwater table.

Lake Number 12 covers 44 acres and is fed by surface runoff from a 500-acre drainage area and shallow groundwater flow over a less permeable substrate layer. The lake is known to have an aquatic weed growth problem associated with high phosphorus concentrations. Lake 12 is considered a "shoreline of the state" and is regulated by King County's Shoreline Master Program. Lake 12 is in the City's Urban Growth Area (UGA) northeast of the current City limits.

Mud Lake is largely a wetland with a drainage basin of 378 acres. This lake is located in an area designated as mineral resource land. It was once part of a mining plan. However, disturbance of the lake is no longer proposed.

## Groundwater

Ground water either moves laterally or remains in place as an isolated body of water and slowly moves downward. Shallow groundwater will generally reflect the influence of local precipitation and surface water phenomena. Deep groundwater is generally regional both in terms of size and immunity to local surface water changes. Groundwater characteristics depend largely on subsurface geologic features (stratigraphy) and surficial geologic features (soil type).

Major groundwater sources in the Puget Sound area are found in the glacial and non-glacial deposits formed during the Pleistocene epoch. Subsurface and surficial geologic features in the Rock Creek, Ravensdale Creek, and Crisp Creek watersheds resulted from the Vashon ice flow. The Vashon ice flow left deposits of outwash and till which form the major groundwater sources in the Rock Creek, Ravensdale, and Crisp Creek drainage basins. Glacial outwash is a medium to highly permeable sand and gravel that produces nominal surface runoff. Precipitation and surface discharges infiltrate the outwash, which generally contributes to recharging deep, regional groundwater aquifers.

Groundwater occurs in three aquifer systems beneath the planning area. These aquifer systems include 1) a seasonal shallow or perched unconfined aquifer in the weathered soil and recessional outwash overlying till or bedrock, 2) an intermediate depth, regional unconfined and confined aquifer system within the pre-Vashon glacial and interglacial sediments, and 3) a confined regional aquifer system within the bedrock.

The shallow aquifer system is the primary water resource penetrated by most of the domestic wells in the planning area. At least seven water wells penetrate the intermediate depth aquifer in the planning area. The deep bedrock aquifer is controlled by fractures in the bedrock. Several domestic wells penetrate the bedrock aquifer in the east portion of the planning area, but are typically very low in yield.

The shallow aquifer is particularly vulnerable to contamination from the surface and may dry out seasonally in some areas. The intermediate depth aquifer is recharged over a very large area and is generally protected from contamination from the surface. The bedrock aquifer often contains water with elevated level of minerals, such as iron and sulfur that may affect water quality.

Ground water flow patterns have both vertical and horizontal components. In the planning area, the primary vertical component of flow is downward percolation from the shallow aquifer, through the underlying till or fractures in the bedrock, and into the intermediate or deep bedrock aquifer. Horizontal groundwater flow in the shallow aquifer discharges to surface water features in the Rock Creek, Ravensdale Creek, and Crisp Creek drainage systems.

Ground water recharge to the shallow aquifer is primarily from precipitation or infiltration of surface water runoff from adjacent areas. As precipitation falls on the ground surface, a portion infiltrates into the soil. Precipitation that does not infiltrate remains on the surface, filling small depressions or moving downslope as surface runoff. Some shallow infiltrated water (soil moisture) is used by plants and returns to the atmosphere by evaporation. When the soil moisture content is high, such as occurs after a long period of rainfall, water within the soil migrates downward. Downward percolation of water is impeded by relatively impermeable till or bedrock that underlies most of the land. Where water is concentrated within topographically low areas, lowlands such as wetlands and streams, there is generally more recharge than in topographically high, upland, areas where the surficial aquifer is dry much of the time. The intermediate depth and deep bedrock aquifer systems are recharged by infiltrating water over an area much larger than the planning area.

### *Public Water Supplies*

Groundwater withdrawal has not been necessary to supply the City's water needs. The City currently obtains all of its municipal water from a series of springs (Spring No. 1 through Spring No. 4) located on the east slope of Green River gorge about 2 miles southeast of the City. The City does not maintain any water wells at present. The spring system is located in a geologically active area of the Green River gorge as demonstrated by a large landslide in February 1996 immediately downstream of Spring No. 1. The water quality and quantity are very good; limited only by the approved water rights consumptive allocation of the spring water.

The City has a wholesale contract for water supply from the City of Tacoma that will provide future water supply. The City will also continue to withdraw water supply from its springs so long as this source remains feasible.

### **4.2.2. Sensitive Areas**

Sensitive Areas (also referred to as critical areas) are environmentally sensitive features of the City for which protection is required by the GMA. They include wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (FWHCA), geologically hazardous areas, and areas with a critical recharging effect on groundwater used for potable purposes.

The City conducted sensitive areas inventories in its planning area in the early 1990s and is also using King County mapping data as its source of sensitive areas information. The Black Diamond Sensitive Areas Map was produced by King County geographic information systems (GIS) data. This plan relies on the King County Interactive Map Folio, Sensitive Areas layer to identify locations of known sensitive areas both within the City limits and the City's UGA. This information will

be updated in 2008 as a result of the update of the City's current Environmentally Sensitive Areas regulations (Ch. 19.12 BDMC).

Development adjacent to wetlands and streams inside the City is regulated by the City's SAO. The SAO contains requirements for designating, rating and mapping wetlands and streams, requires the establishment of wetland and stream buffers, identifies activities allowed within the buffers and describes applicable performance standards, and outlines appropriate mitigation requirements.

### *Wetlands*

Known wetlands and streams in the City have been identified and classified (i.e., rated on a reconnaissance level) in the 1992 study entitled "City of Black Diamond Wetland and Stream Inventory." The City's SAO designates and rates wetlands according to the Washington State Department of Ecology's (Ecology's) wetland ratings system found in the Washington State Wetland Rating System documents (Western Washington Ecology Publication #93-74). Known wetlands in and adjacent to the City are identified in Appendix A. The wetland classifications listed in the appendix are preliminary and for information purposes only. For project proposals, wetland classifications will be determined using the definitions, criteria and procedures contained in the City's SAO.

The City has classified and designated frequently flooded areas using the Federal Housing and Urban Development Flood Map (Figure 4-1). This map identifies the following flood hazard areas inundated by a 100 year flood: along Rock Creek from Morganville to Jones Lake; the southern portion of Ginder Creek; surrounding Jones Lake and along the east side of Highway 169 (across from Jones Lake). New development in these areas will continue to be regulated by the City.

The 2006 King County Interactive Map Folio Sensitive Areas layer shows a small segment of Section 15 in the 100 year floodplain in the City. The floodplain is generally along the Rock Creek wetlands and Covington Creek Wetland No. 26.

### *Fish and Wildlife Habitat Conservation Areas*

Fish and wildlife habitats in the City were identified and ranked in terms of value in the 1992 "City of Black Diamond Fish and Wildlife Habitat Study." High value habitats include the Rock Creek and Ginder Creek corridors, open water ponds, lakes, and riparian forests. These habitats exist around streams and wetlands, which are identified, classified, and regulated under the City's SAO. The SAO contains requirements for designating and mapping FWHCA, sets buffer requirements and performance standards for activities allowed within FWHCAs and their buffers, and outlines appropriate mitigation requirements. There are areas of high quality habitat that relate closely to the City's wetland and stream network. Two of these areas may

meet the City's SAO criteria for FWHCAs: 1) Ravensdale Creek and its adjacent wetlands; and 2) Black Diamond Lake and its adjacent wetlands (Figure 4-2). The City is currently updating its SAO and may revise the criteria for FWHCAs in the update process.

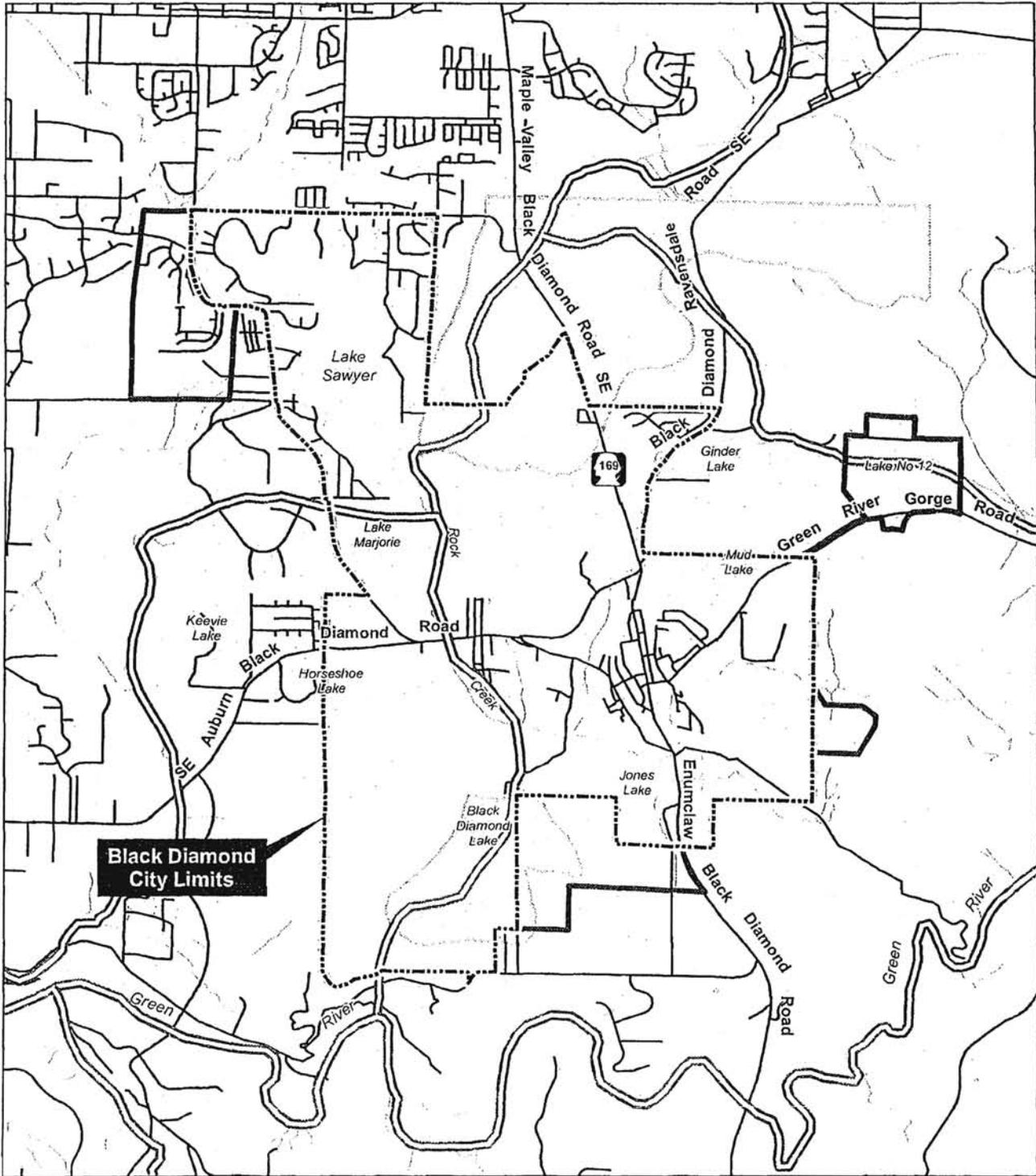
The general habitat types in the Black Diamond area include mixed deciduous and unmanaged evergreen forest, areas of regenerating managed forest, wetlands, lakes, riparian areas, and creeks. Wetlands, riparian areas, and lakes meeting certain criteria are listed as "priority habitats" in the Washington Department of Fish and Wildlife's (WDFW's) Priority Habitats and Species (PHS) program. WDFW has compiled draft maps of priority habitat areas in the City.

Wildlife corridors provide a means for wildlife, particularly species that roam widely or have large home ranges, to move freely within and among habitat types. Creeks and streams and their associated buffers function as wildlife corridors in urban areas. Rock Creek, Ravensdale Creek and the associated riparian habitat, functions as a corridor between the upper and lower Soos Creek basin. The Rock Creek corridor likely serves as a route to the Green River and upper parts of the Green River watershed as well, linking wildlife that use the lower Green River watershed and the upper Soos Creek basin. The following list of drainages and the known fish species are updated from the Water Resource Inventory Area (WRIA) 9 Fish Distribution maps (2000, King County DNR):

Covington Creek. Coho, cutthroat trout and steelhead are known to inhabit Covington Creek. The WRIA 9 Fish Distribution Map indicates that Covington Creek also provides good habitat for Chinook salmon, though presence of that species has not been verified.

Lake Sawyer. Covington Creek drains Lake Sawyer, which is fed by Ravensdale and Rock Creeks. Lake Sawyer supports populations of cutthroat trout, steelhead, largemouth and smallmouth bass, yellow perch, and rainbow trout (WRIA 9 2000 and WDFW 1991). The lake is impounded by a small dam at the head of Covington Creek. The dam has a fish ladder that allows passage of migrating coho. Due to low water flows and creekbed infiltration, however, the fish ladder is not typically passable until December. This factor limits coho use of the upper watershed, including Rock Creek.

Ravensdale Creek. Ravensdale Creek has significant fisheries value and is known to support coho and cutthroat trout. The headwater wetlands are important for maintaining perennial flow, as well as maintaining water quality in Rock Creek.



Sources: City of Black Diamond (2006); King County (2007)

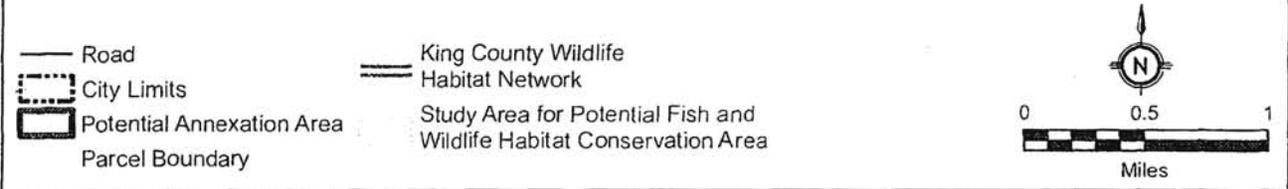


Figure 4-2. Wildlife Habitat Network  
Black Diamond Comprehensive Plan  
May 2009

Rock Creek. A small portion of the planning area drains to Black Diamond Lake and the wetlands surrounding it. The Black Diamond Lake wetlands serve as partial headwaters of Rock Creek. Rock Creek is listed as supporting coho salmon, cutthroat trout, and steelhead in the WRIA 9 Fish Distribution Map.

Ginder Creek. The northeast portion of the planning area drains to Ginder Creek, which drains into Rock Creek. Ginder Creek historically provided good habitat for salmonid spawning and rearing. The WRIA 9 Fish Distribution Map (2000) shows Cutthroat trout presence in Ginder Creek. Based on a 1982 sampling, Ginder Lake supports warm water fish including black crappie, largemouth bass, and pumpkinseed. An obstruction limits the passage of adult salmonids upstream as far as Ginder Lake. Electroshocking done during the 1982 survey indicated that Ginder Creek, above State Route (SR) 169 may be able to support other species of fish if passage barriers were removed. The survey generally indicated that Ginder Creek is a relatively productive tributary (John Henry Mine, SEIS).

Mud Lake Creek. This stream provides some habitat for spawning and rearing of salmonids. The cascading portion over sandstone bedrock would prevent passage of salmonids. High turbidity was also identified in the 1982 sampling in Mud Creek, especially at the inlet to Mud Lake. Mud Lake Creek, however, represents an important source of water for Ginder Creek below the confluence near SR 169, at least during the winter months. Fish populations were essentially non-existent in Mud Creek (1982) and in the inlet to Mud Lake (John Henry Mine, SEIS).

Crisp Creek. The eastern edge of the Crisp Creek drainage basin crosses into the City. The Crisp Creek basin drains an area approximately 5.0 square miles with the majority of the basin located upstream of the Keta Creek Hatchery. Crisp Creek and Keta Springs are the water supply for the Hatchery. Crisp Creek is also the sole water supply for the state owned rearing ponds, located on the mainstem and upstream of the Hatchery. Coho, chum and Chinook salmon as well as steelhead have been produced at the Keta Creek Hatchery.

Green River. The planning area lies within 1 mile to the north of the lower end of the Green River Gorge, between river mile (RM) 42 and RM 47. In this vicinity, the river flows through a steep-sided eroded gorge. The Green River supports significant runs of coho, Chinook, and chum salmon as well as steelhead and sea-run cutthroat trout. These salmonid runs support important sport and retail fisheries in the Puget Sound Region and the Pacific Ocean as well as within the river system.

All of these creeks need highly effective groundwater and stormwater protection to maintain the water quality and ensure sufficient supplies of water for natural production or successful hatchery production. Stream buffers and limitations on land



uses contained in the City's SAO help protect the functions and values of these streams as critical fish and wildlife corridors.

### *Geologically Hazardous Areas*

Geologically hazardous areas include erosion hazards, landslide hazards, and mine hazards. Areas of abandoned coal mine workings are identified and mapped in Figure 4-3 and are regulated by the City's Sensitive Areas regulations.

Areas of steep slopes are similarly identified in City Sensitive Areas maps and regulated by the SAO. The SAO contains designation and mapping requirements, a description of allowed activities and performance standards, and appropriate mitigation requirements for erosion, landslide, and mine hazard areas. Additional geologically hazardous areas not currently regulated by the SAO include seismic hazard areas and steep slopes.

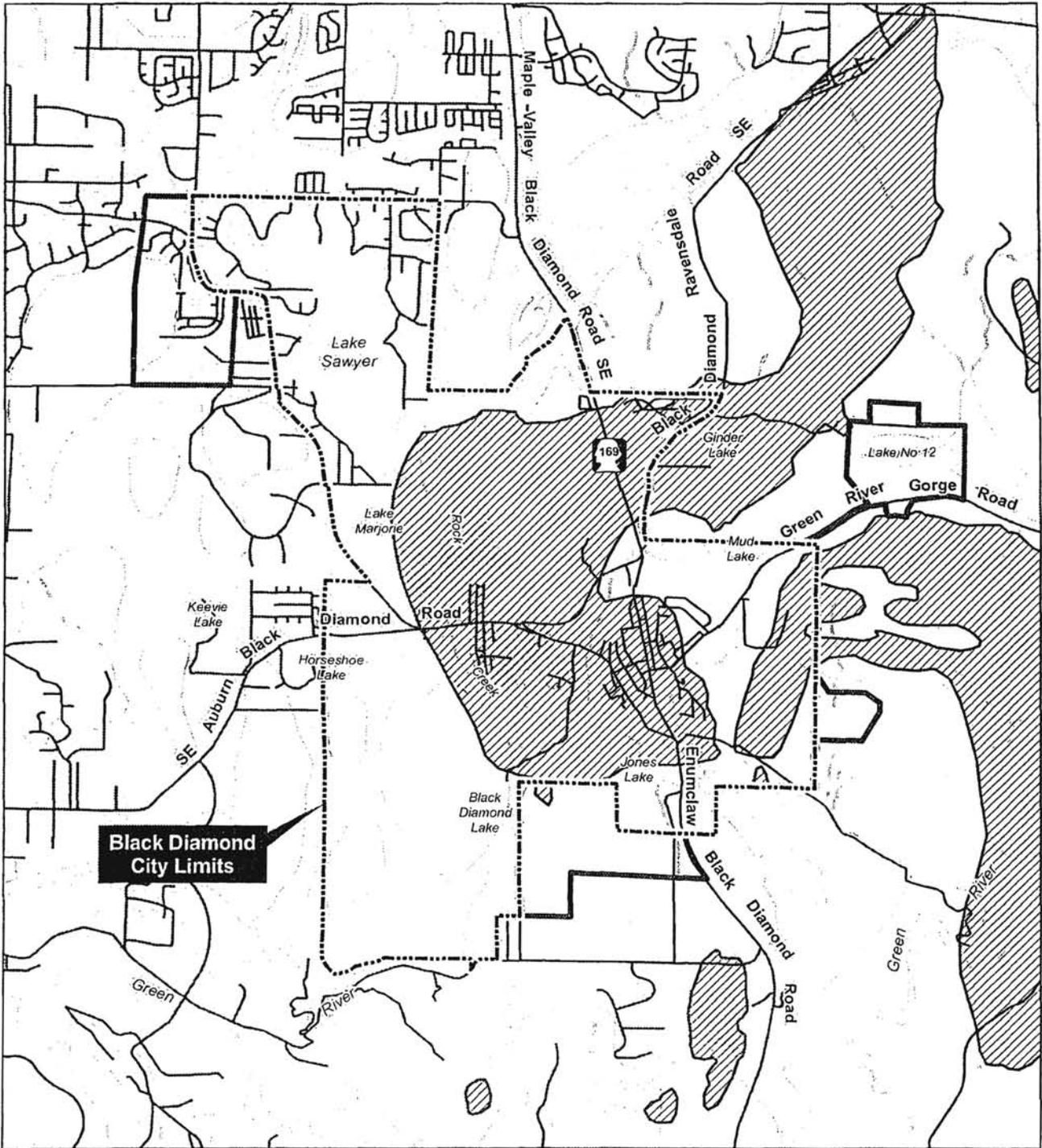
### **Erosion Hazard Areas**

Erosion hazard areas are defined as those areas identified by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) as having a "severe" to "very severe" erosion hazard.

King County's Interactive Map Folio, Sensitive Areas Layer indicates five small locations within the planning area, including the Ravensdale Creek corridor, as "erosion hazard." Among the Natural Resources Conservation Service (formerly Soil Conservation Service [SCS]) soil types identified within the planning area, one is identified by King County as potentially severely erosive. It is shown as AkF and AgD. Relatively small areas of this soil type exist within Sections 22 and 23, but both are located along the edge of wetlands (southwest of Black Diamond Lake and east of Jones Lake). These erosion prone soils are constrained for development, especially the area of AkF near Black Diamond Lake.

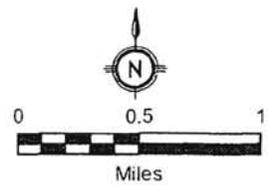
### **Landslide Hazard Areas**

Landslide hazard areas are defined in the City's SAO as those areas that are potentially subject to risk of mass movement due to a geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, groundwater, or other factors. King County's Interactive Map Folio (IMap) Sensitive Areas Layer delineates no known landslide hazardous areas within the planning area.



Sources: City of Black Diamond (2006); King County (2007)

-  City Limits
-  Potential Annexation Area
-  Road
-  Water Feature
-  Potential Coal Mine Hazard Area
-  Area Highly Susceptible to Groundwater Contamination



## Coal Mine Hazard Areas

Coal mine hazard areas include abandoned and improperly sealed mine openings and areas underlain by mine workings shallower than 200 feet in depth (steeply dipping seams) or shallower than 15 times the thickness of the seam or workings (gently dipping seams) may be affected by collapse or other subsidence.

Although the City is underlain by numerous coal mines, the "mine hazard" areas by definition are limited due to the accuracy of past mapping and the depth of most of the shafts. King County's IMap Sensitive Areas Layer identifies one large area of "coal mine hazard" in the central part of the City, and a smaller area to the east in the Lawson Hill neighborhood. The county map layer appears to locate coal mine areas without specific information on the degree of hazard.

Information provided by Palmer Coking Coal (PCC) indicates that much of the existing City is built over deep underground coal mine working. Most underground coal mining in the Black Diamond area consisted of the "room and pillar" mining technique. "Pillars" of coal were left to provide support for the mining of adjacent areas, creating rooms. Once abandoned, these "pillars" would collapse and the "rooms" would fill with collapsed roof material, coal debris, and water.

There are known coal mine entrances, stockpiles of coal tailings or mine spoil in the planning area. Mining records indicate that underground mining has occurred in Section 2, 10, 11, 12, 13, 14, 15, and 23. Most of these are areas underlain by deep underground coal workings. The coal mine hazards identified in the SAMF are based upon maps available at the Department of Natural Resources. The approximate location of the mine areas is shown on Figure 4-3.

Prior to development in areas of coal mine working and potential subsidence, the City requires studies by geologic engineers detailing the depth to workings, the presence of surface openings or potential sinkholes, and a detailed examination of historic coal mine maps.

## Seismic Hazard Areas

Seismic hazard areas are subject to severe risk of earthquake damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction. These conditions occur in areas underlain by cohesion's soils of low density, usually in association with a shallow groundwater table. For the City, these areas are primarily wetlands and saturated soils. According to King County's IMap Sensitive Areas Layer, no seismic hazard areas are identified within the planning area.

## Steep Slopes

The county's SAMF does not identify steep slopes (greater than 40%) in the planning area and did not map inside the existing City limits. The steepest slope in the City occurs along the south side of Lawson Hill (aka Franklin Hill), where isolated portions of the hillside approach 30% slope. Most of Lawson Hill contains 6% to 15% slopes with an area of 16% to 24% slopes. Some isolated slopes which are in the 16% to 24% slope range, are located east of the Black Diamond Lake, along Lawson Road east of Mud Lake, near SE 288th Street and crossing SR 169 north of the City limits. The remainder of the City of Black Diamond Comprehensive Plan area appears to contain slopes from 0 to 15%. Isolated steep slopes may exist throughout the City.

## Ground Water Management Areas

The City is located within the South King County Groundwater Management Area. In the "South King County Groundwater Management Plan," the western and northwestern portions of the City have been identified within the large area of coarse and highly pervious Qvr (Vashon Recessional Outwash) geologic deposits. As a result, the Qvr areas of the City have the potential to serve as aquifer recharge areas but offer little contaminant removal ability leaving groundwater susceptible to contamination. The King County Comprehensive Plan mapped these areas as "Areas Highly Susceptible to Ground Water Contamination," that are shown in Figure 4-3. As noted on Figure 4-3 this map is provided for information purposes only and is not specific enough to be used as an integral part of regulations.

This area of Qvr geology contains a shallow aquifer serving as a source of water supply to the City of Kent system and Lake Sawyer. Lake Sawyer, Ravensdale Creek, and Rock Creek are identified as being hydraulically coupled to this shallow aquifer. Mapping provided by King County's IMap shows that areas with high susceptibility to groundwater contamination are located surrounding Lake Sawyer in the northwestern portion of the City, and in the southwestern portion of the City. An area southeast of Lake Sawyer and a small area in the southeastern part of the City are shown as medium susceptibility to groundwater contamination.

To protect critical groundwater recharge areas of domestic water supply aquifers, the City requires that development within the City limits served by City utilities be served by sanitary sewers. Areas served by Soos Creek Water and Sewer District where sewer service is not available are still allowed to use septic systems.

Maintaining the water quality and quantity of stormwater runoff is important within aquifer recharge areas so that aquifers are protected from pollutants. Maintaining infiltration of stormwater runoff in recharge areas renews the aquifer resource. The City's storm drainage ordinance requires treatment of runoff prior to surface water

discharge and encourages infiltration. Utilizing the appropriate treatment and infiltration techniques in aquifer recharge areas will aid in the protection of aquifer recharge areas.

### 4.2.3. Air Quality

Based on readings from the nearest monitoring stations in the cities of Kent and Enumclaw, air quality in the City is generally considered good.<sup>6</sup>

The City and its planning area are located to the southeast of metropolitan Seattle. As a result of prevailing winds, long summer days, and higher inland temperatures, the City experiences relatively higher ozone pollution concentrations than other areas in King County. This is common for much of southeast King County (the City contributes only marginally to this regional pollution). Zone monitoring is conducted at Enumclaw on a seasonal basis.

Particulate Matter (PM<sup>10</sup>) consists of very small particles, either solid or liquid, which float in the air and settle very slowly. Soot and dust are examples. PM<sup>10</sup> stands for particulate matter that is smaller than 10 micrometers or one-hundredth of a millimeter. Most particulate comes from wood smoke, road dust, outdoor burning, and industry. In the City and surrounding area, the sources of PM<sup>10</sup> include local mining operations, a smokehouse, and outdoor burning. Inside the City, the requirements of the Puget Sound Air Pollution Control Agency (PSAPCA) and WAC 173-425-040 prohibit outdoor burning within designated UGAs.

### 4.2.4. Geology, Soils and Topography

#### *Geology*

The City lies in a geographic area known as the Puget Lowlands, a large land trough extending from the Fraser Valley in British Columbia, Canada, to the Willamette Valley in Oregon and from the Cascade Mountains in the east to the Olympic Mountains in the west. Geologic characteristics in the northern portion of the Puget lowlands are the result of glaciation that occurred during the Pleistocene Era (beginning about 20,000 years ago). Glaciers were once as thick as 3,000 feet during the Vashon Period of the Fraser Glaciation (roughly 15,000 years ago). They deposited till, outwash, and material mixed with volcanic ash in the Puget Lowlands on top of a thick sequence of interbedded sandstones, quartzose sandstones, siltstones, and numerous coal beds. The Black Diamond area is located on the Covington Drift Plain. Two types of deposits occur in the planning area: Vashon till

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<sup>6</sup> 2005 Air Quality Data Summary; Puget Sound Clean Air Agency.

which is generally an impervious mix of gravel, cobbles, and clayey, sandy silt (known as "hardpan"); and the Vashon stratified drift deposits (generally, permeable) composed of outwash gravels, rocks, and cobbles. Since the last glaciation, urbanization, rural development, logging, gravel mining activities, erosion, and sedimentation have modified the land surface. Weathering and erosion of native soils has resulted in the development of topsoil at the ground surface. The topsoil in undeveloped areas consists of a few inches of silt and sand with decayed leaves and roots. The weathered soils underlying the topsoil consist of a few inches of organic matter, silt, and sand with roots generally extending to a depth of 2 to 6 feet. Topographic depressions and low gradient stream channels and wetlands have accumulated organic silt and peat.

Vashon recessional outwash mantles the west portion of the planning area. This soil consists of sand and gravel with variable amounts of alluvial silt and cobbles deposited by rivers emanating from the melting front of the Vashon ice sheet. This soil is considered a valuable gravel resource in this area depending on its thickness and silt content.

Vashon till is at the ground surface in some areas of the east portion of the planning area. Till consists of unstratified silt, sand, gravel, and cobbles that are in very dense condition due to being overridden by the glacial ice. Till is usually 20 to 40 inches thick and probably underlies the recessional outwash but may be absent where eroded during deglaciation meltwater runoff.

Pre-Vashon glacial and interglacial sediments underlie the Vashon till; generally in the west portion of the planning area where bedrock is deep. The pre-Vashon glacial and interglacial sediments consist of interbedded and/or stratified silt, sand gravel and till. These soils are not exposed at the ground surface in the planning area, but are exposed in the upper walls of the Green River gorge south of the planning area and are penetrated by water wells in the west portion of the planning area.

Bedrock of the Puget Group underlies the entire planning area. The bedrock is locally exposed at the surface in the east portion of the planning area and in the walls of the Green River gorge south of the planning area. The bedrock consists of sedimentary sandstone, mudstone, shale, and coal. Based on elevations of surface exposures and water well logs, bedrock underlies the land at a depth of 200 feet or more in the west portion of the planning area.

## Soils

Weathered soils derived from native geologic deposits cover the ground surface in most of the planning area. The following soil information was taken from the November 1973 NRCS "Soils Survey of King County Area." Because this information is based on mapping from aerial photos and may not be totally

representative it is used for comparing the general suitability of areas for different land uses. Field verification may be required for specific sites as part of specific project review.

Specific to the Black Diamond vicinity, weathered gravel, sand, and clay left in glacial till plains, terraces and outwash plains at the end of the Pleistocene Era, have formed the local soils. The NRCS characterizes soils by the mixture of clay, silt, sand and organic materials that make up the soil and the degree of slope where the soils are located.

The soil types mapped in the planning are:

- Alderwood gravelly sandy loam, 6-15% slope (AgC);
- Alderwood gravelly sandy loam, 15-30% slope (AgD);
- Alderwood gravelly sandy loam, with Kitsap Silty Loam (AgF);
- Alderwood and Kitsap soils, 25% to 70% slope (AkF);
- Beausite gravelly sandy loam, 6 - 15% slope (BeC);
- Beausite gravelly sandy loam, 14 to 30% slope (BeD);
- Bellingham silt loam, 0% slope (Bh), hydric;
- Buckley silt loam, 0% slope (Bu), hydric;
- Everett gravelly sandy loam, 0- 6% slope (EvB);
- Everett gravelly sandy loam, 6-15% slope (EvC);
- Everett gravelly sandy loam, 15- 30% slope (EvD)
- Mixed Alluvial, less than 2% slope (Ma);
- Norma sandy loam, less than 2% slope (No), hydric;
- Ragnar-Indianola association, 2-15% slope (RdC);
- Seattle muck, less than 1% slope (Sk), hydric;
- Shalcar muck, less than 1% slope (Sm), hydric, and
- Urban land, filled (Ur).

### Alderwood Soils

Alderwood soils (principally AgC) are the most abundant soils present in the planning area. These soils were formed on till plains and roughly correspond with

the Vashon Till (Qvt). Alderwood surface and subsoils consist of a very gravelly sandy loam that is moderately deep, averaging approximately 30 inches. Extending downward from depths of approximately 20 to 40 inches, the soil layer has been compacted. This material is known as "hardpan". Alderwood soils have the characteristic of moderately rapid permeability above the hardpan layer and very slow permeability through it. Water has a tendency to perch on top of the hardpan layer. In winter, water moves laterally along the top of the hardpan, or it saturates surface soils in topographic low areas creating local areas of hydric soils and wetlands. These wetlands typically do not contribute to aquifer recharge because water does not percolate easily through the hardpan to the aquifer below.

A notable complex of wetlands in Section 23 occurs in topographic depressions on Alderwood soils. These wetlands are consistently oriented in a northwest to southeast direction presumably related to the direction of glacial movement in the area. According to the Site Evaluation and Land Use Concepts prepared for Plum Creek Timber Company properties (Hewitt Isley, 1991), the regional groundwater table occurs within the preglacial soils that underlie the glacial till. The regional groundwater table is below and hydrologically separate from the glacial till where the perched groundwater occurs and supports wetlands.

Alderwood soils are stony and commonly experience summer drought after seasonally high (winter), perched water tables diminish. The erosion potential on 6-15% slopes (AgC) is moderate due to the relatively unconsolidated nature of the till above the hardpan. The erosion potential on 15-30% slopes (AgD) is severe and slippage is moderate; however, only a small area lying within Section 23 exhibits this soil type. Related to agricultural purposes, Alderwood soils are used mostly for timber. If cleared, the soils are suited to grasses.

According to the NRCS, continuous vegetative cover is important to protect the soils adequately against the hazards of severe erosion and sedimentation to maintain the quality of water in streams, and to control runoff. Alderwood soils are not suited to field crops requiring annual tilling and re-seeding.

In general, glacial drift soils, other than the loose weathered colluvium/topsoil, provide excellent support for buildings and roadways and are generally suitable for development. Development limitations that exist are related to areas of seasonal high water table and steep slopes with erosion potential. The limitations for stormwater infiltration and septic tank drainfields are severe due to the very slow permeability in the substratum (hardpan). Urban development on Alderwood soils requires sanitary sewers.

### **Alderwood Kitsap Soil**

Alderwood soils (AkF) is about 50% Alderwood gravelly sandy loam and 25% Kitsap silt loam. Slopes are 25% to 70%. The distribution of these soils varies greatly within short distances. Drainage and permeability vary. Runoff is rapid to very rapid, and erosion hazard is severe to very severe. The slippage potential is severe. Alderwood Kitsap soil is located along the west edge of the Black Diamond Lake wetland.

### **Beausite Gravelly Sandy Loam**

Beausite gravelly sandy loam (BeC, BeD) is a well drained soils formed in glacial deposits and are rolling to very steep. Vegetation cover is usually alder, fir, cedar and associated brush and shrubs. Beausite soils are used for pasture, but some areas have been used for urban development. Beausite soils occur in the Black Diamond center and in the area where the John Henry Mine is located, north and south of the Green River Gorge Road.

### **Bellingham Silt Loam**

Bellingham silt loam (Bh) is a poorly drained soil formed in alluvium. These soils are nearly level and are mostly in depressions on the upland glacial till. Permeability is slow. Runoff is slow and the hazard of erosion is slight. Bellingham soils occur along sections of Ginder Creek and Rock Creek.

### **Everett Gravelly Sandy Loam**

Everett gravelly sandy loam (EvC), 5-15% slopes, is the second most abundant soil type present within the planning area. These soils were formed in glacial outwash on terraces and outwash plains, and were deposited on top of older Alderwood soils described above. Everett soils roughly correspond with Vashon Stratified Drift Deposits (Qvs). These gravelly sandy loam soils are very deep and somewhat excessively well drained. The surface and subsurface soils can be found to a depth of 60 inches, with a weakly cemented layer in the substratum in some areas.

Rainfall in these soils is quickly absorbed and percolates to the groundwater table. Creeks that drain into areas dominated by Everett soils typically intercept the groundwater table and receive most of their flow from groundwater discharge. Runoff is slow to medium. The erosion hazard is slight to moderate. Everett soils are used for timber, pasture, and urban development. Everett soils are also generally suitable for urban development, except in areas of steep slopes. Limitations for septic tank drainfields exist where Everett soils are present because of the potential for aquifer and stream contamination, particularly where slopes exceed 8%. Urban

development on Everett soils requires sanitary sewers. Everett gravels provide sand and gravel resources for the gravel pit located in Section 10.

### **Mixed Alluvium**

Mixed alluvium (Ma) consists of a variety of alluvial soils in areas too small and too closely associated to map at the scale of the NRCS survey. This land ranges from very well drained to poorly drained. The hazard of stream overflow is severe. Mixed alluvium is located east of Jones Lake and SR 169.

### **Ragnar-Indianola**

Ragnar-Indianola (RdC) soil is about equal parts Ragnar fine sandy loam and Indianola loamy fine sand. Permeability is moderately rapid in the upper part of this soil and rapid in the substratum. Runoff and erosion hazard is moderate. This soil is used for timber and for urban development. This soil type is located near Morganville.

### **Urban land**

Urban land (Ur) is soil that has been modified by disturbance of the natural layers with additions of fill material several feet thick to accommodate urban development. Urban land is mapped near the intersection of Roberts Road and SR 169.

### **Hydric Soils**

Notable, high value wetlands exhibiting hydric (poorly drained) soils such as *Buckley silt loam*, *Norma sandy loam*, *Shalcar muck* and *Seattle muck* include Black Diamond Lake and the Rock Creek wetland corridors.

#### *Buckley Silt Loam*

Buckley silt loam (Bu) occurs in a small, isolated area in the far, southeastern portion of Section 23. Typically, a seasonally high water table occurs at or near the surface of this hydric soil unit and these soils are typically associated with wetlands. Erosion hazard is slight and runoff is slow. The limitations for septic tank drainfields are severe due to the very slow permeability in the substratum (hardpan).

#### *Norma sandy loam*

A small, isolated area of Norma sandy loam (No) is located to the north of Black Diamond Lake. This hydric soil is poorly drained and is typically alluvium, in basins and along stream bottoms. Permeability is moderately rapid, and the seasonal water table is at or near the surface. Runoff is slow, and the erosion hazard is slight. This

soil is used mostly for pasture and is severely limited for use with septic drainfields due the saturated condition.

### *Seattle Muck*

Seattle Muck (Sk) soils occur in limited areas associated with wetlands adjacent to Black Diamond Lake and Rock Creek. These hydric soils are composed of peaty soils originating mostly from sedges. There is a seasonal high water table at or near the surface, and soil permeability is moderate. Surface water “ponds,” and there is little or no erosion hazard. Like the Norma series, Seattle muck is unsuited for septic drainfields due to saturation and the presence of organic soils. The Seattle muck soil (muck peat, muck, and peat) is generally not suitable for urban development because of the seasonal high water table and organic soils.

### *Shalcar muck*

Shalcar muck (Sm) is located at the connection of Rock Creek to Lake Sawyer. This hydric soil is poorly drained organic soils. They are formed in deposits of sedge peat and alluvium along stream bottoms. Slopes are 0% to 1%. Permeability is moderate in organic layers and moderate to rapid in the lower soils. There is a seasonal high water table at or near the surface. Runoff is ponded and there is no erosion hazard. This soil is typically used for pasture and is severely limited for use with septic drainfields due to the saturated condition.

### *Topography*

The planning area is located in a small valley on an upland plateau ranging roughly from 525 to 750 feet in elevation, and includes the hillside east of the City up to an elevation of 1,180 feet. The plateau is approximately 300 feet above the Green River Gorge. Much of the planning area is characterized by rolling terrain with wetlands and drainage courses located in topographically low areas.

## **4.3. Natural Features Goals, Concepts, Objectives, and Policies**

### **4.3.1. Natural Environment Goals**

#### *Natural Environment Goal*

Retain the City’s natural environment and scenic beauty.

## *Natural Systems Goal*

Encourage development in areas where natural systems present the fewest environmental constraints while exercising responsible stewardship over natural resources and amenities.

### **4.3.2. Water Quality Concepts, Objectives, and Policies**

#### *Water Quality Concepts*

Groundwater is an important resource and a critical source of drinking water, especially in rural areas. It is also used for industrial purposes, power generation, and agricultural irrigation. A finite amount of precipitation is available to replenish local water resources and most of this occurs during the fall and winter. The portion of precipitation that reaches the ground replenishes groundwater and provides base flow for streams, wetlands, and rivers during the spring and summer dry months. The base flows sustain fish, wildlife, their habitats, and recreational values.

#### *Water Quality Objectives*

Objective NE-1: The impact of development practices should not contaminate the natural hydrologic system in a way that may be long lasting and relatively irreversible. The City strives to ensure the long term protection of the quality and quantity of groundwater resources within its planning area.

#### *Water Quality Policies*

Policy NE-1: The City recognizes the need for aquifer protection and will continue to coordinate planning efforts with King County in maintaining the South King County Ground Water Management Plan through the South King County Groundwater Management Committee.

Policy NE-2: Adopt stormwater regulations consistent with the Department of Ecology's Surface Water Management Manual for Western Washington (2005 or as revised).

Policy NE-3: Promote the use of interlocal agreements with other agencies to restrict land use in sensitive aquifer recharge areas in order to minimize possible sources of pollution, potential for erosion, and to maintain infiltration volumes.

Policy NE-4: Condition all development proposals to require sanitary sewer service prior to occupancy.

- Policy NE-5: Within areas highly susceptible to groundwater (aquifer) contamination, adopt special protection measures. The special protection measures require businesses that use hazardous chemicals to have containment facilities to capture potential chemical spills, and require the use of best management practices for applying pesticides and fertilizers for business residential, and recreational uses.
- Policy NE-6: The special protection measures noted in NE-5 should evaluate and define "high risk" uses and address the siting of such uses in sensitive aquifer recharge areas. The protection measures should also evaluate and include measures to reduce pollutant loads, including phosphorous discharged to Lake Sawyer.
- Policy NE-7: Require temporary erosion control measures to be installed before construction begins and maintenance of those control measures through the stabilization of the site following the completion of construction to control the quantity of sediment entering surface water.

### 4.3.3. Critical Area Concepts, Objectives, and Policies

#### *Critical Area Concepts*

Critical Areas include wetlands, aquifer recharge, fish and wildlife habitat conservation areas (FWHCAs), frequently flooded areas, and geologically hazardous areas. These features of the natural environment are critical to maintaining local environmental quality, quality of life, and maintaining the City's character. Some of the critical areas may present potential development constraints, i.e., floodplains, and geologically hazardous areas (including coal mine hazards).

#### *Critical Area Objectives*

The City will control development in all critical areas through its Critical Areas Ordinance (CAO). Those areas designated as posing a hazard to life or property will be identified prior to development approvals. Development will not be permitted unless detailed technical studies find the hazardous condition can be safely mitigated. Monitoring of the CAO should result in periodic updates to assure effectiveness of the ordinance.

- Objective NE-2: Implement the Natural Resources Management Plan for the Comprehensive Plan planning area.

Objective NE-3: Promote preservation of fish and wildlife habitats of documented threatened and endangered species.

### *Critical Area Policies*

- Policy NE-8: Coordinate with King County and the Muckleshoot Indian Tribe in the developing natural resources planning for the areas surrounding the City.
- Policy NE-9: Protect sensitive areas from inappropriate land uses, activities, or development through continued application of and periodic updates to the CAO and development regulations. The City of the City will monitor the effectiveness of its CAO and will modify this ordinance as necessary, based upon the information gathered during monitoring.
- Policy NE-10: Avoid disturbance to valuable fish and wildlife habitat through the proper location, design, construction, and management of new development.
- Policy NE-11: Minimize disruption of areas in current use by endangered wildlife species or by unique wildlife populations.
- Policy NE-12: Establish an open space network, linking critical habitat areas to enhance their ecological value.
- Policy NE-14: Update and enforce comprehensive regulations pertaining to development in critical areas.
- Policy NE-15: Manage land uses to be compatible with aquifer recharge areas and to minimize potential groundwater contamination.

## **4.3.4. Air Quality Concepts, Objectives and Policies**

### *Air Quality Concepts*

Because of the surrounding geographic and climatic characteristics, the City experiences prevailing winds, long summer days and higher inland temperatures. Although there are no air quality monitoring stations in the planning area, southeast King County has a higher ozone pollution concentration than the rest of the county.

### *Air Quality Objectives*

Objective NE-5: Protect the City's air quality by minimizing potential new pollution from new and existing sources. Air quality will be considered in approving new development.

### *Air Quality Policies*

Policy NE-16: Adopt local land use planning and development control procedures designed to avoid and mitigate adverse cumulative air quality impacts prior to project approval and construction.

Policy NE-17: Promote infill developments contributing to a better jobs/housing balance and greater non-automobile transportation accessibility to residents and workers, rather than land consuming and car dependent sprawl.

Policy NE-18: Discourage wood as a source of heat for residential development in low lying areas susceptible to pollution accumulations.

Policy NE-19: Conform to the federal and state Clean Air Acts by maintaining conformity with the Metropolitan Transportation Plan of the Puget Sound Regional Council and by the requirements of the state law (WAC 173-420).

## **4.3.5. Soils & Geology Concepts, Objectives and Policies**

### *Soils & Geology Concepts*

The soils and geology of the planning area are glacial in nature. The most common soils in the planning area are coarse, well-drained soils often overlying a hardpan of more compact material. These coarser soils allow rapid infiltration with little pollutant removal ability. Perched water tables are common above hardpan layers and lateral movement of this shallow groundwater can be relatively rapid. Hydric soils are present in the many wetlands within the planning area. These soils are poorly drained and experience frequent saturation. Soil stability and suitability for supporting structures varies with soil type and slope across the planning area but in general, the soils in the planning area are poorly suited to supporting functioning septic systems and provide minimal protection of groundwater from contaminants in stormwater, septic leachate, chemical spills or other sources of contaminant introduction.

## *Soils & Geology Policies*

Policy NE-20: Minimize areas of vegetation loss and grading disturbance to protect water quality and prevent erosion, when developing on moderate and highly erodible soils.

Policy NE-21: Permit development in areas with localized geologic or soils problems where it can be demonstrated that conditions can be stabilized through engineering or structural solutions.

# Chapter 5. Land Use

## 5.1. Introduction

The Land Use Element is a central element of the City of Black Diamond Comprehensive Plan. The plan's land use designations affect the patterns and location of future development and redevelopment, traffic patterns, and determine the overall character of the City of Black Diamond (City). The City of Black Diamond Comprehensive Plan is intended to influence or alter development patterns over time. Decisions about the type and location of land uses will determine where people live, shop, and work. The Land Use Element of the comprehensive plan should also be sensitive to the natural environment and physical constraints of land, and to the wishes and desires of the community.

The Growth Management Act (GMA) requires a Land Use Element to address the following items:

- the proposed general distribution, location and extent of land uses,
- population densities, building intensities and estimates of future population growth;
- protection of the quality and quantity of groundwater used for public water supplies; and
- review of drainage, flooding, and stormwater runoff in the area and nearby jurisdictions, including guidance for corrective actions to mitigate or cleanse discharges that pollute waters of the state.

Provisions for protection of the water quality, groundwater, natural drainage and flooding are discussed in the Natural Environment chapter. Corrective actions to protect resources are contained in the Natural Environment and Capital Facilities chapters.

## 5.2. Land Use

### 5.2.1. Land Use History

The City has served as a rural center in southeast King County since its founding in the 1880s. Over its 120-year history, the City has evolved from one of the earliest and largest towns and employment centers outside Seattle to a local center for resource activities (primarily mineral extraction); then to its current character as a somewhat economically dormant, rural residential center and bedroom community for emerging nearby employment centers; and now to a city poised to experience substantial growth over the next several decades as southeast King County continues to urbanize, and as opportunities for development of large parcels of land within the City materialize.

The City, originally a “company town,” was the center of a large Pacific Coast Coal Company land holding that included other small communities such as Franklin, Newcastle, and Burnett. The local ownership covered portions of the area lying generally between the existing northerly City limits (including Lake 12) and the present SE Green Valley Road (excluding Northern Pacific Railroad land) and between a line extending southerly from the west shore of Lake Sawyer and the Green River Gorge, and included a large area south of the Green River around Isabel Lake, Deep Lake, and Fish Lake. Between the late 1930s and early 1950s, coal mining declined and the Pacific Coast Coal lands were sold to local residents, Palmer Coking Coal Company, and other large landholders. After a period of being part of unincorporated King County, the residents of the City voted to incorporate in 1959. The 1959 City boundaries encompassed the original Black Diamond townsite and Morganville Addition, as well as adjacent lands owned by Palmer Coking Coal Company, Burlington Northern Railroad, the Banchemo family, and a variety of other small and medium size ownership interests.

The City prepared its first comprehensive plan in 1980. This plan proposed future annexation of additional Palmer Coking Coal Company lands to the northwest and east, as well as a small parcel to the southwest. Subsequent annexations completed by 1985 added Palmer Coking Coal Company land to the northwest and southwest. In 1994, the City also annexed 783 acres at the southwest edge of the City. The land was owned by Black Diamond Associates, Plum Creek Timber (successor to

Burlington Northern Railroad land), Palmer Coking Coal Company, and the Berklid family.

The City completed its first GMA comprehensive plan in 1996. That same year, the City negotiated a Potential Annexation Area (PAA) with King County and nearby property owners that was formalized in the Black Diamond Urban Growth Area Agreement (BDUGAA). Subsequently, the City annexed an additional 786 acres to the northwest, including and surrounding Lake Sawyer, in 1998. This annexation added 1,480 residents to the City, increasing the population by 82.6% in one year.<sup>7</sup> In December 2005, the City completed annexation of its West Annexation Areas totaling approximately 345 acres.<sup>8</sup> With the December 2005 annexation, the following PAAs remain to be annexed:

- South Annexation Area: Approximately 233.6 acres in the southern portion of the City's Urban Growth Area (UGA).
- East Annexation Area: Approximately 50 acres along the eastern boundary of the City in the City's UGA.
- Lake 12 Annexation Area: Approximately 160 acres in the northeast corner of the UGA, including portions of the Green River Gorge Road connecting the Lake 12 Annexation Area to the City limits.

There is also an area within the King County UGA located west of Lake Sawyer along the Covington-Sawyer road and including Kentlake High School, which is not identified in the BDUGAA. This "unclaimed" urban growth area, which abuts the City's northwest boundary, was not historically designated as a Black Diamond PAA. However, with this plan; the City is now including this area as part of its PAA.

## 5.2.2. Planning Area Land Use

The Land Use Element addresses the existing City limits (approximately 4,179 acres) and the adjacent unincorporated UGA, referred to in this plan as the PAA. The PAA, which is currently outside the City's corporate boundaries, will provide capacity for future growth through annexation during and beyond the 20-year planning period. The City's present land use pattern primarily reflects development of the original company town within the Black Diamond townsite and Morganville settlements. Other residential and commercial growth has been more linear, generally following the major road corridors. The exceptions are a large mobile-home park on the north edge of town and the Lake Sawyer neighborhood, which reflects a more recent

<sup>7</sup> Washington State Office of Financial Management. Annexations Approved by OFM 1/1/1990 through 12/31/1999.

<sup>8</sup> Washington State Office of Financial Management. Annexations Approved by OFM 1/1/2000 through 8/31/2006.

development pattern centered on the lake. Existing residences are not concentrated in a single area of the City, but are loosely grouped in four general areas. Similarly, commercial development is dispersed into three areas, rather than concentrated into one “central business district.”

The rolling topography and variety of open pastures and meadows, lakes, wetlands and forested areas in the City reinforce the dispersed spatial pattern of development. The City is surrounded, or “framed,” by large blocks of second and third growth forest stands in various stages of growth. The mixture of existing development and forested or field open spaces helps to define the City as a community. The variety of land uses in the City include public facilities, commercial, services, mining activities, and several residential neighborhoods: Black Diamond Township, Morganville, Lawson Hill, Lake Sawyer, Black Diamond Lake, and the recently annexed West Annexation Areas at the western, northern, and southwestern edges of town.

A large part of land in the City is either undeveloped or underdeveloped, i.e., not developed at the full potential allowed by existing zoning. Significant forested areas, creeks and lakes occur in the City, some of which are identified and regulated as environmentally sensitive areas. A predominance of large undeveloped areas (including open space) integrated with developed areas —gives the City much of its “village character”—clustered development surrounded by open space/rural land uses. Numerous large undeveloped parcels inside the City limits are owned by Yarrow Bay Communities, Palmer Coking Coal, the Banchemo family, the Bryant family, and the Pierotti family. Smaller undeveloped acreage is owned by numerous property owners. In the Black Diamond Lake area, the West Annexation Areas, and Lawson Hill area, ownership is concentrated in Yarrow Bay communities.

Historically, the presence of large parcels and concentrated ownership patterns has impacted the pace of development in the City. Recent ownership changes and currently favorable economic conditions, however, suggest that the rate of development is likely to increase significantly over the next 20 years.

### *Residential*

The residential neighborhoods of the Black Diamond townsite and Morganville addition are composed of small lots in traditional grid patterns, developed at a predominant density of about 6 dwelling units per acre. Most of these lots were built without adequate right-of-way width and paved street width, sidewalks, and stormwater retention and detention facilities. Many of the street rights-of way are 16 feet, 20 feet, 30 feet, or 40 feet in width, smaller than typical public safety standards. This limits the potential of non-single family residential “infill” development in these areas, as these narrow streets are not adequate to accommodate increases in density. Between these neighborhoods and extending up Lawson Hill is a

residential area with homes and lots at a density of 4 dwelling units per acre. A large portion of this area is vacant and suitable for development.

Other areas of the City, such as east of Jones Lake Road, have developed in a non-grid pattern of irregularly shaped, larger lots and narrow streets with unusual angles. These areas also contain narrow rights-of-way, no sidewalks and lack retention and detention facilities. These areas also have limited infill development potential.

Residential areas with larger home sites—generally 1.25 dwelling units per acre—are located south of Lawson Street, on a portion of Lawson Hill, and two areas north of Roberts Drive between Morganville and State Route (SR) 169. These large-lot residential areas are not completely developed.

The Lake Sawyer neighborhood is characterized by a variety of single-family houses on lots oriented around the lake. Lot sizes range from less than 0.5 acre to more than 2 acres in size, with the average lot size close to 0.5 acre. Many lots are long and narrow, which limits their potential of being subdivided to create new building lots. This area originally was developed as a rural residential neighborhood in the early twentieth century. However, most of the area was subdivided and developed in the last half of the twentieth century and reflects a more suburban development pattern. There is little vacant land in this part of the City; however, future installation of sanitary sewer improvements may result in in-fill opportunities or some redevelopment of larger lots with adequate lot width. The Lake Sawyer area is served by the Covington Water District and Soos Creek for sanitary sewer service.

There are five dispersed pockets of multifamily housing. The maximum density allowed by current zoning is 18 dwelling units per acre. Only about nine of the 91 acres currently designated for multifamily use is developed, and the developed uses include a mobile home park and a detached single family housing project for the elderly.

Housing prices in the City have been rising significantly, along with prices in King County as a whole. According to 2006 data, the median home price in the City was \$418,000, which was higher than prices in Covington (\$295,000) or Maple Valley (\$360,000) but lower than Enumclaw (\$448,000). High-priced properties around Lake Sawyer contribute to the overall high median home price. In July 2007, median sales prices in the City and surrounding areas ranged from \$325,000 to \$387,000. The median housing price in King County as a whole was \$427,000 as of August 2007.

The City is seeking to attract more medium and high-end market rate housing, particularly in master-planned communities, as a means to help increase its tax base and allow for continued provision of adequate City services. The 1994 annexation of the Black Diamond Lake area and the 2005 annexation of the West Annexation Areas

were important steps towards achieving this objective. The City is also committed to meeting its obligation to provide its fair share of affordable housing. Some of the City's older housing also meets this objective.

### *Commercial*

Existing commercial areas are found in four locations:

- An area located along both sides of SR 169, north of the intersection with Roberts Drive;
- An area located between SR 169 and Railroad Avenue at Baker Street (Black Diamond townsite/Old Town);
- A small area along both sides of Roberts Drive at Morganville, and
- A commercial cluster at the intersection of Covington-Sawyer Road and 216th Avenue SE near Lake Sawyer.

Three of the commercial areas are considered partially developed and encompass a mix of small commercial uses.

Currently, the City does not have a central commercial core. The historical Black Diamond townsite commercial area has the famous Black Diamond Bakery and restaurant, antique shops, a museum, the post office, Black Diamond Elementary School, a fire station and some highway-oriented commercial uses (automotive repair and/or auto parts, restaurant, gas station with small convenience store). Single family homes are interspersed within this area, too. The area functions well with a mixed-use character. The small commercial area at Covington-Sawyer Road/216th Avenue SE consists of a small number of lots including a convenience grocery, a restaurant, a retail store, an automotive repair business, and some vacant land.

The commercial frontage along SR 169 contains a mix of commercial uses, including an attorney's office, dentist's office, grocery store, material supply, meat market, Palmer Coking Coal Company office, the Black Diamond Community Center, a church, a sporting goods shop, bakery, and a tavern. Some residential uses are also found intermixed in this commercial area. The area is currently developing as a typical "commercial strip"—a series of individual structures with individual driveways, parking in front of the buildings, little or no vegetation or landscaping, and no pedestrian connections between commercial areas. The 1996 Comprehensive Plan Map designated this area as Business Park and Light Industrial. Annexation of the "north triangle" of the West Annexation Area in 2005 added more Business Park and Light Industrial designated land to this area.

The small commercial area at Morganville encompasses the Dinner House restaurant, a small garden nursery, and office uses.

Currently, the City has relatively little vacant land designated for commercial use. However, commercial uses are also permitted, and likely to occur, in future Master Planned Communities to provide jobs and services for local residents.

### *Industrial*

Two areas within the City are currently zoned for industrial use: along the south side of Roberts Drive at Morganville, which contains Anesthesia Equipment Supply, the City's only industrial use, and office space; and the area west of SR 169, north of Roberts Drive. For the past 100 years, the latter area has been used for mineral extraction, processing activities, and associated industrial uses (an auto wrecking yard, a meat market, fuel supply station, truck and equipment repair facilities and several storage warehouses). The area is currently available for redevelopment.

### **5.2.3. A New Direction**

The community's vision is for the City to guide and manage growth carefully and creatively, in a manner which protects its sensitive areas and treasured places (e.g., historical structures and sites) and retains open spaces that form the natural beauty of the City. Given the abundance of these features throughout the City, future development is likely to occur in numerous "villages" separated by these features. New development can be accommodated within this framework and landscape.

Preparation of the Land Use Element considered and identified areas that are appropriate for development and those which should be protected as sensitive areas and open space. The result is a comprehensive pattern of greenbelts and buffers shaped through a variety of policies, regulations, and incentive programs, such as transfer of development rights (TDR)—i.e., providing development "credits" for constrained or open space areas that can be transferred and used on other, more appropriate lands. The program allows property owners to realize much of the value of lands that cannot be developed to their full potential because of physical constraints. While every square foot of land has value to the land owners, not every square foot has to be built upon to achieve that value.

## **5.3. Community Design and Character**

### **5.3.1. Fundamental Principles: Village with a View**

In the process of developing the comprehensive plan, the community has expressed its strong desire that the City preserve forested areas and open spaces, views of Mt. Rainier, historical buildings, and a strong sense of community. The City will apply several fundamental principles to retain its small town character, as follows:

- Retain the natural setting.
- Define features and landmarks.
- Provide mixture of uses and continuity of form.
- Continue compact form and incremental development.
- Maintain pedestrian scale and orientation.
- Provide opportunities for casual meeting and socializing.

### 5.3.2. Principles of Small-Town Character

#### *Retain the Natural Setting*

As settlement patterns consume land in the rural landscape, citizens have become more aware of the need to protect environmentally sensitive areas, forests and open spaces.

Open space occurs in many forms, including wooded hillsides, open meadows, parks, undeveloped lots, school yards, riversides and even cemeteries. In the Black Diamond area, the natural setting is not just an accent, but is intended to be integrated with the built environment. The retention of open space forms the skeletal framework for the village and helps to define the City's neighborhoods.

The most significant open spaces in the City are those that frame the City to the south and west. These open spaces are related to wetlands and previously unusable areas. The City's mining origins meant historically there was not pressure to drain or fill these areas for agricultural uses. The City is committed to protecting its sensitive areas as the basis of the open space network. Retention of sensitive areas and other existing open spaces will be the key to ensuring sufficient open space in the future.

The City will include protected sensitive areas as part of its formal open space network. This will be achieved through buffers required as part of the Critical Areas Ordinance (CAO), by allowing clustered residential development, and by implementing the TDR program. New parks will be located to support and connect to open space areas. Jones Lake trail will be a key park feature. Parks are targeted for the area just west of the Black Diamond Historical Museum, at the "castle" (historical mine entrance), at the trestle (also known as fish pond), and parks south of Morgan Street, north of Roberts Drive and in the Black Diamond Lake area. A major acquisition is Lake Sawyer Park, consisting of approximately 150 acres at the south end of Lake Sawyer. A trail network that relates to natural systems, especially wildlife and wetland corridors will be an essential part of the open space network.

The Black Diamond Area Open Space Protection Agreement (BDAOSPA), adopted in June 2005, represents a significant step toward achievement of the City's vision for the establishment of connected open space and recreational facilities within and adjacent to the City. Developed as a tool to achieve the open space requirements of the BDUGAA, the BDAOSPA provides for over 2,500 acres of open space within and adjacent to the City, including the Lake Sawyer Park property and 27 acres of property along Ginder Creek just west of SR 169 and south of Robert's Drive.

### **Defining Features and Landmarks**

Small towns arise from a time and place (that is, they were located in a specific place and developed in a particular period). They usually have distinguishing features and landmarks. Some of these features are shared by other small towns, while others are unique to the town and often become landmarks.

Individual characteristics result from the geography of the place; the industries and origins of its residents, and many other factors. Landmarks are more specific; they are either places or things that help a community become oriented in location and time.

The City's distinguishing characteristics include its history as a coal mining town and traditions associated with that history; views of Mount Rainier; and the geography of natural features that define the southern and western edges of the original townsite.

Adding to the value of the historical museum in town, elements of history may be made visible and tangible through literal and creative reminders located throughout the town. For example, the location of underground mine shafts may be identified at ground level through painted poles or changes in roadway or sidewalk paving.

### **Mixture of Uses and Continuity of Form**

Prior to zoning, the mixture of uses within many small towns was often dictated by necessity and function. Limits in transportation frequently meant that there was a greater mix of uses within a small area.

While zoning is a twentieth century creation, most traditional rural towns are based on a plan or organizing concept. The "plan" may be as formal as a grid with a town green bordered by a grange hall, school, and church. The town may, on the other hand, reflect its function as, for example, an agricultural, or mining town. Typically, small towns are also characterized by the architecture popular during its periods of economic and social growth. This results in continuity in the arrangement and form of buildings.

The City contains a variety of uses within its corporate limits. Several small commercial enterprises exist along SR 169. Another cluster of commercial uses can be found along Railroad Avenue. Civic facilities are scattered among several locations. For example, the elementary school occupies a central location on the west side of SR 169, while the police station and City Council Chambers are a few blocks away on the east side. Although there are several roads that parallel SR 169, the lengths of blocks vary. The plan provides an opportunity to take advantage of Old Town and Morganville, with their historical significance and cultural potential, and to further enhance civic and commercial uses there.

### **Continue Compact Form and Incremental Development**

Similar to many other rural towns, the City initially developed as a compact community. The Pacific Coast Coal Company built few buildings other than a church. The company allowed the miners to build their own modest houses at the center of town, on land not expected to be used for mining operations. Those businesses locating in town were able to do so because they did not need large amounts of land. Since travel was difficult before the automobile, businesses and residences were conveniently located near each other to facilitate errands and business. As with other older towns, new development often filled in undeveloped parcels or extended the existing pattern. Growth was slow as miners built houses to meet their own needs.

Morganville was built on a parcel of land donated to striking miners. The miners used land efficiently and their houses were modest. Consequently, the pattern of development in Morganville reflects the compact character of the rest of the City.

Large-scale development can dramatically alter the character of the community. To ensure that new large-scale development in the City feels connected to the older sections of town, this plan encourages the use of techniques that continue the character of compact form and incremental growth. Design guidelines will provide methods and examples of how to achieve design continuity and to reinforce the identity of the City as a rural community. Connector trails, opens space, forested areas, and wildlife corridors will highlight the connection between new, large scale development and the existing City.

### **Maintaining Pedestrian Scale and Orientation**

Walking was the dominant mode of travel in rural towns. Even if one arrived by horse, carriage, or train, in town, one could walk amongst various destinations. Both the networks of streets and scale of buildings reflect this pedestrian orientation. A fine network, often a grid, served to allow efficient use of the land and gave many alternative routes between locations. Structures, particularly commercial ones, were located close to the street to attract walk-in customers. Typically, downtown

commercial districts featured amenities including benches and small parks for pedestrians. Boardwalks may have been provided to elevate the pedestrians above the mud and debris in the street. Much of the City has a relatively fine network of streets that functions well as a pedestrian system, but lacks sidewalks, benches and other pedestrian oriented amenities. The newer commercial areas north of Old Town do not function well as pedestrian areas.

Increased traffic in the Old Town commercial area may necessitate the addition of sidewalks and other pedestrian facilities. New commercial uses should be designed to increase pedestrian orientation by providing a fine-grained circulation network, sidewalks, and buildings that focus on the sidewalk environment. New residential areas should incorporate site and street design techniques that support walking. On-road pedestrian facilities should be augmented by a network of off-road facilities including trails that will further connect City residents with the many forested buffers and natural areas which contribute to the City's unique rural character.

### **Providing Opportunities for Casual Meeting and Socializing**

A town center located close to residential areas can provide opportunities for informal socializing. Local residents may go to the bank or pick up a movie. Small spaces like a cafe or bakery or park encourage residents to stop for a moment where they might meet their neighbors. The Black Diamond Bakery, a favorite local spot, attracts visitors as well as residents. The schoolyard may also function as a formal or informal meeting place. The City Council Chambers, the grocery store, and at church are other places in town where people meet.

As the City grows to its projected size over time, maintaining a sense of community will be a significant challenge. A strong town center where formal interaction and pedestrian activity are encouraged will enable familiarity and community among residents. Providing places for active and passive interaction – such as parks, adult schools, community centers, and clubs—can also perpetuate the sense of community possessed by the City now. The recently acquired Lake Sawyer Park site provides a unique opportunity for this important social interaction to be centered on a high quality recreational amenity, connected to each of the City's existing and future large-scale development areas by an integrated trail system. Continuing the community bulletin boards and /or newsletters will also help.

New areas for socializing may include a cafe or tavern, community gardens, community center, the Lake Sawyer Park site, the Ginder Creek open space area, or a lakeside park for swimming. To foster a sense of community and history for old and new residents alike, the City could revive the Black Diamond Band, open a speakeasy (specialty brew), revive the City's community baseball and soccer teams, or create festivals to celebrate the City's history or celebrate nature's bounty.

## 5.4. Implementing the Comprehensive Plan Future Land Use

### 5.4.1. Extent of Proposed Land Use

The following is a list and description of the City of Black Diamond Comprehensive Plan land use designations. Complete lists of allowed uses (permitted, conditional, and unclassified) are identified in the adopted development regulations.

The following section identifies the purpose, allowed uses and designation criteria, and helps explain the intent of each designation on the Future Land Use Map.

#### *Urban Reserve Designation*

**Purpose:** The Urban Reserve designation recognizes existing low-density residential development surrounding the Lake 12 Potential Annexation Area and that it should not be allowed to develop at higher densities until such time that public water, sewer and other services are made available. Pursuant to other policies in this plan, annexation of this area will not be considered until a plan for extending required utilities is developed and financed.

**Allowed Use and Description:** The Urban Reserve designation allows for single-family residential uses, their accessory uses and public and semi-public uses that meet appropriate development standards. Development at urban densities could occur in the future when public water and sanitary sewer service is made available.

**Designation Criteria:** Properties designated Urban Reserve should be only be those areas currently lacking public water and sanitary sewer service within the City's Potential Annexation Area.

#### *Transfer of Development Rights(TDR) Receiving Areas Overlay*

**Purpose:** The TDR Receiving Areas Overlay is applied to lands that, pursuant to City policies, annexation agreements, or other legal instruments of records, are intended to remain in an undeveloped state until such time that development rights are received pursuant to the City's TDR program as outlined in BDMC 19.24. A Master Planned Development (MPD) overlay may also apply in these areas. In order to maintain a "baseline" value to these lands and avoid the necessity of acquiring significant amounts of development rights, a base density of either one or two dwelling units per acre should be allowed, provided that development at higher urban densities consistent with the other plan designations can be achieved through the receipt of transferred development rights from designated "sending areas."

Allowed Uses and Description: Low density, single-family residential uses (not exceeding 1 or 2 dwelling units per acre) should be allowed in these areas as a basic development right, recognizing that higher density development is expected to occur with the acquisition of development rights from designated “sending areas.”

Designation criteria: Properties to which the TDR Receiving Area Overlay is applied should be those identified through the City’s TDR program that are intended to develop as urban densities only after the transfer of development rights. For the majority of these areas, approval of an MPD is a prerequisite to development.

### *Master Planned Development (MPD) Overlay*

Purpose: The MPD overlay is applied to areas to take advantage of opportunities to create a clustered mix of residential, commercial and civic uses along with open space and public facilities, on large sites in appropriate locations. These sites typically consist of large parcels in common ownership where a master plan will be developed to guide unified development over a period of many years. The MPD designation is applied to meet the special needs and opportunities presented by such sites while managing impacts on nearby uses.

Allowed Uses and Descriptions: The MPD overlay is applied to areas that are intended to allow a mix of those land uses and residential densities as depicted on the Future Land Use Map. Areas with an MPD overlay designation are intended to develop only subsequent to approval of an MPD permit pursuant to Black Diamond Municipal Code. An MPD may include residential and commercial uses clustered around private and community open space, supported by adequate services and facilities. As part of the process of approving an MPD, a specific development plan or site plan will be prepared and will specify the residential and non-residential uses, densities and intensities, phasing of development, and specific development standards that will apply to the site. Densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process; some MPD sites may also be designated as TDR receiving areas. An approved development plan should contain a provision for periodic updates. Significant opportunities for public involvement should be provided in the consideration of any MPD. An MPD is implemented through the provisions of BDMC 18.98 and provisions of any pre-annexation agreement that is in place for properties in this designation.

Areas developing as MPDs are expected to incorporate innovative site design and utilization of progressive techniques to provide for environmentally sustainable development. This may include the use of “low impact” engineering techniques, employment of “green building” technologies, extensive incorporation of trails and pathways, etc.

Designation Criteria: Properties to which the MPD overlay is applied should generally reflect all of the following criteria:

1. Existing or planned public facilities are adequate to support the planned development density.
2. The area is not predominated by environmentally sensitive areas, and/or the development plan contains standards that will allow development while providing appropriate protection to the environmentally sensitive areas. The level of protection must be equal or better than that provided by the City's environmentally sensitive area policies and regulations.
3. There is either a need for or benefits will clearly derive from providing flexibility in zoning that cannot be provided by other mechanisms.
4. The parcel is at least 80 acres in area and in single or unified ownership, or is subject to a pre-annexation agreement that requires an MPD for the parcel.
5. The development plan requires flexibility to meet the requirements of a MPD.
6. The MPD will provide public benefits, in the form of preservation or enhancement of physical characteristics, conservation of resources, provision of employment, improvement of the City's fiscal performance, provision of adequate facilities, and other public benefits identified by the City.
7. At least 50% of the MPD site is devoted to open space uses, which may include recreational amenities.
8. Adequate mitigation for adverse impacts on the community, neighborhood, and environment is provided.

### *Low Density Residential Designation*

Purpose: The Low Density Residential designation provides primarily for single-family residential neighborhoods on lands suitable for residential development. This designation provides for stable and attractive residential neighborhoods. It should be applied to both existing developed neighborhoods and areas intended for future development. Some of these areas have a MPD overlay designation and are also designated as TDR receiving areas. Urban density development in these areas will only be possible upon the receipt of transferred development rights from other areas.

Allowed Uses and Description: The Low Density Residential designation permits single-family residential uses, their accessory uses and public and semi-public uses. Residential densities may range from a base density of 4 units per acre to approximately 6 units per gross acre. Detached single-family residences should predominate, but these areas may also include duplexes, subject to dispersal

standards, a determination of consistency with design standards and following public review. These areas should also be potentially eligible for additional density through the use of on-site transfer of density (to preserve open space) or through the acquisition of TDRs.

**Designation Criteria:** Properties designated Low Density Residential should generally reflect all of the following criteria:

1. Existing or planned public facilities are adequate to support residential development at this density.
2. The area is free of significant amounts of environmentally sensitive areas, excluding aquifer recharge areas.
3. If the area is undeveloped, it is proximate to a neighborhood of single-family dwellings or is well suited to that use and is not suited to more intense residential development. The area is identified for Low Density Residential development as part of an MPD.

### *Medium Density Residential Development*

**Purpose:** The Medium Density Residential Development designation provides for stable and attractive residential neighborhoods of small lot, single-family homes, or attached single- and multifamily residences on lands suitable for these residential intensities. Medium Density Residential areas should be located near commercial services, employment, and arterial roads, and may also be located in mixed-use developments. All MDR areas are also subject to a TDR Overlay.

**Allowed uses and description:** The base residential density in these areas should be eight units per gross acre. Increased density could be approved up to 12 units per gross acre with the acquisition of transferred development rights.

**Designation Criteria:** Properties designated Medium Density Residential should generally reflect all of the following criteria:

1. Existing or planned public facilities are adequate to support residential development at this density.
2. If the area is undeveloped and not near the identified employment and commercial service areas, the area should be free of significant amounts of environmentally sensitive areas.
3. The area is separated by topography or another appropriate boundary from incompatible uses. Buffering or a density transition may be used to separate this designation from lower density residential designations.

4. The area meets at least one of the following descriptions:
  - a. The area is located outside of an existing single family neighborhood and fronts an arterial
  - b. The area is developed and consists of a mix of attached and detached housing types. A residential neighborhood that is primarily single family with a strip of multifamily housing along an arterial does not meet this criterion.
  - c. Medium density housing can be developed to be compatible with existing development.
  - d. Identified as a receiving site for density under the TDR program.
  - e. The area is identified for Medium Density Residential development as part of an MPD.

### *Commercial Designations*

**Purpose:** The Commercial Designations are intended to lead to the development of several types of commercial areas, and are intended to be implemented through the application of multiple zoning classifications that help distinguish between types of areas based on their desired size and function. There are three types of commercial areas envisioned in this plan, each intended to have distinctive development standards and/or allowed uses:

1. Town Center;
2. Community Commercial; and
3. Neighborhood Commercial.

### **Town Center designation**

The Town Center designation recognizes and continues the pattern of development found in the historic "Old Town" center as a community focal point. Uses in this area will include a mix of residential, civic, retail, commercial (including comparison commercial), office, entertainment, services and hospitality services (inns and meeting centers). Low to moderate rise in scale, the Town Center commercial area will be pedestrian oriented and include buildings and nearby parks that symbolize the City's center. Buildings are intended to be located close to the street to create a pedestrian-oriented environment; required parking may be provided on the street or in lots to the sides or rear of buildings. Bike and pedestrian trails and sidewalks will connect the Town Center to the rest of the City. Upper story residential uses should be encouraged in this area and existing residential uses should be allowed to continue as an integral part of the fabric of the center.

## Community Commercial

Larger, community-scale centers outside of the Town Center are intended to meet the community's growing needs, serve the needs of the surrounding area, and accommodate commercial uses that require larger sites, involve significant areas of outdoor product display and/or storage, or are oriented to the needs of the motoring public. All required parking will be provided on site, with cross-access provided between sites to reduce the number of driveway locations along arterial streets. Pedestrian connections between sites should also be required. At least a portion of the commercial buildings should be located close to the primary street frontage without intervening parking stalls, with parking lots located to the sides and rear of buildings. Landscaping along street frontages should be sufficient to preserve and enhance the natural beauty of the area and create a distinctive character that distinguishes these commercial areas from those typical of nearby communities. Residential uses should be encouraged as a component of mixed use projects.

## Neighborhood Commercial

Other commercial areas will provide for small-scale neighborhood centers with convenience goods and services, while protecting neighborhood character. Permitted uses should primarily serve the neighborhood and should not attract new vehicle trips that pass through neighborhoods. These centers should act as neighborhood focal points. They are also intended to help reduce automobile trip lengths and frequency. New Neighborhood Commercial areas are expected to develop as vital components of MPDs.

**Allowed Uses and Description:** The Town Center and Community Commercial areas should allow comparison retail, restaurants, motels/inns, professional offices, entertainment and cultural uses, public and semi-public uses. Community Commercial areas should also allow land-intensive commercial activities such as automotive sales, lumber yards, and other activities that include outdoor product display and/or storage. Neighborhood commercial areas should emphasize limited retail and service businesses that serve the immediate neighborhood. Permitted uses should include food stores, day care centers, dry cleaning, personal care and medical and dental services, and similar services. Supermarkets and drug stores may also be appropriate if conditions are suitable. The design and scale of these areas, and the size, location and design of parking areas, should be regulated to ensure compatibility with the surrounding neighborhood. The designation will include features to encourage pedestrian and (future) transit access to and within the designation such as shared parking and siting the buildings near sidewalks.

**Designation Criteria:** Properties designated Community Commercial should generally reflect all of the following criteria:

1. The designation should provide the opportunity for a commercial area of appropriate size and scale, to serve the community or neighborhood, depending on the type of center, and in view of given its location, market or service area, and intended function.
  - a. Neighborhood-scale centers should be limited in size and provide services to the surrounding neighborhoods. These centers may range in size from 3 acres to a maximum of 10 acres. Neighborhood centers should not be located within one mile of another neighborhood or community center.
  - b. Community Commercial areas should be located along major arterial routes in order to serve the broader community with a wider range of goods and services. Sufficient land within the City should be designated to allow for development of uses that provide significant employment opportunities and potential of sales tax generation.
  - c. The Town Center designation is intended to be applied to the historic Old Town center and should only be expanded to additional lands if the historic pedestrian-friendly character can be maintained.
2. Existing or planned public facilities are adequate to support the intended scale of commercial development.
3. If the area is undeveloped, the area should be free of significant amounts of environmentally sensitive areas or development can occur outside those areas. Commercial areas may include aquifer recharge or seismic hazards areas where those areas have previously been designed for urban intensity uses.
4. New Neighborhood Centers should be located at the intersection of two arterial streets or integrated into an MPD. Community Commercial may be located along major arterials such as SR 169, but access to the arterial should be limited to a combined access point, preferably that being an intersecting public street. Interconnectivity for both vehicles and pedestrians should be provided between sites.
5. The area should be capable of being served by transit when available and capable of connecting to existing or planned pedestrian or bikeways.
6. The area shall be located adjacent to the existing or planned bikeway or be connected to a bikeway and have existing or planned pedestrian connections to the neighborhood it serves.

### *Mixed Use*

Purpose: Mixed Use development is intended to encourage complementary land uses that work together for mutual benefit and that contain pedestrian connections and close proximity to encourage walking between activities. Desired Mixed Use areas

are identified in areas also subject to the MPD overlay. While mixed-use development could potentially occur at numerous locations within an MPD per the provisions of BDMC 18.98, it is encouraged to occur in specific areas where the anticipated larger commercial component can also serve the broader community. Mixed-use development should exhibit one or more of the following benefits:

1. Provide sufficient human activity and/or development intensity to support efficient transportation and land use.
2. Positively influence the character of neighboring development by providing services, activity focus, and/or unique development setting thus enhancing the neighborhood qualities.
3. Achieve more effective site utilization through shared parking, day and night activity, or other efficiency.

Mixed Use development will be implemented through the approval of an MPD that identifies areas that meet the criteria noted herein.

**Allowed Uses and Description:** Mixed-use development may occur in vertical, horizontal or district forms. Horizontal mixed-use allows complementary activities housed side by side or in neighboring buildings. It can include personal and professional services, residences, small retail and offices, eating and drinking establishments all on one site. Vertical mixed-use is the layering of uses one above another. For example, it could include retail frontage, parking below and offices and residences above. Mixed-use districts are typified by several different buildings on different parcels combining to provide a viable mixed-use setting. Many traditional "main streets" are examples of mixed-use districts, for example banks, offices, personal services, restaurants, and retail shops are found, often with residential above. The residential component for mixed use should only be limited by floor area ratio standards, required parking, etc., rather than being subject to a defined density standard. Mixed-use districts may include vehicle-related services and gas stations.

**Designation Criteria:** Properties appropriate for Mixed Use development should generally reflect the following criteria:

1. The property must be located within an MPD.
2. The property must be located along or situated to receive primary access from arterials.
3. The property must be of sufficient size to allow a variety of land uses.

### *Light Industrial/Business Park Designation*

**Purpose:** The Light Industrial/Business Park designation encourages manufacturing activities and manufacturing related businesses, with attractively designed and efficiently used areas for research and development, and high technology manufacturing. To protect the community and the natural environment, allowed uses are those that do not create significant hazards or negative impacts. Performance standards also are used to protect the community and other uses in this designation.

**Allowed Uses and Description:** Allowed uses and site regulations should provide appropriate opportunities for manufacturing, high technology manufacturing, research and development, light industrial uses, wholesale businesses and essential public facilities, located in a campus-type setting. Corporate and general offices are also allowed uses. Limited commercial and retail service activities that support the employees of the immediate area may also be found in this designation. Uses that require significant amounts of storage (both indoors and outdoors) of materials and equipment may be allowed subject to screening requirements and an evaluation of compatibility with adjacent uses.

**Designation Criteria:** Properties designated as Light Industrial/Business Park should generally reflect all of the following criteria:

1. Light industrial areas should be located near corridors for transportation of goods, such as arterials and railways or potential railway corridors.
2. The site should be free of significant amounts of environmentally sensitive areas or should adequately mitigate impacts.
3. Existing or planned public facilities are adequate to support light industrial and business park uses.
4. The area is separated by topography, buffers, or other appropriate boundary from incompatible uses.
5. The area is served or capable of being served by transit.
6. Properties of this designation must have large undeveloped parcels suitable for the light industrial and manufacturing uses and of sufficient size to allow for campus-like business park development.

### *Industrial Designation*

**Purpose:** The Industrial designation is intended to provide for industrial enterprises that manufacture and distribute goods for regional, national, or worldwide markets, and that provide jobs and tax base for the economic growth and stability of the community and region. The industrial zone will accommodate changing industrial

technology and facility siting requirements under performance standards that protect nearby properties and environmentally sensitive areas and also protect industrial uses by prohibiting intrusion by non-industrial uses except those that are considered accessory to industrial enterprises.

**Allowed Uses and Description:** Uses and site regulations should provide appropriate opportunities for manufacturing, warehousing and distribution, including outside manufacturing and mineral resource processing, where continuing operations are unlikely to harm surface and groundwater resources. In deciding which uses should be allowed, the City's environmentally sensitive areas and other regulations should be considered. Buildings not used exclusively for warehousing, manufacturing and distribution should not exceed a height of two stories.

**Designation Criteria:** Properties designated Industrial should generally reflect all of the following criteria:

1. The area should be located near corridors for the transportation of goods, such as highways, arterial streets, and railways.
2. If the area has not been developed for industrial activities, it should be free of significant amounts of environmentally sensitive areas or should adequately mitigate impacts.
3. The existing or planned public facilities are adequate to support industrial uses.
4. The area is separated by topography, buffers, or other appropriate boundary from incompatible uses and/or existing or planned residential areas.
5. The area is capable of being served by transit.
6. The area has large undeveloped parcels suitable for industrial uses.

### *Primary and Secondary Open Space Overlay*

**Purpose:** The City of Black Diamond Comprehensive Plan Primary and Secondary Open Space overlay, shown on the Parks and Open Space Map, coincides with the known (approximate) location of environmentally sensitive (critical) areas (Primary Open Space) and lands within close proximity to such areas (buffers), or other desired open space areas (Secondary Open Space). These areas should be preserved and/or used as open spaces and parks, including the City's Treasured Places; some lands may also be targeted to be acquired or otherwise protected through the City's Open Space Plan. Primary and Secondary Open Space will be retained or protected through a variety of public and private development and preservation mechanisms, including conservation easements, environmentally sensitive area tracts, on-site density transfer, TDR, dedication, fee simple purchase, or development as a private park or recreation area. . The plan's Open Space overlay designation does not

override the underlying land use and zoning designations, and may also signify a potential Sending Area under the City's TDR Ordinance.

**Allowed Uses and Description:** Primary Open Space contains environmentally sensitive (critical) areas, which will be managed through the City's sensitive (critical) area regulations and should remain largely undisturbed, except as allowed by those regulations. The Secondary Open Space designation allows for natural undisturbed areas, trails, public and private parks with facilities, public and private open space, public or private recreation uses (e.g., soccer field, golf course, community facilities), as well as the land uses indicated in the underlying land use designation. However, regulations should include incentives such as TDR and clustering to encourage Secondary Open Space to be retained for open space use as noted.

**Designation Criteria:** Lands designated as open space areas shall generally reflect one or more of the following criteria:

1. All known environmentally sensitive areas, as regulated by the City.
2. Lands adjoining the Rock Creek, Ginder Creek, Lawson Creek, Ravensdale Creek, and other riparian corridors.
3. The following lakes: Jones Lake, Black Diamond Lake, Frog Lake, Lake Marjorie (Oak Lake), Lake Sawyer, and the land perimeters of those lakes when not subdivided.
4. All existing and proposed public parks and open spaces.
5. Identified Treasured Places.
6. King County and City-identified wildlife habitat corridors

### *Public*

**Purpose:** The Public designation identifies properties under public ownership, whether by the City or other governmental entities that are either currently used or intended for unique uses, including parks or elementary schools. This includes the City's watershed, which is located approx. 1.5 miles southeast of the City limits and is otherwise surrounded by unincorporated King County. Lands falling within this category should be those that are intended to remain within public ownership and management for long periods of time.

**Allowed Uses and Description:** The Public designation could allow a variety of governmental uses, both passive and active. However, government uses and activities that are similar in character to private enterprises (such as offices) are not intended to be included within this designation. Sensitive environmental areas that

are not intended to be incorporated into the City's parks and open space system are also included within this designation.

**Designation Criteria:** Lands designated as Public shall reflect one or more of the following criteria:

1. Must be owned by a public government or agency.
2. Are intended to be retained in long-term public ownership.
3. The use of these lands does not logically fit within another land use designation.

### 5.4.2. The Land Use Map

The Comprehensive Plan Future Land Use Map (Figure 5-1) identifies the approximate location of future land uses and serves as the road map for accomplishing the vision identified in Chapter 1 of the plan. The Future Land Use Map embodies the goals, objectives, policies, and the concepts of the plan. Existing parks and schools are also shown on the map. Since the majority of future parks are anticipated to occur within MPDs, future sites have yet to be identified. The precise location of active and passive open space, parks, and school sites will ultimately be identified prior to development.

The land use designations described in the previous section are shown on the Future Land Use Map to graphically display the City's planned land use pattern. The approximate acreage for each land use designation within the City and its recognized PAAs is identified in Table 5-1.

**Table 5-1. Comprehensive Plan Future Land Use Designations**

Land Use	City Acres	PAA Acres	Total Acres
Urban Reserve	0	111	111
Master Planned Development <sup>1</sup>	1,505	287	1,792
Low Density Residential	2,476	466	2,942
Medium Density Residential	141	0	141
Commercial designations	185	0	185
Mixed Use	294	0	294
Light Industrial/Business Park	295	0	295
Industrial	101	0	101
Public	266	51	317
Undesignated (ROW, Water bodies)	545	231	776

Land Use	City Acres	PAA Acres	Total Acres
TOTAL	5,808	1,146	6,954

Note: Table based upon GIS analysis of Draft Comprehensive Plan Future Land Use Map, October 2006. Numbers have been rounded up to the nearest whole number.

<sup>1</sup> This represents only the areas previously designated as an MPD. It does not represent the entire area that will be developed under the MPD Ordinance, which is larger and includes all properties developed at 80 or more acres in size.

PAA = Potential Annexation Area

The Comprehensive Plan Future Land Use Map and land use policies will guide the City's development regulations, decisions on public facilities and services, and the decisions of property owners and developers on appropriate land uses. The GMA requires that comprehensive plans and development regulations be consistent.

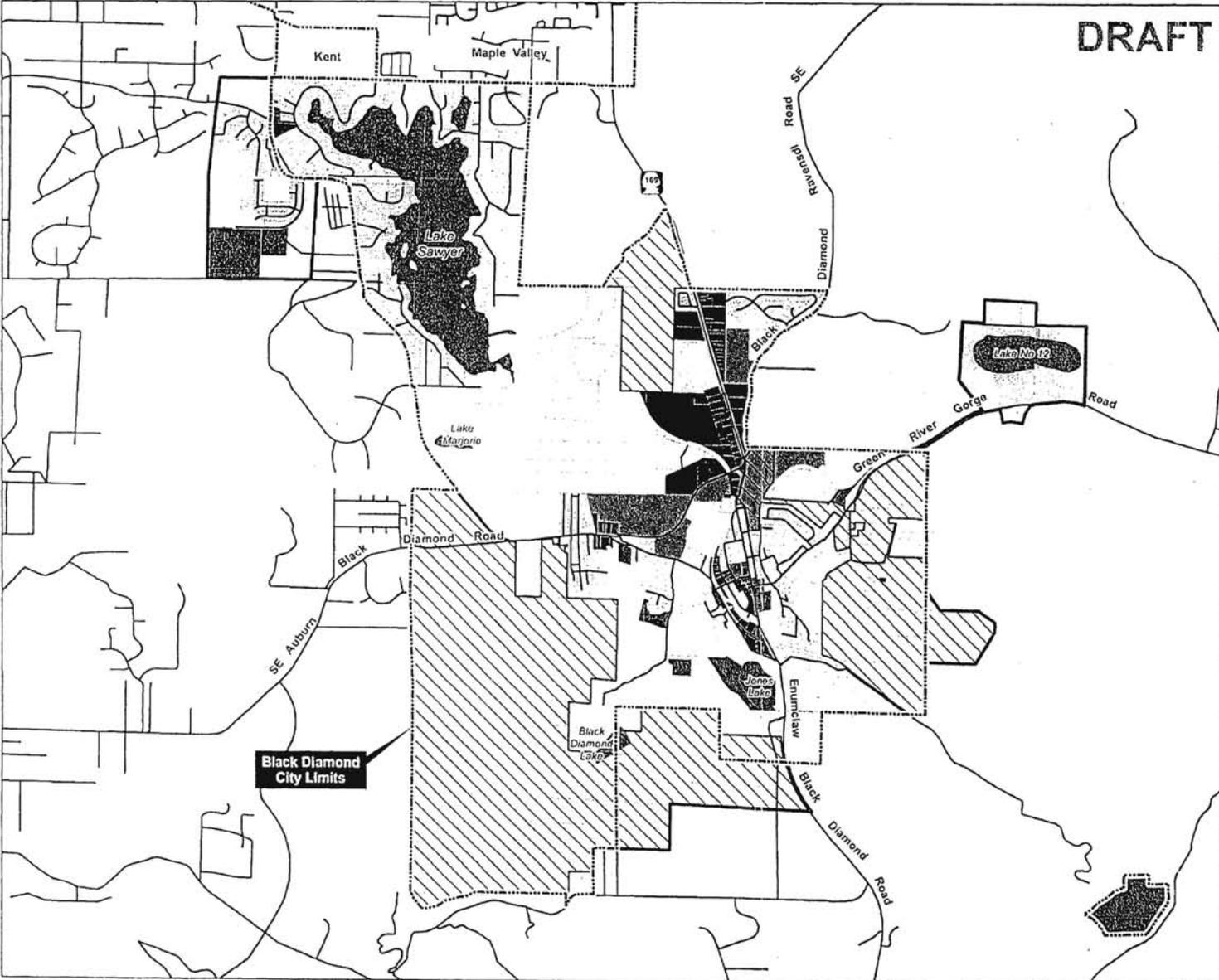
### 5.4.3. Open Space Plan

The Open Space Plan is based on the City's vision and land use pattern, in which open space is an essential element of the community. The cornerstone of the Open Space Plan is the identification and preservation of environmentally sensitive areas. Added to the open space network will be parcels adjacent to environmentally sensitive areas which provide community-valued open space and treasured areas, urban/rural buffers, in-city urban separators, public and private parks and recreation and community facilities including a trail network. The Open Space Plan builds upon the naturally occurring open space areas to create a network that serves both people and nature.

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Figure 5-1

City of Black Diamond  
Future Land Use Map

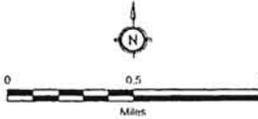


- City Limits
  - Potential Annexation Area
  - Road
  - Master Planned Development Overlay
- Future Land Use**
- Urban Reserve
  - Low Density Residential
  - Medium Density Residential
  - Mixed Use
  - Business Park & Light Industrial
  - Neighborhood Commercial
  - Town Center
  - Community Commercial
  - Industrial
  - School
  - Park
  - Public
  - Water

**NOTES:**  
 Any parcel of 80 acres or more that develops is required to go through the Master Plan Development (MPD) process identified in BDMC 18.98.

Some residentially-designated properties with an MPD overlay have a basic density entitlement of either 1 or 2 dwelling units per acre, pursuant to either the Black Diamond Urban Growth Area Agreement or pre-annexation agreements. A maximum of 4 dwelling units per acre may be attained with the Transfer of Development Rights pursuant to City Code.

Sources: King County (2007); City of Black Diamond (2006)  
 Map Prepared: December 2008



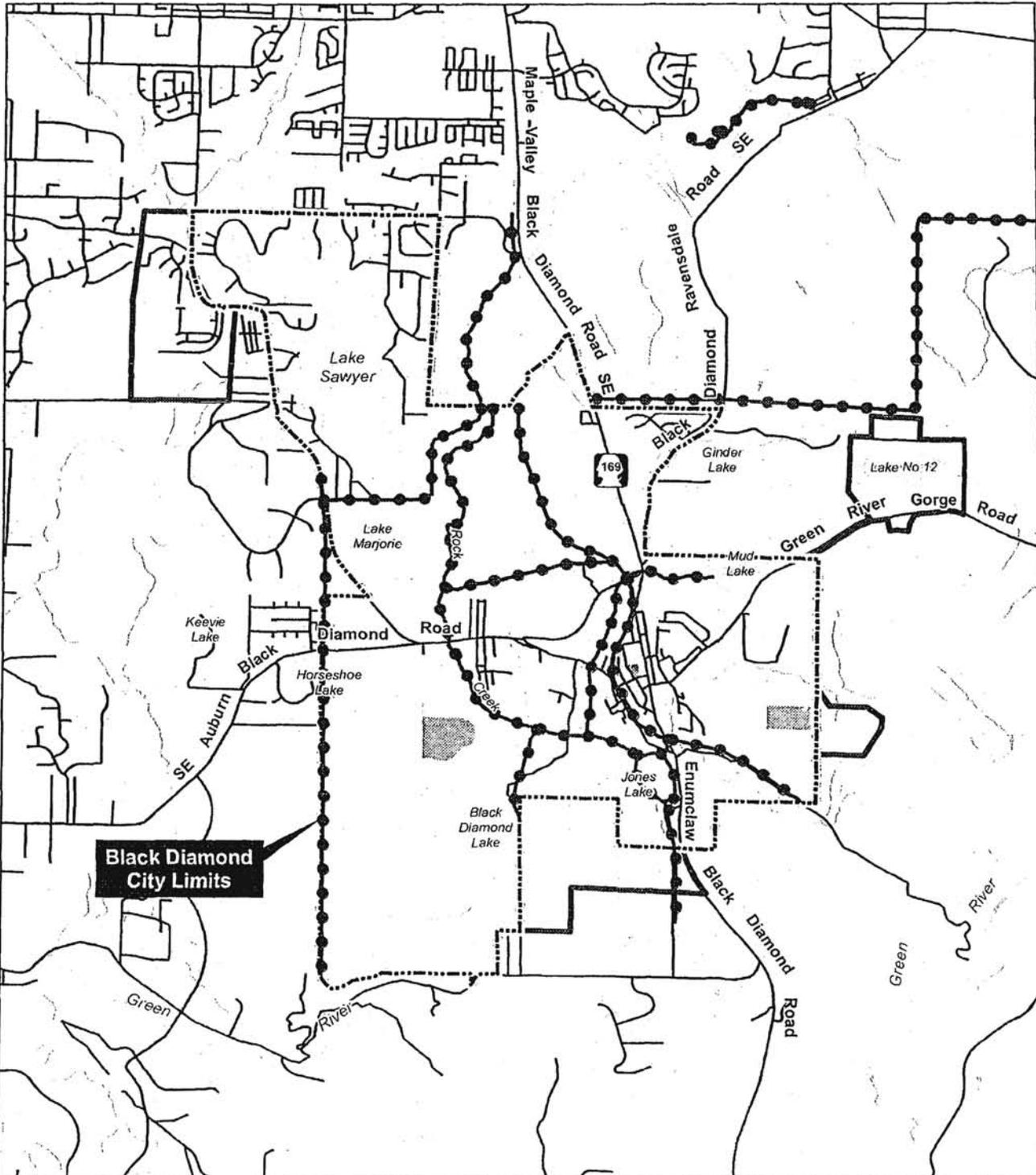
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 an ICF International Company

The Open Space Plan's underlying concept was first developed in conjunction with the 1994 annexation of 783 acres in the Black Diamond Lake area, when the landowners proposed retaining 50% open space in new development. By planning for and anticipating future development within the City, a commitment was made to preserve for perpetuity significant land area for open space uses. Open spaces would serve a variety of functions, including active and passive recreation, natural resource preservation, water quality protection, and non-vehicular transportation corridors. The open space should be comprised, at a minimum, of environmentally sensitive areas, riparian habitat corridors and an integrated trail system and could include parks, recreation facilities, and community facilities. This concept was furthered in the 1996 BDUGAA and the 2005 BDAOSPA, and will provide additional opportunities for implementation as annexation occurs. The Open Space Plan will include both open space inside the existing City limits and connectivity to open space in the unincorporated area around the Black Diamond area. Within the City's overall planning area, open space and park land will comprise 35% to 40% of the total land area. Known sensitive areas designated as Primary Open Space area should be preserved. Additional land is also needed to enable citizens to enjoy these open spaces. In this way, the impacts from human intrusion near environmentally sensitive areas will be minimized. Parks along the edges of the open space network provide a place for human activity outside sensitive areas.

The open space network (see Figure 5-2 for Parks/Open Space) shows conceptually both large and small parcels of land that may be targeted for retention using a variety of methods, including density transfer, clustering, conservation easements, and TDR, which will, over time, create an extensive network. Some parcels are large enough to provide open space on-site in conjunction with development by requiring clustering of the development.

Small parcels have limited ability to apply on-site density transfer, however, and retention of open space may warrant use of the City's TDR program to transfer density off-site to identified TDR receiving areas.

The conceptual Open Space Map illustrates how open space may be integrated within the City, and how an overall balance between open space and developable lands will be achieved.



Sources: City of Black Diamond (2006); King County (2007)

- Road
- ⋯ City Limits
- ▭ Potential Annexation Area
- ▭ Parcel Boundary
- Trail
- ▨ School
- ▨ Park
- ▨ Open Space

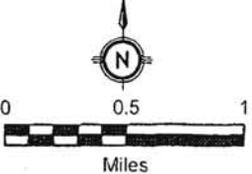


Figure 5-2. Parks and Open Space Map  
Black Diamond Comprehensive Plan  
May 2009

#### 5.4.4. Population Densities, Building Intensities, and Growth Targets

##### *Existing Population*

As of 2000, the City's population was, according to the U.S. Census, 3,970 persons and was estimated to have grown to 4,155 in 2008. Population density was 613 persons per square mile, over the City's 6.78 square miles. This represents a 5% decrease in density since 2000, much of which is due to the annexation of the large vacant parcels as part of the 2005 West Annexation Area.

##### *Target Population*

The City's population has basically remained relatively stable for decades. The only significant population increase in the past several decades was a result of annexing the Lake Sawyer neighborhood. Because of the environmental sensitivity of adjacent land areas and the presence of resource extraction activities (forestry and mining), growth through annexation was restricted. In 1994, the City annexed 783 acres located near Black Diamond Lake, followed by annexation of an additional 338 acres in the West Annexation Area north and west of the City in 2005. The proportion of these areas that is considered "developable" is substantial. In 2005, the City amended its development regulations to establish an MPD process and criteria for development of these newly annexed areas, along with other large sites within the City, and entered into a number of Pre-Annexation and Development Agreements. Development is expected to take the form of residential, recreational, commercial, and mixed-use development with substantial active and passive open space. In addition, the conversion of land currently zoned for Mineral Extraction and Forestry (ME/F) will add new developable land for residential and employment uses in the future.

Table 5-2 indicates the City's internally generated population projections and those of the PAA during the 20-year planning period. Of the 2025 projected population of 16,980, 13,075 are anticipated to be living in areas within the 2006 City limits.

**Table 5-1. Population Projections in 5-Year Increments**

Year	Total Population	Total Households
2007	4,120	1,578
2010	4,868	1,714
2015	10,437	3,740
2020	15,770	5,776
2025	16,980	6,302

Note: 2007 is an existing estimate from Washington State OFM. The remaining years are projections developed by the City. Projections include population in the City of Black Diamond's PAAs.

### Target Dwelling Units and Required Acreage

The GMA requires cities to plan for sufficient lands to meet the population growth allocated through a countywide process. In King County, this is done in accordance with the King County Countywide Planning Policies (CPPs), which have allocated a year 2022 new households target to the City of 1,099, which equates to an additional population of 2,945 individuals. The year 2025 growth projection found in Table 5-2 is based on a City estimate that assumes the development of major planned developments and far exceeds the amount of growth the City is obligated to accommodate during the planning period.

The 2025 population projection exceeds the 2007 population by 12,860 persons. The average size of households in 2025 is assumed to be 2.68 persons, a slight decline in persons per household from 2007. The 2025 population and housing unit projection does account for potential vacant housing units. Table 5-3 assumes a 5% vacancy rate due to households in transition to indicate how many acres of residential land are needed to accommodate anticipated growth.

Table 5-3 Target Dwelling Units and Acreage Requirements, indicates the number of dwelling units and residential acreage needed to accommodate the 2025 population target.

**Table 5-2. Target Dwelling Units and Acreage Requirements**

2025 Population *	Dwelling Units (2.63persons per unit)	Plus 5% Vacancy	Number of Acres (4 DU/Acre)
16,980	6,302	6,617	1,654

\* Note: The City has updated the existing King County CPP targets both to extend the 20-year planning period, and to reflect known development proposals anticipated to occur by 2025.

To meet the 2025 population projection and accommodate an assumed vacancy rate of 5%, the City will need at least 1,654 acres of developable residential land if an average residential density of 4 DU/Acre is assumed. Available acres in the City are contained on Lawson Hill; near Black Diamond Lake; at the northern City limits; and in the areas annexed as part of the West Annexation Area in 2005 located in the northern, western, and southwestern areas of the City. Additionally, smaller sites are available in the Black Diamond townsite, north and south of Roberts Road and in Morganville. The comprehensive plan provides 2,891 acres for residential use. Appendix B provides the calculation of the residential development capacity for the study area.

## 2025 Target Employment

Whereas mining was the employment catalyst for the City in its first 100 years, the natural beauty of the Black Diamond area, the availability of large parcels for potential commercial and industrial use, and the expansion of urban areas into southeast King County are now envisioned to be the drawing cards for businesses for the next several decades. In conformance with GMA and the CPPs, a number of significant planning decisions were made which will influence employment growth potential within the City. The annexation of the Black Diamond Lake area (1994) and parts of the West Annexation Area (2005) for housing and recreation was seen as one catalyst to support additional business and commercial services and industry in the City. In addition, areas annexed to the City in 2005 with frontage on SR 169 and the Auburn-Black Diamond Road will provide additional acreage on arterials for potential commercial and mixed-use development.

Because of these new opportunities, the 2025 employment target was not based on past trends or countywide forecasts. Rather, the employment forecast reflects the City's desire to create a higher jobs/housing balance, to build a strong economic base, and to recognize its strategic location and the potential provided by large, developable parcels of land. Table 5-4 shows target employment projections to 2025.

**Table 5-3. 2025 Target Employment**

	2000 Existing Jobs	2025 Additional Jobs	2025 Total Jobs
Black Diamond	427	2,525	2,952

### *Planned Employment Capacity and Forecast Allocation of Jobs*

Development capacity was calculated for commercial and industrial designations within the City, as shown in Figure 5-1. The capacity calculations were based on regionally accepted development assumptions relative to discounts from developable acreage to recognize public rights of way, market availability, market absorption, commercial and industrial intensity, and open space designations within the commercial or industrial designations. These assumptions are included in Appendix B. The data indicate the City contains the capacity for 5,761 total jobs or 5,334 new jobs (from 2000).

The planning rationale and assumptions considered City policy and market factors such as available infrastructure and site constraints. For example, the Old Town commercial area is anticipated to receive growth. A small supply of commercial lots currently exists in the Old Town commercial area. Mixed use development could add to the commercial use potential of this area. Because necessary infrastructure to serve these lots is in place or located adjacent, it is assumed they will be totally developed by 2025. Similarly, since the other commercial and mixed-use areas

already contain partially developed and developed commercial uses or provide access to visible commercial frontage on arterials, it is assumed that a majority of these will be developed within 20 years. The newly annexed commercial and mixed-use areas along SR 169 and Auburn-Black Diamond Road are expected to be mostly if not completely built-out within the planning period. The large light industrial and business park parcels are assumed to grow slowly at first, until there is enough business to attract others. This is a typical pattern of industrial absorption found in new industrial areas.

In conclusion, there is an adequate amount of designated land in the City to meet the employment projection for the next 20 years.

## **5.5. Shoreline Master Program**

When the City annexed the Lake Sawyer neighborhood in 1996, it annexed two sensitive areas that are also considered “shorelines of the state” pursuant to the Shoreline Management Act: Lake Sawyer and Covington Creek. The City plans to update its Shoreline Master Program (SMP) by December 31, 2011, consistent with the requirements of state law. In the meantime, existing shorelines within the City limits are governed by the City Code and by the King County SMP policies and regulations in place as of the date these natural resources were annexed in 1996. The policies of King County’s adopted SMP are incorporated into this plan by reference as an interim measure, until the City prepares its own SMP.

## **5.6. Land Use Goals, Objectives, Policies, and Concepts**

### **5.6.1. Overall Development Goal, Objectives and Concept**

Land Use Goal: Establish a pattern of development that maintains and enhances quality of life within the community.

Objective LU-1: Create a diversity of high quality places to live, work, shop, and recreate.

Objective LU-2: Create an open space system that frames and separates distinct areas of development both within the existing City limits and within all annexation areas.

Objective LU-3: Develop a balance of residential, commercial, industrial/business park and open space uses that create a fiscally sound community

while maintaining a small-town atmosphere in a natural setting and meeting the needs of a diverse population.

**Policy LU-1:** Develop and enforce regulations consistent with the character and scale of the community and use design guidelines to help shape development.

### *Overall Development Concept*

The City will develop as a balanced community similar to traditional small towns. Principles and guidelines for community design and character will guide development to ensure it remains a traditional village community (see Section 5.3 above). The City will provide a variety of housing types, retail goods and services and local and regional employment opportunities. Significant population and employment growth are anticipated and encouraged so long as new development is consistent with the City's vision for integration of development and open space areas. The City will take an aggressive stance to attract new employment opportunities.

To achieve the desired balance of places for living, working and recreating, new residential and Light Industrial/Business Park development will be interspersed with large areas of active and passive open space as the City grows.

Active and passive open space will be preserved within the City through the use of TDR, acquisition, and dedication. The TDR program is an essential element used to preserve the connections between valuable sensitive areas and open space.

The City now has a strong visual identity with clear edges and gateways defined by its natural setting. Preservation of this identity, gateways and edges should continue, and be enhanced. New development in the vicinity of a gateway should strengthen, or at least not diminish, these features. This concept has been further implemented along the City's northern SR 169 gateway through strict view protection requirements on adjacent lands as set forth in the BDAOSPA in 2005.

The principal elements of the natural system (lakes, creeks, forested hillsides, open meadows, and views of Mount Rainier) will be incorporated into a permanent open space system that separates individual neighborhoods, preserves critical natural functions and provides a visual reminder of the natural landscape. Important community design elements should be retained and/or enhanced.

The small-town atmosphere will be maintained by controlling the scale and character of new development, creating pedestrian linkages between the different neighborhoods, building on the City's rich history and encouraging participation in City government and special community events. New development should be designed to encourage residents to become part of the City's community.

While recognizing the importance of the automobile and efficient circulation, vehicular traffic and associated parking will not become the dominant visual feature as found in many suburban settings. The potential improvement of SR 169 and how this improvement will impact the community is a significant issue to the City.

To improve and maintain the economic viability of City government, it is critical that new development be designed to allow for the efficient provision of public services and utilities. New development must also pay for its share of required new infrastructure, and should proceed only when the necessary public services and facilities are available to serve it, and where it contributes positively to the fiscal health of the community.

## 5.6.2. Open Space Policies and Concept

### *Open Space*

- Policy LU-2: Use the open space system as the primary unifying component of the comprehensive plan.
- Policy LU-3: Preservation of areas designated for primary open space is a top priority.
- Policy LU-4: Preserve and protect all significant natural areas (wetlands, streams, steep slopes, geologic hazards, and 100-year floodplains) and integrate these areas into the open space system.
- Policy LU-5: Use appropriate methods of acquisition or long-term protection to preserve sensitive natural areas.
- Policy LU-6: Use the open space system to protect surface and groundwater quality.
- Policy LU-7: Protect and enhance the dominant natural features and open space structure (including gateways, viewpoints, and view corridors) that characterize the City.
- Policy LU-8: Protect the City's treasured places by connection to the open space system.
- Policy LU-9: Preservation of open space should not remove all rights to develop a property owner's land.
- Policy LU-10: Create an open space system which frames and separates distinct areas of development within the City.

- Policy LU-11: Plan for and retain a natural vegetation buffer around the perimeter of the City adjacent to unincorporated Rural-designated land. The buffer may vary in width based upon sensitive areas and other constraints. Once established by development, this buffer is to be permanent. Development adjacent to the buffer is encouraged to combine other open space features with the Urban-Rural buffer.
- Policy LU-12: Development on prominent hillsides should retain substantial tree cover to preserve the forested hillside view from the valley floor.
- Policy LU-13: The open space system will be preserved and protected through a variety of approaches that respect the landowner's commitment to their property including: TDR, open space tax incentives, cluster development, public land acquisition, conservation easements and other public and private initiatives.
- Policy LU-14: The City should develop a stewardship plan for open space. A stewardship plan would identify techniques and ways to maintain and enhance the active and passive open space areas (that lie outside the protected environmentally sensitive areas). The stewardship plan may rely on community involvement to implement the plan.
- Policy LU-15: The City will regularly review the BDAOSPA approved in 2005 and will actively investigate and enforce any violations of the agreement.

### *Open Space Concept*

Existing open spaces provide the City with many benefits. The City is "framed" by large blocks of second-growth forests in various stages of regrowth. The separation provided by the open space and views of the natural rolling topography, forests, open pastures/meadows, lakes, and stream corridors gives the City much of its character. The numerous open spaces also provide significant natural functions. Inasmuch as the City cannot afford to purchase all these lands, mechanisms must be developed to encourage open space preservation and/or require preservation of environmentally sensitive areas. The open space uses allowed within environmentally sensitive areas and buffers include trails, recreational areas and community facilities (under certain conditions), urban separators and utility and road crossings.

The City's parks and open spaces are not necessarily the same. Developed recreational facilities are needed in addition to natural open space. Plans for public parks and recreational facilities are addressed in the Capital Facilities Element of this plan.

The active and passive open space system will be based on existing stream corridors, lakes, and retention of buffers comprised of mature trees in certain areas. The Rock Creek, Ravensdale Creek, Ginder Creek, Mud Lake Creek, and Lawson Creek are the linear components of the system within the City. These areas lie in proximity to the developed areas of the City; they form the village and neighborhood open space network.

Black Diamond Lake and the tributary to Rock Creek and Ravensdale Creek are the major pristine natural resources that are part of undeveloped areas. They can form the wildlife and habitat corridor part of the open space network. The comprehensive plan recommends further evaluation of these areas for fish and wildlife conservation areas. If designated fish and wildlife conservation areas are designated, these areas should be included in the Critical Areas regulations.

The outer perimeter of the City should be maintained as an open space buffer between the City limits and the county defined rural lands, except where the county has identified permanent open space lands at the edge of the City limits. This buffer is an important part of the Open Space Plan. The dimensions are to be guided by the comprehensive plan policies and the Open Space Plan. The BDAOSPA (2005) serves as an important example of how the City has started to make the vision for this open space buffer a reality and should be looked to as a model for future open space protection efforts.

To ensure preservation of open space without unduly penalizing property owners, urban zoning will be applied to all lands and density credits should be allowed for land designated as open space as part of a development project. In certain cases, some single-family lot sizes could be reduced below the basic zoning standard to achieve up to the same density that would have been allowed had there been no open space designation required. The City's TDR program will also be used as an incentive for preserving open space.

The City has adopted a TDR program, including development regulations, which is a key element in its open space network and Land Use Plan. In addition, the City requires open space dedication and retention as part of its MPD ordinance. The following program guidelines provide policy direction for implementation.

### **TDR Program Guidelines**

- A. The City will establish a schedule for the careful review and consideration of a Treasured Places TDR program.
- B. The Treasured Places TDR program should support the City's development regulations and comprehensive plan policies by providing a market-based mechanism to encourage the voluntary preservation of designated resource

systems and community open spaces and to facilitate the efficient use of lands to be developed.

C. A Treasured Places TDR program will address the following critical elements:

1. **Preserved Area** - The sending area which is the land targeted for preservation. It will include:
  - a. Major riparian and open space systems such as Rock Creek, Ravensdale Creek, Ginder Creek, and Jones Lake Creek and neighborhood separators.
  - b. The City's Community Treasures such as open spaces, view points, habitat, historic sites, and valued natural areas.
2. **Receiving Area** - Lands in the City will be targeted for density increases as receiving areas for the TDR Program.

### 5.6.3. Residential Development Policies and Concept

#### *Residential Development Policies*

- Policy LU-16: Encourage a variety of housing types, providing housing for all income levels and all family sizes.
- Policy LU-17: New housing should be compatible with the existing development pattern and the small-town atmosphere—a mix of small and large lots, size and scale.
- Policy LU-18: Require residential development patterns to allow for efficient provision of public services and utilities.
- Policy LU-19: Encourage clustering within new developments to create compact new communities surrounded by open space.
- Policy LU-20: Allow multifamily residential in identified areas or when integrated as part of a planned development.
- Policy LU-21: Require multifamily structures or multiple family complexes with more than 4 units to undergo design review for consistency with adopted Design Guidelines.
- Policy LU-22: Use the MPD process to review all proposals on sites larger than 80 acres.

## *Residential Development Concept*

The existing pattern of distinct residential neighborhoods should be continued and expanded. While existing neighborhoods may experience some infill, much of the City's new residential growth will be directed towards larger tracts, physically separated from the existing neighborhoods. The City recognizes that individual lot size and density are two important, but different, issues. Whether infill or a new development, residential units should be clustered and neighborhoods separated by elements of the open space system. Within new development, design of the open space system will be a critical issue. Clustering will guarantee permanent open space and help to preserve environmental amenities such as creeks, wetlands, and significant stands of trees that, in part, give the City its character.

To encourage clustering, the City will examine potential amendments to the Zoning Code to provide incentives for new development that is consistent with appropriate design standards. Design guidelines may include concepts such as:

- Allowing lot size averaging and/or reducing the lot size, as appropriate, while maintaining the overall density established by the zoning district (small lot sizes, with permanent open space are consistent with a small town);
- Creating residences that relate to the neighborhood's character;
- Maintaining, enhancing or replacing existing native vegetation along arterial and collector streets;
- Creating or maintaining substantial vegetative buffers at boundaries of neighborhoods;
- Establishing a significant amount of permanent, common open space;
- Providing space and facilities for active recreation;
- Limiting proposed clearing and grading;
- Respecting the integrity of the character of the site and its natural systems;
- Integrating local cultural or historical elements into the site design;
- Integrating local architectural components;
- Screening parking and garages; and
- Providing incentives to encourage good design such as density increases within the site, and/or transfer of density credits to other appropriate sites.

The lowest residential densities should be applied where environmentally sensitive areas warrant limited development densities, as well as in established lower density

residential neighborhoods. Reductions in density based on identified constraints or City policy will be off-set and compensated for on suitable lands in other portions of the City, using TDR, MPDs, cluster or mixed-use development and other techniques. In areas with significant environmental constraints that are designated as TDR sending areas, a density not to exceed two units per gross acre can be clustered on the nonsensitive portions of sites. Regulations should also allow for the continuation of existing small scale farming activities.

Within developed areas, a more diverse housing stock will be encouraged to provide housing for a more diverse population, including various types and densities of attached and detached units. While most housing is expected to be single-family, opportunities for attached units, such as duplexes and townhouses, should also be available within single-family areas. Multifamily residential units should be developed at a character and scale consistent with the existing character of the City, shaped by design guidelines. New multifamily development may occur in the form of duplexes, triplexes, fourplexes, townhomes (row houses), and units above commercial (in mixed-use areas). Densities on infill parcels may be higher provided the architectural character of the neighborhood can be maintained. Review of multifamily development proposals should include design review and public hearings. Medium-density multi-unit structures (maximum 12 units per acre) should be encouraged to co-locate convenient to retail and service uses, in mixed use areas or as components of MPDs. Consistent with state law, manufactured housing should be treated the same as site-built housing at comparable densities.

Since the 1996 comprehensive plan was adopted, the City has taken a number of steps to implement its vision for residential development. These steps include adoption of a TDR program; adoption of an MPD ordinance; and preparation of MPD design guidelines. Additional residential development tools that should be to be considered include:

- Provisions for small or moderately sized clustered developments.
- Subject to site plan and design review, allowance for smaller lots and attached units such as duplexes and townhouses in single-family zones, consistent with applicable zoned densities, and contiguous to open space.
- Incentives to encourage clustering and provision of open space and parks.
- Allowance for attached and detached accessory units.

### *Commercial and Mixed Use Development Policies*

Policy LU-23: Retain and enhance the existing commercial areas while providing sites large enough to accommodate significant commercial uses.

- Policy LU-24: Provide day-to-day retail goods and services within walking distance of most residential neighborhoods.
- Policy LU-25: Permit a limited amount of Neighborhood Commercial sites within those neighborhoods that are not within a convenient walking distance of designated Community Commercial/Mixed-Use centers.
- Policy LU-26: Allow a comprehensively planned mixture of Residential, Commercial, Retail, Public and Open Space uses within MPDs and areas appropriate or designated for mixed-use development.
- Policy LU-27: Prohibit heavy industrial, and limit light industrial uses within mixed-use areas.
- Policy LU-28: Encourage well-planned, coordinated commercial development within the SR 169 Community Commercial area and discourage strip retail development. This area is to serve as the primary source of community shopping needs, and should provide those services and activities that support it as a gathering place.
- Policy LU-29: Strengthen design standards for commercial development to include:
- a. local architecture emphasis,
  - b. streetscape compatibility,
  - c. parking and vehicle access design that discourages strip development,
  - d. service access design,
  - e. landscaping to enhance the building or site,
  - f. sign regulations,
  - g. allowing mixed use development in some commercial designations, and
  - h. pedestrian and bicycle linkages.

### *Commercial and Mixed Use Development Concept*

A new Commercial and Mixed-Use area is planned for the area centered on Auburn-Black Diamond Road in the West Annexation area. The three existing commercial areas at Morganville, Old Town, and along SR 169 will be retained and enhanced. These three areas form a triangle reflective of the historical local

development pattern. An important objective of new development will be to create linkages between the areas and encouraging appropriate development along them. These linkages will serve a local, rather than "pass through" purpose. However, the SR 169 commercial corridor is planned to expand to the north to encourage the development of uses that serve a broader market than the local community. These areas are intended to serve the day-to-day retail and service needs of residents as the City grows. Additionally, each of the three commercial areas now has an important community facility. It is intended that community facilities also remain dispersed within this triangle to strengthen it as a focal point for the community.

In mixed-use areas, commercial and business activities may be combined with residential uses, and possible some very limited light industrial activities, in a complementary land use pattern. For example, personal and professional services may serve adjacent businesses and residences. Mixed-use areas should have convenient pedestrian connections and close proximity to encourage walking between activities (generally less than one half mile).

The plan's intent for existing commercial areas is as follows:

**Old Town Mixed Use.** The historical character of the Old Town area should be retained and enhanced, and this area should become the focus of tourist and specialized retail activities. Old Town currently contains City government offices, including the City Council Chambers/Police Station, the Post Office, and Fire Station. The historic district should overlay the area encompassing the existing Old Town and to the northwest and south along Railroad Avenue and Jones Lake Road. This land use district should employ historical building design guidelines to insure that new construction or renovation is consistent with the character of the area. The southern tip of the Old Town district adjacent to SR 169 will become a primary "gateway" to the City from the south. That portion of the commercial area along SR 169 at Lawson Street (especially east of the highway) may serve a different function.

SR 169 through the original Black Diamond townsite could be envisioned as a tree-lined boulevard serving the historical, cultural and government center of town. The potential impact of any SR 169 improvement/widening is a critical issue to the City and must be carefully studied by both the City and Washington State Department of Transportation (WSDOT) at such time as a specific proposal is identified by WSDOT.

**Morganville Mixed Use.** The Morganville mixed-use area may be expanded to provide additional land for retail uses and services. Given the unique character of Morganville, a special zoning district overlay could be established. Morganville will be encouraged to keep the eclectic mix of light industrial, retail, services and community facilities that serves the neighborhood.

SR 169 Commercial, North End of Town. Residents have expressed special concern that the existing commercial area along SR 169 should not evolve into a "strip commercial" development. The view protection elements of the BDAOSPA should be strictly monitored and enforced. Further mixed-use development in this area should be sensitive to retaining existing trees along the road edge, combining access points or driveways and employing site design that is compatible with that of the Community Commercial.

This commercial area is extended to allow sufficient depth from SR 169 for an expanded commercial area. Development in this area should be subject to design guidelines to ensure coordinated access, parking, landscaping, signage, and pedestrian circulation.

Strip commercial development is discouraged.

Auburn-Black Diamond Road Mixed Use. The City anticipates that this area, which was annexed in 2005, will be master planned, and will contain a mix of commercial, services, civic uses, and residential. The most intense uses will be located along and near Auburn-Black Diamond Road, with allowed uses becoming less intense the farther away from the main arterial at Auburn-Black Diamond Road.

### *Neighborhood Commercial Development Concept*

To maintain a small town atmosphere, most residential neighborhoods should be located within walking distance of a commercial area (1 mile). Scale, appearance, and character are also important factors.

Zoning regulations, including the adopted MPD process, and design guidelines will guide the planning, location, design, and approval of neighborhood commercial centers.

Lake Sawyer Neighborhood Commercial. The Lake Sawyer neighborhood has a small neighborhood commercial area located at the intersection of Covington-Sawyer Road and 216th Avenue SE. The developed area consists of approximately 1.6 acres on three lots. This plan encourages an expansion of the area in recognition of the potential for additional commercial development. This area provides convenience commercial for residents in the area, including a mini-mart grocery store and an auto repair service.

For all commercial and mixed-use areas, implementing regulations should include the following general site and architectural design requirements:

- Architecture distinctive to the Black Diamond area, rather than standardized national or regional designs.

- Limiting front yard setbacks, with parking located primarily to the side and rear of buildings.
- Buildings and off-street parking sited to create interesting and attractive spaces and appearance at the streetscape and along building setbacks.
- Visual continuity among adjacent development (include consideration of site design, historical significance, landscaping, building design and signage).
- Provision for pedestrian circulation.
- Joint-use of access drives and off and on-street parking.
- Landscaping that incorporates existing native vegetation.
- Screening of parking and service areas, all mechanical equipment, rooftop equipment, dumpsters, and any outdoor storage.
- Removal or screening of accumulated scrap material or building construction materials.
- Pedestrian/bicycle linkages to adjacent residential neighborhoods.
- Coordinated signage program designed to serve local residents and consistent with the character and scale of the community.

#### **5.6.4. Industrial/Business Park Development Objective, Policies and Concept**

##### *Industrial/Business Park Development Objective and Policies*

- Objective LU-4: For the City to transition from its history as a company town to a self-sufficient economic center in southeast King County.
- Policy LU-30: Provide local employment opportunities that support the City as a sustainable community.
- Policy LU 31: Develop an aggressive economic development strategy, with the cooperation of the City, county, business and property owners.
- Policy LU-32: Strengthen the local economy and the City's tax base.
- Policy LU-33: Ensure that all Light Industrial/Business Park development is consistent with all appropriate environmental standards.
- Policy LU-34: Ensure that zoning regulations are sufficiently flexible to accommodate changing industrial needs.

- Policy LU-35: Support adequate rail access to the industrial core.
- Policy LU-36: Ensure that all Light Industrial/Business Park development is functionally and aesthetically compatible with surrounding uses.
- Policy LU-37: Recognize that Light Industrial and Business Park uses can be compatible with other less-intensive uses where appropriate performance standards are established.
- Policy LU-38: Require industrial and Light Industrial/Business Park areas to be functionally and aesthetically compatible with existing uses and to buffer impact generating uses from other uses; carefully site them to minimize environmental impacts.
- Policy LU-39: Strengthen design standards for Light Industrial/Business Park development to include:
- a. local architecture emphasis,
  - b. streetscape compatibility,
  - c. parking and coordinated vehicle access design,
  - d. loading and service area design,
  - e. landscaping to enhance the building or site,
  - f. sign regulations, and
  - g. pedestrian and bicycle linkages.
- Policy LU-40: Within areas designated interim mineral extraction, require site reclamation and restoration pursuant to state mining laws and local environmental and land use regulations.

### *Industrial and Light Industrial/Business Park Development Concept*

Industrial and Light Industrial/Business Park development, if properly designed, is an important part of the community. The opportunity for local employment and an increased tax base can improve the quality of life for residents. The City will seek to attract new light industrial, manufacturing, office and other businesses to the City as a means to achieve its vision for growth and prosperity.

Light Industrial/Business Park areas are targeted to have distribution, assembly, storage, repair, and warehousing uses with some services and offices. Limited retail uses and services intended to serve employees of the area may also locate within the Light Industrial/Business Park areas. These areas should have stringent development

standards to ensure high quality, compatible development. Special attention should be given to: critical areas protection, landscaping to enhance the building or site, circulation and transit access, service access design, screening of loading docks and mechanical equipment, connection to arterial streets, pedestrian and bicycle linkages, architectural control, parking, and utility needs.

Industrial and Light Industrial/Business Park uses may be proximate to but should be separated from commercial uses, to avoid land use conflicts. Circulation plans for adjacent industrial and commercial areas should separate truck traffic from shopping traffic. Certain areas along new principal arterials are suitable for Industrial and Light Industrial/Business Park uses. The existing industrial area is also well situated, but if this area does not develop over the long-term, and a demand for other employment areas can be documented, the City should consider changes to land use.

### **5.6.5. Forest and Mineral Lands**

The City has historically been oriented to resource extraction activities. Coal mining was the initial resource base, but sand and gravel mining and forestry have also played roles. Economic feasibility of resource extraction changes over time with changes in market demand, extraction technology, and environmental consideration. The designation and use of resource lands are now also framed by the requirements of the GMA and the City's planned growth. While resource activities may continue in the future subject to appropriate development regulations, existing resources within the City do not meet the criteria for designation as resource lands of long-term commercial significance.

#### *Forest Lands*

In the past, the area surrounding the City, including limited areas near the former Palmer Coking Coal Company and Plum Creek ownerships within the City limits, were considered suitable for commercial timber production. An area outside of the planning area, on a portion of Lawson Hill east of the City, has been designated as Forest Production District by the King County Comprehensive Plan.

The original forest lands in and around the City are in various stages of regrowth. They now provide significant open space which provides many passive values such as scenic views, open space, wildlife habitat, and separation from adjacent developments. These lands are part of a large network that will comprise an open space system for the City and the region.

The City has acquired some former Plum Creek forest lands as documented in the Black Diamond Open Space Protection Agreement (2005). Other forested lands are addressed in the BDUGAA (1996) and are eligible for TDRs. Some future forestry

activities will occur on Plum Creek properties subject to the terms of these agreements.

According to GMA definitions and criteria, forest resource lands are those primarily devoted to long-term commercial timber production on land that can be economically and practically managed for such production and that has long-term commercial significance (Revised Code of Washington [RCW] 36.70A.030[8]). Factors considered in making this determination as set forth in the statute include the proximity of the land to urban, suburban, and rural settlements; the compatibility and intensity of nearby land uses; long-term local economic conditions that affect the ability to manage timber production; and the availability of services and facilities conducive to conversion of forest lands to other uses.

Long term commercial forestry is not contemplated on these lands and would not be economically productive. Moreover, extensive resource activities would conflict with the type and level of growth that is forecast to occur over the life of this plan. While the City will retain elements of its rural character and heritage, it will also become more urban and more populated, as will other cities in this portion of King County.

### *Mineral Lands*

Known mineral resources in the City include coal, sand, gravel, topsoil, and clay. Within the existing City limits, there is currently one sand and gravel operation in Section 10 (Palmer) and one area north of the Green River Gorge Road used in conjunction with the John Henry mine (coal, clay and sandstone). Both areas are currently zoned Mineral Extraction/Forestry. Topsoil is also produced at the sand and gravel operation in Section 10. There are no significant identified rock, clay, or peat resources. The 1996 plan identified aggregate resources within the current City limits and its UGA in Sections 10, 11, 12, 13, 14, and 15.

One other commercial deposit of sand and gravel has been identified in the undeveloped portion of the City. The deposit is located at the south half of Section 22, in the area annexed to the City in 1994. A report prepared by McLucas and Associates, Inc. indicates that about 128 acres contain a commercially viable sand and gravel resource extending to depths ranging from 20 to 90 feet below the surface. For sand and gravel, the potential economic value is determined by quality of the material (proportion of sand and gravel relative to silt or clay, quantity, depth to overburden, and the presence of groundwater).

Currently, approximately 363 acres of land in the City have permits to extract minerals (primarily gravel). The two areas are: 1) north of Morganville to the northern City limits and surrounding Oak Lake; and 2) at Mud Lake and west to SR 169. Gravel is currently being extracted directly north of Morganville and east to

the south side of Oak Lake (Figure 5-1). Based on estimates of the gravel resources, permitted mining is expected to continue until approximately 2025.

Palmer and Plum Creek lands have been evaluated for the presence of such deposits. Palmer's deposit in Section 10 is considered a high quality deposit of clean sand and gravel. The deposit is estimated at 13 million cubic yards. The Section 22 deposit is identified as a high quality, high volume source of construction aggregate. Deposits of silica sand are present on Franklin Hill.

While the extent of remaining coal resources is generally known, the long-term economic viability of the City's coal resources is largely unknown. Black Diamond coal is a high quality, low sulfur coal. The City also has easy access to a port for shipment to overseas users. However, the deep pitching veins broken by faults are difficult and expensive to mine, especially when compared to the "flat" seams of high quality coal in areas such as Wyoming. The potential for further underground mining in general will depend on world energy needs, technology advancements, and environmental and land use considerations.

The John Henry No. 1 mine, located just outside the City limits, has been inactive for more than 5 years. This mine is a unique geologic condition (anticline) in which the coal is located close enough to the surface to allow for more economical surface mining. At the time of this plan update, future operation plans for this mine were unknown. The only other areas in the City with significant deposits of surface mineable coal are within the developed portion of the City.

GMA guidelines for classifying and designating mineral lands of long-term commercial significance, as set forth in WAC 365-190-070, require consideration of a combination of factors, including geology (type of mineral deposit), economics (quality and size of deposit, distance to markets), environmental constraints (critical areas) and a number of land use factors (land use patterns and intensity, proximity to population centers, and availability of services). Consistent with this direction, the City has considered its planned land use pattern, as reflected on the Comprehensive Plan's Future Land Use Map, including the proximity of mineral resources to designated residential areas. In particular, the City notes that identified mineral resources are located—and therefore future mining would occur—in a UGA that is planned for significant growth over the next 20 years at urban densities. Mining could create significant conflicts with this planned growth, depending on its extent, timing, and location.

On balance, based on consideration of these criteria, the City has concluded that identified mineral resources in the City do not meet the criteria for designation as mineral lands of long-term commercial significance. At the same time, the City acknowledges the presence of existing mining operations and mineral resources and the potential for future mining and intends to maintain the ability of property owners

to access these valuable resources. The City will use its development regulations and a conditional use process to review applications for mineral extraction and to ensure that such development is consistent with the protection of the environment and accomplishment of other City policies.

### **5.6.6. Forest and Mineral Resources Concepts, Objectives, and Policies**

#### *Forest and Mineral Resources Concepts*

Some forestry activity and commercial extraction of mineral resources will continue to play a role in the City's future. The City supports these activities provided that environmental quality is maintained and consistent with adopted standards and that land use impacts are mitigated. The City will implement a review process for mining permits that includes appropriate standards, allows public input, and ensures mitigation of significant impacts. Upon the cessation of mining activities, all mineral lands must be reclaimed consistent with state law.

#### *Forest and Mineral Lands Objectives*

Objective LU- 5: Allow use of forest and mineral resources within the City consistent with the Land Use Concept and development regulations.

#### *Forest and Mineral Lands Policies*

Policy LU-41: Retain forest resource land until conversion to urban uses is appropriate.

Policy LU-42: Allow extraction of valuable minerals, including coal, sand, gravel, oil, and gas deposits, when extraction can be conducted consistent with the Future Land Use Map.

Policy LU-43: Apply a Conditional Use permit process to help ensure that mining operations maintain environmental quality and mitigate impacts. Review of applications should include public notice and comment, specific duration of operations, and authority to condition permit extensions or renewals to address new circumstances and impacts.

Policy LU-44: Known mineral extraction sites will be identified in the comprehensive plan to notify adjacent property owners and residents of prospective mining activities and to allow long-term planning by mineral and surface owners.

Policy LU-45: Reclamation plans should be consistent with the land uses indicated on the Future Land Use Map. At the cessation of mineral extraction activities, sites should be converted to their long-term planned land use

### **5.6.7. Community Design and Character Objectives, Policies and Concept**

#### *Community Design Objective and Policies*

- Objective LU-6: Use development regulations to enhance and protect the overall appearance and character of the City.
- Policy LU-46: Retain a sense of place by protecting the community's important natural features.
- Policy LU-47-48: Old Town should be the primary historical component of the City.
- Policy LU-48: Major entrances into the City should be given symbolic markers and landscaping to create a gateway effect.
- Policy LU-49: Parks, schools, churches and other public and semi-public buildings should be encouraged to locate on sites to create neighborhood landmarks.
- Policy LU-50: Public buildings should fulfill their role as gathering areas and community resources.
- Policy LU-51: Building design, zoning regulations and design standards should provide for buildings of a character and scale appropriate to the site, encourage building variety while providing for designs that reflect the distinctive local character, historical character, and natural features.
- Policy LU-52: Design standards, building design and site design should provide appropriate transitions between dissimilar uses, such as echoing design features and graduating building heights and intensities.
- Policy LU-53: New developments should be designed to incorporate features to encourage alternative travel modes, such as biking, walking, and transit.

## *Community Design Concept*

What is desired is the “chance to live in a real human settlement with a sense of place and sense of belonging.” (Arendt, 1994 *Rural By Design*)

Community character relates to the types of land uses found in the comprehensive plan. While land use designations describe the dominant uses and overall function of areas in the City, character designations describe the look and feel of different parts of the City. In general, character may be more important than the specific uses, activities, and building types. The character designations describe: key design elements, mixture of uses, related activities and intensities of development. The key design element discusses the relation of the built and natural environment, and building features. The mixture of uses, related activities, and intensities describe the scale and character of a land use.

Traditional “zoning” concerns, including density and setbacks, must be balanced with the intent of the character designations to encourage development that achieves both the described function and character of the respective area.

### *“Limited” Residential*

**Key Design Element:** This development pattern, generally found in areas subject to significant environmental constraints and open space protection, will reflect the informal rural development typical of many portions of the City. Subdivisions and short plats should provide interconnected streets. Development is encouraged to promote a variety of individual dwelling designs and is discouraged from using walled planned residential techniques common in other portions of King County.

**Mixture of Uses, Related Activities, and Intensities of Development:** This area is reserved for residential uses. Accessory units may be built on single lots provided they are significantly secondary to the main use.

### *Village Residential*

**Key Design Element:** The primary design element will be consistency with existing historical development. Some areas may be subject to historic preservation guidelines, while others may have general guidelines that promote the incorporation of historical design features in new development. The development will be predominantly compact single-family buildings with pitched roofs. Structures will be located towards the street edge and generally have building design features such as front porches and overhanging eaves.

**Mixture of Uses, Related Activities, and Intensities of Development:** Some mixture of small scale retail and professional office will be included with residential uses. Commercial buildings will generally take similar forms to or use residential

structures. Multifamily houses in keeping with the historic design elements are allowed. Small inn and bed and breakfast operations are also permitted.

### *Amenity-Focused Residential*

**Key Design Element:** These areas are to contain a hierarchy of open spaces where private open spaces are linked to public open spaces. Development is to be located on portions of the site away from environmentally sensitive features, but oriented to take advantage of natural amenities. Higher density development resulting from on-site transfer of density is designed to be compatible with single-family scale.

**Mixture of Uses, Related Activities, and Intensities of Development:** Primarily residential uses. There will be a somewhat higher net density allowed for retention of undeveloped open spaces. Some pocket parks or interpretive facilities may be located in these areas.

### *Mixed Use*

**Key Design Element:** Mixed-use development will include measures to minimize conflict between differing uses through site planning and building design.

**Mixture of Uses, Related Activities, and Intensities of Development:** Uses will include small scale retail and office, and multifamily residential uses. Uses including gas and service stations and those uses that require large amounts of exterior storage are not targeted for this area.

### *Commercial*

**Key Design Element:** The commercial development is envisioned to be moderate scale incorporating features that promote an active pedestrian environment. Buildings will be provided in groupings to approximate a small scale grid found in a traditional rural downtown. Parking is provided in smaller lots dispersed throughout the development site and out of view from the commercial streetfront whenever possible. Larger parcels incorporate an internal circulation scheme and possibly a central focus area such as a "green" plaza. Landscaping enhances the auto and pedestrian circulation system through the provision of street trees along walkways and internal roads. Landscape screening is also used to reduce the impact of parking areas.

**Mixture of Uses, Related Activities and Intensities of Development:** Commercial activities will include retail, service and office uses. Some auto-oriented retail such as hardware, supermarkets, and feed stores could also locate in the commercial areas.

### *Industrial and Light Industrial/Business Park*

**Key Design Element:** Industrial uses would be substantially buffered and screened from nearby uses. In addition, industrial uses would be subject to performance standards with respect to noise, dust, and light emissions.

Light industrial/business park uses would incorporate buffering and high landscaping as a part of stringent site design and to provide a corporate campus setting. These uses may serve as a transition from industrial or other less intense uses.

**Mixture of Uses, Related Activities and Intensities of Development:** Retail and residential uses are not allowed in industrial areas. Light Industrial/Business Parks may have a food service and some limited personal services (e.g., sandwich shop, travel agent) available. Office buildings would be encouraged to be multi-story to retain greater open areas around the buildings.

## **5.6.8. Historic Preservation Objective, Policies and Concept**

### *Historic Preservation Objective and Policies*

**Objective LU-7:** Maintain those historical qualities in the environment that bring value to the community.

**Policy LU-54:** The City should provide reasonable flexibility in applying development requirements and building codes to encourage the preservation and rehabilitation of historically and culturally valuable buildings and sites. Explore alternatives to the demolition of structures and sites that are historically significant or otherwise deemed eligible for the local, state, or national registers to accommodate private or public sector development proposals.

**Policy LU-55:** Historically and culturally significant buildings should be protected from demolition or inappropriate exterior modification.

**Policy LU-56:** Place new structures, circulation, and utility systems in such a way as to minimize the alteration of the historical character of the City's landscape.

**Policy LU-57:** Expand the existing historical district to the southern edge of Jones Lake Road and SR 169 to provide a southern "gateway" to the City.

**Policy LU-58:** Adopt and enforce design guidelines for the areas with historical character.

Policy LU-59: Encourage land uses and development that retain and enhance significant historical resources and sustain historical community character.

### *Historical Preservation Concept*

The City's historical settlement pattern has resulted in a unique, small town rural landscape. It gives the community a character distinct from that of the more recently urbanized areas in east King County. To maintain this distinct character, while at the same time permitting infill development, important historical elements must be retained as the community grows.

Historical resources contribute substantially to a sense of community, a quality of life, and provide for a source of pride. Historical downtowns and neighborhoods have invigorated local economies, sparked new businesses, generated additional tax revenue, and created new jobs.

These assets should be broadly interpreted to include structures, landmarks, sites, and views.

To assure protection of the City's historical resources, the City entered into an interlocal agreement with King County in June of 1995 to provide landmark designation and protection services (KC Motion 9584). The 1997 Inventory of Historical Structures and Sites can be found in Appendix C.

New infill development will identify and preserve, wherever possible, existing structures, vegetation or views that are visually important to the community character. Incentives for doing so will be included in development regulations such as zoning, subdivision, and building codes.

Design guidelines should be developed for areas of historical character. Structures and sites with historical designations will follow the community character design guidelines and any of the requirements of being a designated historical structure or site. The intent is to ensure that the renovation and alteration of existing structures, as well as the construction of new buildings, is done in a manner to maintain the character of the district and improve the economic vitality of the district. Design control for commercial structures in historical areas will address exterior building design and materials (new construction and reconstruction), setbacks from the street, signage, sidewalks, and code compliance. Residential new construction guidelines for historical areas will address building bulk and site design, compatible features and materials.

## 5.6.9. Regional Coordination Objectives, Policies and Concept

### *Coordination Objective*

Objective LU-8: Use the Countywide Planning Policies as a basis for regional coordination and land use decisions.

### *Monitoring Objective and Policies*

Objective LU-9: Monitor implementation of the comprehensive plan for changed conditions in the City's anticipated growth, for consistency with the City's vision, GMA requirements, and Countywide Planning Policies and make amendments as necessary.

Policy LU-60: Report annually to the City Council and general public on implementation of the comprehensive plan, identifying the degrees to which the policies are being implemented.

### *Essential Public Facilities Siting Objectives and Policies*

Objective LU-10: Coordinate with other governmental jurisdictions to site, when necessary, essential land and building uses that are typically difficult to site and which are necessary to meet the needs of the City's present and future growth.

Objective LU-11: Jointly identify and evaluate alternative site locations that meet the essential locational requirements involved for each facility's function.

Objective LU-13: Conduct appropriate public review and hearing processes, including environmental impact assessments and statements where appropriate, to ensure local residents have an opportunity to comment upon siting alternatives, potential impacts, and mitigation measures prior to the selection of final site and development particulars.

Policy LU-61: Essential Public Facilities sited in the City shall be sited consistent with the goals, objectives, and policies of the City of Black Diamond Comprehensive Plan.

Policy LU-62: The City will apply Conditional Use Permit process criteria and additional criteria contained in Black Diamond Municipal Code Chapter 18.28 for the siting of essential public facilities.

### *Essential Public Facilities Concept*

The GMA requires that a process be identified in the development regulations to review the siting of essential public facilities. Essential public facilities include, but are not limited to, airports, state educational facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities.

# Chapter 6. Housing

## 6.1. Existing Housing

### 6.1.1. Existing Housing Stock

The predominant type of dwelling unit in the City of Black Diamond (City) is the single-family,<sup>9</sup> owner-occupied house. Approximately 82%<sup>10</sup> City housing stock is a detached single-family house. According to the 2006 King County Annual Growth Report, approximately 60% of King County residents lived in detached single-family housing. According to the 2000 U.S. Census, approximately 60% of King County residents owned their homes. In contrast, approximately 90% of the City's households lived in owner-occupied housing.<sup>11</sup> According to data from the 2006 King County Annual Growth Report, mobile homes constitute 16% of total housing units in the City, and multifamily units 2%.

According to the 2000 U.S. Census, approximately 15% of the City's housing was built prior to 1940 (many during the community's peak mining years, 1890 through 1915). The original construction of many of these units was considered inferior, even by standards of the times. Most remaining structures have been remodeled, enlarged, and substantially improved and represent a major investment of time and money by the homeowners. However, as a reflection of the growth experienced in

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<sup>9</sup> A 1-unit, detached structure, per 2000 U.S. Census.

<sup>10</sup> 2006 King County Annual Growth Report.

<sup>11</sup> 2000 U.S. Census.

the late twentieth century, almost 38% of housing in the City was constructed between 1990 and 2000.

Historically, the City's housing market has been lacking in housing appealing to middle- and upper-income households. However, with the annexation of the Lake Sawyer neighborhood in 1998, the stock of middle- and higher-income housing increased within the City. The changes in the City's composition after the 1998 annexation have caused a shift toward a more balanced housing stock.

## 6.1.2. Housing Characteristics

### *Value*

Housing prices in the City have been rising significantly, along with prices in King County as a whole. In July 2007, median sales prices in the City and surrounding areas ranged from \$325,000 to \$387,000. The median housing price in King County as a whole was \$427,000 as of August 2007. The median monthly rent within the City was \$878, compared to \$758 for King County as a whole (2005).

These figures represent a significant shift in the City's economic conditions over the last decade. In 1990, both home values and median rents were well below those of the county. While home values are still more affordable in the City than the county as a whole, the gap has been reduced significantly. In part, this increase can be attributed to annexations that increased the City's population by more than 80% in the late 1990s, along with the value of its housing stock.

### *Persons per Household*

King County and the City have both shown a decrease in household size during the last thirty years, particularly in the 1970 to 1980 period. The 1990 City household size was 2.63 persons per household (pph), compared with 3.21 in 1970. By the time of the 2000 Census, however, the average household size in the City had increased to 2.73 pph. Over the same period, the average household size for the county as a whole remained stable.

The Puget Sound Regional Council (PSRC) expects a continued increase in household size, followed by a gradual decline during the remainder of the planning period. Forecasts for Forecast Analysis Zone 3310 (Black Diamond/Lake Sawyer area) expect 2.84 pph in 2010, 2.73 in 2020, and 2.63 in 2030.

### *Vacancy Rates*

Vacancy rates for King County and the City are available from the U.S. Census Bureau. In addition, King County updates estimates for vacancy rates in the county

periodically—most recently in 2005. Homeowner vacancy rates for the City and King County were almost equal in 2000 (0.8% for the City versus 1.2% for King County), and for both areas vacancy rates for rental units were higher than those for owner-occupied units (4.2% versus 1.4%).

By 2005, this picture had changed in King County. Most neighborhoods in south King County had apartment rental vacancy rates higher than 6% (the King County average vacancy rate).<sup>12</sup> This was a decline in vacancy rates from the previous 3-year period.

## 6.2. Affordable Housing

### 6.2.1. King County Overview

By 2030, the PSRC estimates that the number of households in King County will increase by nearly 250,000. Keeping up with forecasted growth will require public and private actions: land zoned for a range of development and redevelopment; adequate infrastructure; and affordable financing to produce about 10,000 new housing units per year within the region.

King County growth management policies call for a significant shift of new residential development to higher densities and infill locations. The success of this vision depends, in large part, on efforts to achieve community and market acceptance of this housing as well as affordability.

Development of housing for very low-income households and people with special needs typically requires local government support, in partnership with housing agencies, nonprofit developers, and private builders and lenders.

### 6.2.2. Quantifying Countywide Housing Needs

Affordable housing for low and moderate households is defined as "rental and ownership housing for households with incomes up to 80% of the King County median household income, which costs no more than 30% of monthly household income." This guideline limiting housing costs to 30% of income is standard for most state, federal, and local housing programs.

Based on the 2000 U.S. Census, approximately 219,414 households in King County earned below 80% of the King County median. By 2005 one-third of all owner

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<sup>12</sup> King County Benchmarks 2006; Affordable Housing, King County Office of Management & Budget, 1/07, page 8.

households (136,800) earned less than King County's median income. In comparison, about three-quarters of all renter households (217,500) earned less than county median income. A total of 38% of King County's households (over 280,000 households) paid more than 30% of their incomes for housing; almost half of these households were renters.<sup>13</sup>

Of all of the households in King County paying more than 30% of their income for housing in 2005 (one-third of all owner households), approximately 60% earned less than median household income. Of the renter households in King County in 2005, about half paid over 30% of their income for housing; more than 97% of those earned less than the King County median income.

Many of these households have difficulty finding adequate affordable housing to meet their needs. These households have housing that is too expensive, overcrowded (more than one person per room), in poor condition, or they may be homeless or unable to live independently without support services. Households paying more than 30% of income for housing (the most common problem) have problems affording food, clothing, medical care, and other necessities. These households are vulnerable to losing their home when a lost job, medical emergency or other crisis hits. The problem of overpaying is most severe for the lowest income households.

In addition to households overpaying for housing, housing assistance is needed for people with no housing at all, and for people who require housing combined with supportive living services. The Seattle King County Coalition on Homelessness conducts an annual one-night count of people who are currently unsheltered, occupying emergency shelters, or engaged in transitional housing programs. On the night of January 27, 2006, the Coalition counted 7,910 people in these various stages of homelessness throughout the urbanized areas of King County.

King County is targeted to grow by 158,000 households by the year 2020. In 2000, 22% of King County households had incomes less than 50% of median. However the U.S. Department of Housing and Urban Development's State of the Cities Data System indicates that approximately 16% of housing was affordable to these households. By 2005 for households with incomes less than 50% of median, 0.4% of the houses sold were affordable, 6.7% of the condominiums and townhomes sold were affordable and 39% of rental units were affordable.<sup>14</sup> To meet the rising demand for affordable housing, urban growth must include opportunities for lower cost housing types—single family homes on small lots, townhouses, condominiums, and

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<sup>13</sup> King County Benchmarks 2006; Affordable Housing, King County Office of Management & Budget, 1/07, page 4.

<sup>14</sup> King County Benchmarks 2006; Affordable Housing, King County Office of Management & Budget, 1/07, page 13.

apartments. Good design will be essential, both to attract residents to higher density housing and to address concerns of neighbors.

### *Distribution of Low and Moderate Income Housing*

With few exceptions, each jurisdiction in King County has residents who are low or moderate income and overpaying for housing. Each jurisdiction can also expect the demand for affordable housing to increase. The existing distribution of low and moderate income households is not uniform; however, Seattle and several suburban cities and unincorporated communities have relatively high proportions of low and moderate income households and low-cost housing. The lack of affordable housing in other communities also restricts housing choices for low and moderate income households, and restricts their access to employment. The County is attempting to reverse the current trends which concentrate low income housing opportunities in certain communities. The affordable housing targets established in the King County Countywide Planning Policies (CPPs) include an adjustment for existing concentrations of low-cost housing and low-wage employment.

### *Countywide Affordable Housing Policies*

The Countywide Affordable Housing Policies require each jurisdiction to specify the range and amount of affordable low and moderate income housing to be accommodated in the comprehensive plan. Each City is to plan a number of affordable housing units for households between 50% and 80% of the median household income that is equal to 17% of its projected household growth. In addition, each City is to plan for a number of housing units affordable to households with incomes below 50% of median income that is either 20% or 24% of its projected household growth. The Countywide Affordable Housing Policies require the City to plan for 20% of its housing units to be affordable under this standard because it already contains a greater proportion of low-cost housing than the King County average.

### *City of Black Diamond Affordable Housing*

Table 6-1 shows income trends in King County and the Black Diamond/Lake Sawyer Area, based on data from the 2000 Census and the PSRC. More recent data at the City level for the City is unavailable between census years.

**Table 6-1. City of Black Diamond/King County 2000 Household Income Comparison**

	Total Households	Households Below 50% Median Income	Households 50% to 80% Median Income	Total Households Overpaying (paying more than 30% income for mortgages or rent)
City of Black Diamond	1,456	17%	13%	30%
King County Total	710,916	20%	27%	33%

Source: King County 2000 U.S. Census

Note: In 2000, the City had 1,538 existing housing units and 1,456 households (occupied housing units).

The 2000 Census identified 469 households in the City as low and moderate income. Low and moderate income households comprised 34% of the City's total households in 2000. In 2000, approximately 31% of King County households met the definition of low and moderate income households.

According to King County, 85.7% of the City's rental units were affordable to households with 30% to 49% of median income based on HUD 2003 income estimates; 14.3% were affordable to households with 50% to 79% of median income. Of all home sales 1.4% were affordable to households with less than 30% of median income, 1.4% were affordable to households with 30% to 49% of median income, and 53.6% were affordable to those with 50% to 79% of median income.<sup>15</sup>

Using the CPP guidelines for planning for affordable housing, 37% of all new units should be "affordable to households with 80% of King County median income." Specifically, 17% should be affordable to households with 50% to 80% of median income, and 20% affordable to households with less than 50% of median income.<sup>16</sup>

The City is projected to have 6,302 households in the year 2025. Applying the county identified target for affordable housing to arrive at the City's goal for affordable housing, 17% or 1,071 housing units should be available to households with 50% to 80% of the median income (for 2015) and 1,260 housing units should be available to households with less than 50% of the median income. As of 2007, no jurisdiction is fully meeting these affordable housing goals. Nevertheless, the City should continue to pursue these goals to retain the diversity of housing choices and population that make for a vibrant community.

<sup>15</sup> King County Comprehensive Plan 2004, Technical Appendix B Housing. Department of Development & Environmental Services, 9/27/04 with 2006 Amendments. Pages B-33 & B-43.

<sup>16</sup> King County Countywide Policy AH-2.

The 2000 Census estimate of median income in King County is \$53,157, and based on this information, housing at or below a cost of \$106,314 (1999) would be considered affordable (see Table 6-2). As of the 2000 Census, the median housing value in the City was \$194,200.

**Table 6-2. 2000 Affordable Housing Index**

Jurisdiction	Median Income	80% Median Income	< 50% of Median Income
King County	\$53,157	\$42,526	\$26,579
Black Diamond	\$67,092	\$53,674	\$33,546

Source: 2000 Census.

The median household income in King County increased to \$60,700 in 2005.<sup>17</sup> As a result, 7.1% of the home sales in the City were affordable to moderate income households. In that same year, 25% of the condominium/townhome sales were affordable to moderate-income households. Also, as of 2005, 83.4% of the 166 rental units were affordable to moderate-income households and 66.7% were affordable to low-income households.<sup>18</sup>

As indicated above, median housing cost has continued to increase across the region, and was \$427,000 in King County as of summer 2007. Median household income for the state as a whole increased to \$77,100.

For its existing population, the City has a need for low cost rental housing and programs such as Section 8 and subsidized housing for the elderly. Elderly housing has been built within the City and there is expected to be a growing need for elderly housing as the population ages. The City expects to continue working with King County to address housing issues for needy households, and special needs populations.

### 6.3. Housing Development Concept and Goals

Housing Goal: Make housing available to all economic and social segments of the community.

Objective H-1: Promote a variety of residential densities and housing types.

<sup>17</sup> King County Benchmarks 2006; Affordable Housing, King County Office of Management & Budget, 1/07, page 2.

<sup>18</sup> King County Benchmarks 2006; Affordable Housing, King County Office of Management & Budget, 1/07, page 13.

- Policy H-1: Work with King County, other local governments and appropriate agencies and programs to maintain the City's "fair-share" of affordable housing.
- Policy H-2: Encourage the preservation of existing housing stock.
- Policy H-3: Provide a balance of dwelling unit types, residential densities, and prices within the City.
- Policy H-4: Provide flexibility in zoning and subdivision regulations to encourage a variety of housing types.
- Policy H-5: Examine ways to eliminate unnecessary or excessive requirements that create barriers to affordable housing, if they exist. This may include any excessive requirements regarding siting and operating special needs housing.
- Policy H-6: Coordinate with appropriate agencies to provide programs and services to needy households, special needs populations, and the homeless.

### 6.3.1. Housing Development Concept

The City will participate with other cities and King County in developing countywide housing resources and programs to assist the large number of low and moderate income households who currently do not have affordable housing. These countywide efforts are intended to reverse current trends which concentrate low income housing opportunities in certain communities (such as the City), and achieve a more equitable participation by local jurisdictions in low-income housing development and services. Countywide efforts should give priority to assisting households below 50% of median income that are in greatest need and communities with high proportions of low and moderate income residents.

The City is committed to preserving, improving, and developing housing for all income levels and to creating a more balanced housing supply. The City is also committed to working with appropriate agencies to provide assistance programs to needy households. While the City has limited funds to contribute to housing or housing assistance programs, it will review its land use regulations to ensure that:

- A variety of housing types are permitted, including single-family detached, single-family attached, townhouse and multifamily, mixed uses, accessory living units, and manufactured homes.
- A variety of lot sizes and densities, including clustering, are permitted.

- Sufficient land zoned for residential development is provided.
- Housing for special needs groups (i.e., group homes, foster care) is accommodated.
- The character of existing neighborhoods is preserved, along with the right of people to live in neighborhoods of their choice.
- New subdivisions and Master Planned Developments (MPDs) are required to provide a “fair share” of the City’s affordable housing needs.

# Chapter 7. Transportation

## 7.1. Introduction

### 7.1.1. Background

The City of Black Diamond's (City's) transportation system is essential to its ability to move people and goods efficiently. Over the long term, this system also affects the location and pattern of growth. The City will also regularly update the comprehensive transportation element of the Comprehensive Plan to address potential safety and congestion problems, and to direct the City's transportation future as it continues to grow.

The Growth Management Act (GMA) includes planning requirements that link transportation directly to land use decisions and fiscal planning. The Transportation Element of the Comprehensive Plan, also called the Comprehensive Transportation Plan, is structured within the context of these GMA requirements.

### 7.1.2. Need for the Comprehensive Transportation Plan

In 1996, the City completed its first comprehensive transportation plan. A 2001 plan amendment included the transportation impacts of growth in the City's potential annexation areas. The 2007-08 update provides a revised look at the existing transportation system; addresses changes in legislative requirements; reflects changes in economic conditions; evaluates current needs; and reviews the adequacy of the planned transportation improvements to meet future travel needs and conditions.

The primary purposes and uses of the transportation plan include the following:

- **Determining Existing Transportation Deficiencies.** An inventory of the transportation system identifies the existing needs of the community.
- **Meeting GMA Requirements.** The City is required by the GMA to develop a comprehensive plan including a transportation element that includes a list of future system improvements and a multiyear financing plan.
- **Qualifying for Funding.** State agencies require communities to have a comprehensive transportation plan that demonstrates the community's vision of its future.
- **Planning for the City.** Both public and private sectors can use the comprehensive transportation plan when making decisions about the transportation system.

### **7.1.3. Elements of the Comprehensive Transportation Plan**

The comprehensive transportation plan has the following key elements:

- **Transportation Goals and Policies.** A list of goals and policies the City will focus on to develop and maintain an efficient transportation system;
- **Transportation Improvement Program.** A list of transportation improvements to mitigate traffic congestion;
- **Funding Strategy.** A plan for funding the improvements and a contingency plan with additional funding sources; and
- **Concurrency Management System.** A system the City will use to make sure the transportation network will be able to accommodate development as it occurs.

## **7.2. Level of Service**

A level of service (LOS) standard measures the performance of an existing transportation system and the adequacy of the planned future improvements. Additionally, LOS standards establish the basis for the concurrency requirements in the GMA. Agencies are required to "adopt and enforce ordinances which prohibit development approval if the development causes the LOS on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with development." (RCW 36.70A.070(6)(b)). Therefore, setting the LOS standard is an essential component of regulating development.

### 7.2.1. Definitions

LOS is both a qualitative and quantitative measure of roadway operations. LOS, as established by the *Highway Capacity Manual* uses an “A” to “F” scale to define the operation of roadways and intersections as follows:

LOS A. Primarily free flow traffic operations at desired travel speeds. Vehicles are completely unimpeded in their ability to maneuver within the traffic stream. Control delays at signalized intersections are minimal.

LOS B. Reasonably unimpeded traffic flow operations at average travel speeds. The ability to maneuver within the traffic stream is only slightly restricted and control delays at signalized intersections are not significant.

LOS C. Stable traffic flow operations. However, ability to maneuver and change lanes may be more restricted than in LOS B, and longer queues, adverse signal coordination, or both may contribute to lower than average travel speeds.

LOS D. Small increases in traffic flow may cause substantial increases in approach delays and, hence decreases in speed. This may be due to adverse signal progression, inappropriate signal timing, high volumes or some combination of these factors.

LOS E. Significant delays in traffic flow operations and lower operating speeds. Conditions are caused by some combination of adverse progression, high signal density, high volumes, extensive delays at critical intersections, and inappropriate signal timing.

LOS F. Traffic flow operations at extremely low speeds. Intersection congestion is likely at critical signalized intersections, with high delays, high volumes, and extensive queuing.

### 7.2.2. LOS and Concurrency

The concurrency provisions of the GMA require that local governments permit development only if adequate public facilities are—or can be guaranteed to be—available within 6 years to support the new development.

The GMA requires each local jurisdiction to identify future facility and service needs based on its LOS standards. To ensure that future development will not cause the City’s transportation system performance to fall below the adopted LOS, the jurisdiction must do one or a combination of the following: modifying the land use element, limiting or “phasing” development, requiring appropriate mitigation, or changing the adopted standard.

### 7.2.3. Level of Service Standards

Based on the City Council's recommendations, this plan identifies a LOS standard of LOS D for intersections along State Route (SR) 169 and LOS C for all other arterials and collectors throughout the City. Setting different LOS standards for specific areas is a common practice that accounts for the function and use of the roadways into the acceptable operating conditions.

The City also recognizes how intersection control (i.e., traffic signals, roundabouts, and stop signs) defines LOS. For two-way and one-way stop-controlled intersections, the LOS is defined by the amount of time vehicles are waiting at the stop sign. Although a substantial volume of traffic can proceed through the intersection without any delays, a small volume at the stop sign can incur delays that would exceed LOS C or LOS D. To avoid mitigation that would only serve a small volume of traffic, the City allows two-way and one-way stop-controlled intersections to operate worse than the LOS standards. However, the City requires that these instances be thoroughly analyzed from the operational and safety perspectives and the City will individually evaluate these situations to determine when mitigation is appropriate.

These LOS standards are higher than other cities in the area. For example, the City of Covington adopted a LOS E standard and Maple Valley generally uses LOS D, except along Maple Valley Highway (SR 169), Kent-Kangley Road, and Witte Road where the LOS standard is lowered to LOS E. The higher LOS standards indicate the City's desire to avoid congestion and the willingness to identify and fund future transportation improvements. If expected funding for improvements to meet future transportation needs is found to be inadequate, then the City may pursue one of the following options:

- Lower the LOS standards to LOS D, E, or F for the system for portions of the system that cannot be improved without significant expenditure.
- Revise the City's current land use plan to reduce density or intensity of development that will "fit" with the planned transportation system; or
- Phase or restrict development to allow more time for the necessary LOS-driven transportation improvements to be completed by the development community and/or responsible agency or jurisdiction(s).

### 7.2.4. Level of Service Methodology

The City has established specific methods to calculate the LOS for evaluating the performance of the roadway intersections and transit service and facilities. This section describes those methods.

### *Intersection Level of Service*

For signalized and unsignalized intersections, the LOS is calculated using the procedures described in the latest edition of the *Highway Capacity Manual* (2000 edition). At signalized and all-way stop-controlled intersections, the LOS is based on the weighted average delays for all movements, whereas the LOS for two-way stop-controlled intersections is defined by the weighted average delay for the worst movement.

### *State Highway Level of Service*

1998 amendments to the GMA require local jurisdictions to address state-owned transportation facilities, as well as local transportation system needs in their comprehensive plans. House Bill (HB) 1487 requires that the transportation element of local comprehensive plans include the LOS standards for Highways of Statewide Significance (HSS). HB 1487 clarified that the concurrency requirement of the GMA does not apply to HSS or other transportation facilities and services of statewide significance. HB 1487 also requires local jurisdictions to estimate traffic impacts to state-owned facilities resulting from land use assumptions in the Comprehensive Plan.

The Washington State Department of Transportation (WSDOT) adopted LOS standards for HSS facilities is LOS D for urban areas (RCW 47.06.140). The LOS target is established for Comprehensive Plans and for reviewing developer impacts along urban HSS facilities.

The WSDOT also analyzes “screen lines” for deficiencies along state routes using a standard of 70% of the posted speed. This screen line analysis allows WSDOT to identify the “most congested” locations along its HSS facilities. A speed of approximately 70% of the posted speed equates to conditions where a highway achieves the maximum throughput of vehicles.

In 2007, the WSDOT added SR 169 to the list of HSS facilities. The State’s 2007-2026 *Highway System Plan* indicates that SR 169 is expected to operate below the 70% speed threshold (termed ‘operating less than efficiently’) during peak hours in 2030.

### *Transit Level of Service*

The GMA (RCW 36.70A) requires communities to also adopt LOS standards for transit routes. The City has established guidelines to monitor the performance of the transit system as follows:

- Encourage King County Metro to expand service as the demand dictates;

- Monitor existing transit facilities to determine if additional routes are needed or if existing headways should be decreased (or frequency increased);
- Monitor the need for park and ride facilities; and
- Develop design standards for bus-pullouts, passenger waiting facilities, and other transit facilities.

## 7.3. Existing Transportation System

The City forms the southeastern edge of King County's urban area. The traffic circulation system within the City is an incomplete grid system, reflective of the original settlement pattern, varied topography, and lack of substantial growth up to the present. The area's road system consists of a state highway (SR 169), the City's arterials, collectors, and local access roads. Because the grid system is incomplete, many local access roadways are, in effect, long cul-de-sacs. Local access roads are also often narrow by current standards. Although the narrow widths and lack of locations for vehicles to turn-around are a problem for emergency services, the smaller area devoted to roads contributes significantly to the existing rural character of the community and reduces storm water impacts.

The City is bisected by SR 169, a north-south highway, providing regional access from Renton to Enumclaw as well as local access. This route is also known as 3rd Avenue within the downtown area. Along the City's northern boundary, SE 288th Street is an east-west arterial that is shared with the City of Maple Valley. The Roberts Drive arterial provides local east-west access west of SR 169 as well as a link from the City to the City of Auburn and the Green River Valley employment centers to the west. The Lawson Street/Green River Gorge Road is an east-west arterial providing local access east of SR 169 as well as access to the rural areas and communities to the east.

The Black Diamond/Ravensdale Road is a north-south arterial linking the City and Ravensdale and providing a secondary link to SR 516 (Kent-Kangley Road). The SE Lake Sawyer Road is a north-south arterial that forms the City's western boundary and also provides a connection to SR 516.

### 7.3.1. Existing Roadway and Intersection Characteristics

SR 169, within the planning area, is a two-lane principal arterial that generally divides the City into east and west sections. SR 169 serves an area extending between the cities of Renton and Enumclaw, providing both regional (to SR 18, SR 516 and Interstate 405) and local access.

Posted speed limits along SR 169 vary depending on the amount of development adjacent to the highway. Areas immediately outside City limits are posted at 50 miles per hour (mph). Within the City limits, legal speeds are reduced to 35 mph except for a small 50 mph section from Jones Lake Road to the southern City limits. All cross-streets intersecting with SR 169 are controlled by stop signs.

SE 288th Street is a two-lane road that runs east-west. The road is a minor arterial that changes to SE 291st Street as it approaches SR 169. The road serves City residents north of Lake Sawyer and also serves as the only access for Maple Valley residents living north of SE 288th Street and south of the Burlington Northern Railroad line. SE 291st Street is stop sign-controlled at SR 169 and 216th Avenue SE. At all other intersections, the cross-street traffic is stop sign-controlled. The posted speed is 35 mph.

Roberts Drive/Auburn-Black Diamond Road provides access to the City of Auburn and is a two-lane minor arterial. The road changes name to Roberts Drive east of Lake Sawyer Road SE in the City. The roadway branches into two facilities near Covington Creek allowing access to the City of Kent (Kent-Black Diamond Road).

All cross-streets intersecting Roberts Drive are stop sign-controlled. Roberts Drive is controlled by a stop sign at its intersection with SR 169. Posted speeds are generally 50 mph outside the City limits and 25 to 35 mph once inside the City.

Green Valley Road is a two-lane minor arterial that connects SR 169 and the City of Auburn. This street is classified by King County as a collector. The roadway is posted for a maximum speed of 40 mph, but operating speed is constrained to 10 to 15 mph in certain areas due to its curvilinear horizontal alignment with steep grades. Green Valley Road is stop-controlled at SR 169. It should be noted that the annexation of property adjacent to Green Valley Road in 1995 included a condition that direct transportation access would not occur from the annexed area onto Green Valley Road.

Lake Sawyer Road/224th Avenue SE/216th Avenue SE is a two-lane minor arterial that provides access to a predominantly residential area west of Lake Sawyer. The street generally parallels SR 169 between Roberts Drive and SR 516. The roadway is stop sign-controlled at its intersection with Roberts Drive. There are traffic signals at the intersections of 216th Avenue SE/SR 516, 216th Avenue SE/Covington-Sawyer Road, and SE 296th Street/219th Avenue SE. All other cross-street traffic intersections along Lake Sawyer/216th Avenue SE are stop sign-controlled. Posted speeds vary between 35 mph and 45 mph.

Covington-Sawyer Road is a two-lane minor arterial that connects with 216th Avenue SE on the western border of the City. It provides access to SR 18 and SR 516.

Morgan Street is a two-lane collector from Roberts Drive to Railroad Avenue. Railroad Avenue extends as a two-lane collector from Morgan Street southward to SR 169. Functionally, Morgan Street and Railroad Avenue provide alternative connections between Roberts Drive and SR 169, bypassing the downtown area which is located a few City blocks to the east. The intersection of Morgan Street and Roberts Drive is stop sign-controlled on the minor approach (Morgan Street). Railroad Avenue (also referred to as Jones Lake Road) is controlled by stop sign at its intersection with SR 169. The posted speed limit on Morgan Street and Railroad Avenue is 25 mph.

Lawson Street is an east/west minor arterial with its western terminus one block west of SR 169 and continuing east and northeast out of the City. Near the outskirts of the City, the roadway changes to Green River Gorge Road. The arterial provides access between SR 169 and residential developments in the City and rural areas east of the City. The posted speed limit along this route is 25 mph within the City limits. Near Mud Lake, the speed limit increases to 45 mph. Lawson Street is stop-controlled at its intersection with 3rd Avenue (SR 169).

Black Diamond-Ravensdale Road is a two-lane minor arterial linking the City and Ravensdale and serves as a secondary connection between Kent-Kangley Road SR 169. The posted speed limit along this road is 45 mph within the City limits. Cross-street traffic along Black Diamond-Ravensdale Road is stop-controlled.

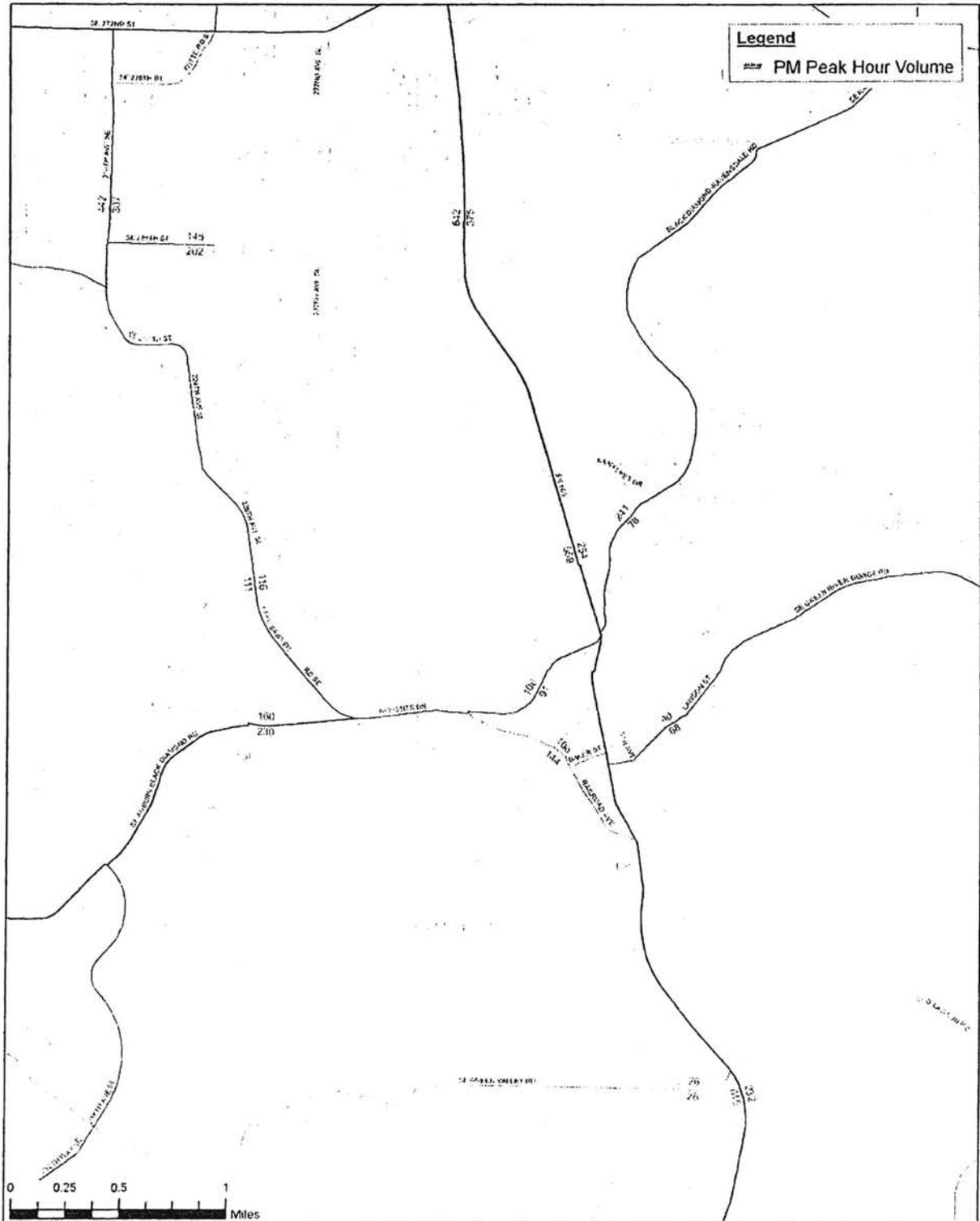
Baker Street (between SR 169 and Railroad Avenue) is a two-lane arterial collector located in the downtown area of the City. The roadway provides access to the post office and school; it has a posted speed limit of 25 mph. It is stop sign controlled at SR 169 and Railroad Avenue.

All remaining roadways in the City are local roads with two-lane cross-sections. Most local roadways have posted 25-mph speed limits.

### 7.3.2. Existing Roadway Volumes and Travel Conditions

Figure 7-1 depicts the study area for the updated transportation plan and shows the 2007 evening peak hour traffic volumes. Available traffic volumes were collected from WSDOT, the City, and the City of Covington. These evening peak hour volumes were used in the intersection LOS analysis and the results are summarized in Table 7-1.

Figure 7-1. Study Area and Existing PM Peak Hour Traffic Volumes



**Table 7-1. Existing Intersection Level of Service Summary (2007)**

Intersection	Control	Direction	LOS	Delay (s)
SE 288th Street/232nd Avenue SE	Stop-Controlled	Northbound	B	10.0
Covington-Sawyer Road/216th Avenue SE	Signal	Average	B	19.3
216th Avenue SE/219th Avenue SE	Signal	Average	B	17.6
<b>Black Diamond Ravensdale Road/SR 169</b>	<b>Stop-Controlled</b>	<b>Westbound</b>	<b>F</b>	<b>94.5</b>
Roberts Drive/SR 169	Stop-Controlled	Westbound	D	26.9
Auburn-Black Diamond Road/Lake Sawyer Road SE	Stop-Controlled	Southbound	B	11.4
Roberts Drive/Morgan Street	Stop-Controlled	Northbound	B	10.9
Baker Street/SR 169	Stop-Controlled	Eastbound	C	17.7
Baker Street/Railroad Avenue (Jones Lake Road)	Stop-Controlled	Westbound	A	9.2
Lawson Street/SR 169	Stop-Controlled	Westbound	B	13.6
Railroad Avenue (Jones Lake Road)/SR 169	Stop-Controlled	Eastbound	B	13.0
<b>SE 288th Street/216th Avenue SE</b>	<b>Stop-Controlled</b>	<b>Westbound</b>	<b>D</b>	<b>26.1</b>

Consistent with the City's adopted LOS standards established in this plan, intersections must operate at LOS D or better along SR 169 or LOS C or better for all other locations. The majority of intersections within the City operate at an acceptable LOS; however two intersections currently operate below their respective standards: Black Diamond Ravensdale Road/SR 169 and SE 288th Street/216th Avenue SE. At both of these intersections, the primary contributors to delays are the westbound left movements from the minor streets.

### 7.3.3. Other Modes

#### *Rail Service*

Presently, the City has no railroads located within the City limits. Rail lines that historically provided service from Seattle through Renton to the City have been decommissioned. The last coal trains left the City in 1969. The old rail line passed through town in a north-south direction paralleling Railroad Avenue.

#### *Public Transportation Service*

The City currently has a low population density and is distant from major Puget Sound urban employment centers. Public transportation service is available but is

limited. Metro currently provides three routes that serve the City: 143, 149, and 912. Table 7-2 summarizes existing transit services in the City. Routes 143 and 149 provide 25 to 30 minute service during commute hours and Route 149 provides 60 to 90 minute service during off-peak hours. Route 912 provides off-peak hour service between Enumclaw and Covington.

**Table 7-2. King County Metro Transit Routes Serving the City**

Route	Beginning Location	Destination	Black Diamond at 3rd Ave/Baker St	
			Headway: Minimum- Maximum (min)	Duration
143	Downtown Seattle	Black Diamond (via Renton)	20-30	5:34 pm - 6:40 pm
	Black Diamond	Downtown Seattle (via Renton)	25-28	5:29 am - 6:24 am
149	Renton	Black Diamond	25-120	5:14 am - 4:08 pm
	Black Diamond	Renton	37-130	7:08 am - 6:47 pm
912	Covington	Enumclaw (via Black Diamond)	95-100	9:32 am - 2:27 pm
	Enumclaw	Covington (via Black Diamond)	90-104	10:29 am - 3:23 pm

Since the 1996 Comprehensive Transportation Plan, two new routes have been added, King County Metro Routes 143 and 149, which provide service to regional destinations and to the Renton Transit Center. A park and ride lot located at the Masonic Lodge at 3rd Avenue/Baker Street provides 30 spaces for weekday parking for transit users. Another nearby facility, the Maple Valley Park and Ride, is located at SE 231st Street/SR 169, and provides 122 spaces.

The existing transit service meets the City's defined LOS criteria. However, in the future, additional service as well as provisions for bus pullouts, bus stops, and park and ride lots will become necessary, as the population increases.

### *Surface Freight Transportation*

There are no freight terminal facilities located in the City. However, truck operations related to mineral extraction, logging and landfill commonly use the road network, primarily on SR 169.

### *Pedestrian Facilities*

The City has limited sidewalk facilities along its arterial and collector road network. While adopted City road construction standards now require sidewalks on all new roads, many of the roads in the remaining areas of town were developed to rural

standards with gravel shoulders or no shoulder at all. Only two arterials in the City have sidewalks: SR 169 in the downtown area on the east side of the street; and 216th Avenue SE between SE 288th Street and Covington-Sawyer Road on the west side. There is a small stretch of sidewalk along Baker Street near the elementary school, on the south side of Roberts Road near the library, and a sidewalk on SE 300th Street near Kentlake High School. The newly developed subdivisions along Kanasket Drive and McKay Lane also contain sidewalks.

### *Bicycle Facilities*

No formal planned bicycle network exists within the City. A small stretch of bicycle lanes was added to Roberts Road as part of the library project. Bicyclists currently use the existing roadways as informal routes, although there are no markings or signs to support the street usage for bicycles. City residents have voiced a desire to include bicycle facilities within the transportation environment.

### *Shoreline/Water Transportation*

There are no navigable waterways for freight or passenger transportation in the Black Diamond area. The region's primary river, Green River, is used primarily for recreational purposes.

### *Aviation Transportation*

The nearest major airport facility is SeaTac airport located approximately 22 miles to the west. The City does not have a local airport; however, a privately owned field with a runway length of 1,500 feet is located along Roberts Drive west of SR 169. Nearby public use airports include Kent's Crest Airpark (6 miles), the Auburn Municipal Airport (14 miles) and the Renton Municipal Airport (18 miles).

### *Parking Facilities*

On street parking is presently provided informally throughout the City in conjunction with the local street network. Parking is restricted on SR 169. Additional public parking is currently needed, particularly in Old Town, and along the SR 169 corridor for weekend bicyclists driving to the City to ride, and for weekday commuters who wish to use transit.

## **7.3.4. City of Black Diamond Functional Classification System**

Roadway classifications define the character of service that a street is intended to provide. The City has classified its roadway system and adopted roadway design standards based on the roadway's functional and physical characteristics. The functional classification system is a hierarchical system providing for the gradation of

traffic flow from an access function to a movement function. The functional classification system for the City is described in Table 7-3 and the accompanying roadway design standards are summarized in Table 7-4.

The following list provides the-planned classifications by roadway.

### *Principal Arterials*

- SR 169

### *Minor Arterials*

- SE 288th Street
- Roberts Drive
- North Connector\*
- North-South Connector\*/Abrams Road
- Black Diamond-Ravensdale Road
- Lake Sawyer Road
- Pipeline Road\*
- Lawson Connector\*

### *Collectors*

- Annexation Road\*
- Southeast Loop Connector\*
- Morgan Street
- Baker Street (west of SR 169)
- South Connector\*
- Railroad Avenue (Jones Lake Road)
- Lake Sawyer Extension\*

### *Local Access*

- All remaining roadways within the City

\* New Roadways (for location, see Figure 7-2) Summaries of the design criteria and characteristics for these different classifications of roadways is provided in Tables 7-3 and 7-4. These tables serve as only a general guide for the different classifications and the City's Road Design Standards should be referenced for further clarification.

## 7.4. Current Transportation Plans and Improvements

The City is working to identify the near-term improvements that address transportation needs for its community.

### 7.4.1. Planned Roadway Improvements

The current planned roadway improvements consist of projects programmed by the City, County, and WSDOT.

#### *WSDOT*

WSDOT has jurisdiction over SR 169 through the City. While WSDOT has been developing a Route Development Plan for SR 169, the plan has not been completed. A conversation with WSDOT's Urban Planning Office and review of meeting minutes of the SR 169 Working Group, indicate the potential to widen SR 169 to as many as six lanes from Jones Road (in Maple Valley) to I-405 and four to five lanes from SE 291st Street. Within the City, WSDOT has proposed minor widening to allow for a two-way-left turn lane north of the historic core of the City and a truck climbing lane south of Green Valley Road. For purposes of this plan, the City is assuming a 3-lane section with bike lanes for SR 169, with potential widening at intersections to accommodate turn lanes.

#### *King County*

King County has identified future improvements in the Enumclaw Planning Area, which includes the City (detail is in the County's *2008 Transportation Needs Report*). The County's list of improvements in or around the City is shown in Table 7-5.

**Table 7-3. Functional Classification System Definition of the Roadway Functions**

Classification	Function	Continuity	Spacing (miles)	Direct Land Access	Minimum Roadway Intersection Spacing	Speed Limit (mph)	Parking	Comments
Principal Arterial	Primary - Intercommunity and intrametro area traffic movement Secondary - land access	Required	1/2 in CBD; 1 in urban residential; 1-5 in suburban and fringe	Limited - major generators only	1/2 mile	35-45 (fully developed areas)	Prohibited	
Minor Arterial	Primary - Intercommunity and intrametro area traffic movement Secondary - land access	Required	1/8 - 1/2 in CBD; 1/2 - 1 in urban; 1-3 in suburban and urban fringe	Restricted - some movements may be prohibited; number and spacing of driveways controlled	1/4 mile	30-35	Generally Prohibited	Backbone of the street system
Collector	Primary - collect/distribute traffic between local roads and arterial system; Secondary - land access; Tertiary - interneighborhood traffic movement	Desirable	Not less than 1/4 mile from higher Classified arterials	Safety controls; limited regulation	300 feet	25-30	Limited	Through traffic should be discouraged
Local (Residential)	Land Access	None	As needed	Safety controls only	300 feet	25	Permitted	Through traffic should be discouraged

**Table 7-4. Road Classifications and Development Standards**

Classification	Min. ROW (feet)	Min. Paved Width (feet)	Other
Arterial (major and minor)	66-100	30-62	Sidewalk, extra lane width for bicycles, planting strip storm drainage
Collector Road	60-72	28-40	Sidewalk, extra lane width for bicycles, planting strip, storm drainage or swales
Local Access (Industrial)	50	28	Sidewalk, planting strip
Local Access (Commercial)	60-68	36	Sidewalk, planting strip
Local Access (Residential)	48-60	22-32	Sidewalk, planting strip

Source: City of Black Diamond Engineering and Design Standards.

**Table 7-5. King County Identified Black Diamond Area Facilities Improvements (2008 King County Road Needs Report)**

Project No.	Project Action	Location	Priority	Cost
T-33	Black Diamond-Ravensdale Road - Non-Motorized	SR 169 to Kent Kangley	Low	\$2,028,000
OP-RD-41	Covington-Lake Sawyer Road - Minor Capacity	From Thomas Road to 216th Avenue SE	Medium	\$7,733,000
RC-135	Black Diamond-Ravensdale Road - Reconstruction (0.6 miles)	From SE Kent Kangley Road to 268th Avenue SE	Medium	\$597,000
RC-142	SE Green Valley Road - Reconstruction	From 243rd Avenue SE to SR 169	High	\$1,423,000
RC-6	Covington-Lake Sawyer Road - Reconstruction	From Covington C/L to 216th Avenue SE	High	\$1,093,000
GR-35	Black Diamond-Ravensdale Road - Guardrail	City limits to Ravensdale Way	High	\$12,000
GR-68	224th Avenue SE - Guardrail	From SE 296th Street to 228th Avenue	High	\$81,000

### *City of Black Diamond*

The City has identified several road improvements shown in Table 7-6. The City maintains a 6-year Transportation Improvement Program (TIP). The 6-year program proposes improvements to existing substandard roads and includes repairing and overlaying existing roadways, paving gravel roadways, constructing sidewalks, and widening roadways.

Table 7-6. Black Diamond Six-Year Transportation Improvement Program (2010-2015)

Rank	Year	Improvement	From	To	Type of Improvement
In process	2008	Railroad Avenue (Jones Lake Road)	Merino Street	Baker Street	Rebuild Existing Roadway/ Storm drainage/Parking
In process	2009	Morgan Street Sidewalk Phase II	Abrams Avenue	Roberts Drive	Install new sidewalk
1	2010	233rd Avenue SE	SE 293 Place	South to end	Repair and overlay existing roadway
2	2010	Auburn - Black Diamond Road	Rock Creek	West City Limits	Repair and overlay existing roadway
3	2010	Lawson Street & Newcastle Drive Intersection Repair	Lawson Street	Newcastle Drive	Repair and overlay existing intersection
4	2011	Roberts Drive	SR 169	West City Limits	Corridor Study/Preconstruction Engineering
4	2011	Roberts Drive Pedestrian Trail/ Sidewalk	SR 169	Morganville Neighborhood	Install new sidewalk, curb gutter and storm drainage on one side
5	2011	Black Diamond/ Ravensdale Road Intersection	East City Limits	SR 169	Right of Way Purchasing, minor widening, radius construction/ improvement, overlay, alignment
6	2012	Pacific Street Neighborhood Improvements	Lawson Street	Southerly Terminus of Pacific/ Fifth Avenue South	Widen and Pave existing gravel roads, install storm drainage improvements
7	2012	Intersection Improvements in Morganville Neighborhood	N/A	N/A	Acquire easements and construct new intersection radii.
8	2012	Roberts Drive Reconstruction	SR 169	Rock Creek Bridge	Overlay existing roadway, repair broken panels, widen to standard
9	2012	Sixth Avenue/ Baker Street	Lawson Street	SR 169	Minor widening and overlay of existing asphalt roadway
10	2013	Fifth Avenue North	Lawson Street	Northerly End	Minor widening and overlay of existing asphalt roadway with installation of storm drainage
11	2013	SE 288th Street	236th Avenue SE	216th Avenue SE	Overlay existing roadway
12	2013	Commission Avenue	Morgan Street	Appx 300' SW of Morgan Street	Repair and overlay existing roadway
13	2014	Alley from Park Street to Railroad Avenue to SR 169	Park Street	SR 169	Pave an existing gravel roadway
14	2014	Lawson Street	City Limits	SR 169	Overlay existing roadway
15	2014	Lawson Hill Sidewalk	City Limits	SR 169	Install new sidewalk
16	2015	Lake Sawyer/ Black Diamond Road	307th Place SE	SE 292nd Street	Overlay existing roadway
17	2015	Plass Road	SR 169	City Limits/ Existing Pavement	Pave an existing gravel roadway
18	2015	Pipeline Road	SR 169	Lake Sawyer/ Black Diamond Road	New roadway construction

Source: City of Black Diamond June 2008

## 7.5. Actions Needed to Meet LOS Standard

Two intersections operate below their respective LOS standards under existing conditions: Black Diamond Ravensdale Road/SR 169 and SE 288th Street/216th Avenue SE. Intersection control (e.g., a roundabout or traffic signal) and channelization improvements would be needed at these locations to meet acceptable LOS standards. These actions are included in the 2010-2016 improvements listed in Table 7-7.

## 7.6. Travel Forecasts

Regional and local historical traffic volume counts were compared to determine the magnitude of traffic volume growth that can reasonably be expected. A 1.0 percent annual growth rate was assumed for the Covington area along SR 516, and a 1.5% annual growth rate was assumed for all other intersections within the study area. In many areas, the historical annual growth in traffic volumes was less than these assumptions, and in some cases the exhibited trend was a decline in growth. As a result, these assumed growth rates were deemed conservative and were applied to the existing 2007 traffic counts to forecast future traffic volumes.

In addition to the annual growth rates, trips generated by two proposed Master Planned Developments (MPDs) (Lawson Hills and The Villages) were also accounted for. Based on a straight line trend; 40% of these MPDs were assumed to be constructed by 2016, with complete build out and occupancy by 2025.

### 7.6.1. Future Land Uses and Transportation Concepts

The City intends for the Black Diamond Comprehensive Plan Transportation and Land Use Elements work together to maintain the City's "small town" character in the face of increasing regional traffic-related impacts. Regional traffic growth on SR 169 may be expected to continue as long as vehicular capacity is increased on that route. Similar conditions would be expected on other arterials that facilitate regional traffic. The need for planned transportation improvements will depend on the location, density and timing of area development occurs and may vary depending on market forces, availability of utilities and actions taken by the jurisdiction.

#### *Forecast Horizons*

The TIP is linked to the City's planned land uses and the anticipated traffic volumes. There are two traffic forecasts analyzed in the comprehensive transportation plan:

- Short-Term: 2010 to 2016
- Long-Term: 2017 to 2025

The short term forecast coincides with the City's TIP and represents current growth trends and expected short term development within the City. Future levels and timing of land development were based on conversations with City staff, local land owners, and development firms. Changes to development patterns and priorities may vary the need for and the completion order of the transportation improvements. The long-term traffic forecast represents the future growth in housing and employment that will support the expected 2025 projections.

## 7.7. Transportation Improvement Recommendations

This section of the transportation plan establishes intersection and roadway improvement programs for the periods 2010 to 2016 and 2017 to 2025.

### 7.7.1. Arterial Roadway Improvements

A conceptual configuration for the future roadway system in 2025 is shown in Figure 7-2. New arterial roads include: Pipeline Road, Annexation Road, Lake Sawyer Extension, Lawson Connector, South Connector, Southeast Loop Connector, North Connector, and the North-South Connector.

The proposed roadways shown in Figure 7-2 are not specific to site or location. The intent is to show a basic concept and the exact locations would be determined after engineering and environmental review. For example, the City has reserved an interest in realigning the South Connector from its connection with SR 169 to a connection with SE Green Valley Road. These new roads will distribute future traffic growth throughout the City that would otherwise have been concentrated on the few existing major arterials.

The Pipeline and North Connector Roads would enhance the circulation for industrial development. The Annexation Road would provide north-south and east-west circulation through the southwestern portion of the City's Expansion Area. Other new facilities are proposed to improve general circulation.



### *Agency Coordination*

Improvements on SR 169 will require coordination with WSDOT; however, the Comprehensive Plan should include a vision for SR 169 through the City. The City could use the vision to begin discussions with the State of Washington to coordinate the future design of the road. Then as development occurs along the highway, improvements (such as lanes, sidewalks, bike lanes, median planting, turn pockets, driveways, and signals) could be implemented consistent with the overall design. The City will continue to participate in the development of the SR 169 Route Development Plan and in its future implementation.

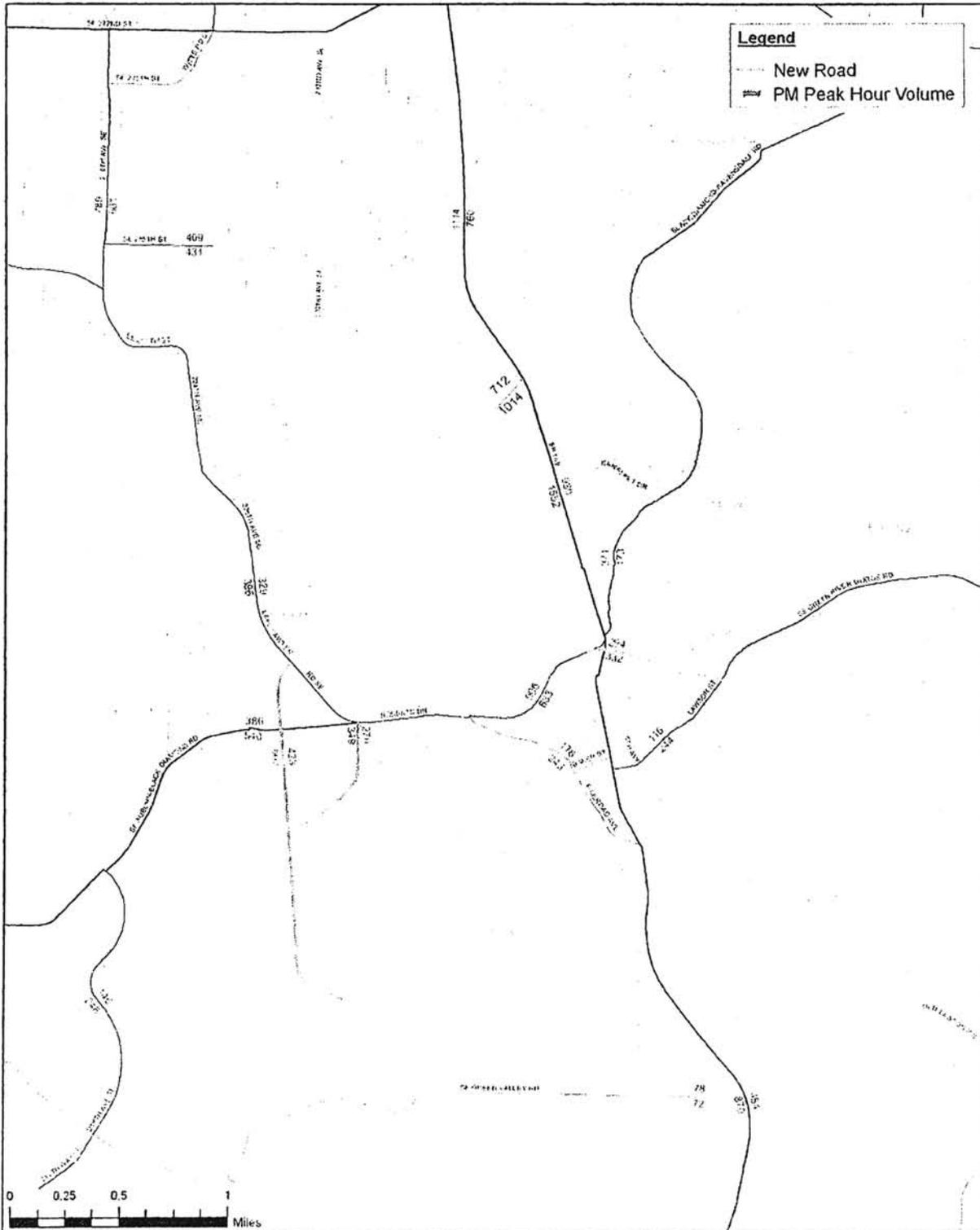
### *Intersection Control Requirements*

Although the construction of new collector roads and connecting arterials will help distribute traffic, key intersection will warrant traffic control and intersection improvements to meet the City's LOS standards in the future. The City identified roundabout-controlled intersection improvement as the preferred solution to address the increasing turning movements at intersections. Where it is shown that the traffic movements cannot be handled and or the site conditions will not allow for a roundabout, signalization of the intersection can be considered. The necessity for and location of intersection improvements would be established at the time development occurs. The City will look to avoid locating signals in its historic downtown area. Many intersection control improvements are expected and warranted during the 20-year planning period. The improvement for roads and intersections will be implemented incrementally with developments as traffic volumes increase.

### **7.7.2. Roadway Conditions – 2016**

This plan anticipates future conditions for the year 2016 to derive the 6-year improvement program. The PM peak hour volumes anticipated on study area roadways for 2016 are depicted in Figure 7-3. The 2016 analysis includes the roadway projects identified in the Six-Year 2010-2016 TIP plus additional improvements needed to ensure that the roadway system meets the City's LOS C and LOS D standards.

Figure 7-3. 2016 PM Peak Hour Traffic Volumes and Roadway Network



## 2010 to 2016 Recommendations

Development and increasing traffic from neighboring jurisdictions will increase traffic volumes throughout the City. Table 7-7 and Figure 7-4 list the 2010 to 2016 recommended actions. The transportation improvements recommended are expected to meet the projected travel needs throughout the City.

**Table 7-7. Transportation Improvements (2010–2016)**

Improvement	Action	Comments
A1, Annexation Road	Construct City-standard collector roadway	Provides access to new development
A2, Lake Sawyer Extension	Construct City-standard collector roadway	Provides access to new development
A3, Lawson Connector	Construct City-standard minor arterial roadway; realign across from Roberts Drive	Provides access and serves as vital connection to areas to the east of SR 169
A4, Black Diamond Ravensdale Realignment	Roadway realignment	Realigns Black Diamond Ravensdale Road north of existing intersection with SR 169
A5, North Connector	Construct City-standard minor arterial roadway	Provides access and improves circulation in area
SR 169/Black Diamond-Ravensdale Road	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR169/Roberts Drive/Lawson Connector	Roundabout/Signal and Channelization Improvements; connect to Lawson Connector	Improves intersection operations
SR 169/North Connector	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/ SE 288th Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SE Auburn Black Diamond Road/Morgan Street	Channelization Improvement	Improves intersection operations
SE Auburn Black Diamond Road/Lake Sawyer Road/Lake Sawyer Extension	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SE Auburn Black Diamond Road/Annexation Road	Roundabout/Signal and Channelization Improvements	Improves intersection operations
216th Avenue SE/SE 288th Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations
Existing Roadways	Widen/Pave/Overlay	Per Six-Year TIP

Note: Ultimate road design will be subject to engineering requirements and design guidelines.

## Level of Service – 2016

With the completion of the recommended 2010 to 2016 projects, the City's intersections would generally meet the LOS C and LOS D standards. Table 7-8 summarizes the intersection LOS operations for 2016.

**Table 7-8. Future Intersection Level of Service Summary (2016)**

Intersection	Control	Direction	LOS	Delay (s)
SE 288th Street/232nd Avenue SE	Stop-Controlled	Northbound	C	19.0
Covington-Sawyer Road/216th Avenue SE	Signal	Average	B	19.3
216th Avenue SE/219th Avenue SE	Signal	Average	A	10.0
Black Diamond Ravensdale Road/SR 169	Signal	Average	D	54.5
<b>Roberts Drive/SR 169</b>	<b>Signal</b>	<b>Average</b>	<b>F</b>	<b>200</b>
Lawson Street/Lawson Connector	Stop-Controlled	Southbound	B	12.1
Auburn-Black Diamond Road/Lake Sawyer Road SE	Signal	Average	B	17.1
Roberts Drive/Morgan Street	Stop-Controlled	Northbound	C	24.7
Auburn-Black Diamond Road/Annexation Road	Signal	Average	B	16.9
Baker Street/SR 169	Stop Controlled	Eastbound	D	26.3
Baker Street/Railroad Avenue (Jones Lake Road)	Stop-Controlled	Westbound	A	9.4
Lawson Street/SR 169	Stop-Controlled	Westbound	C	22.0
Railroad Avenue (Jones Lake Road)/SR 169	Stop-Controlled	Eastbound	C	18.3
SE 288th Street/216th Avenue SE	Signal	Average	A	9.0

As shown in Table 7-8, the Roberts Drive/SR 169 intersection is expected to operate below the LOS D standard in 2016. This intersection could be mitigated to acceptable conditions by constructing three additional turn lanes; however, these channelization improvements are not included in the long-term list of projects identified for the 2017 to 2025 timeframe and would not be necessary with construction of the 2025 improvements. Alternatively, full construction of the 2025 improvements by 2016, which includes additional through lanes on SR 169, would improve operations to acceptable conditions.

## Roadway Conditions – 2025

The traffic volumes anticipated for the year 2025 are depicted in Figure 7-5. The City expects that additional arterial roads will be needed in the planning area. SR 169 and Roberts Drive will continue to carry the largest volumes of traffic. The Morgan Street and the Railroad Avenue connection between Auburn-Black Diamond and SR 169 would serve as a prominent collector road. Southbound PM peak hour volumes on SR 169 could be as high as 1,700 vehicles per hour and northbound volumes are expected to reach 1,200 vehicles per hour (north of SE 288th Street).





## 2017 to 2025 Recommendations

Future transportation recommendations for the 2017 to 2025 time horizon are shown in Table 7-9 and Figure 7-6. The program improves existing facilities, provides connections to “fill-in” the existing system, and constructs new facilities to meet the projected travel needs throughout the City.

**Table 7-9. Transportation Improvements (2017–2025)**

Improvement	Action	Comments
A1, Annexation Road (Completed in 2010-2016)	Construct City-standard collector roadway	Provides access to new development
A2, Lake Sawyer Extension (Completed in 2010-2016)	Construct City-standard collector roadway	Provides access to new development
A3, Lawson Connector (Completed in 2010-2016)	Construct City-standard minor arterial roadway; realign across from Roberts Drive	Provides access and serves as vital connection to areas to the east of SR 169
A4, Black Diamond Ravensdale Realignment (Completed in 2010-2016)	Roadway realignment	Realigns Black Diamond Ravensdale Road north of existing intersection with SR 169
A5, North Connector (Completed in 2010-2016)	Construct City-standard minor arterial roadway	Provides access and improves circulation in area
A6, Pipeline Road	Construct City-standard minor arterial roadway	Provides alternative east-west arterial to Auburn - Black Diamond Road
A7, North-South Connector	Construct City-standard collector roadway	Provides access to new development
A8, South Connector	Construct City-standard collector roadway	Provides access to new development
A9, SE Loop Connector	Construct City-standard minor arterial roadway	Provides access and serves as vital connection to areas to the east of SR 169
SR 169 Improvements	Widen to 4 lanes from SE 288th Street to Roberts Drive	Provides additional capacity and improves operations
SR 169/Roberts Drive	Roundabout/Signal and Channelization Improvements; connect to Lawson Connector	Improves intersection operations
SR 169/Black Diamond Ravensdale Road	Roundabout/Signal and Channelization Improvements	Improves intersection operations
North Connector/SR 169	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/SE 288th Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/Baker Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/Lawson Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations

Improvement	Action	Comments
SR 169/Railroad Avenue/SE Loop Connector	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/South Connector	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SR 169/SE Green Valley Road	Roundabout/Signal	Improves intersection operations
SE Auburn Black Diamond Road/Morgan Street	Roundabout/Signal	Improves intersection operations
SE Auburn Black Diamond Road/Lake Sawyer Extension	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SE Auburn Black Diamond Road/Annexation Road	Roundabout/Signal and Channelization Improvements	Improves intersection operations
Lake Sawyer Road/Pipeline Road	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SE 216th Avenue SE/ Covington Sawyer Road	Channelization Improvements	Improves intersection operations
SE 216th Avenue SE/ SE 288th Street	Roundabout/Signal and Channelization Improvements	Improves intersection operations
SE 288th Street/232nd Avenue SE	Channelization Improvements	Improves intersection operations
North Connector/Pipeline Road	Roundabout/Signal	Improves intersection operations
North-South Connector/Roberts Drive	Roundabout/Signal	Improves intersection operations
North-South Connector/Morgan Street	Roundabout/Signal	Improves intersection operations

Note: The projects listed identify needed facilities within the City if the projected growth takes place during the 20-year period. Not all of the projects will be the City's responsibility to provide. New development, which necessitates the new roads, will contribute to the new roads. New development will also be responsible for providing on-site roads and circulation, which is not identified in the TIP.



## Level of Service–2025

With the listed improvements for 2017 to 2025, the City’s arterial and collector road system should operate within acceptable LOS. Table 7-10 indicates the intersection LOS operation for 2025. With the intersection improvements described in Table 7-9, all intersections will meet the City’s LOS C standard.

**Table 7-10. Future Intersection Level of Service Summary (2025)**

Intersection	Control	Direction	LOS	Delay (sec)
SE 288th Street/232nd Avenue SE	Stop-Controlled	Northbound	C	22.6
Covington-Sawyer Road/216th Avenue SE	Signal	Average	C	32.4
216th Avenue SE/219th Avenue SE	Signal	Average	B	12.9
North Connector/SR 169	Signal	Average	D	47.7
Black Diamond Ravensdale Road-Pipeline Road/SR 169	Signal	Average	D	49.3
Pipeline Road/North Connector	Roundabout	Average	.72*	NA
Roberts Drive/SR 169	Signal	Average	D	46.8
Pipeline Road/Lake Sawyer Road SE	Signal	Average	C	24.2
Lawson Street/Lawson Connector	Stop-Controlled	Southbound	B	12.0
Auburn-Black Diamond Road/Lake Sawyer Road SE	Signal	Average	C	34.7
Roberts Drive/Morgan Street	Roundabout	Average	0.39*	NA
Roberts Drive/North Connector	Roundabout	Average	0.35*	NA
Auburn-Black Diamond Road/Annexation Road-Pipeline Road	Signal	Average	C	33.8
Morgan Street/North Connector	Roundabout	Average	0.48*	NA
Baker Street/SR 169	Signal	Average	D	46.7
Baker Street/Railroad Avenue (Jones Lake Road)	Stop-Controlled	Westbound	B	11.9
Lawson Street/SR 169	Signal	Average	C	20.5
Railroad Avenue (Jones Lake Road)/SR 169	Signal	Average	D	47.1
South Connector/SR 169	Signal	Average	C	30.3
SE 288th Street/216th Avenue SE	Signal	Average	C	23.4

\* The measure of effectiveness of a roundabout is typically the volume-to-capacity (v/c) ratio, which is provided in the LOS column. A v/c ratio of 0.80 is approximately equal to LOS C.



### 7.7.3. Public Transportation

Metro is expected to continue the three transit routes into the 2016 horizon year depending on ridership levels and available funding. Service frequency may be increased, however, depending upon demand in the City and Maple Valley and Enumclaw areas. By the 2025 forecast year, additional park-and-ride facilities and transit service may be needed along SR 169. Other transit facilities may be necessary to serve new residential and employment within the City. The likely locations would be along Roberts Drive or Lake Sawyer Road. Long-range planning actions should identify potential parking facilities that could be used as park-and-ride facilities while being shared with other land uses.

### 7.7.4. Pedestrian and Bicycle Facilities

Sidewalks, walkways, and bicycle paths are integral parts of road design, as they are typically located within the roadway right-of-way. Sidewalks should be located on roads providing access to downtown areas, schools, parks, shopping centers, office buildings, and along transit routes. Sidewalk design standards should be applied by the City to address areas with high pedestrian activity, to increase pedestrian comfort and to allow for street plantings.

Bicycle lanes or paths are especially useful where bicycle traffic is high; especially near parks, schools, and other uses generating bicycle traffic. Bicycles can sometimes be accommodated without a bicycle lane on low volume local or collector roads. A 5-foot minimum bicycle lane should be developed on higher volume roadways.

Bicycles are not appropriate on sidewalks designed for pedestrians. In low volume areas where bicycles and pedestrians share the sidewalk, an 8 to 10-foot-wide path is needed. In areas with high bicycle traffic volumes, a separate 5-foot bicycle path is needed.

The City recognizes the importance of pedestrian facilities for recreation and commuter uses. The Black Diamond Park Plan (1989) set development of the City's trail system as its first objective, "Develop a trail system which will connect the City's historic district, neighborhoods, Jones Lake and Morganville with an integrated King County regional trail system and state trail system along the Green River."

Also, the park plan's fifth objective states, "Wherever possible encourage the construction and interconnection of trails."

The trail system is a major component of the City's proposed non-motorized transportation system. The City will identify future trail improvements in its update to the City's Park Plan.

## *Recommendations*

Presently, the City has an incomplete sidewalk system. Sidewalks are provided at various locations within the City. The City road construction standards now require sidewalks on all new roads. It is recommended that sidewalks, walkways, or trails be constructed on all new and reconstructed facilities within City limits.

There is not a system of bicycle paths or lanes in the City. New roadways should include bike lane provisions along arterial and collector facilities in the City. It is recommended that bike lanes be constructed along existing arterial and collector roadways in the future when they are scheduled for rehabilitation or reconstruction.

As stated in the transportation policies (T-7), the City encourages the development of a network of off-road facilities for non-motorized travel. The City should seek these facilities in connection with new development and should attempt to identify potential off-street bicycle routes (Class I) for cyclists wherever sufficient public demand and space can be made available. These non-motorized transportation improvements will be identified in the update to the City's Parks Plan.

The recommended non-motorized facilities in this plan will have a positive impact on the transportation system. The plan's support for bicycle facilities would also help encourage alternatives for shorter length trips.

### **7.7.5. Transportation Demand Management Strategies**

Transportation Demand Management (TDM) is a term encompassing a broad range of measures designed to promote alternatives to the single-occupant vehicle (SOV). By promoting these alternatives, mobility can be maintained without expanding the capacity of the road network.

TDM strategies generally include increased public transportation service, ride-sharing programs and other transportation systems management strategies, such as improved signal coordination and timing.

#### *Commute Trip Reduction*

Washington State's Commute Trip Reduction Law (RCW 70.94.521) requires all employers with more than 100 full-time employees in counties with populations greater than 150,000 (including King County) to implement a commuter trip reduction (CTR) plan. Although presently there are no employers within the City that employ more than 100 employees, anticipated employment growth may necessitate a CTR program in the future.

Reducing congestion includes strategies to reduce demands on the transportation system. Some elements of a CTR plan include:

- provision of preferential parking or reduced parking charges, or both for high-occupancy vehicles (HOVs) and institution of paid parking for single occupant vehicles;
- provision of commuter ride matching services to facilitate employee ridesharing for commute trips;
- provision for subsidies for transit passes or employee use of HOVs;
- vehicles for car pooling and van pooling;
- permitting flexible work schedules to facilitate employer's use of transit, car pools, and van pools;
- cooperation with transportation providers to provide additional service to the work site;
- provision for bicycle parking facilities, lockers, changing areas, showers for employees who bicycle or walk to work;
- establishment of a program to permit employees to work part or full time at home or at an alternative work site closer to their homes (telecommuting);
- establishment of a program of alternative work schedules such as compressed work week (4-day work week); and
- employer-guaranteed ride home for employees who use alternative transportation modes. This program allows employees to use a company vehicle or provides a taxi reimbursement if there is a family emergency or they are required to work outside their normal work hours.

The City encourages drivers of single occupancy vehicles to consider alternate modes of travel such as carpools, vanpools, transit, non-motorized travel, and alternative work schedules.

### *Land Use Policy*

A city's ability to regulate land use is the most effective way available to manage travel demand. Land use plans and the planning and zoning sections of city codes are the principal instruments for implementing land use policy. Some examples of land use policy instruments are discussed below:

## Prohibition on Development

Prohibiting development is the most effective way of impacting traffic. Without development, traffic impact from a parcel is virtually non-existent. Imposing low density agricultural or open space zoning, where appropriate pursuant to GMA, is an example.

## Zoning and Land Use Designation

Zoning and land use designation of individual parcels are very important in determining traffic impacts. In general, retail (particularly fast-food and convenience stores) generates the most traffic per employee or square foot of development. Conversely, industrial developments (such as heavy manufacturing and warehousing) generally have lower traffic impacts. Most other commercial activities (offices, medical, etc.) and residential areas fall somewhere in between these extremes.

## Standards for Transportation Facilities

City codes may also regulate the number and location of driveways, the required minimum (and in some cases, maximum) number of parking spaces, the number and convenience of bicycle parking spaces, and sidewalk requirements. These requirements can provide for good design that can maximize the efficiency of the roadway system and can promote use of commute alternatives.

## *Recommendations*

The City should encourage demand management of the transportation system. This can be accomplished by the following:

- Encourage the use of buses, carpools, and vanpool programs through both private programs and the direction of Metro Transit;
- Promote flexible work schedules allowing use of transit, carpools, or vanpools;
- Promote reduced employee travel during the daily peak travel periods through flexible work schedules and programs to allow employees to work part- or full-time at home or at an alternate work site closer to home; and
- Encourage employers to provide TDM measures in the work place through such programs as preferential parking for high-occupancy vehicles, improved access for transit vehicles, and employee incentives for using HOVs.
- Develop zoning and land use policies that promote land uses and development that are consistent with the City's goals and visions and which require new development to adequately provide for the transportation needs of that development.

### 7.7.6. Parking Facilities

Residents of the City have expressed a concern for the lack of available parking in the “Old Town” area of the City, which is generally defined as the commercial area between SR169 and Jones Lake Road along Baker Street. As roads are improved or rebuilt, formal on-street parking should be considered.

In addition, vacant lots in the vicinity could be identified and considered for off-street parking within the “Old Town” area. The City should encourage, allow, or facilitate private construction of parking lots.

Likewise, available areas to provide parking facilities for weekend bicyclists driving to the City to ride should be identified. On-street parking should continue to be discouraged along the SR 169 corridor.

## 7.8. Funding Strategy

The Comprehensive Transportation Plan recognizes the planning and improvement programming process as ongoing and provides a basis for initiating the funding strategy. A funding analysis is included that examines the available sources to pay for the recommended improvements and new roadways. This analysis recommends those strategies which would be most beneficial for the City to pursue when identifying funding for the improvements outlined in the Six-Year TIP.

During the TIP process each year, the City confirms the construction costs of the recommended improvements and new roadways and matches the appropriate funding strategy to construct the planned improvements. The TIP review also allows the City to reevaluate the need and timing for additional improvements.

### *Proposed Six-Year Financing Plan*

The City is required to create a 6-year financing plan for both transportation and capital facilities.

The Six-Year TIP is the result of an interactive process that balances the goals of all comprehensive plan elements. Financial planning for transportation uses the same process as the financial planning for capital facilities; however, the timing and funding for transportation are restricted by the concurrency requirement and the binding nature of LOS standards.

## Costs

The costs associated with transportation planning and transportation improvement programming include the following:

- maintenance and operation of the existing and proposed system;
- costs for designing and constructing new and/or expanded facilities;
- capital costs;
- transportation program costs; and
- general costs associated with administering, planning, and operating the system.

Costs associated with the transportation environment in the City include the cost of maintaining the existing City transportation facilities (roads, etc.); upgrading or expanding the vehicular road network, expanding the pedestrian system; and, providing bicycle facilities, system control (signage, markings, etc.), as well as transportation system planning and design. It should be noted that the City is not fiscally responsible for the costs associated transportation improvements required by new development.

## Funding Sources

A number of financial strategies are available to the City to finance the transportation improvements identified in the comprehensive transportation plan. Table 7-11 lists these strategies, their availability, and recommendations for the City to consider when implementing the improvement program. Historically, the City has relied on general fund monies and contributions from land developers to construct roadway improvements.

## Strategies

To provide a more consistent strategy for funding roadway improvements, the City should consider a more proactive strategy for transportation funding.

Historically, the City has relied on general fund monies and contributions from land developers to construct roadway improvements within the City. This strategy has resulted in a “piece-meal” development of the transportation system, where small improvements are made to an intersection rather than implementing improvements based on an overall plan for an intersection. The following section compares the City’s current method of relying on developer contributions and to an impact fee-based strategy.

**Table 7-11. Summary of Possible Local Funding Sources for Transportation Improvements**

Comments	Potential of Revenue Generation	Realistic Acceptance	Comments
Local Motor Vehicle Fuel Tax	Good	In-place	Funds distributed on a per capita basis
Local option Sales Tax	Good	Difficult	Requires County implementation
Impact Fees	Good	Good	Allows equitable funding of system improvements; some resistance by development community
Developer Contributions	Good	In-place	Development may support facilities that provide direct access; not likely to fund general system needs
Local Improvement Districts	Good	Difficult	Good for local access assessments for specific needs (e.g. sidewalks in commercial area); not good for mitigating through volumes
Bond Financing	Good	Moderate	Contrary to "pay-as-you-go" policy; may be little public acceptance if considered region wide bond measure
State and Federal Grants	Competitive	Fair	City has had some success in obtaining funds

### Developer Contributions

**Description.** Site developers contribute or build transportation facilities as part of their mitigation of traffic impacts to the road network. This strategy relies on Traffic Impact Analysis studies to identify intersections that no longer operate at acceptable standards. The City then requires developers to make necessary improvements to bring the intersection or roadway back to the City's standard. The use of developer contributions requires careful review of traffic studies and proposed mitigation measures by City staff.

**Benefits.** The primary benefit is the potential for immediate concurrency of the traffic impacts created by the development. The improvement is in-place and open to traffic as the development becomes operational. Contributions can also accelerate construction of some long-range transportation facility projects within the local jurisdiction. Both the developer and the City have the option of determining exactly when the improvement will be constructed. The option exists to have the developer do the work or fully fund a City administered project.

**Disadvantages.** The primary disadvantage is that developer improvements are focused on fixing the “immediate problem” and can result in solutions that may not be desired by the City. As mentioned earlier this “piece-meal” approach can often result in some unforeseen off-site impacts that may cause more traffic congestion or result in improvements that will need to be torn-out in the future to accommodate future improvements. If an intersection already operates below the standard, developers are only required to pay their “fair share” of the cost of an improvement—often requiring the City to fund a portion of the improvement. Further issues can arise over how to deal with developments which are approved after the original developer has completed a major improvement (late-comers agreements).

**City Application.** There are several recommendations that have been made to not only accommodate growing background traffic volumes, but also to meet the needs of future development. Direct contributions by the planned development in that area would expedite construction of these roadways links. Improvement construction is closely linked to the actual development of the land. In some cases, development of the City’s recently annexed areas as identified in the Black Diamond Urban Growth Area Agreement of 1996 require that certain transportation improvements (e.g., Pipeline Road) be in place prior to the time of development and/or the impacts of this development upon the road system.

## **Impact Fees**

**Description.** Local jurisdictions may assess impact fees on development to mitigate the impact caused by growth. This is based on the general acceptance of the principle that development adds to traffic congestion. Washington State law enables local jurisdictions to fund transportation improvements by assessing and collecting impact fees.

**Methodology.** Impact fees can be assessed in several ways. The most popular way determines the traffic generated by the proposed development and applies a per-trip fee. The per-trip fee is developed through a traffic impact fee study, which determines the amount to be assessed. The assessment is based on the number of trips generated by expected levels of land development and the costs of the improvements needed to meet the future traffic development. The per-trip fees are converted into land use-related measures such as dwelling units or square feet.

The City must develop and administer an accounting system. The funds are closely monitored to ensure that they are expended within a suitable timeframe (generally within 6 years from the date of payment) following development of the parcel on transportation-related improvements near the development.

**Benefits.** The City directly receives the funds, marked for specific transportation improvements, directly from the source of traffic generation—the developer. These

funds can be used to leverage grant funding by meeting the local matching requirements for cities.

**Disadvantages.** In general, the fees collected would not be expected to fully-fund the planned improvement thus requiring funding from additional sources. Careful analysis is needed to determine the appropriate fee structure that considers factors such as traffic related to adjacent communities and general growth in traffic levels. Questions can be raised on the methodology used to develop the “per trip fee” and the validity of assessing a generic broad-based fee on unique traffic impacts. Implementation of an impact fee system may also cause some areas to remain undeveloped, which would have otherwise been developed.

**City Application.** Impact fee systems are useful for communities that experience rapid development of multiple large vacant parcels. In the City, the primary cause for needed transportation improvements is the future growth associated with and caused by planned development of several large undeveloped parcels. An impact fee analysis is needed to determine whether or to what extent an impact fee system would generate the revenue needed for the system improvements and to determine the appropriate fee structure. Following the Black Diamond City Council adoption of an ordinance enabling impact fee collection, a suitable accounting system will need to be developed to ensure collection of fees on all future developments.

## 7.9. Plan Administration

### 7.9.1. Funding Matrix

Table 7-12 presents the recommended improvements, their estimated cost, and the timeframe in which they would be constructed, along with a suggested funding source. Future detail for each project will be developed as part of the annual TIP process. This section summarizes concurrency for the City to use in administering the comprehensive transportation plan.

### 7.9.2. Concurrency

#### *Legislative Requirement*

The GMA requires that each city and county incorporate a Concurrency Management System (CMS) into their comprehensive plan transportation element. A CMS is a policy to determine whether adequate public facilities are available to serve new developments.

“Local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a transportation facility to decline below standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development.” (RCW 36.70A.070)

The term “concurrent with the development” is defined to mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within 6 years of development.

Strategies that could be used in order to maintain compliance with concurrency include:

- Increasing roadway capacity or adopting transportation system management (TSM) strategies to accommodate the increase in demand use to development; and
- Adopting TDM strategies, such as increased transit access and rideshare programs, to offset the increase in demand.

Often it is a combination of improvements and strategies that create the most effective CMS.

### *CMS Implementation*

The GMA also requires cities to formalize a CMS into a process that shows measurable results. The City established a position on concurrency in a Concurrency Policy (T-12). The City’s CMS program is further defined below.

### **LOS standards and providing adequate funding**

The City recommends the following LOS standards:

Roadway. LOS D for all intersections along SR 169 and LOS C for all other arterials and collectors within the City. The City will evaluate stop-controlled intersections on an individual basis when the LOS standard is exceeded.

Transit. LOS standard is expressed in terms of a goal to monitor existing transit facilities and to improve transit operations as demand dictates.

Other. LOS standard is expressed in terms of a goal to provide pedestrian and bicycle facilities throughout the City.

Table 7-12. Transportation Improvement Project–Cost Estimates (2008 Values)

Figure 7-10. 18 Year Transportation Improvement Program

2008 Cost Estimates

Improvement	From	To	Length (miles)	Total Project Cost	2008	2009	2010	2011	2012	2013	2014	2015-2025	Type of Improvement	Potential Funding
<b>New Roads</b>														
Annexation Road	Robert's Drive	Apex Location on SR	1.5	\$10,166,371								\$10,166,371	New roadway construction	Development
Pipeline Road	SR 169	Lake Sawyer/Black	1.5	\$9,142,984								\$9,142,984	New roadway construction	Development
Robert's Drive Reconstruction	SR-169	Rock Creek BRIDGE	1.09	\$2,100,000					\$2,100,000				Construct 36' wide minor arterial roadway	Grant/Local/Development
North Connector	SR 169	South Connector	1.9	\$6,813,145								\$6,813,145	Construct 36' wide minor arterial roadway	Development
Lake Sawyer Road Extension	Auburn-9D Rd	Annexation Rd	0.4	\$2,682,581								\$2,682,581	Construct 36' wide minor arterial roadway	Development
South Connector	Annexation Rd	SR-169	1.5	\$5,996,813								\$5,996,813	Construct 36' wide minor arterial roadway	Development
<b>Overlays</b>														
Lake Sawyer Road	Auburn Black Diamond Rd.	320th blk	0.5	\$100,000	\$100,000								Overlay	Grant/Local
233rd Avenue SE	SE 293 Pl	South to end	0.1	\$35,000		\$35,000							Repair and overlay existing roadway	Local
Auburn Black Diamond Road	Bruckner's Way	West City Limits	0.06	\$100,000		\$100,000							Repair and overlay existing roadway	Grant/Local
SE 288th St	235th Ave SE	216th Ave SE	0.7	\$238,000			\$230,000						Overlay existing roadway	Grant/Local
Pacific Street Neighborhood Improvements	Lawson St.	Southerly Terminus of Pacific/Fifth Ave	0.2	\$500,000					\$500,000				Widen and Pave existing gravel roads, install storm drainage improvements	Grant/Local
Commission Avenue	Morgan Street	Apex 300' SW of Morgan St.	300'	\$20,000							\$20,000		Repair and overlay existing roadway	Local
Alley from Park Street to Railroad Ave to SR-169	Park St	SR-169	0.06	\$31,000							\$31,000		Pave an existing gravel roadway	Local
Lawson Street	City Limits	SR-169	1.06	\$500,000							\$500,000		Overlay existing roadway	Grant/Local
Lk Sawyer/Black Diamond Road	307th Pl SE	SE 292 ST	1.2	\$225,000							\$225,000		Overlay existing roadway	Grant/Local
Flatt Road	SR-169	City Limits/Existing Pavement	0.3	\$85,000							\$85,000		Pave an existing gravel roadway	Local/LID
<b>Overlay with minor widening</b>														
Sirth Avenue/ Baker Street	Lawson St.	SR-169	0.25	\$26,000							\$26,000		Minor widening and overlay of existing asphalt roadway	Local
Fifth Avenue North	Lawson St.	Northerly End	0.2	\$26,000							\$26,000		Minor widening and overlay of existing asphalt roadway with installation of storm drainage	Local
<b>Minor Road Improvements</b>														
Lake Sawyer Road Safety Improvement and Culvert Replacement	South Creek Crossing	North Creek Crossing	NA	\$300,000							\$300,000		Safety Improvement/Install guard rail both sides of roadway. Install new culvert(s).	Grant/Local
<b>Major Road Improvements</b>														
SR-169 widening	300 ft. South of Lawson St	300 ft. North of Baker St	0.2	\$1,350,000					\$1,350,000				Widen SR 169 to three lanes and widen approaching intersections	Grant/Local/Development
Railroad Ave Construction	Metzno Street	Baker Street	0.21	\$1,700,000	\$1,700,000								Rebuild Existing Roadway/Stormdrainage	Grant/Local
<b>Traffic Controls</b>														
SR169/Roberts Dr/Lawson Connector/Street				\$435,484							\$544,355		Roundabout or Signal	Development/Local
Jones Lake Rd/Lono Connector/SR-169				\$435,484							\$544,355		Roundabout or Signal	Development/Local
Pipeline Road/SR-169				\$435,484							\$544,355		Roundabout or Signal	Development
North Connector/SR-169				\$435,484							\$544,355		Roundabout or Signal	Development
Pipeline Road/North Connector				\$435,484							\$544,355		Roundabout	Development
Pipeline Road/Lake Sawyer Rd				\$435,484							\$544,355		Roundabout	Development
Robert's Drive/North Connector				\$435,484							\$544,355		Roundabout	Development
Auburn-Black Diamond Rd/Pipeline Rd				\$435,484							\$544,355		Roundabout	Development
Morgan St/North Connector				\$435,484							\$544,355		Roundabout	Development
Lake Sawyer Extension Rd				\$160,306							\$163,306		Roundabout	Development
South Connector/North Connector				\$435,484							\$544,355		Roundabout	Development
<b>Channelization</b>														
SR 169/Jones Lake Road				\$300,000							\$300,000		Channelization Improvements	Grant/Development
Intersection Improvements in Morganville Neighborhood				\$80,000							\$80,000			Grant/Local
Lawson St. & Newcastle Dr. Intersection Repair				\$25,000			\$25,000							Grant/Local
B.O./Ravensdale Road Intersection				\$227,000				\$227,000						Grant/Local/Development
<b>Sidewalk</b>														
Morgan Street Sidewalk Phase II	Abrams Avenue	Robert's Drive	0.3	\$580,000		\$580,000							Install new sidewalk	Grant/Local
Robert's Drive Pedestrian Trail/Sidewalk	SR 169	Morganville Neighborhood	0.8	\$1,500,000			\$1,500,000						Install new pedestrian trail/sidewalk	Grant/Local
Lawson Hill Sidewalk	City Limits	SR 169	1.06	\$450,000							\$450,000		Install new sidewalk	Grant/Local
<b>TOTALS</b>				\$49,809,839	\$1,800,000	\$715,000	\$1,735,000	\$227,000	\$3,950,000	\$680,000	\$2,451,710	\$38,219,829		

A TIP with a potential funding plan has been prepared in connection with the comprehensive plan. All facilities meet the LOS standards based on existing, 6-, and 20-year forecasts. The potential funding plan identifies possible sources for improvements identified in the comprehensive transportation plan.

### **Monitoring/Analyzing Available Transportation Capacity**

The City requires a Traffic Impact Analysis (TIA) for developments that impact the transportation system. A TIA is a specialized study of the impacts a development will have on the surrounding transportation system. It is specifically concerned with the generation, distribution, assignment, and accessibility of traffic to and from the development, and the impact of development traffic on the adjacent roadway system. The City's guidelines for TIAs are similar to those of other communities in western Washington regarding when a TIA is required for a development and the scope of work needed to effectively analyze the impacts of site generated traffic. Generally, if a development adds 10 or more vehicles in the PM peak hour a TIA is required. If deemed necessary by the City, the TIA may also address transit and other modes for impact assessment. The City uses the adopted LOS standards as guidelines for assessing concurrency and mitigation.

A system to monitor concurrency was developed and is illustrated in Figure 7-7. The most important process is monitoring available funding for necessary improvements. As noted in the chart, there are four options for the City to consider:

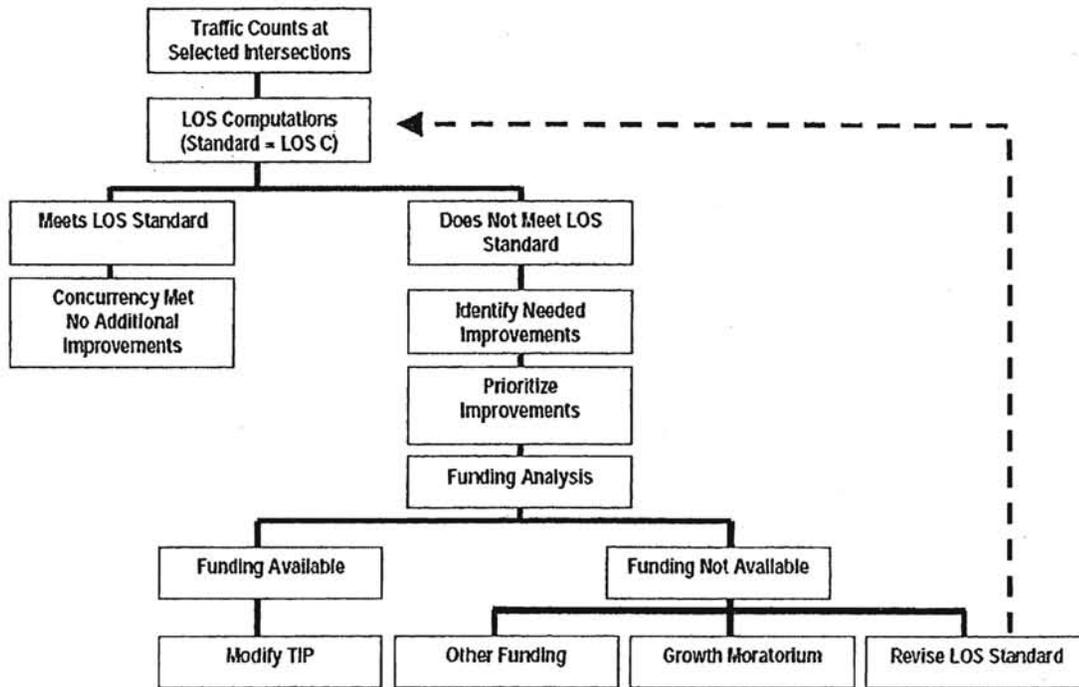
- **Other Funding Sources.** Look for other funding sources, such as dedicating the second 1/4 of 1 percent of the Real Estate Excise Tax for street projects.
- **Reassess LOS standards.** GMA allows a community to change LOS standards annually. Any changes to LOS standards should be done in connection with annual TIP reviews.
- **Reassess Land Use.** GMA requires that if the funding for capital improvements (such as roads) cannot be met, the land use or levels of development within the plan should be re-assessed.
- **Growth Moratorium.** Per GMA requirements. If funding cannot be met, and the LOS standard unchangeable, then GMA requires development to be stopped until either issue can be resolved.

### **C. Analyzing External Influences on Concurrency Management System.**

The City's LOS standards will also be used to evaluate impacts to the transportation system created by development outside the City. The City's annual TIP development process will evaluate if concurrency standards have been exceeded and identify the

improvements needed to maintain the City's standards. The City should seek appropriate funding sources to mitigate through traffic impacts.

Figure 7-7. Concurrency Management System



## 7.10. Transportation Plan

The Black Diamond Comprehensive Transportation Plan emphasizes that the transportation system should be designed to provide safe and efficient vehicular circulation, while at the same time maintaining a pedestrian-oriented "small town" environment. The City plans to continue developing its transportation network as a grid system. The Plan will use a grid of similar smaller roads as well as linking existing and planned neighborhoods to accommodate future growth. Street construction standards are to be used to reinforce the transportation goals and policies.

The plan's policy guidance includes using the existing transportation system efficiently and encouraging transportation alternatives, such as transit, HOV use, and pedestrian and bicycle facilities. Cooperation between affected jurisdictions (the City, State of Washington, King County and the Puget Sound Regional Council) in planning for state highways and county roads is also supported by City policies. The presence of both state and county roads as the primary arterial system requires coordination with King County and Washington State in the planning of these roads.

### 7.10.1. Alternative Modes

The Comprehensive Plan identifies that a comprehensive network of non-motorized facilities, including trails, sidewalks, and bicycle facilities to be developed. These facilities would enhance non-motorized mobility options and reduce automobile dependency. Similarly, an off-street parking plan for Old Town, a park-and-ride for City residents, and visitor parking to serve bicyclists who come to the City to ride on weekends are identified as desired elements of the plan.

### 7.10.2. Funding Strategies

To provide for the necessary transportation facilities, the plan identifies an ongoing program of transportation facility planning and development funded through impact fees, developer contributions, and public funds. The plan identifies that the private-sector should fund its fair share of transportation facility improvement costs.

### 7.10.3. Transportation Improvement Program

Road improvement projects for existing deficiencies are identified for the short term (2010 to 2016) as required by GMA. New roads are identified for both the short-term and the long-term (2017 to 2025) for better circulation for vehicles. The road system

identified in Figure 7-4 and Figure 7-6 form the basis for the long-term motorized transportation improvements. Non-motorized transportation improvements will be identified in the City's update to the trails plan.

The improvements proposed for the short and long term are intended to mitigate the impacts of anticipated traffic growth. Construction of additional roads identified in the proposed Arterial and Collector System Plan will serve to divert and spread traffic flows.

#### **7.10.4. Transportation and Land Use Element Coordination**

The Black Diamond Comprehensive Plan Transportation and Land Use Elements are intended to work together to maintain the City's "small town" character in the face of increasing regional traffic. Surrounding King County land uses and other regional land use patterns may produce adverse effects on City traffic. Land use patterns that perpetuate automobile dependency would be expected to increase traffic in the City. It should be noted that an isolated change of land uses within the City may not, by itself, be expected to produce improved City-wide mobility.

#### **7.10.5. Transportation Facilities and LOS Standards Coordination**

Intergovernmental coordination is essential for the cost-effective provision of transportation services. The City does not possess the resources nor is it fiscally responsible for addressing all the of the transportation circulation system needs that might be identified through transportation planning. The City has reviewed the plans of the County and State Department of Transportation and has assessed the impact of their plan on the transportation facilities in the City. The LOS standards and proposed transportation improvements to be adopted by this element are not inconsistent with the LOS standards or plans of other jurisdictions. In addition, the City is committed to actively seek financial resources necessary to achieve the goals of the Comprehensive Transportation Plan.

### **7.11. Transportation Goals and Policies**

Transportation goals and policies provide a framework for the comprehensive transportation plan and also a means for making decisions. The goal of providing a high quality transportation system must be constantly balanced with the goal of minimizing public expenditures. Similarly, the goal of quality transportation must be balanced with the effects a particular project may have on the environment.

The goals and policies presented below are to be used to help guide the City's decision making. Because it is possible that some goals and policies could conflict with one another in particular circumstances, the City and the public may be called upon to balance the various goals. The analysis of any given proposal should consider all modes of transportation and all methods of efficiently managing the transportation system. Included in the text is a discussion of the concepts that support the goals and policies.

### **7.11.1. Transportation Goals and Policies**

The goals set forth below form the foundation for this transportation plan. The planning policies describe how the goals will be measured and evaluated.

Goal T-1:        Establish an adequate and well-maintained transportation system that provides safe and cost-efficient movement of people and goods

#### **Design, Construction and Maintenance Policies**

The following policies guide the design, construction, operation, and maintenance of the City's transportation system. An underlying objective is to develop a multi-modal transportation system to serve all existing and future land uses. The policies address design and construction standards of transportation facilities to accommodate all types of transportation safely and efficiently. Level of Service standards, maintenance standards, and the need for Transportation Demand Management strategies are also addressed.

#### **Policy T-1        Roadway Design Policy:**

Ensure adequate and safe access to property via a system of primarily public and limited private roads.

A range of design and construction standards for all facilities should be adopted by the City. All roadway design will be coordinated with King County, Washington State, the Federal Highway Administration, and Metro Transit to achieve compatible design criteria, where applicable. The standards will comply with federal and state design criteria. The City will also investigate allowing "low impact development" designs that minimize pavement width and emphasize the use of storm drainage techniques to increase natural treatment and infiltration.

**Policy T-2      Connectivity Policy:**

Provide an interconnected network of roads and trails for ease and variety of travel.

The City of Black Diamond recognizes that increasing connections throughout the City not only reduces traffic congestion but also increases the sense of unity in the community. Therefore, the City will limit the use of cul-de-sacs, dead end roads, loops, and other street layouts that form barriers to travel. Private streets should generally only be allowed to serve a limited number of lots/dwelling units and/or only in unique circumstances. Private streets should not detract from overall motorized and nonmotorized circulation. The City will encourage the use of trails and other connections that provide ease of travel between neighborhoods and community centers.

**Policy T-3      Level of Service Standard Policy:**

Adopt levels of service that reflect the preference of the community. Ensure that new development does not degrade transportation facilities below adopted standards.

The City will adopt a level of service “C” for peak-hour traffic flow on roadways and intersections within the Black Diamond city limits. The levels of service are based upon the *Highway Capacity Manual* and are detailed in the Transportation Element.

**Policy T-4      Maintenance Policy:**

Maintain the City’s transportation system at a level that is comparable with the design standards applied to new facilities.

The City will establish programs and schedules, such as a pavement overlay program, for the level and frequency of maintenance on its roadways, bikeways, and sidewalks.

**Policy T-5      Access Policy:**

Limit and provide access to the road network in a manner consistent with the function and purpose of each roadway.

The City will seek consolidation of access points to state highways, arterials, and major collectors. This will complement the highway

and arterial system, reduce interference with traffic flows on arterials, and discourage through traffic on local roads.

**Policy T-6 Local Access Policy:**

Establish a standard to limit the number of dwelling units that may be served before a second point of access is required. Limit the length of dead end streets by either distance or number of lots served.

Safe and convenient access requires multiple routes of ingress and egress. This is important for both residential convenience and for fire and police protection. A standard should be developed that balances unique topographic characteristics, future development plans, and the need for providing adequate access.

**Policy T-7 Transportation Demand Management (TDM) Policy:**

The City of Black Diamond will encourage demand management of the transportation system by:

1. Encouraging the use of High Occupancy Vehicles - Buses, carpools, and vanpool programs through both private programs and the direction of Metro Transit;
2. Promoting flexible work schedules allowing use of transit, carpools, or vanpools;
3. Promoting reduced employee travel during the daily peak travel periods through flexible work schedules and programs to allow employees to work part- or full-time at home or at an alternate work site closer to home; and
4. Encouraging employers to provide TDM measures in the work place through such programs as preferential parking for HOVs, improved access for transit vehicles, and employee incentives for sharing rides.

**Policy T-8 Pedestrians, Bicycles, and Transit Policy:**

Lessen dependence upon and the influence of the automobile by encouraging travel by other means. Provide for the safety of pedestrians and bicyclists. City actions will:

1. Develop design standards for new roadways that incorporate features required by pedestrian, bicycle and transit facilities;

2. Promote transit by developing design standards that provide accessibility through bus pullouts, pedestrian access to bus stops and bus shelters; and,
3. Seek to complete its sidewalk system and pursue development of a network of off-road facilities for non-motorized travel.
4. Cooperate in regional efforts in exploring the feasibility of DMU service to southeast King County.

Policy T-9

**“Old Town” Parking Policy:**

Encourage the construction of additional parking in the historic “Old Town” area of Black Diamond, both within the public right-of-way and in off-street lots.

The City recognizes that parking in the “Old Town” area of Black Diamond is essential to the continued growth and prosperity of the businesses in this area of the City. Therefore, the City will promote the addition of parking spaces in the “Old Town”, possibly to include the use of a Local Improvement District to fund these parking improvements.

Goal T-2:

Provide a transportation system that preserves the “small town” character of the City and minimizes the environmental impact to critical areas.

**Road Character and Right-of-Way Policies**

Policies contained in this subsection promote the unique “small town” characteristics of Black Diamond and address issues regarding land use development emphasizing desired locations for development throughout the City of Black Diamond. These policies also address the City’s view on right-of-way issues.

Policy T-10

**“Small Town” Character Policy:**

Enhance the “small town” character that the City currently possesses.

This can be done by the following:

7. Discourage widening of SR 169 to a four or five lane facility thus creating a “thoroughfare” that will tend to divide the City;
8. Encourage landscaping, parkway trees, and compatible architecture in the design and construction of roadways,

especially SR 169, and other facilities along selected corridors. Minimize obtrusive signs through provisions in the zoning code;

9. Limit the number of traffic signals within the City of Black Diamond by considering the use of roundabouts as the first solution where appropriate; and
10. Adopt new road standards and development guidelines to minimize paving widths; preserve desirable trees and vegetation through minimized right-of-way clearing; and allow creative designs.
11. Adopt separate road standards for the older, historic portions of the City that are specific to individual street geometries, with the goal of not causing undue disruption to existing neighborhoods.

**Policy T-11 Environmental Protection and Conservation Policy:**

Design transportation facilities within the City of Black Diamond that minimizes adverse environmental impacts resulting from both their construction and operation.

The City will fulfill this need by:

12. Aligning and locating transportation facilities away from environmentally sensitive areas;
13. Encouraging storm drainage system designs to avoid direct drainage into environmentally sensitive areas;
14. Mitigating unavoidable environmental impacts; and
15. Soliciting and incorporating the concerns and comments of interested parties provided such comments are consistent with the goals, objectives, and policies of the Comprehensive Plan.

**Policy T-12 Right-of-Way Policy:**

Retain all existing transportation system rights-of-way, and to identify, acquire, and protect rights-of-way for future roadway and bikeway facilities.

The policies provided in this Transportation Plan will be used by the City to identify current and future transportation system needs. The City will identify specific transportation corridors and protect needed rights-of-way as soon as possible. Some methods used to acquire and preserve rights-of-way include:

16. Requiring dedication of rights-of-way as a condition for development when the need for such rights-of-way is linked to the development;
17. Requesting donations of rights-of-way to the public;
18. Purchasing rights-of-way by paying fair market value when donations and/or required dedications are not possible;
19. Acquiring development rights and easements from property owners; and,
20. Protecting rights-of-way from encroachment by structures, substantial landscaping, or other obstruction is also encouraged by the City. Protection methods may include minimum setback requirements for property improvements and development of guidelines regarding installation and maintenance of landscaping within the public right-of-way.

Goal T-3: Provide a transportation system that has the adequate financing needed to fund the necessary transportation improvements. Funding will come from both public and private sector participation.

#### **Funding, Concurrency, and Impact Mitigation Policies**

The City faces the challenge of making the best use of the limited funds available to finance transportation projects. Issues addressed by these policies include concurrency, identifying favorable funding sources, and deciding impact mitigation assessments.

#### **Policy T-13 Concurrency Policy:**

Ensure that transportation improvements or strategies are constructed or financed concurrent with development. This also includes concurrency with plans of other transportation agencies.

The City requires either a construction or financial commitment for necessary transportation improvements from the private or public sector within 6 years of development. To monitor these commitments, the City's Concurrency Management System includes the following:

21. Adopting a traffic impact fee program;
22. Assessing level of service;

23. Determining compliance with the adopted level of service standards;
24. Identifying facility deficiencies; and,
25. Making appropriate revisions to the Six-Year TIP.

**Policy T-14 Funding Sources Policy:**

Secure adequate long-term funding sources for transportation through all feasible and available methods.

These methods may include:

26. Taking advantage of state funds, such as the Transportation Improvement Account (TIA), and the Public Works Trust Fund (PWTF);
27. Encouraging Washington State Department of Transportation improvements on the state highway system;
28. Encouraging the use of Local Improvement Districts (LID) by property owners to upgrade roads to meet City road standards;
29. Requiring impact mitigation for projects as guided by this Plan. Impact mitigation payments and/or seeking voluntary contributions from developers may also be pursued; and
30. Seeking funding from the federal and all other available grant sources.
31. Traffic impact fees may also be pursued for selected projects.

**Policy T-15 Financial Impact Mitigation Policy:**

Require developers to contribute their fair share towards the transportation improvements required to meet the LOS standards. Impact mitigation efforts may include:

32. Requiring developers to assist in providing additional transportation facilities and services in proportion to the impacts and needs generated by development; and,
33. Encouraging developers to design projects that generate less vehicular traffic.

Goal T-4 A transportation system that is compatible with Washington State, King County, neighboring cities, and other transportation providers.

### **Coordination and Consistency Policies**

The policies contained in this subsection address such issues as multi-agency planning and coordination, consistency of transportation improvement programs and designs among jurisdictions, and cooperation among agencies that fund, build and operate the transportation system within the City of Black Diamond.

Policy T-16 **Traffic Impact Analysis Policy:**

Require that a Traffic Impact Analysis (TIA) be prepared for new developments.

The City will require a TIA for new developments that are proposed in the city limits of Black Diamond that generate ten (10) or more vehicle trips in the PM peak hour or are otherwise determined to have the potential for an adverse impact upon the City's transportation system. The study should include site access points, arterial and collector roadways and intersections of arterials and collectors that are impacted by 10 or more PM peak hour trips, and may not be limited to intersections located within the City of Black Diamond. The TIA shall be prepared by a licensed traffic engineer and will be accepted after approval by the City.

Policy T-17 **Intergovernmental Agency Coordination Policy:**

Coordinate planning, construction, and operations of transportation facilities and projects with other governmental agencies.

This policy supports and complements the transportation functions of Washington State, King County, neighboring cities, Puget Sound Regional Council, Metro Transit, and other entities responsible for transportation facilities and services in the City of Black Diamond.

Policy T-18 **Multi-modal Coordination Policy:**

Coordinate planning and operation of efficient and varied means of transportation for the City of Black Diamond's transportation system.

This will be accomplished by the following:

34. Metro Transit provides transit service in the Black Diamond urban area. The City invites Metro to evaluate expanding regular fixed transit service within Black Diamond.
35. The City will continue to coordinate with Metro Transit to provide transit connections between Black Diamond and other parts of King County.
36. The City will support development of regional park-and-ride lot facilities by Metro Transit and the Washington State Department of Transportation. The City encourages such lots on sites promoting compatible land uses and along primary travel corridors for travel to King and Pierce County urban areas.
37. The City will provide for pedestrian and bicycle facilities in the City's road system through provisions in the City's design standards.

# Chapter 8. Capital Facilities

## 8.1. Introduction

### 8.1.1. Purpose of the Capital Facilities Element

This Capital Facilities Element has been prepared in accordance with Section 36.70A.070 of the Growth Management Act (GMA) to address the need for and the financing of capital facilities in the City of Black Diamond (City) and the surrounding Potential Annexation Area (PAA). The GMA requires all comprehensive plans to include a Capital Facilities Element that analyzes the need for future capital improvements to support the development goals stated in the Land Use Element, as well as the funding mechanisms available for implementation.

The Capital Facilities Element includes the following:

- Inventory of existing City-owned capital facilities, showing the approximate location and identifying the approximate capacities of those facilities;
- Forecast of future needs (for the next 6 years minimum);
- The proposed locations and capacities of expanded or new capital facilities;
- A 6-year plan that also identifies potential revenue sources needed to fund the timely construction of the capital facilities, including specific identification of funding programs or sources of public money for such purposes; and
- Coordination with the Land Use Element of the City of Black Diamond Comprehensive Plan to provide consistency with each other.

The GMA requires the Capital Facilities Element to address all public facilities except transportation facilities, which are addressed separately in the Transportation Element of this plan. The GMA also requires that the Transportation Element and Capital Facilities Element each identify facility/system capacity and funding mechanisms/sources for future necessary capital improvements. These items have been consolidated, for ease of reference, and appear in this section of the plan.

The GMA contains requirements pertaining to the concept of *concurrency*, which mandate that the City adequately demonstrate within this plan that public utilities and modes of transportation will be available to support growth at the time such development (growth) occurs. Thus, the financial planning section included herein (as required by GMA) identifies a financial program for implementing this set of compiled improvements.

### *Planning Area*

It is the intent of the GMA that all development requiring urban services will be located in the Urban Growth Area (UGA), and will have these services available to them in a timely and financially feasible manner. The Capital Facilities Element is intended to guide the City in its decision making process in order to achieve the community's goals; in particular, to provide utility service at an acceptable standard (approved minimum level of service [LOS]) without compromising the existing LOS currently provided to its citizens.

### *Organization of Chapter*

Sections 8.3 to 8.14 of this chapter are organized in the following manner for each capital facility or service:

- Inventory
- LOS
- Forecast of Future Needs

Larger capital facility sections include a brief introduction that includes a concept description and relevant goals prior to the inventory.

## **8.1.2. Future Considerations for Capital Facilities Planning**

### *Growth Uncertainties*

The City has had a development moratorium in place since 2001 in order to give it time to upgrade necessary infrastructure, including water and sewer systems, to

accommodate future development, and to update required plans and regulations. There has been little development outside of that vested prior to 2001.

Given the potential development within the City and areas anticipated to be annexed soon, a large wave of development is almost certain in the near future. Following the lifting of the development moratorium, building permit activity is anticipated to increase significantly begin in 2010. The City of Black Diamond Comprehensive Plan contemplates significant residential growth in the City limits and the impact of that growth on capital facility needs.

### *Additional Long-Term Planning*

There are many unresolved and unknown issues related to the residential development expected in the near future once the moratorium is lifted. Once the moratorium is lifted and development projects begin permitting, the City will have a window of time to revisit and consider how capital facility needs are to be met. During this time, the City may wish to develop a series of work plans for administrative maintenance services, police, parks, and utilities to consider how the City could most appropriately and effectively deal with meeting its long-term needs.

These work plans could address:

- reevaluating long-term facility needs once a clearer picture of the amount, timing, location, and scale of development is known;
- revisiting and adjusting LOS standards to balance services with the ability to provide them; and
- exploring alternative forms of service provision.

## **8.1.3. Overview of City Staffing**

### *Considerations in Setting LOS Standards*

LOS standards are a management tool that establishes benchmarks or measures to determine the adequacy of public services provided. They also represent those values that are deemed most important to the community's quality of life. The establishment of LOS standards provides a useful basis from which to project future staffing and facilities needs based on anticipated population growth. These standards are intended as planning guidelines, with actual staffing decisions to be made by the City Council during the annual budget process, taking into account both actual needs and financial feasibility.

LOS standards allow planners to estimate approximate staff and facilities that will be needed to provide basic municipal services to growing populations. Washington

State law establishes that “those public facilities and services necessary to support development shall be adequate to serve that development at the time the development is available for occupancy and use without decreasing current levels below locally established standards.” (Revised Code of Washington [RCW] 36.70A.0202(12))

LOS measures are typically presented as ratios of facility capacity to demand. Examples include number of acres of parks per 1,000 population, or the response time in minutes/seconds for a fire distress call. However, it is important to note that LOS measures are generally quantitative, and therefore measure the *output* and not necessarily the *outcome* of public services.

LOS measures should reflect local values. The values and needs of each community will differ, and this uniqueness should be reflected in the LOS standards that are adopted. Several overarching criteria should be considered when developing standards for a community.

LOS standards should:

- assure that the community’s most important service needs are met;
- recognize the limitations of any measure and strive for a balance between quantitative and qualitative measures; they should ensure a balance between input, output, and outcome measures;
- be realistic, achievable, and flexible;
- be tailored to the needs and values of the individual jurisdiction; and
- represent the values and needs of the community, and should be embraced by local decision makers and the general public; national LOS standards present the framework for which local LOS measures may be developed, but ultimately, local LOS measures should be a reflection of the community and the unique characteristics and values that are important to its residents and businesses.

## 8.2. Capital Facilities Goal and Objectives

Capital Facilities Goal: Ensure that public services are available to support development consistent with the Land Use Element.

Objective CF-1: Ensure public utilities and facilities provision maximizes public safety, minimizes adverse environmental impacts, and is compatible with surrounding land uses.

Objective CF-2: Consider economic development when planning the capital facilities infrastructure.

Objective CF-3: Ensure that those public services and facilities necessary to support development are adequate to serve the City both during construction and completion of development.

Objective CF-4: Require new developments to pay their fair share of the cost of providing public services.

## 8.3. Administrative Services

### 8.3.1. Administrative Services Concept and Policies

#### *Administration and Maintenance Services*

Funding for City administrative services should be sufficient to provide needed services, and where possible, "economies of scale" should be realized. New growth, which necessitates or benefits from these services (residential, commercial, or industrial), should pay its fair share of associated facilities costs. The City recognizes that employees and businesses, as well as residents, will contribute to demand for City services.

#### *Administrative and Maintenance Services Policies*

- Policy CF-1: Provide adequate City Hall and other municipal space as needed to meet the demands for City services.
- Policy CF-2: Provide for the necessary additional services while recognizing appropriate "economies of scale" as growth occurs in the City.
- Policy CF-3: Require new development to finance the facilities and services needed to support the development wherever a direct connection of benefit or impact can be demonstrated.

### 8.3.2. Inventory

#### *Municipal Buildings*

The City's facilities include the former City Hall on Lawson Street, which houses the police department, the City Council chambers and the Black Diamond Municipal Court; the Black Diamond Cemetery at Morganville; and the City shop across from former City Hall, which consists of one garage, storage room, and yard. City administrative offices are currently located within leased modular buildings and leased office space at 24301 Roberts Drive. The City also owns the Black Diamond

Museum property on Railroad Avenue and leases the facility to the Black Diamond Historical Society.

### *Equipment*

The City's maintenance and operation equipment includes the following: road grader, slope mower, dump truck, and several general public works vehicles.

### *Other Facilities*

A Community Center and a King County Library System branch are also located in the City. The Community Center, located on Highway 169 near the Roberts Drive intersection, contains approximately 12,000 square feet on two floors. The center, which opened in October 1990, now offers programs for seniors and youth and classes and meeting space for community groups. The center is owned and operated as a nonprofit entity, the Black Diamond Community Center Association, with its own Board of Directors. The center has also acquired the old 3,740 square foot elementary school gymnasium and relocated it to a site between City Hall and the City shops

The Black Diamond branch of the King County Library System is located on Roberts Drive. The library is open 59 hours a week. In addition to the collection of books, the library maintains collections of magazines, videos, and compact discs (CDs). The library computer system allows the public to order any book in the King County system and have it mailed directly to their home.

### **8.3.3. Level of Service**

LOS standards for administrative buildings and services are not subject to concurrency and are listed here as a helpful management tool. The size of City facilities will be dictated by the number of employees needed to serve City residents. The recommended LOS standard for municipal building space is to provide 330 square feet of space per each full-time equivalent employee (FTE).

### **8.3.4. Future Needs**

Municipal space needs will be affected by several variables, including the development of large residential developments, commercial/ industrial growth, and policy decisions on how to deliver governmental services. The City already lacks enough permanent administrative office space to meet LOS standards, and this will increase as City staff increases. However, without any funding sources for new administration facilities, it may be some time before the facilities are built.

Within the next year, the City should create a work plan to address the long-term facility needs for administrative and maintenance services.

The work plan should:

- evaluate how services are provided and explore other forms of service delivery, either directly or contracted;
- develop a facility needs assessment as part of a Facilities Master Plan, based on service delivery decisions; and
- create a prospective capital projects list that the City might undertake or fund in the future.

## **8.4. Police**

### **8.4.1. Police Concept, Objective, and Policies**

#### *Police Services Concept*

The police department will continue its programs that support community policing to maintain a positive presence and sense of safety within the community.

As the City grows over the next 20 years, additional personnel and equipment will be required to maintain current service levels. An expanded police station would also be required. Reducing the turnover of police personnel is also necessary to maintain an efficient and adequate LOS.

#### *Police Protection Objectives and Policies*

Objective CF-5: Ensure that adequate provisions are made to accommodate the demands of new development on police services.

Policy CF-4: The City shall maintain no less than the existing ratio of 3.5 police officers per 1,000 population. As the department reaches a higher economy of scale, the ratio may be reduced to 2.75 officers per 1,000.

### **8.4.2. Inventory of Department Staff, Facilities, and Programs**

The Black Diamond Police Department is a full-service law enforcement agency serving the citizens and business population of the City. The police department currently is staffed by 12 commissioned police officers, one reserve officer, one records manager, and one part-time support position. Core services include

responding to calls for service, proactive patrol, special operations, traffic enforcement, marine services, records, evidence, crime prevention, and narcotics and criminal investigation.

The police fleet currently consists of 11 patrol cars, two administrative vehicles, one undercover vehicle, one off-road Jeep, one marine boat, and one marine Jet Ski™.

The police department responds to calls 24 hours per day, 7 days per week, through requests for service via contracted dispatch with Valley Communications. The department is housed in approximately 1,600 square feet of space in a building shared with the Municipal Court, City Council Chambers, and the Emergency Operations Center.

The department is committed to active involvement and participation with the community. Community policing is a partnership of community and police working together to promote a feeling of safety and security among members of the community. These efforts are accomplished by:

- home and business security checks,
- extra patrols upon request,
- extra traffic control upon request,
- referrals to domestic violence counseling,
- Drug Abuse Resistance Education (D.A.R.E.) and early childhood education programs,
- supervision of and participation in block watch programs,
- instruction of traffic school program,
- marine safety courses,
- court security,
- the McGruff housing program,
- National Night Out Against Crime and other community activities participation, and
- the Narcotic K-9 handler program.

The Black Diamond Police Department received 2,511 calls for service in 2007; these calls do not include officer initiated traffic stops. Matters investigated include property crimes, traffic issues, and violent crimes. The City has seen a sharp rise in

violent crimes in recent years with a continuing street level drug problem and a sharp rise in methamphetamine related problems in recent years.

The department also provides a marine patrol presence on Lake Sawyer during the summer months, which serves a large recreational user population. This enforcement effort was implemented after the annexation of Lake Sawyer into the City.

The average response time in high priority calls is between 3 and 4 minutes; lower priority calls average 4 to 8 minutes.

The department is also an active member of the Coalition of Small Police Agencies (CSPA) of King County, which has proven to be an extremely effective group to consolidate training and other cooperative efforts to bring citizens the most value for their tax dollars. The Major Crimes Task Force and Special Operations Team are just two of CSPA's programs that have proven to be highly utilized.

### 8.4.3. Level of Service

The current LOS for police is 3.5 officers per 1,000 residents. As the City grows, the LOS standard can be reduced to 2.75 officers per 1,000 residents through efficiency gains in the provision of police services. The LOS for police is proposed to decrease with each 1,500 to 2,000 increment of population growth, as shown in Table 8-1.

**Table 8-1. Police Level of Service**

Population Level	4,000-5,000	5,000-7,500	7,500-10,000	10,000-13,000	13,000-16,000	16,000-20,000
Police Officers	8	8.2	12.5	14.7	21	29
Sergeants	2.6	2.3	3.25	3.7	4.6	6.25
Administration	1.5	1.6	1.6	2	2.6	4.75
Total Staff	12.1	12.1	17.35	20.4	28.2	40

### 8.4.4. Future Needs

Currently, the most pressing need for the police department is additional office space. The department has studied adequate space requirements, and a 4,500 to 5,500-square-foot facility is currently needed to meet immediate needs as well as anticipated growth over the next 5 to 10 years.

The growth in population for the City will require additional officers and capital facilities, which will include vehicles, administrative office space, and equipment.

As county jail costs continue to rise, particularly in light of King County's funding issues, additional resources will be necessary. The Buckley City Jail continues to be the primary holding facility for misdemeanor offenders. The City also contracts jail services with the cities of Enumclaw and Issaquah.

## 8.5. Parks, Recreation, and Open Space

### 8.5.1. Parks, Recreation, and Open Space Concepts, Goal, Objectives, and Policies

#### *Parks, Recreation, and Open Space Plan Concept*

The City is rich in recreational potential but poor in existing facilities. Given demand for trail and park use in town, and given the potential corridors and open space opportunities, the City has the opportunity to provide for a first-rate park, recreation, and trail system.

To meet the community's park and recreational needs, however, the City will have to focus on existing gaps in its park and recreational system, and the future needs of the City as it grows over the next 20 years. Current and future needs include having a full variety of park types, such as open space and neighborhood parks, as well as enough recreational facilities, such as baseball diamonds, to support the City's population.

These needs can be met through the strategic location of new parks and facilities as well as the maintenance and upgrading of existing facilities. New park and recreational facility standards for the City will guide the type and location of the new parks and facilities needed, and enable the City to require new development to pay its "fair-share" of such facilities.

#### *Park, Recreation, and Open Space Goal, Objectives, and Policies*

Parks, Recreation, and Open Space Goal: Foster and support the stewardship of natural resources throughout the community in the form of parks, open space, and recreation to serve the needs of the City's residents.

Objective CF-6 Parks should include a variety of active, passive, developed, and natural parks and open space.

Objective CF-7: Retention of the area's natural beauty and ecology should be represented in the park and open space system.

- Policy CF-5: Provide the City with a system of recreation facilities that are attractive, safe, functional, and available to all segments of the population.
- Policy CF-6: Encourage development of a trail system which will connect the City's historic district, neighborhoods, Jones Lake, and Morganville with an integrated King County regional trail system, the new park site at Lake Sawyer, and a state trail system along the Green River.
- Policy CF-7: Repairing deficiencies and maintaining the existing park and recreation facilities should be a top priority.
- Policy CF-8: Development of new parks within the City shall involve:
- a. Obtaining land by purchase or dedication.
  - b. Developing parks with emphasis on active play areas, park benches, a creek trail or trail connections, and highlighting the historical aspects of the town's development.
- Policy CF-9: Current Parks, Recreation, and Open Space LOS guidelines include:
- a. Active Parks: 5 acres per 1,000 population - neighborhood and community parks.
  - b. Passive Parks: 2 acres per 1,000 population.
  - c. Open Space: As identified in the Open Space Plan and Policies.
- Policy CF-10: Maintain an up-to-date Parks Plan.

## 8.5.2. Inventory

### *City of Black Diamond Park Facilities*

Currently, the City has limited park and recreational lands, facilities, and programs. The City has 195 acres of parkland ranging from passive open space to a BMX bicycle track. The largest park is the 143-acre Lake Sawyer Regional Park (undeveloped) located at the south end of the lake.

Recreational facilities the City owns and operates include a basketball court, a tennis court, and a skate park at "School Park," which is adjacent to the Black Diamond Elementary School. The only other recreational facilities within the City are the playfield located at the elementary school, a gymnasium operated by the Black

Diamond Community Center, and a BMX bike track next to the community center’s gymnasium. In-town recreation programs are minimal due to the lack of facilities.

Two pocket parks (Coal Car Memorial Park and “Union Stump”) are formed from public right-of-way, and serve as gateway elements for the City. Coal Car Memorial Park, at the intersection of State Route (SR) 169 and Roberts Drive, contains a coal car marker reminiscent of the City’s mining history. “Union Stump,” which is near Morganville, served as the speaker platform during the union/mining era. Each site is less than 0.30 acre, and neither provides recreational opportunities.

In 1995, the City acquired 14 acres of land adjacent to Jones Lake with county open space funds. Plans for this open space park include the construction of a trail around the lake. The City has also acquired the Webb (Ginder Creek) open space parcel northwest of the City Center.

**Table 8-2. Parks Inventory**

Facility	Type	Acreage	Features
Union Stump	Passive	0.23	Historical Marker
Coal Car Park	Passive	0.27	Historical Marker
Jones Lake Site	Passive	14.06	Undeveloped
Ginder Creek Site	Passive	27.59	Undeveloped
Eagle Creek Community Park	Active	0.43	Basketball Court
Lake Sawyer Boat Launch	Active	1.80	Boat Launch
BMX Park	Active	2.96	Dirt Bike Track
School Park	Active	4.75	Baseball Diamond, Basketball Court, Tennis Court, Skate Park
Lake Sawyer Park	Undeveloped	143.05	Undeveloped
<b>Total Park Acreage</b>		<b>195.14</b>	

**8.5.3. Level of Service**

The City adopted the current Parks Plan in December 2008. To help best identify park needs and guide the timing and implementation of the Parks Capital Improvement Program, new park LOS standards and recreational facility standards are being proposed. The City’s existing LOS standards are based on a ratio of capacity (park acres) to demand (population); however, the Washington Recreation and Conservation Office has recommended a spatially based approach for LOS standards. Spatially based standards emphasize access to different types of park and recreational facilities, which ensure all residents are adequately served. This approach is the basis for the new LOS standards.

## Redefined Park Types and Standards

More comprehensive park classification systems, in place of the old active and passive classifications, will better meet the diversity of user needs in the community. The proposed new park types include:

- **Pocket Parks** – small pedestrian-oriented areas, one-half acre or less, that provide greenery and open-space in higher-density developed areas. They may include features such as play equipment, community gardens, historical/information markers, landscaping, seating, and public art.
- **Open Space** – undeveloped areas or areas with limited development intended to preserve natural areas within the City for environmental, health, and/or aesthetic reasons. They may include features such as picnic areas, trails, and/or interpretive facilities.
- **Neighborhood Parks** – small pedestrian-oriented parks, one acre or less, that serve residents of the immediate, usually residential, area. They may include features such as play areas, basketball courts, community gardens and/or open areas.
- **Community Parks** – large parks, 1 to 5 acres in size, which provide active recreation facilities for the broader community. They may include features such as parking areas, baseball or softball diamonds, soccer fields, aquatic facilities and/or natural areas.
- **Trails (Non-motorized)** – a network of pedestrian or bicycle-oriented paths for recreational and transportation uses. They can be within an existing park or open area or separate. Ideally, they should create a well connected city- or region-wide system. They may include features such as parking areas, paved or graveled paths, picnic areas, and/or historical/informational markers.

Table 8-3 shows the proposed park types and associated LOS standard, while Table 8-4 shows how existing facilities have been reclassified.

**Table 8-3. New Park LOS Standards**

Park Types	LOS Standard
Pocket Park	None
Open-Space	10% of City's Land Area
Neighborhood Park	75% of population within 0.5 mile of a neighborhood park
Community Park	90% of population within 1.5 miles of community park
Trails (Non-motorized)	75% of population within 0.5 mile of a trail

**Table 8-4. Park Type Reclassification**

Facility	Type	Reclassified Type	Features
Union Stump	Passive	Pocket	Historical Marker
Coal Car Park	Passive	Pocket	Historical Marker
Jones Lake Site	Passive	Open-Space	Undeveloped
Ginder Creek Site	Passive	Open Space	Undeveloped
Eagle Creek Community Park	Active	Neighborhood	Basketball Court
BMX Park	Active	Community	Dirt Bike Track
School Park	Active	Community	Basketball Court, Tennis Court, and Skate Park
Lake Sawyer Boat Launch	Active	Community	Boat Launch
Lake Sawyer Park	Undeveloped	Community	Undeveloped

*Recreational Facility Standards*

In addition to new park LOS standards, recreational facility standards are being proposed to ensure specific community recreational needs are met. These are citywide recreational needs that are usually met through the development of new or existing community parks. The combination of the recreational facilities standards and the park LOS standards will serve as a comprehensive guide for park and recreational development for the City. Table 8-5 shows the proposed recreational facility standards.

**Table 8-5. Recreational Facility Standards**

Facility Type	Minimum Units Per Population
Basketball Court	1:2,000
Soccer Field	1:2,000
Tennis Court	1:2,000
Play Area	1:2,000
Youth Baseball/Adult Softball Field	1:2,000
Adult Baseball Diamond	1:5,000
Community Center	1:10,000
Skate Park	1:10,000
Youth Football Field	1:10,000
BMX Track	1:20,000
Swimming Pool/Beach	1:20,000

### 8.5.4. Future Needs

An analysis of the City's current parks inventory using the new park type classifications and LOS standards indicates the City is lacking a number of neighborhood parks, trails, and dedicated open-space, and a number of recreational facilities.

#### *LOS Conditions*

Currently, almost every household is within a 1.5-mile radius of a community park, meeting the 90% standard. One park, "School Park," provides most of the recreational facilities for the community. However, "School Park" is not an official City park because the City does not own the property. Instead, the City has an agreement with the property owner, Palmer Coking Coal, to only use the property for green space and recreation.

The City has 1% of its gross area designated as open space, but this is still well below the 10% LOS standard. Two parks have been designated open space, the Ginder Creek site and the Jones Lake site, for a total of 41.65 acres. The City only has one neighborhood park, Eagle Creek Community Park, which is relatively new. Currently, the City has no recreational trails.

**Table 8-6. Existing Park LOS**

Type	LOS Standard	Existing LOS
Pocket	None	Two
Open space	10% of gross land area	1% of land area
Neighborhood	75% of population within 0.5 mile	11% within 0.5 mile
Community	90% of population within 1.5 miles	100% within 1.5 miles
Trail (Non-motorized)	75% within 0.5 mile	0% within 0.5 mile

**Table 8-7. Existing Recreational Facility Standards**

Facility Type	Minimum Units Per Population	Existing Units Per Population
Basketball Court	1:2,000	1:2,060
Soccer Field	1:2,000	0
Tennis Court	1:2,000	1:4,120
Play Area	1:2,000	0
Youth Baseball/Adult Softball Field	1:2,000	1:4,120
Adult Baseball Diamond	1:5,000	0

Facility Type	Minimum Units Per Population	Existing Units Per Population
Community Center	1:10,000	1:4,120
Skate Park	1:10,000	1:4,120
Youth Football Field	1:10,000	0
BMX Track	1:20,000	1:4,120
Swimming Pool/Beach	1:20,000	0

### *Existing Need*

To meet the current LOS deficit, new parks and trails will have to be added in the City, in addition to more extensive development of existing park land. The location of new parks will need to account for the “geographic deficit” in certain areas of the City.

For example, the City will need several new neighborhood parks to meet the LOS standard. One of these new parks would have to be located in the northern end of the City around Lake Sawyer, where there is a large amount of housing but no existing neighborhood park. Other gaps in neighborhood park coverage include the northeast corner of the City, in the vicinity of SR 169, and the area around the City Center.

Extensive development of a trail system will be required to bring the City up to the proposed LOS standard. Any new trail locations will need to be planned so that they enable at least 75% of households to have access to a trail.

Existing open space needs include an additional 439.3 acres of dedicated open space within the City.

Recreational facilities needed include: a second youth baseball or softball field, a second tennis court, two soccer fields, and two additional play areas.

### *Future Need*

In addition to the existing park and recreation needs, the City needs to consider the effects of future development on its park and recreational facilities needs. The potential future needs of the City are determined by applying the proposed LOS standards to the City’s projected 2025 population (16,980). However, delays in development of the Lawson Hills and The Villages Master Planned Developments (MPDs) likely mean the projected population increases will be delayed by a minimum of 2 years. Thus, the number of additional facilities may be higher than the number actually needed.

Table 8-8 below lists the number of additional recreational facilities—beyond the current facilities—the City needs to meet its LOS standards at its projected 2025 population.

**Table 8-8. Future Recreational Facility Needs—2025**

Facility Type	Minimum Units Per Population	Additional Facilities Needed
Basketball Court	1:2,000	6
Soccer Field	1:2,000	8
Tennis Court	1:2,000	7
Play Area	1:2,000	8
Youth Baseball/Adult Softball Field	1:2,000	7
Adult Baseball Diamond	1:5,000	3
Community Center	1:10,000	0
Skate Park	1:10,000	0
Youth Football Field	1:10,000	1
BMX Track	1:20,000	0
Swimming Pool/Beach	1:20,000	1

The City should be able to meet its LOS standard for community parks and open-space by 2025. Much of the City, developed and undeveloped, is already within 1.5 miles of a community park. Also, MPDs are required to dedicate at least 50% of their total area to open space, except as modified by historic agreements such as the Black Diamond UGA Agreement (BDUGAA). As development occurs, this would result in more than 10% of the City's land area being open space.

This is not the case with neighborhood parks and trails, however. The City will need to ensure neighborhood parks and trails are developed concurrently as new residential development occurs to meet the established LOS standards.

### 8.5.5. Individual Projects

The following is a summary listing of individual parks projects prioritized for development and improvements for the 2009-2014 Capital Facilities Plan.

**Table 8-9. Park Projects and Estimated Cost and Funding Sources**

Park	Estimated Cost							Funding Source
	2009	2010	2011	2012	2013	2014	6-Year Total	
School Park	\$25,000	-	-	-	-	-	\$25,000	REET 1
Union Stump Memorial Park	\$15,000	-	-	-	\$20,000	-	\$35,000	REET 1
Lake Sawyer Boat Launch	\$40,000	\$55,000	\$788,000	-	-	-	\$962,000	General Fund, REET 1, Grants
Lake Sawyer Regional Park	-	-	\$500,000	\$2,500,000	\$1,647,000	-	\$4,647,000	KC Regional Park Fund, Grants, Impact Fees
Trail System	\$20,000	\$20,000	\$100,000	\$100,000	\$100,000	-	\$340,000	KC Regional Park Fund, REET 1, Grants
BMX Park	\$20,000	\$20,000	-	\$210,000	-	-	\$250,000	REET 1, Grants
Eagle Creek Community Park	\$25,000	-	-	-	-	-	\$25,000	REET 1
<b>Total</b>	<b>\$145,000</b>	<b>\$95,000</b>	<b>\$1,388,000</b>	<b>\$2,810,000</b>	<b>\$1,764,000</b>	<b>\$0</b>	<b>\$6,284,000</b>	

## 8.6. Schools

### 8.6.1. Schools Concept, Objective, and Policies

#### *Schools Concept*

The City supports the location of elementary schools, and a junior high/high school. Schools within the community contribute significantly to community identity and offer the possibility of joint use of facilities. It is also important to residents of the City that their children attend schools within or near the City. Local schools will also encourage more local participation in school activities.

Specific future actions should include:

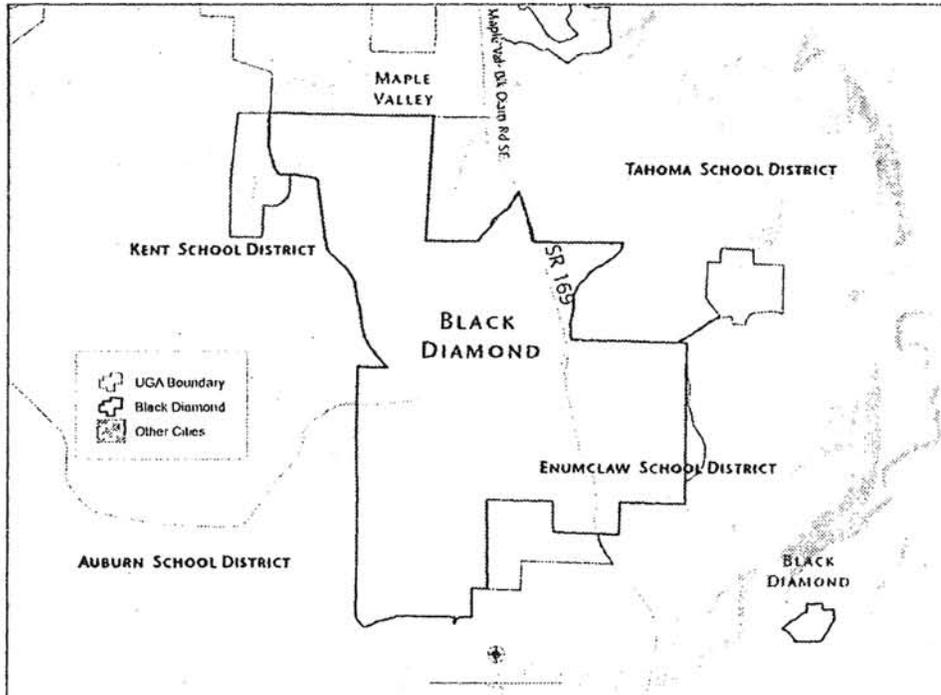
- Coordinating City and school district facility planning.
- Developing a joint-use agreement for all school facilities within the City.

### *Schools Objectives and Policies*

- Objective CF-8: Coordinate with the school districts serving the City to encourage the provision of safe, secure, and permanent education space for all students.
- Policy CF-11: Work with the school districts serving the City to identify new school sites within City limits and encourage school districts to acquire those sites at the earliest possible time.
- Policy CF-12: Support the City's representation on the Enumclaw School Board, by a resident from within the City.
- Policy CF-13: Encourage City residents to participate in school activities.
- Policy CF-14: Maintain a joint-use agreement for all facilities and land.
- Policy CF-15: Develop and implement an impact fee ordinance for the future development of schools within the City.
- Policy CF-16: School district comments shall be solicited prior to approval of residential development projects.

## 8.6.2. School District Overview

Figure 8-1. School Districts Serving Black Diamond



### *Enumclaw School District*

The original Black Diamond School District was merged with the Enumclaw School District in 1975, to provide education and programs equivalent to the Enumclaw Schools. Most of the City now lies within the Enumclaw School District No. 216, except for a portion of the area surrounding Lake Sawyer. The majority of new residential development within the City is anticipated to occur within the Enumclaw District. The lake and areas to the west are served by the Kent School District, and the area immediately to the east of Lake Sawyer is part of the Tahoma School District. A very small area along the Green Valley Road is within the Auburn School District.

The Enumclaw School District encompasses a 440 square mile area, the northwestern portion of which contains the City. The district service area is centered in the City of Enumclaw where the district offices, high school, junior high, and several elementary schools are located. The district has five elementary schools, one of which is located in the City. Enrollment within the district has recently declined by about 100 students per year. Based on population projections, growth is anticipated beginning in the next 2 years within both the cities of Enumclaw and Black Diamond.

Black Diamond Elementary School had a January 2009 enrollment of 284 students. According to the district's program capacity, the maximum population for the school without portables is 226 students. With the seven portables it is using, the school is operating over its capacity. A multi-purpose addition was constructed in 1990. No other room for expansion exists, although some space conversion (to classroom space) could occur.

Students from the City currently attend Thunder Mountain Middle School and Enumclaw High School.

### *Kent School District*

In 1998, the City annexed Lake Sawyer and the surrounding neighborhoods. Areas on the western side of the lake were already served by the Kent School District, and children from these households continue to attend Kent schools. The Kent School District is the fourth largest in the State of Washington, with an enrollment of nearly 27,000, and operates 40 schools, including four high schools, seven middle schools, 28 elementary schools, and one academy. Students living in the portion of the City served by the Kent School District attend Sawyer Woods Elementary located just west of the City limits, Cedar Heights Middle School in Covington, and Kentlake High School located west of Lake Sawyer.

### *Tahoma School District*

A small portion of the City immediately to the east of Lake Sawyer is served by the Tahoma School District. The Tahoma School District operates 10 schools with a combined enrollment of approximately 7,000. Tahoma School District students from the City attend Glacier Park Elementary, Tahoma Middle School, and Tahoma Senior High School.

## **8.6.3. Future Needs**

The areas with greatest potential for growth in the City are mostly within Enumclaw School District. Kent and Tahoma School Districts have little potential for growth from within the City.

### *Enumclaw School District*

The district is looking for school sites in the City, including the area near Black Diamond Lake, but no specific action has been taken to date.

Because the school system is run by the district, the City does not establish LOS standards for school facilities. LOS standards have been established by the

Enumclaw School District in its 2008 Capital Facilities Plan, which is adopted by reference herein. The following standards of service are used by the district:

- Class size for grades K-4 should not exceed 23 students.
- Class size for grade 5 should not exceed 26 students.
- Class size for grades 6-8 should not exceed 28 students.
- Class size for grades 9-12 should not exceed 28 students.

The district anticipates using the following student generation rates for single and multiple family dwelling units cited in their 2008-2013 Capital Facilities Plan.

**Table 8-10. Student Generation Rates**

Students per unit	Single Family	Multifamily
Elementary	.401	.137
Middle School	.135	.045
High School	.166	.056
Total	.702	.238

Source: Enumclaw School District (5/08)

To accommodate the current student population and future needs, it is anticipated that the district will need four new elementary schools, two middle schools, and one high school in the City over the long term. The existing Black Diamond Elementary School is slated for reconstruction to add capacity, and is scheduled to open in 2011.

The school attendance area for the elementary and secondary schools would likely extend beyond the City limits to serve students within the district. It should be noted that these projections include the areas surrounding Lake Sawyer currently served by the Tahoma and Kent School Districts. Depending on variable growth between individual portions of the planning area, the Enumclaw School District will only be required to absorb a portion of the growth occurring within the City.

## 8.7. Fire and Emergency Medical Services

### 8.7.1. Fire and Emergency Medical Service Concept, Objective, and Policies

#### *Fire and Emergency Medical Services Concept*

The Capital Facilities Element requires adequate fire flow through the water system and adopted standards for fire flow. The water systems within new development should be served off a looped line, if required to achieve fire flow. These new systems should also be designed and constructed to meet fire flow standards.

#### *Fire and Emergency Medical Services Objectives and Policies*

Policy CF-17: The City shall contract with the district to maintain a ratio of 1.4 on-duty career firefighters per 1,000 population to protect the suburban and urban areas of the City until such time as the City reaches a population of 10,000. Thereafter, the ratio of on-duty career firefighters per thousand residents will decrease incrementally to no less than 0.89 on-duty firefighter per 1,000 population. The district will continue to foster and support the volunteer system utilizing volunteers to augment the LOS provided by the career staff.

The staffing level of 1.4 on-duty career firefighters per 1,000 population is consistent with national averages, but is greater than the 2007 staffing level of 0.5 on-duty firefighters per 1,000 population inside the City.

Policy CF-18: The City shall take reasonable action to ensure development is within 1.5 miles travel distance of a fire station upon built roads.

Policy CF-19: It is determined that 8,000 square feet is an adequate size for satellite fire stations.

Policy CF-20: Implement impact fees for Fire and Emergency Medical capital facilities and equipment. Impact fees will be waived for sprinklered buildings less than 32 feet in finished height and properly sprinklered residences.

Policy CF-21: Replace Station 99 and Engine 99.

Policy CF-22: The City shall negotiate with King County Fire Protection District 44 to develop a staffing and equipment plan providing the best possible

fire, rescue, and emergency medical services for citizens as the City grows.

Policy CF-23: The City shall pursue a Concurrency Management Plan for fire and BLS services.

### 8.7.2. Inventory

Mountain View Fire and Rescue, King County Fire Protection District 44, provides fire protection, fire prevention, rescue, emergency medical services, and other services that protect life or property via a contract with the City pursuant to a 2006 inter-local agreement (ILA).

Mountain View Fire and Rescue is a combination department, consisting of both career and volunteer personnel, and has 26 career firefighters and approximately 100 volunteers, 32 of which are assigned to the City. It services a combined area of approximately 70 square miles encompassing an estimated population of 27,000. Of the total population served, 4,200 live in the City.

The district operates out of eight stations, two of which are located in the City: Station 98 located on SE 296th Street, near Lake Sawyer, and Station 99 located in the City Center. The I.A requires that Station 98 have one career lieutenant and one career firefighter/emergency medical technician (EMT) on duty during the day. Staffing at night is provided by two volunteer firefighter/EMTs. Station 99 is staffed solely by volunteers.

District equipment includes 12 structure fire apparatus, including three water tenders (2,000 gallons each), three brush trucks, one medium rescue vehicle, one light rescue vehicle, five aid vehicles, a special operations support vehicle, a 14-person transport van, a five-ton flatbed truck, various four-wheel drive command vehicles, and a training/safety officer vehicle. Of this equipment, the City owns three of the fire engines, one brush truck, one aid car, and two staff vehicles counted.

Advanced Life Support (ALS) services are provided by King County Medic One. ALS services are funded separately through a countywide property tax assessment of \$0.30 per \$1,000 valuation.

### 8.7.3. Level of Service

The City has an LOS standard of 1.4 on-duty career firefighters per 1,000 population. Pursuant to the April 2006 ILA between the City and District 44, one career lieutenant and one career firefighter/EMT are on duty at the Lake Sawyer station between 0600 hours and 1800 hours each day. Staffing at night is provided by two

volunteer firefighters/EMTs. Station 99 is staffed only by volunteers responding from home. The staff the City is supported by a cadre of volunteers assigned to Station 98 and Station 99, as well as career staff assigned to nearby stations. Nighttime coverage, between 1800 hours and 0600 hours, is augmented by volunteer staff at Station 92, Station 93 on SE Covington Sawyer Road, Station 97 on Green Valley Road, and Station 94 near Krain Corner.

The National Fire Protection Association (NFPA) establishes six trained firefighters arriving to a scene within 14 minutes of an alarm 80% of the time for volunteer fire departments in rural areas (defined as areas with a population density less than 500 people per square mile; District 44 has roughly 350 people per square mile) as a sufficient number of members to operate safely and effectively.

2007 response data indicates Station 98 had a response time of 6.98 minutes or less 80% of the time, and Station 99 has a response time of 8.28 minutes or less 80% of the time. Both stations' response times are well below the NFPA's standard. Note, both fire and EMS responses were considered together because of the limited database.

#### 8.7.4. Future Needs

As the City and district increase in population, the district may need to increase the number of volunteer and career firefighters available per shift.

The City should create a work plan to address its long-term fire and emergency services needs as a result of anticipated development and growth.

### 8.8. Utilities

This Utilities Element has been developed in accordance with Section 36.70A.070 of the GMA. It describes how the existing and planned utility capacity will be financed, and supports the City's Land Use Element.

Suggested items to be included in the Utilities Element and recommendation for preparing the element are delineated in WAC 365-195-320. These are as follows:

- Integration of the general location and capacity of existing and proposed utility lines with the Land Use Element of the City of Black Diamond Comprehensive Plan. For the purposes of this step, proposed utilities are understood to be those awaiting approval when the comprehensive plan is adopted.

- An analysis of the capacity needs for various utilities over the planning period to serve the growth anticipated at the location and densities proposed within the jurisdiction's planning area.
- A schematic identification of the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period within the jurisdiction's planning area. This should be a part of the process of identifying lands useful for public purposes to be carried out by planning jurisdictions.
- Evaluation of whether any utilities should be identified and classified as essential public facilities, subject to the separate siting process established under the comprehensive plan for such facilities, and if so, provision for applying that process as appropriate.
- Creation of local criteria for siting utilities over the planning period, involving:
  - a. Consideration of whether any siting proposal is consistent with the locations and densities for growth contemplated in the Land Use Element.
  - b. Consideration of any public service obligations of the utility involved.
  - c. Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its system.
  - d. Balancing of local design considerations against articulated needs for system-wide uniformity.
- Policies should be adopted which call for:
  - e. Joint use of transportation rights-of-way and utility corridors, where possible.
  - f. Timely and effective notification of interested utilities of road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.
  - g. Consideration of utility permits simultaneously with the proposals requesting service and, when possible, approval of utility permits when the project to be served is approved.

It is the intent of this section to fulfill the RCW requirements relating to the Capital Facilities Element and Utilities Element of the comprehensive plan.

The Utilities Element has also been developed in accordance with the Countywide Planning Policies (CPPs) and has been integrated with all other planning elements to ensure consistency through the comprehensive plan. The Utilities Element

specifically considers the location and LOS of all existing and proposed utilities, including electrical, telecommunication, natural gas, and non-city water transmission line; public schools; and fire protection. This element also provides a process and policies for the siting of “Essential Public Facilities” as defined by the GMA.

### 8.8.1. Inventory and Analysis

The inventory presented in this element provides information useful to the planning process. The inventory summarizes general information pertaining to the existing utility service system in the City. Many public and private agencies are involved in regulation, coordination, production, delivery, and supply of utility services. This section of the element identifies those providers as well as the legislation regulating the utility. The inventory includes:

#### City-Provided Utilities

- Water (except around Lake Sawyer)
- Sanitary Sewer (except around Lake Sawyer)
- Stormwater

#### Utilities Provided by Other Entities

- Electricity (Puget Sound Energy)
- Telecommunications (Qwest and Comcast)
- Natural Gas (Puget Sound Energy)
- Tacoma Water Transmission Pipeline #5 provides wholesale water supply
- Covington Water District provides water service around Lake Sawyer
- Soos Creek Water and Sewer District provides sewer service to a small area in the northwest corner of the City and has a sewer service around Lake Sawyer.

#### *Federal and State Utility Laws and Regulations*

**RCW and Washington Utilities and Transportation Commission** – Utilities and transportation are regulated in Washington by the Washington Utilities and Transportation Commission (WUTC). The WUTC, composed of three members appointed by the governor, is empowered to regulate utilities (including but not limited to, electrical, gas, irrigation, telecommunication, and water companies). State law (WAC 480-120) regulates the rates and charges, services, facilities, and practices of utilities. Any change in customer charges or service provision requires WUTC approval.

**Federal Energy Regulatory Commission** – The Federal Energy Regulatory Commission (FERC) is an independent agency led by a five-member commission. FERC establishes rates and charges for the interstate transportation and sale of natural gas, for the transmission and sale of electricity, and the licensing of hydro-electric power projects. In addition, the Commission establishes rates or charges for the interstate transportation of oil by pipeline.

**Northwest Power Planning Council** – The Northwest Power Planning Council (NWPPC) focuses on the generation of electricity. The NWPPC has directed the region to develop cogeneration as an energy resource and hydro-firming as a power back-up system. Cogeneration is the use of heat, as a by-product of power generation, for industrial processes or for space and water heating. Natural gas is often used as a fuel source for cogeneration. Hydro-firming is the back-up of the region's intermittent excess spring hydro generation with gas-fired combustion turbines to provide backup if hydroelectric power is insufficient.

**The State Department of Health** - The State Department of Health regulates the operations of all public water utilities in the state.

**Washington State Department of Ecology (Ecology)** –Ecology regulates the operations of all public sewer systems in the state.

**1991 Clean Air Amendments** – The passage of the Washington State Clean Air Act in 1991 indicates a state intent to promote the diversification of fuel sources for motor vehicles. This is in response to a need to both reduce atmospheric emissions and to reduce the nation's reliance on gasoline for strategic reasons. This act promotes the use of alternative fuels by requiring 30% of newly purchased state government vehicle fleets to be fueled by alternative fuel by July 1992, increasing 5% each year. It also studies the potential and encourages the development of natural gas vehicle refueling stations.

## **8.9. Water System**

### **8.9.1. Water System Description and Concept**

The Black Diamond Water System is operated and maintained by the City of Black Diamond's Public Works Department. The Lake Sawyer area, which was annexed in 1998, is currently served by the Covington Water District and is not included in the existing Black Diamond Water Service Area.

The City's water system is expected to serve a population of 16,980 by 2025. The City has adequate supply and wholesale water contracts with the City of Tacoma to provide for the future growth as planned in this document.

In response to several large-scale development proposals, Ordinance 700, which placed a moratorium on the development of new lots within the City, was passed by the City to provide time to evaluate and update its development regulations. Thus, there has been a very limited increase in the number of water connections in recent history.

### *Adjacent Purveyors*

Water systems adjacent to the City of Black Diamond Water System include the Covington Water District.

The Covington Water District is the purveyor for the area around Lake Sawyer within the City limits. The Covington Water District has a service area of approximately 53 square miles and provides water to the cities of Covington, Maple Valley, and Black Diamond, as well as unincorporated areas of King County. The district is a member of the Cascade Water Alliance and its primary water supply comes from nine production wells located at two well-field sites. The district has 18 million gallons (MG) of storage in ground-level steel tanks at five sites, and 210 miles of pipeline.

### *System Overview*

The City's primary water source is the Black Diamond Spring Field, located approximately 2 miles southeast of the City. Water from the Black Diamond Spring Field is pumped across the Green River to the 4.3 MG reservoir by an electric pump station located on the north side of the river. An additional source of water for the City is a recent intertie with the City of Tacoma Second Supply Pipeline (SSPL).

The City has two reservoirs and its distribution system currently operates with three pressure zones: an upper pressure zone at a pressure head of approximately 965 feet, a middle pressure zone at a pressure head of approximately 850 feet, and a lower pressure zone at a pressure head of approximately 750 feet. The system operates with high pressures, so there are individual pressure-reducing valves (PRVs) on all service connections throughout the City.

### *Source of Supply*

#### **Black Diamond Spring Field**

The City's primary source of water is from a series of natural springs. The springs are located approximately 2 miles southeast of the City on a large City-owned parcel.

There are four major collection areas associated with the Black Diamond Spring Field. Water from two of the four collection areas is currently used for the City's

drinking water system. One of the collection areas has been placed out of service at this time, and the fourth collection area is considered a future of supply for the City.

A hydrogeology report prepared for the City in 1989 estimated that the average total combined discharge from Collection Areas #1, #2, and #3 was approximately 20 cubic feet per second (cfs) (12.9 MGD). The capacity range was estimated from 5 to 40 cfs (3.2 MGD to 25.9 MGD). The discharge flow from collection Area #4 was estimated to be approximately 10 cfs (6.45 MGD) with a range of 4 to 25 cfs (2.6 MGD-16.2 MGD).

## **Water Rights**

The City has two water rights certificates currently on file with Ecology. The source of water for both certificates is the Black Diamond Spring Field. Certificate of Water Right No. 3580 authorizes diversion of 2.93 cfs continuously for production of power to operate a hydro-pump. Certificate of Water Right No. S1-00506C authorizes maximum instantaneous diversion of 8.0 cfs with an annual limit of 551 acre-feet.

## **City of Tacoma Intertie**

Water system interties are physical connections between two adjacent water systems. Interties are normally separated by a closed isolation valve or control valve. Emergency supply interties provide water from one system to another during emergency situations only. An emergency situation may occur when a water system loses its main source of supply or a major transmission main and is unable to provide a sufficient quantity of water to its customers. Normal supply interties provide water from one system to another during non-emergency situations and are typically supplying water at all times.

The City negotiated a Wholesale Water Agreement with the City of Tacoma in 2003 wherein the two agencies agreed that the City of Tacoma would supply wholesale water to the City. Under the terms of the agreement, the City is responsible for significant System Development Charges (SDCs) associated with the connection to the City of Tacoma to be repaid over a 10-year period.

The intertie connection to the City of Tacoma's SSPL project was constructed in 2005. Amendment No. 1 to the agreement was approved in 2007 and included the purchase of an additional 500,000 gallons per day of water.

## *Storage*

### **0.5 MG Reservoir**

The 0.5 MG Reservoir is located on a City parcel that is approximately 1,200 feet easterly up a gravel road from the intersection of HL Botts Drive SE and

SE Mountain View Drive. This reservoir was constructed in 1986 and has a capacity of 500,000 gallons. The 0.5 MG Reservoir is at an approximate elevation of 930 feet, with an overflow elevation of approximately 965 feet.

### 4.3 MG Reservoir

The 4.3 MG Reservoir is located just west of the intersection of Lawson Road and SE Botts Drive on a City parcel. This reservoir was constructed in 2006 and has a capacity of 4.3 MG. The Lower Reservoir is at an approximate elevation of 770 feet, with an overflow elevation of approximately 850 feet.

### *Treatment Facilities*

The City's water system is currently disinfected via a hypochloride chlorination system at the North Bank Pump Station. Corrosion treatment is provided at the pump station located at the 4.3 MG reservoir site.

**Table 8-11. Pipe Inventory (2007)**

Pipe Size Diameter	Material	Approximate Length (Linear Feet)
2 inches or less	Galvanized Iron	3,800
	PVC	6,250
3 inches	PVC	200
4 inches	Ductile Iron	400
	Asbestos Cement	3,600
6 inches	Ductile Iron	550
	Asbestos Cement	11,400
	PVC	3,800
8 inches	Ductile Iron	42,000
	Asbestos Cement	15,000
	PVC	2,500
10 inches	Asbestos Cement	500
12 inches	Ductile Iron	13,300
16 inches	Ductile Iron	1,000
20 inches	Ductile Iron	3,700
<b>Total Length</b>	-	<b>108,000</b>

Source: 2007 Black Diamond Water System Comprehensive Plan

### 8.9.2. Future Needs

A complete hydraulic analysis of the system has been completed as part of updating the Water System Comprehensive Plan. The City currently has the storage capacity and water supply capacity to provide for approximately another 10,500 residential

connections. Projects recommended for the 6-year funding program are shown in Table 8-12. 6-Year Water System Needs

## 8.10. Sanitary Sewer System

### 8.10.1. Sanitary Sewer System Concept, Objectives, and Policies

#### *Sanitary Sewer System Concept*

The City provides sewer collection services to all portions of the City that are currently developed except around Lake Sawyer, which is within the Soos Creek Water and Sewer District. Only a small portion in the northwest portion of the Soos Creek Sewer district within the City is currently served. The City sewer system delivers all of the City sewage to the City-owned and King County Waste Water Department-maintained sewage pump station near Jones Lake. King County Wastewater Division operates the Jones Lake Pump Station and transmits all of the flow via regional City owned and King County Wastewater maintained transmission facilities to the Soos Creek system. By interlocal agreements with Soos Creek, the City's sewage is wheeled through the Soos Creek system back to King County regional facilities further west. Ultimately the City's sewage is delivered to the Renton Treatment Plant.

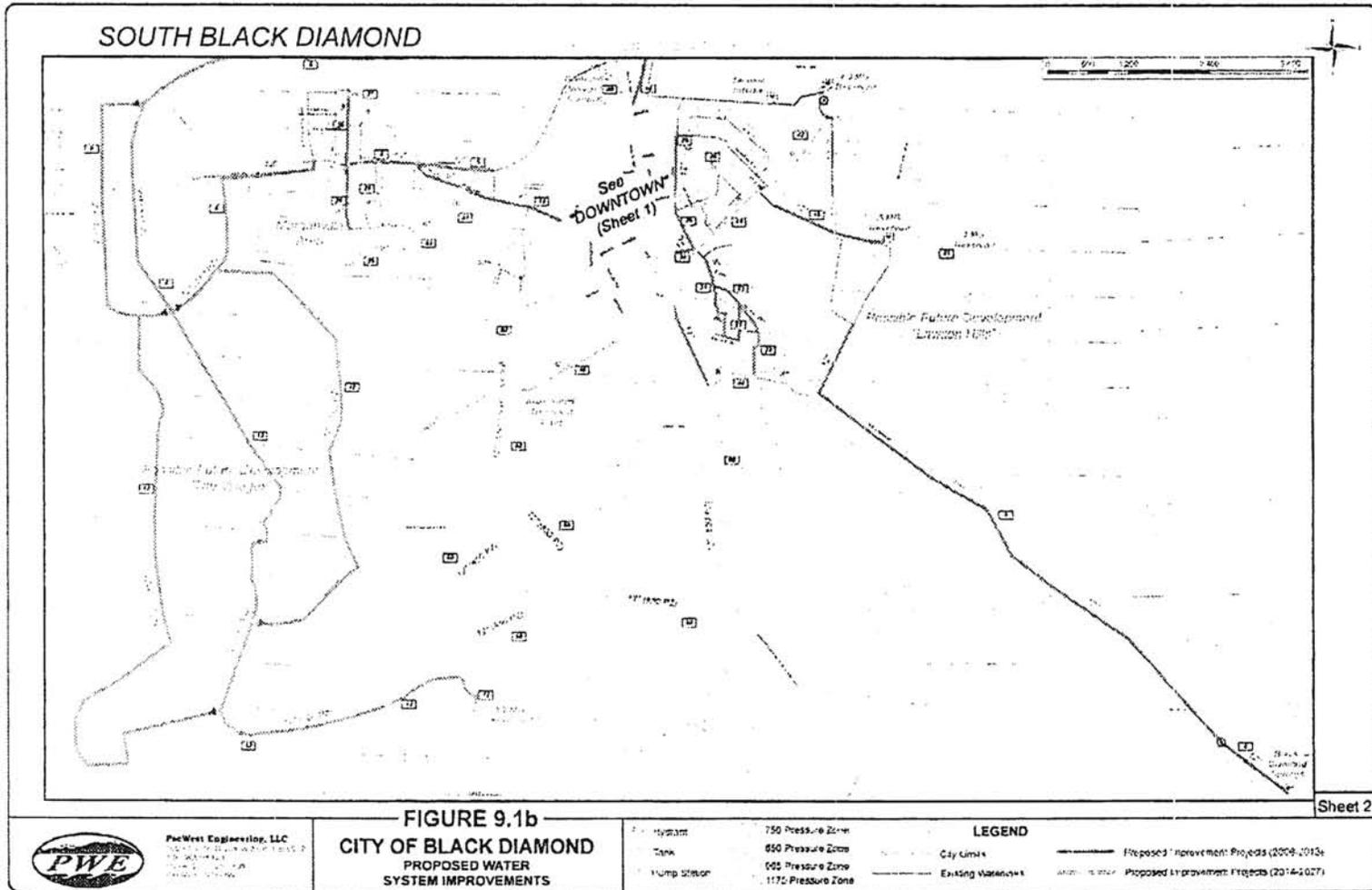
The sanitary sewer service collection capacity within the City is adequate to service the existing City and allow for some growth. As the City grows, several new pump stations and sewer trunk lines will be needed to provide sewer service to undeveloped portions of the City as identified in Figure 8-2. King County is in the preliminary engineering phase of a peak flow storage project to reduce the peak flows from the City and extend the capacity of the regional transmission facility to the Soos Creek System. The peak-flow storage project is expected to be completed in 2012. King County is bound by contract and has adopted policies to meet the sewer transmission and treatment demands of the City. The City intends to coordinate with King County for interim and long-term transmission and sewage treatment needs. The City has a contract with Soos Creek Water and Sewer District to transmit City flows to the King County Sewer system. This contract limits the City to 3,600 equivalent residential unit connections until further capacity improvements are funded and agreed to. The City is expecting to turn the wheeling responsibility over to King County in the near future and the capacity improvements through the Soos Creek System will become an obligation of the King County Wastewater Division and Soos Creek.

Table 8-12. 6-Year Water System Needs

Project Number	Project Name	Estimated Cost						6-Year Total	Funding Source
		2009	2010	2011	2012	2013	2014		
1	Railroad Ave. W/L Replacement, Phase 1	\$186,000	-	-	-	-	-	\$186,000	Rates
2	Merino St. W/L Replacement, Phase 1	\$30,000	-	-	-	-	-	\$30,000	Rates
3	Springs Study	\$50,000	-	-	-	-	-	\$50,000	Rates
4	Water Meter Upgrades	\$70,000	\$70,000	\$60,000	-	-	-	\$200,000	Rates
5	Roberts Dr. W/L Replacement	\$440,000	-	-	-	-	-	\$440,000	Development
6	The Villages, Phase 1	\$3,780,000	-	-	-	-	-	\$3,780,000	Development
7	3rd Ave. W/L Replacement, Phase 1	-	\$250,000	-	-	-	-	\$250,000	Connection Charges
8	Springs Transmission Main Replacement, Phase 1 & Collection Upgrades	-	\$1,000,000	-	-	-	-	\$1,000,000	Development
9	Springs Transmission Main Replacement, Phase 2	-	\$1,274,000	-	-	-	-	\$1,274,000	Development
10	Springfield No. 3 Collection Upgrade	-	-	\$100,000	-	-	-	\$100,000	Rates
11	3rd Ave. W/L Replacement, Phase 2	-	-	\$200,000	-	-	-	\$200,000	Connection Charges
12	The Villages, Phase 2	-	-	\$5,790,000	-	-	-	\$5,790,000	Development
13	2nd Ave W/L Replacement	-	-	-	\$190,000	-	-	\$190,000	Rates
14	Morgan St. W/L Replacement	-	-	-	\$416,000	-	-	\$416,000	Rates
15	965 Pressure Zone Transmission Replacement	-	-	-	\$300,000	-	-	\$300,000	Connection Charges

Project Number	Project Name	Estimated Cost							Funding Source
		2009	2010	2011	2012	2013	2014	6-Year Total	
16	The Villages, Phase 3	-	-	-	\$1,820,000	-	-	\$1,820,000	Development
17	The Villages, Phase 4	-	-	-	\$689,000	-	-	\$689,000	Development
18	3rd Ave. W/L Replacement, Phase 3	-	-	-	\$398,000	-	-	\$398,000	Development
19	Baker St. W/L Replacement, Phase 1	-	-	-	-	\$100,000	-	\$100,000	Rates
20	Lawson St. W/L Replacement, Phase 1	-	-	-	-	\$150,000	-	\$150,000	Rates
21	5th Ave. W/L Replacement & Extension	-	-	-	-	\$208,000	-	\$208,000	Rates
22	Pacific Pl. W/L Replacement	-	-	-	-	\$72,000	-	\$72,000	Rates
23	Pacific St. W/L Replacement & Extension	-	-	-	-	\$228,000	-	\$228,000	Rates
24	3rd Ave. W/L Replacement, Phase 4	-	-	-	-	\$440,000	-	\$440,000	Connection Charges
25	5th Ave. W/L Replacement	-	-	-	-	\$440,000	-	\$440,000	Connection Charges
	<b>Total</b>	<b>\$4,556,000</b>	<b>\$2,594,000</b>	<b>\$6,150,000</b>	<b>\$3,813,000</b>	<b>\$1,638,000</b>	<b>\$0</b>	<b>\$18,751,000</b>	





## *Sanitary Sewer System Objectives and Policies*

Objective CF-9: Provide and maintain a sanitary sewer collection system that protects public health and water quality.

Objective CF-10: Require public sewer connections for all new subdivisions and commercial /industrial developments. Require public sewer connections for all new residential construction and redevelopment on existing lots of record where sewer is available within 300 feet. New residential construction and redevelopment on existing lots of record will be allowed where sewer is not within 300 feet, provided that 1) all King County Wastewater Disposal Regulations are met; 2) the property owner signs and records a no protest covenant forming a local improvement district for sewer and 3) makes some future provision for sewer frontage costs and connection fee costs.

Policy CF-24: Provide sanitary sewer to only those areas inside the City limits and designated sewer service areas.

Policy CF -25: Utilize the identified sanitary sewer service capacity of the City owned and King County maintained downstream trunk main when allocating availability of sewer service. This shall serve as the sewer capacity until more capacity is obtained by the City through improvements planned for completion by 2012 by King County. King County is planning for peak day storage within the City in order to extend and maximize the use of the transmission facilities from the City to the west.

Policy CF-26 Coordinate with King County for improvement in the downstream regional conveyance of sewage to insure that needed capacity improvements are in place as needed for growth in the City.

Policy CF-27: Prior to approving development, ensure that the sanitary sewer system necessary to support development meets City requirements and is adequate to serve the development at the time the development is available for occupancy and use.

Policy CF-28: Track the total sewer hook-ups to the sanitary sewer system, as a means to monitor available sanitary sewer capacity. Initiate a certificate of sanitary sewer availability requirement for proposed development.

Policy CF-29: Upgrade any deficiencies in the sewer system within 6 years as they come up.

- Policy CF-30: Design new sewer facilities to allow for efficient and economical provision of sanitary sewers and require new development to provide those new facilities following the general concepts in this chapter.
- Policy CF-31: Encourage parcels on septic systems to connect to the municipal sanitary sewer when it becomes available to the property. Septic systems that fail will be required to connect to the sanitary sewer system if they are within 300 feet.
- Policy CF-32: Plan for regional pump stations and minimize the use of neighborhood scale pump stations. Neighborhood scale pump stations will only be allowed on a case-by-case basis and must be funded totally by the developer.
- Policy CF-33: Maintain an updated Sanitary Sewer Comprehensive Plan.
- Policy CF-34: Ensure coordination between the City and all other utilities providing sanitary sewer service within the Black Diamond planning area.
- Policy CF-35: Create a Reserve Fund to pay for replacement of existing facilities and equipment.
- Policy CF-36: Update the capital facility charge calculations regularly, and consider a capital facility charge based on sewer flow and waste water strength, compared to single-family residential flow characteristics.
- Policy CF-37: New development will be required to pay its fair share of expansion of the sewer system through capital facility charges, built, and dedicated facilities.
- Policy CF-39: The City will consider late comer fees and Local Improvement Districts as a way encouraging investment in public infrastructure.

## 8.10.2. Inventory

### *Collection System*

The City's existing sanitary sewer system consists of approximately 16 miles of gravity and pressurized piping systems. Table 8-13 itemizes the piping systems and pump station capacities in the existing sanitary system.

**Table 8-13. Black Diamond Sanitary Sewer System Inventory as of 2000**

Facility	Size	
<b>Gravity Main Piping: Size &amp; Type</b>	<b>Total Length (Approximate lineal footage)</b>	
6" PVC & Conc.	1,350 LF	
8" PVC	61,750 LF	
10" PVC	4,750 LF	
15" PVC	1,650 LF	
18" RCP	2,700 LF	
<b>Total</b>	<b>72,200 LF</b>	
<b>Force Main Piping: Size &amp; Type</b>	<b>Total Length (Approximate lineal footage)</b>	
2 & 2-1/2"	400 LF	
4"	350 LF	
6"	3,200 LF	
10"	8,750 LF	
<b>Total</b>	<b>12,700 LF</b>	
<b>Sanitary Sewer Lift Stations (Name)</b>	<b>Pump Size</b>	<b>Existing Capacity</b>
City of Black Diamond	50 HP-2 Each	1,060 gpm
Morganville	20 HP-2 Each	313 gpm
Ridge	1.5 HP-2 Each	105 gpm
Diamond Glen	1.5 HP-2 Each	94 gpm

\*All Pipe is PVC or HDPE

Source: 1996 Comprehensive Plan updated with 2000 Sewer Plan information

### *Treatment System*

The City currently has no sanitary sewer treatment system in operation. All sanitary flows tributary to the City's system are conveyed to King County's South Treatment Plant in Renton. As an alternative to transporting all future sewage flows to Renton, King County is currently exploring local water reclamation plants in the south county area to accommodate future sewage treatment needs, provide for local water uses, and provide water for the environment.

### *Collection System*

The minimum LOS for the City's sanitary sewer system (both existing and future) shall be provided in compliance with those minimum standards and guidelines identified in the *Criteria for Sewage Works Design*, as published by Ecology (1998) and the Development Guidelines and Public Works Standards adopted by the City (1995) by City ordinance No. 533.

Generally, conventional gravity type service will be required. Individual private pressure sewer systems and/or septic systems will only be considered on a case-by-case basis, and permitted or approved due to the City's evaluation of extenuating circumstances.

New stations will be sized to serve the "regional" area to eliminate the need for redundant stations. At a minimum, the design of these new facilities shall comply with the minimum design criteria for pumping stations as outlined in the aforementioned Ecology design standards and City standards. The City will also require that emergency auxiliary power be provided at any future lift station(s).

### **8.10.3. Future Needs**

The capital improvement projects recommended in this plan are based on existing system deficiencies, a 6-year population projection, and the anticipated maximum build-out development within the UGA boundary.

All calculated future sewage flow rates were developed by applying per capita flow rates and peaking factors to the estimated population figures developed for various periods of the planning period, as have been presented within the Land Use Element section of this report.

#### *Collection System*

Using King County standards and Ecology sewage design criteria, the expected flow rate (not including infiltration or inflow) for residential land uses is 60 gallons per capita per day. The expected flow rate is 35 gallons per employee per day for retail/commercial uses, and 75 gallons per employee per day for industrial uses. Ecology's standards call for a peaking factor of 3.0 for trunk lines and sewer interceptors, and a peaking factor of 4.0 for sewer mains and laterals. These are typical numbers, and more specific peaking factors from Ecology's design criteria should be used for actual system design.

For system analysis, the UGA was divided into several subsections or tributary basins, based on both topography and the location of existing sewer interceptor lines. Maximum discharge quantities (sewage flows) were then calculated for each sanitary basin based on zoning, area, and projected growth rates. Cumulative totals for population, average and peak flows, and the necessary gravity pipe size needed to accommodate each basin were calculated for each of the sub-basins. Gravity pipelines were sized by assuming minimum pipe slopes as recommended by Ecology, and minimum pipe scouring velocities of two feet/second would be required when flowing full.

The evaluation of the City's collection and conveyance system identified several capital improvement projects which are required to serve both existing and future customers. These projects are briefly discussed below.

### **Infiltration and Inflow Study of System and Infiltration and Inflow Project**

The City will aggressively and efficiently seek to reduce infiltration and inflow by studying the existing system to locate inflow and leaks into the system, adopt policies that prohibit misuse of the sewer system and provide for private upgrade to side sewers, and schedule targeted sewer collection system repairs and upgrades.

This project will be funded by capital facilities charges and customer rates. As infiltration and inflow are reduced, capital and operational costs are reduced. Lower I & I also improves the possibilities for a water reclamation plant in the City. If this project is effective, additional downstream transmission capacity will also be provided.

### **Manhole Rehabilitation**

Conducting repairs to manholes to prevent leaking of groundwater into the wastewater system. Repairs will provide additional system capacity.

### *Treatment System*

#### **Preserve and Protect the Old Treatment Plant for Future Use**

The City currently is using the old sewage treatment plant to treat the remaining bio-solids. A period of anaerobic treatment is complete, and the lagoon needs to be prepared for aerobic treatment of the bio-solids.

### **Capacity Projects**

**NPS1 (New Pumps Station #1)** - The sizing of this facility will be determined through the Sewer Comprehensive Plan in progress. This facility is roughly estimated to cost \$6,000,000 and is scheduled for 2012. This project will be funded by the developer of The Villages. There is a possibility that the facility could be upgraded to become the central pump station for King County Wastewater Treatment Division.

**NPS2 (New Pump Station #2)** - The sizing of this facility will be determined through the update of the Sewer Comprehensive Plan in progress. This facility is roughly estimated to cost \$6,000,000, and is scheduled for 2015.

**Trunk Line #1** - Trunk line #1 will collect sewage from the initial phases of The Villages and route the sewage to NPS1. Trunk Line #1 is estimated to be 10,000 feet of 12- to 18-inch gravity sewer main costing \$3,000,000 and is scheduled for 2012.

**Trunk line #2** - Trunk Line #2 will collect sewage from Lawson Hills MPD, and discharge the collected sewage flows to a force main that routes the sewage to the western storage facility. Trunk Line #2 is estimated to be 2,500 feet of 12-inch sewer main from Lawson Street to SR 169 costing \$750,000 and is scheduled for 2015.

**Trunk Line #3** - Trunk Line #3 will collect sewage from the north triangle and portions of the Morgan Kame Pit delivering sewage to NPS2. Trunk Line #3 is estimate to be 600 feet of 12-inch sewer main costing about \$1,800,000 and is scheduled for 2017.

**Trunk Line #4** - Trunk Line #4 will collect sewage from the south area of the City (later phases of The Villages) and deliver the sewage to the west to NPS1. Trunk Line #4 is estimated to be about 8,000 feet of 12-inch sewer main costing about \$2,400,000 and is scheduled for 2017.

**Force Main #1** - Force Main #1 will deliver sewage from NPS1 to a distribution box and storage facility along Roberts Drive. The force main is estimate to be about 8,000 feet costing \$960,000 and is scheduled for 2012.

**Force Main #2** - Force Main #2 will deliver sewage from the Lawson Hill's gravity line and NPS2 to the distribution box and storage facility along Roberts Drive. It is scheduled for 2015.

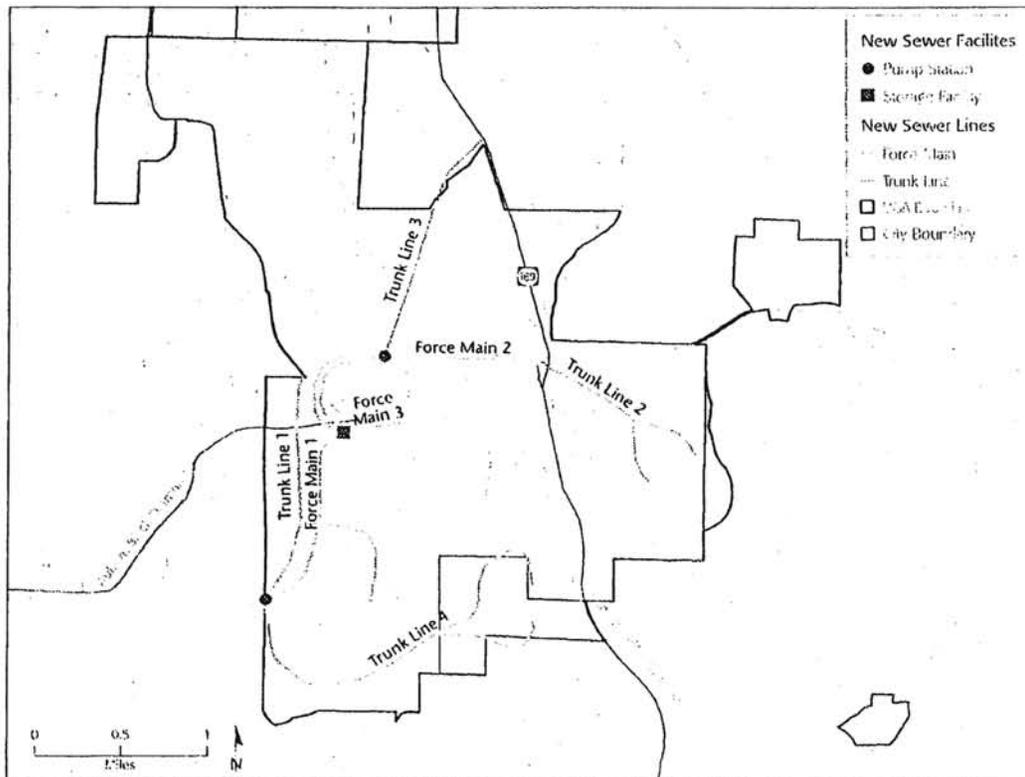
**Storage Project #1** - The Storage Project #1 will accept all of the flows from the various pump stations around the City and attenuate the flows. Initially the flows will be routed through a distribution facility that will direct flows to the gravity transmission main. During very high peak flow events the storage facility will store the peak flow and limit the flows to the gravity transmission line to approximately 1.6 MG per day, and flows in excess of that will overflow into storage.

This project is a King County Wastewater Treatment Division project and is only mentioned here as the City is involved in the location decision. If King County decides to locate their regional facilities other than where shown in Figure 8-2, the sewer comprehensive plan will need to be revised.

The projects listed above are intended to provide general guidance for future development of the City's sewer system in coordination with King County Wastewater Division. The actual implementation of the concepts described in Figure 8-2 may be made in smaller increments or interim type projects. Interim projects that

do not build toward the City Sewer System Plan will not be granted Sewer Capital Facility Charge Credit.

**Figure 8-2. Sewer Capacity Projects**



## 8.11. Stormwater System

### 8.11.1. Storm Drainage System Concept, Objective, and Policies

#### *Storm Drainage System Concept*

The City recognizes that a Comprehensive Storm Drainage Plan is needed to manage the stormwater runoff within the City. The plan should emphasize measures to address the adverse impacts of poor water quality of the stormwater runoff to the natural drainage systems. This plan should also address the volume of water impacts on receiving waters. Of primary concern are the steep channel of Lawson Creek and the outflow of Mud Lake. Larger creeks are less of a concern because of the shallow slopes and the large receiving bodies of water including the Rock Creek Wetland,

Frog Lake, and Lake Sawyer. Proper construction practices, especially with regard to erosion control, shall be required. Zoning regulations, construction, and development standards should allow for low impact development measures.

Development regulations should encourage ways to provide stormwater cleansing and infiltration. The loss of current biofiltration opportunities in roadside ditches should be replaced as ditches are replaced with pipes. The City should be prepared to respond to new federal or state requirements, which may require the treatment of stormwater releases. The City should encourage the potential for regional detention facilities where development was not built with drainage facilities. Dual use of storm drainage facilities for open space/recreation uses is encouraged where feasible. The overall Storm Drainage Plan must balance the needs of an urban community and the natural drainage system, which provides significant fish and wildlife habitat.

### *Storm Drainage System Objective and Policies*

Objective CF-11: Manage the quality of stormwater runoff to protect public health and safety, surface and groundwater quality, and the natural drainage systems.

Policy CF-40: Complete the Storm Drainage Plan that addresses both quantity and water quality concerns, and complies with NPDES Phase II permitting requirements.

Policy CF-41: Design storm drain lines or pathways to minimize potential erosion and sedimentation, discourage significant vegetation clearing, and preserve the natural drainage systems such as rivers, streams, lakes, and wetlands.

Policy CF-42: Development regulations should encourage the reduction of impervious surface and retention of natural vegetation.

Policy CF-43: Ensure that the storm drainage facilities necessary to support construction activities and long-term development are adequate to serve the development at the time construction begins and when the development is available for occupancy and use.

Policy CF-44: Design new development to allow for efficient and economical provision of storm drainage facilities, and require new development to pay its fair share of providing service.

Policy CF-45: The City of Black Diamond Stormwater Utility shall be responsible for implementing the Storm Drainage Plan.



Policy CF-46: New development should minimize increases in total runoff quantity, should not increase peak stormwater runoff, and should prevent flooding and water quality degradation.

Policy CF-47: Ensure coordination between the City and adjacent drainage systems.

## 8.11.2. Inventory

### *Conveyance System*

The City's stormwater conveyance system is a combination of piped and open channel drainage systems and sheet flow, with outfalls to Ginder Creek, Rock Creek, or Jones Lake. The overall City and natural drainage systems are shown in Table 8-14. The City reports no known major flooding problems; however, minor ponding does occur at some locations during larger storm events and/or during extended wet weather conditions.

The City's existing stormwater conveyance system consists of approximately 50,000 LF (9.4 miles) of gravity pipe, and 18,000 LF (3.4 miles) of open ditch. The pipe system is composed mainly of concrete culverts, corrugated metal pipe, and PVC pipe. Approximately 30% of the piped system is located in housing developments (Figure 8-3). Figure 8-3. Current City and Natural Drainage Systems

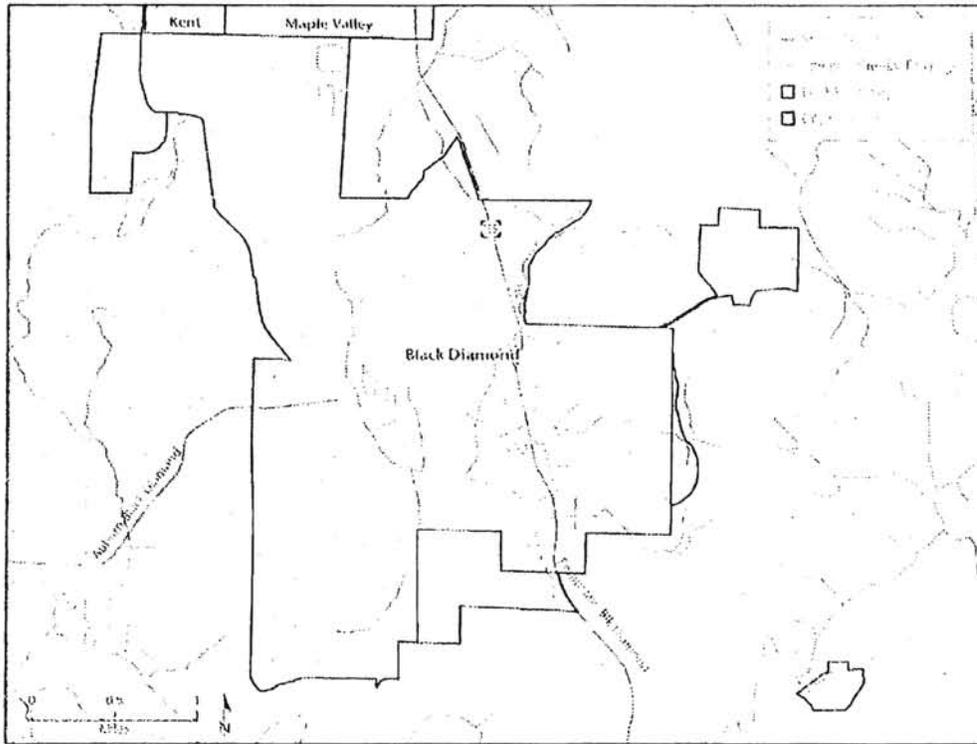
Table 8-14. itemizes the piping systems and open ditch systems. There are few stormwater ponds in the City. One of the more significant stormwater pond systems is the Greenbrier detention ponds located near Lake Sawyer.<sup>1</sup>

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<sup>1</sup> Dal Santo, Dan, Black Diamond Utility Supervisor. Phone conversation, December 27, 2006.



**Figure 8-3. Current City and Natural Drainage Systems**



**Table 8-14. Black Diamond Stormwater Conveyance System Inventory**

Piped Storm Water System Size (Inches/Diameter)	Total Length Linear Feet (Approximate)
6	250
8	450
10	550
12	27,250
15	2,150
18	3,950
24	950
36	1,250
48	150
54	150
<b>TOTAL</b>	<b>50,000</b>
Open Ditch Size	
Variable	18,000

Source: City of Black Diamond Comprehensive Plan (1996)

### *Stormwater Runoff Treatment*

Stormwater flow from the majority of the currently developed portions of the City does not receive treatment, other than some limited biofiltration. Stormwater detention ponds are located in the Lawson Hills and Morgan Creek developments and a 20-lot development in the Morganville area. There are additional stormwater detention ponds associated with the Greenbrier development near Lake Sawyer. These facilities may, and likely do, provide some minimum level of treatment of stormwater runoff from these developments.

#### **8.11.3. Level of Service**

##### *Conveyance System*

The LOS for the stormwater conveyance system capacity, as defined in the City's Stormwater Ordinance, requires that the conveyance system have sufficient capacity to convey the peak flow predicted for the 25-year, 24-hour design storm event within the storm pipe. The City will also require that the 100-year storm stay within the gutter system and that a route to a safe outfall for the overflow is planned for with a 10% safety factor. In addition, new and redeveloped areas of the City are required to provide sufficient detention so that the peak runoff from the site during the 2-year, 10-year, and 100-year storm event does not exceed peak runoff predicted under existing conditions. Looking forward, the City will be adopting Ecology's 2005 Stormwater Management Manual.

##### *Stormwater Runoff Treatment*

The City has adopted Ordinance No. 523, Stormwater Management. This ordinance requires all new development that creates 5,000 square feet or more of impervious surface, or redevelopment which increases the existing impervious area by 25% or more or increases the value of the property by 25% or more, to provide stormwater treatment that meets the criteria for stormwater treatment contained in the Ecology's, *Stormwater Management Manual for the Puget Sound Basin, 1992*. Additionally, it is the City's long-term goal to eventually provide stormwater treatment for all urban runoff.

#### **8.11.4. Future Needs**

##### *Stormwater Planning*

The Stormwater Comprehensive Plan is under development at this time. It will support and add definition to the general guidance of this chapter and address the following:

- Comprehensive Stormwater Management and Programs
- Detailed mapping and inventory of the stormwater systems
- Capital Project Planning will propose stormwater project concepts to minimize the environmental impacts of stormwater, minimize maintenance, and protect public and private property from storm runoff.

### *Capital Planning*

A capital improvement plan is under development as part of the comprehensive stormwater planning. The projects that are needed to serve growth will be included in the City's capital planning just as recognition of the future facility. However, the projects supporting future development will not be included as City-funded projects. It is expected that each developer will provide for stormwater treatment and detention as needed for its projects. Given that much of the City will be developing as MPDs, the City preference for regional storm facilities can be coordinated with the developers through the permitting and development approval process. The majority of the projects listed in the Capital Improvement Plan are maintenance projects replacing old, rusted out culverts.

The City is investigating opportunities where regional storm facilities serving the new MPDs could provide a storm treatment or detention benefit to areas of the City that are already developed. If such a project is identified, this will be incorporated into the City of Black Diamond Comprehensive Plan during the next update.

### *Other Plans and Requirements*

The **King County Stormwater Management Soos Creek Basin Plan** recommended two water quality enhancement projects for inclusion in the 6-year Capital Improvement Plan. The projects listed in this plan are now outdated as the John Henry Mine has very limited activity, and there are no longer any livestock in the Jones Lake area.

**Lake Sawyer Total Maximum Daily Load Restrictions (Department of Ecology Requirements to clean up a water body):** The City will need to consider various measures through capital planning, policy development, coordination with Soos Creek Water and Sewer District, and development of designed and constructed facilities to reduce phosphorous loading into Lake Sawyer. Part of the solution to the phosphorous loading into Lake Sawyer will be the elimination of septic systems around Lake Sawyer and the education of homeowners.

## 8.12. Utilities Provided By Other Entities

As independent utilities, the private companies providing the services described in this section, for the most part, fund capital investments and ongoing operations and maintenance costs independently through their rate base.

This section describes how the goals in the other plan elements will be implemented through utility policies and regulation, and is an important element in implementing the comprehensive plan. The main purpose of this section is to ensure that the City will have utility capacity to adequately serve the Land Use Element.

### 8.12.1. Utilities Concept, Goal, Objective, and Policies

#### *Utilities Concept*

The City should consider, when reasonable and feasible, the co-location of new public (non-City owned) and private utility distribution facilities in shared trenches, and coordination of construction timing, to minimize construction-related disruptions to the public and reduce the cost to the public of utility delivery. The City will encourage provision of an efficient, cost effective and reliable utility service by ensuring land will be made available for the location of utility lines and utility facilities.

The City will review and amend existing regulations, including Critical Areas Ordinances (CAOs), as necessary within existing corridors to allow maintenance, repair, installation, and replacement of utilities in a timely manner.

The City will provide standard locations for gas, power, phone, and cable within the street section of the City's construction standards.

The City will encourage communication among the private utility providers to support service planning for the City. It will be important for the City to encourage system design practices intended to minimize the number and duration of interruptions to customer service. The City supports necessary amendments to the Utility and Public Services Element for the purposes of updating individual provider plans.

As a strategy, the City will facilitate and encourage conservation of resources to delay the need for additional facilities for electrical energy and water resources, and to achieve improved air quality. In addition, the City will support the conversion to cost-effective and environmentally sensitive alternative technologies and energy sources.

## *Utilities Goal, Objectives, and Policies*

**Utilities Goal:** Coordinate City land use and utility facility planning to ensure consistency and to enable utility service providers to meet public service obligations.

**Objective U-1:** Design and construction standards will be environmentally sensitive, safe, cost effective, and consistent with utilities' public service obligations.

**Policy U-1:** Facilitate the development of all utilities at the appropriate levels of service to accommodate growth that is anticipated to occur in the City.

**Policy U-2:** Facilitate the provision of utilities and ensure environmentally sensitive, safe, and reliable service that is aesthetically compatible with the surrounding land uses and results in a reasonable economic cost.

**Policy U-3:** Process permits and approvals for utility facilities in a fair and timely manner and in accordance with development regulations which encourage predictability.

**Policy U-4:** Encourage conservation of all non-renewable non-municipal resources.

### **8.12.2. Utilities Overview**

#### *Electricity*

Electricity is provided by Puget Sound Energy (PSE). Various facilities are located throughout the City and King County, including one substation and one overhead transmission line within existing City limits.

The Bonneville Power Administration has a 500 kV transmission easement and line that lies about one mile north of the City limits,

#### *Telecommunications*

The City is served by Qwest Communications. There are various facilities located throughout King County and the City. Many of the telecommunication facilities, including aerial and underground, are co-located with those of the electrical power provider.

Cellular service in the City is currently available through a variety of providers, including Verizon Wireless, AT&T Wireless, T-Mobile, and Sprint. There are at least three cellular towers located in or near the City. Additional cellular sites are located around the City in the vicinity of the cities of Maple Valley, Covington, and Enumclaw. Generally, locating new cellular tower sites would depend on the density and location of new cell phone users, not overall population trends.

Cable television service throughout the City is provided by Comcast. Comcast usually locates its cable lines on private property, or on the power company lines within street right-of-way. They will also locate their lines within other utility easements along the right-of-way. No new major facilities would be required to accommodate population increases. Only additional cable lines would need to be provided to new development. Comcast also uses these lines to deliver broadband internet and digital phone service to its customers.

### *Natural Gas*

Puget Sound Energy provides natural gas via existing pipelines to the City. Gas service is generally extended to new development upon evaluations of requests based on an economic feasibility study. Currently the gas supply system meets the existing demand.

### *Tacoma Water Transmission Pipeline #5*

The City of Tacoma, Department of Public Utilities Water Division completed a project to improve its water supply system with construction of the second supply pipeline (Pipeline No. 5) in May 2006. Construction of the project allows diversion and transmission of an additional 100 cubic feet per second (or an additional 65 MGD) of water from the Green River to the Tacoma Regional Water Supply Area. The pipeline begins at the headworks near Kanaskat located approximately 0.5 mile downstream of the diversion dam and river intake, and travels in a westerly direction through the City and other communities, terminating near the Portland Avenue Reservoir in Tacoma.

The section of the pipeline through the City first passes through a wetland east of Lake 12, then south of Lake 12, to within 150 feet of the north right-of-way of the Green River Gorge Road (along the edge of the John Henry Mine), then along the south boundary of the John Henry mine to SR 169. The pipeline continues north along SR 169 to the existing Palmer Coking Coal roadway and turns west, to Lake Sawyer Road then north along Lake Sawyer Road to SE 305th Street then west to where it leaves the City limits.

## 8.13. Essential Public Facilities

The GMA provisions include the identification and location of essential public facilities in the City of Black Diamond Comprehensive Plan. Essential public facilities are defined to be essential land and building uses that are typically difficult to site, such as airports, state education facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

As specified in the GMA, local comprehensive plans may specify alternative sites, mitigating development conditions, and other particulars involved in the siting of essential public facilities. By statutory dictate, however, local comprehensive plans may not prevent outright the location and thereby the provision for essential public facilities as defined in the GMA.

When essential public facilities are identified for potential siting within the City, it will participate in the siting study. Essential public facilities are not limited to utilities, but represent a type of special land use. Thus, the objectives and policies for essential public facilities are contained in the Land Use Element.

## 8.14. Financial Resources

### 8.14.1. Revenue Sources

The 6-year Capital Facilities Plan includes improvements that the comprehensive plan elements indicate are necessary, along with potential funding sources. The funding sources identified below are potential long-term choices that may be available to the City for major capital improvement projects.

The following section describes several funding sources available to the City, organized by specified program use, but without reference to any specific project.

#### *General Purpose Revenues for Capital Funding*

##### **Real Estate Excise Tax**

Real Estate Excise Tax (REET) revenues are levied in two portions and must be expended on capital projects. The first 0.25% of property value may be used for the general purpose of financing capital improvements, and the second 0.25% may be used for only those capital projects listed in a comprehensive plan. Since the REET is based on the total value of real estate transactions in a given year, the amount of REET revenues a city receives can vary substantially from year to year based on the

normal fluctuations in the real estate market. During years when the real estate market is active, revenues are high, and during softer real estate markets, revenues are lower.

## **Sales Tax**

Of the 8.6% sales tax currently collected in the City, a 1% "local" share of the tax accrues to local jurisdictions. The City receives 85% of the 1% local tax and the County receives 15%. This tax is levied on businesses in the area, on construction activity, and on some transactions that are related to housing, such as certain online purchases and telecommunications services. Cities may discretionally use general fund revenues to fund capital improvements. By policy, some cities have chosen to dedicate a portion of their local sales tax toward the construction of their capital needs. All City residents and visitors to the City who make retail purchases within the City limits contribute to this revenue stream.

## **Utility Taxes**

Utility taxes are a form of business and occupation tax levied on utilities, and a revenue source that is currently used by the City. These revenues contribute to the municipality's General Fund and may be used for many City expenses, including capital improvements. Washington State sets the maximum rate of tax on electrical, natural gas, steam energy, and telephone businesses at 6.0%, unless a higher rate is approved by voters. There is no tax rate limit on other utilities such as water, sewer, and garbage services. Utility taxes are paid by the companies that provide the utility service, but are likely passed on to the customers of those companies. Therefore, these funds are primarily paid by City residents.

## **General Obligation Bonds**

The City, by special election or council decision, may issue general obligation bonds to finance almost any project of general benefit to the City. The bonds are paid off by assessments levied annually against all privately owned properties within the City. This type of bond issue is usually reserved for municipal improvements that are of general benefit to the public, such as arterial streets, bridges, lighting, municipal buildings, fire-fighting equipment, and parks. Inasmuch as the money is raised by assessment levied on property values, the business community also provides a fair share of the funds to pay off such bonds. General obligation bonds have the best market value and carry the lowest rate of interest of all types of bonds available to the City because they are backed by the good faith of the entire City's assets.

## *Parks and Recreation-Specific Revenues*

### **Park Impact Fees**

Park impact fees are a financing tool that requires new development to pay a portion of the costs associated with infrastructure improvements that are “reasonably related” to that development. The impact fee must be related to improvements to serve new development and not existing deficiencies, assessed proportionally to the impacts of new development, allocated for improvements that reasonably benefit new development, and spent on facilities identified in the Capital Facilities Plan.

### **Washington State Recreation and Conservation Office Grants**

The Recreation and Conservation Office is dedicated to creating and maintaining recreational and habitat opportunities in Washington State. The Recreation and Conservation Office staffs five Boards:

- the Recreation and Conservation Funding Board,
- the Salmon Recovery Funding Board,
- the Governor's Forum on Monitoring Salmon Recovery and Watershed Health,
- the Washington Biodiversity Council, and
- the Invasive Species Council.

Two of the Boards, the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board, are responsible for awarding and managing capital project grants. Both Boards solicit, make grant awards, and oversee sponsor progress for property acquisition and facility development projects that support the Boards' missions. Grants are typically for open space protection and acquisition, farmland protection, habitat conservation, trail development, and parks and recreation facility projects.

## *Transportation-Specific Revenue Sources*

### **State Motor Vehicle Fuel Tax**

Counties and cities receive a portion of the state Motor Vehicle Fuel Tax (MVFT) based on a reimbursement formula. This provides a nexus between those who pay the tax, and those who benefit from the improvements paid for with those revenues. These funds are collected from people who purchase gas for vehicles and are presumably users of the road system, and are used to pay for improvements that benefit those users. Generally, there is a positive relationship between road use and taxation.

## State Grants

Grants are an important funding source for transportation capital projects; however, these funds are distributed in a competitive process making it difficult to determine future grant funding levels. State grants are primarily funded with the state-levied portion of the MVFT, which is paid by anyone purchasing fuel in the state. Therefore, users of the state roads are the largest funding source for improvements paid by grants, and are the primary beneficiaries as well.

There have, in recent years, been increases in the state MVFT rate. However, many of these additional funds were earmarked for specific large projects, although there was some allocation to local jurisdictions. The Transportation Partnership Act of 2005 provided some additional funds to the Transportation Improvement Board and the County Road Administration Board, for a total of \$80 million to be disbursed to local jurisdictions as grants over a 16-year period. However, these increases in funds are very small relative to demand, with requests to the Transportation Improvement Board overreaching available funds by 800%.

## Federal Grants

Federal transportation grants are funded through the federal portion of the fuel excise tax. The federal gas tax rate has fluctuated between \$0.183 and \$0.184 per gallon since 1994. The majority of these funds are deposited into the Highway Trust Fund and disbursed to the states through the Highway and Mass Transit Accounts.

This tax is paid by all who purchase gas in the United States. Again, users of the roads are therefore the largest funding source for improvements paid by federal grants and the primary beneficiaries. However, the pool of contributors is nationwide, and the grants are distributed nationwide. This means that each year all states contribute to grant revenues, but depending on their grant awards may receive more or less in funding than they contributed.

## Transportation Impact Fees

Impact fees are a financing tool that requires new development to pay a portion of the costs associated with infrastructure improvements that are “reasonably related” to that development. The GMA allows agencies to develop and implement a transportation impact fee program to help fund some of the costs of transportation facilities needed to accommodate growth. State law (Chapter 82.02 RCW) requires that impact fees be related to improvements to serve new developments and not existing deficiencies, assessed proportionally to the impacts of new developments, allocated for improvements that reasonably benefit new development, and spent on facilities identified in the Capital Facilities Plan.

Legally, financing for improvements that will serve the new development must provide a balance between impact fees and other sources of public funds, and the fees must be structured in a manner that ensures that funds collected do not exceed a proportionate share of the costs of improvements reasonably related to new development.

### **Transportation Benefit District**

Cities, towns, and counties may establish a Transportation Benefit District to fund capital improvements of City streets, county roads, and state highways. A Transportation Benefit District may include an area within one or more counties, cities, port districts, or public transportation benefit areas. Transportation Benefit Districts may be funded with a local sales tax of up to 0.02% and may be levied for a 10-year period unless reauthorized for a second 10-year period by the voters. In addition to the sales tax, Transportation Benefit Districts may be funded with 1) single-year, voter-approved excess property tax levies; 2) multi-year, voter-approved levies for bond redemption; 3) up to a \$100 annual vehicle fee per vehicle registered in the district with any fee exceeding \$20 requiring a public vote, 4) vehicle tolls, and 5) transportation impact fees. Improvements funded by the Transportation Benefit District must be 1) consistent with local and regional transportation plans; 2) required for economic development; and 3) partially funded by local governments or private sources.

### **Local Improvement Districts**

Another potential source of funds for improvements comes through the formation of Local Improvement Districts (LIDs) involving a lien against the property collected through assessment made on properties benefited by the improvements.

LID financing is frequently applied to water, sewer, and street system extensions into previously underserved areas. Typically, LIDs are formed by the City at the written request (by petition) of the property owners within a specific area of the City. Upon receipt of a sufficient number of signatures on petitions, the local improvement area is defined, and a system is designed for that particular area in accordance with the City's general comprehensive plan. Each separate property in the LID is assessed in accordance with the special benefits the property receives from the system improvements.

### **Centennial Clean Water Fund**

This program offers low interest loan programs, with a limited grant funding program. State grants and loans administered by Ecology for the design, acquisition, construction, and improvement of Water Pollution Control Facilities and related activities to protect water quality.

## Surface Water Management Fees

The City is required by state and federal law to provide surface water management services. The surface water management program identifies, prevents, and manages the impacts of development on flooding, erosion, pollution, and low stream flows. To pay for these services, a fee is assessed on property owners in the City. These management fees are used to fund a range of surface water infrastructure projects.

## State Revolving Fund

The State Revolving Fund (SRF) program was created by the August 1996 reauthorization of the Safe Drinking Water Act. The SRF program provides low-interest loan financing to cities for capital improvements that promote public health and increase compliance with drinking water regulations.

Additionally the state provides low-interest loans and loan guarantees administered by Ecology for water pollution control projects. Applicants must show a water quality need, have a facilities plan for treatment works, and show the ability to pay back the loan through a dedicated source of funding. Funds must be used for construction of water pollution control facilities (wastewater treatment plants, stormwater treatment facilities, etc.).

## Aquatic Land Enhancement Account

This grants program is administered by the Department of Natural Resources. Aquatic Land Enhancement Account (ALEA) funds are limited to water dependent public access/recreation projects or on-site interpretive projects. A 25% local match is required.

## Rural Economic Community Development

A Federal Agency, the Rural Economic Community Development (RECD, formerly FmHA), has a loan program that, under certain conditions, includes a limited grant program. Grants can be awarded when utility and/or garbage debt service payments exceed 1% of the community's Median Household Income.

In addition, the RECD has a loan program for communities that cannot obtain funding by commercial means through the sale of revenue bonds. The loan program provides long-term, 30- to 40-year loans at an interest rate that is based on federal rates, varying with the commercial market. The City is not likely to get funding from this source because of the City's median household income level and because other financing mechanisms are potentially available.

## State Public Works Trust Fund

The Public Works Trust Fund (PWTF) is a revolving loan fund designed to help local governments finance needed public works projects through low-interest loans and technical assistance. The PWTF, established in 1985 by legislative action, offers loans substantially below market rates, payable over periods ranging up to 20 years.

Interest rates are 1%, 2%, or 3%, with the lower interest rates providing an incentive for a higher local financial share. A 20% local share qualifies the applicant for a 2% interest rate and a 30% local share qualifies for a 1% PWTF loan. A minimum of 10% of project costs must be provided by the local community. The useful life of the project determines the loan term, with a maximum term of 20 years.

To be eligible, an applicant must be a local government or special purpose district, and have a long-term plan for financing its public works needs. If the applicant is a county or city, it must adopt the optional 0.25% real estate excise tax dedicated to capital purposes. Eligible public works systems include streets and roads, bridges, storm sewers, sanitary sewers, and domestic water. Loans are presently offered only for purposes of repair, replacement, rehabilitation, reconstruction, or improvement of existing eligible public works systems, in order to meet current standards and to adequately serve the needs of existing service users. Ineligible expenses include public works financing costs that arise from forecasted, speculative, or service area growth. Such costs do not make a project ineligible but must be excluded from the scope of their PWTF proposal.

## *Private Funding Sources*

### Latecomer Agreements

Latecomer Agreements allow property owners who have paid for capital improvements to recover a portion of the costs from other property owners in the area who later develop property that will benefit from those improvements. The period of collection may not exceed 15 years and is based on a pro rata share of the construction and contract administration costs of the particular project. The city or county must outline an area subject to the charges by determining which properties would require similar improvements. The improvement must be required for property development by city or county ordinance in order for the reimbursements to be assessed.

### Capital Facility Charges

The City may adopt a capital facility charge to finance improvements of general benefit to the system which are required to meet future growth. Capital facility charges are generally established as one-time charges assessed against developers or

new customers as a way to recover a part or all of the cost of additional system capacity constructed for their use.

The capital facility charge or fee is deposited in a construction fund to construct such facilities. The intent is that all new system customers will pay an equitable share of the cost of the system improvements needed to accommodate growth. Typical items of construction financed by the capital facility charge are water treatment facilities, pump stations, transmission lines, and other general improvements that benefit the entire system.

Capital facility charges are based on the cost of the existing facilities of that utility and the cost of the capacity-adding public projects that are planned to service new development, divided by the number of units of development to be served within the planning period.

### **Developer Mitigation**

The City has the authority to require developers to mitigate the impacts of their projects either through developer impact fees or general mitigation under the State Environmental Policy Act (SEPA). However, the law does not allow the City to impose both methodologies in a way that charges developers twice for the same mitigation. Developer mitigation would be used to close the gap between what the City can afford and the total. In addition, the mitigation would only be used to ensure that new development pays its "fair share" of capital facilities (unless precluded by any agreement).

### **Planned Actions**

Planned Actions are a project specific action under SEPA in which an Environmental Impact Statement (EIS) designates, by ordinance, those types of projects to be considered Planned Actions—spelling out mitigation measures that will be applied. This type of action is appropriate for small areas expecting a specific type of development.

## **8.14.2. 6-Year Capital Facilities Funding**

Table 8-15. sets forth the 6-year Capital Facilities Plan, based on the capital facility needs identified in this plan; while Table 8-16. summarizes the funding needs. Since the comprehensive planning process is a continuing, evolving process, this 6-year plan will be continually reviewed and updated. Any plan is a tool to aid in decision making. This plan is no exception. By outlining how the needed capital facilities of the future can be successfully provided, it will assist annual budget decisions which need to incrementally provide the funding for those facilities. The

plan is not intended as a substitute for those budget decisions, only as a tool to help make them.

If the probable funding for capital facilities at any time is insufficient to meet existing needs, the Land Use Element must be reassessed. At the same time, funding possibilities and levels of service might also be reassessed. The plan requires that as a result of such reassessment, appropriate action must be taken to ensure the internal consistency of the Land Use and Capital Facilities Elements of the plan.

**Table 8-15. Black Diamond Six-Year Capital Facilities List**

Capital Facility Projects	Estimated Cost	Potential Funding
<b>Administration</b>	<b>\$0</b>	
None	-	-
<b>Police</b>	<b>\$0</b>	
None	-	-
<b>Parks and Recreation</b>	<b>\$6,284,000</b>	
School Park	\$25,000	General & Local
Union Stump Memorial Park	\$35,000	General & Local
Lake Sawyer Boat Launch	\$962,000	General & Local, State & Federal Grants
Lake Sawyer Regional Park	\$4,647,000	General & Local, State & Federal Grants, Private
Trail System	\$340,000	General & Local, State & Federal Grants
BMX Park	\$250,000	General & Local, State & Federal Grants
Eagle Creek Community Park	\$25,000	General & Local
<b>Fire and Emergency Services</b>	<b>\$0</b>	
None	-	-
<b>Transportation</b>	<b>\$9,778,710</b>	
See Chapter 7 for Complete List	-	-
<b>Water System</b>	<b>\$18,751,000</b>	
Railroad Ave. W/L Replacement, Phase 1	\$186,000	Utility Funding & Fees
Merino St. W/L Replacement, Phase 1	\$30,000	Utility Funding & Fees
Springs Study	\$50,000	Utility Funding & Fees
Water Meter Upgrades	\$200,000	Utility Funding & Fees
Roberts Dr. W/L Replacement	\$440,000	Private
The Villages, Phase 1	\$3,780,000	Private
3rd Ave. W/L Replacement, Phase 1	\$250,000	Utility Funding & Fees

Capital Facility Projects	Estimated Cost	Potential Funding
Springs Transmission Main Replacement, Phase 1 & Collection Upgrades	\$1,000,000	Private
Springs Transmission Main Replacement, Phase 2	\$1,274,000	Private
Springfield No. 3 Collection Upgrade	\$100,000	Utility Funding & Fees
3rd Ave. W/L Replacement, Phase 2	\$200,000	Utility Funding & Fees
The Villages, Phase 2	\$5,790,000	Private
2nd Ave W/L Replacement	\$190,000	Utility Funding & Fees
Morgan St. W/L Replacement	\$416,000	Utility Funding & Fees
965 Pressure Zone Transmission Replacement	\$300,000	Utility Funding & Fees
The Villages, Phase 3	\$1,820,000	Private
The Villages, Phase 4	\$689,000	Private
3rd Ave. W/L Replacement, Phase 3	\$398,000	Private
Baker St. W/L Replacement, Phase 1	\$100,000	Utility Funding & Fees
Lawson St. W/L Replacement, Phase 1	\$150,000	Utility Funding & Fees
5th Ave. W/L Replacement & Extension	\$208,000	Utility Funding & Fees
Pacific Pl. W/L Replacement	\$72,000	Utility Funding & Fees
Pacific St. W/L Replacement & Extension	\$228,000	Utility Funding & Fees
3rd Ave. W/L Replacement, Phase 4	\$440,000	Utility Funding & Fees
5th Ave. W/L Replacement	\$440,000	Utility Funding & Fees
<b>Sanitary Sewer System</b>	<b>\$10,340,000</b>	
New Pump Station 1	\$6,000,000	Private
Trunk Line 1	\$3,000,000	Private
Force Main 1	\$960,000	Private
Preserve Old Treatment Plant	\$30,000	General & Local, Utility Funding & Fees
Manhole Rehabilitation	\$50,000	General & Local, Utility Funding & Fees
Infiltration and Inflow Program	\$300,000	Utility Funding & Fees
<b>Stormwater System</b>	<b>\$200,000</b>	
3rd Avenue Basin Improvements	-	Private (Occur as needed)
North Town Basin Improvements	-	Private (Occur as needed)
Park Street Basin Improvements	-	Private (Occur as needed)
First Avenue Basin Improvements	-	Private (Occur as needed)
Railroad Avenue Basin Improvements	-	Private (Occur as needed)

Capital Facility Projects	Estimated Cost	Potential Funding
Stream Bank Revegetation	-	Grants
Storm Culvert Replacement	\$200,000	Grants, Utility Funding and Fees
<b>Total</b>	<b>\$45,353,710</b>	

**Table 8-16. 6-Year Capital Facilities Plan Summary**

Category	Cost Estimates						
	2009	2010	2011	2012	2013	2014	6-Year Total
Administration	-	-	-	-	-	-	-
Police	-	-	-	-	-	-	-
Parks and Recreation	\$195,000	\$145,000	\$1,438,000	\$2,810,000	\$1,767,000	-	\$6,284,000
Fire and Emergency Services	-	-	-	-	-	-	-
Transportation	\$715,000	\$1,755,000	\$227,000	\$3,950,000	\$680,000	\$2,451,710	\$9,778,710
Water System	\$4,556,000	\$2,594,000	\$6,150,000	\$3,813,000	\$1,638,000	-	\$18,751,000
Sanitary Sewer System	\$90,000	\$60,000	\$60,000	\$10,020,000	\$60,000	\$50,000	\$10,340,000
Stormwater System	-	-	-	\$200,000	-	-	\$200,000
<b>Total</b>	<b>\$5,556,000</b>	<b>\$4,554,000</b>	<b>\$7,875,000</b>	<b>\$16,980,000</b>	<b>\$4,145,000</b>	<b>\$2,501,701</b>	<b>\$45,353,710</b>

## Appendix A

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Wetlands and Streams of Black Diamond and Their Preliminary Classifications

## APPENDIX A

### WETLANDS AND STREAMS OF BLACK DIAMOND AND THEIR PRELIMINARY CLASSIFICATIONS

The following are streams that are located within the City of Black Diamond along with Department of Natural Resource water typing classifications that were applied in the 1996 Comprehensive Plan. These water typing classification are shown for planning purposes only.

**Table 0-1. Stream Type Classifications**

Type 1	Type 2	Type 3	Type 4	Type 5
Covington Creek	Ravensdale Creek	Rock Creek	Lawson Creek	All other Rock Creek drainage
		Jones Lake Creek	Mud Lake Creek	
		Ginder Creek		
		Black Diamond Lake Creek		
		Unnamed tributary to Black Diamond Lake		

The following are known wetlands located within the City of Black Diamond and their associated classifications according the Washington State Department of Ecology's wetland rating system. These wetlands and their classifications are shown for planning purposes only. Provisions of the City's sensitive areas ordinance govern delineation and classification of wetlands within the City limits.

**Table 0-2. Black Diamond Wetland Classifications**

Wetland	Wetland Names	DOE Wetland Category
1	Lake Sawyer	Category I
2	Lake Sawyer Wetlands	Category II
3	Coal fine Wetland	Category III
4	Shrub/scrub Wetland	Category IV
5	Ginder Creek (North) Wetlands	Category II
6	Ginder Lake	Category II
7	Mud Lake	Category II
8	Lawson Hill Wetland	Category IV
9	Lawson Hill Wetland	Category IV
10	Ginder Creek (Mid) Wetlands	Category II

11	Morganville Wetland	Category III
12	Oak Lake	Category III
13	Ginder Creek (South) Wetlands	Category II
14	Rock Creek Wetlands	Category I
15	Franklin Hill Wetland	Category III
16	Jones Lake	Category II
17	169/Franklin Hill Emergent Wetland	Category II
18	Below Franklin Hill Forested Wetland	Category II
19	Black Diamond Lake	Category III

Source: City of Black Diamond Wetland and Stream Inventory, December 1991, and revised by field investigation in 1995.

The following are known wetlands located outside the City of Black Diamond's municipal boundaries. These wetlands are shown with their associated wetland types and King County categories. This information is provided for planning purposes only.

**Table 0-3. Surrounding Area Wetlands**

Wetland Name	Size	Wetland Type	King County Category
Covington Creek 8	123.0 Ac	PSS, PFO, PUB	Class 1
Covington Creek 9	6.7 Ac	PFO, PEM	Class 2
Covington Creek 10	8.3 Ac	PSS	Class 2
Covington Creek 11	9.5 Ac	PSS	Class 2
Covington Creek 12	23.3 Ac	PSS, PUB	Class 1
Covington Creek 22	15.0 Ac	PAB, PEM, PSS, PFO	Class 1
Covington Creek 24	19.8 Ac.	PEM, PSS, PFO	Class 2
Covington Creek 26	30.8 Ac	PSS, PFO	Class 2
Covington Creek 27	40.0 Ac	PFO, PSS, PUB	Class 1
Covington Creek 60	39.5 Ac	PEM, PFO	Class 2
Covington Creek 79b	N/A	PFO	Class 1
Covington Creek 82b	N/A	PEM, PAB	Class 2
Middle Green River 1b	N/A	PSS	Class 1
Middle Green River 2b	N/A	PSS	Class 1
Middle Green River 11b	N/A	PSS	Class 1

These wetlands, as listed in the King County Interactive Map Folio, Sensitive Areas layer, are identified by the National Wetland Inventory based upon aerial photography. *The mapping work and classifications were done in 1980.*

## Appendix B

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City of Black Diamond 2025 Population and Employment Forecasts Tech Memo



## Jones & Stokes

### Memorandum

<b>Date:</b>	November 27, 2006
<b>To:</b>	Rick Luther, Interim City Administrator, Scott Jones, City Planner
<b>From:</b>	Gil Cerise, Senior Planner
<b>cc:</b>	Deborah Munkberg, Richard Weinman, John Davies, Michael Hodgins
<b>Subject:</b>	City of Black Diamond 2025 Population and Employment Forecasts

### Background

In updating the City of Black Diamond's Comprehensive Plan, our scope of work states that we will update the population and employment forecasts to 2025. The existing Black Diamond Comprehensive Plan, completed in 1996, only contains forecasts to 2015, and have greatly different boundaries than the current city. The 1996 Plan did not account for the Lake Sawyer neighborhood or the Black Diamond Potential Annexation Area (PAA) that was approved in December 1996. Both Lake Sawyer and the Black Diamond PAA were accounted for in a DEIS and FEIS that were produced in 2000 for the City of Black Diamond PAA.

The 2000 Black Diamond DEIS and FEIS included information and assumptions about buildout under a variety of alternatives, including a Preferred Alternative in the FEIS. However, these documents did not address timing or growth rates other than to generally discuss compliance with phasing provisions of the Black Diamond Urban Growth Area Agreement. In addition, King County growth targets listed in the 2000 FEIS were for the 2012 target year since the FEIS was completed prior to the 2002 update of household and employment forecasts.

The Preferred Alternative included the following information for build-out within the City and its PAA:

**Table 1.3 of City of Black Diamond Potential Annexation Area Final Environmental Impact Statement: October 2000.**

*Preferred Alternative*

*Population, Households, and Job Effects*

	PAA at Build-out	Existing City at Build-out	Total City at Build-out	Increase due to PAA
Population	4,211	14,262	18,473	23%
Households	1,620	5,485	7,105	23%
Jobs	8,039	3,518	11,557	70%

The City of Black Diamond has also had a development moratorium in place since 2001 to allow time for water and sewer infrastructure to be put in place to accommodate expected growth. The development moratorium has held growth to a minimal amount during the 2001-2006 time frame. Only vested applications were allowed to proceed with development plans. Therefore, staff has taken an approach of using the FEIS numbers to guide the total build-out growth of Black Diamond and its UGAs, but has made use of other methods to produce a 2025 population and employment projection.

## Methodology of Projections

Staff developed a projection methodology that uses existing estimates of number of households, jobs, and population within City of Black Diamond as a starting point. Current households and population were obtained from the State Office of Financial Management and current employment levels within the City were obtained from Puget Sound Regional Council.

On October 26, 2006, consultant and city staff meet with Yarrow Bay Communities to review their development projections for their land holdings within the current Black Diamond city limits and PAA. Yarrow Bay Communities provided assumptions on the numbers of dwelling units being considered for each of their landholdings, as well as amount of square feet of commercial and office uses. Yarrow Bay Communities also offered an assessment for timing of when development would occur.

The methodology used for making projections to 2025 used Puget Sound Regional Council (PSRC) annualized forecasts from FAZ 3310, a geographic area which contains City of Black Diamond and its PAA to account for non-Yarrow Bay Development growth.

The methodology combines these annualized increases with Yarrow Bay Communities' projections to produce estimates for the total number of households, jobs, and population in 2025.

Staff, then utilized the following assumptions in developing household and population projections:

1. Yarrow Bay Communities projections for their development buildout, estimated to occur in the 2009 to 2020 time frame were used to estimate number of new households during those years.
2. Population was calculated by applying a PSRC estimate of King County persons per household in 2005 of 2.37 to the annual household number.
3. Due to the development moratorium, no annualized background growth rate for new households was assumed in 2006. However, under the assumption that the development moratorium will be lifted in 2007, the PSRC FAZ forecast was used for the 2007-2008 time frame.
4. No annualized background growth above and beyond that being provided as an assumption by Yarrow Bay Communities was assumed for households during the 2009-2020 timeframe. It can be assumed that some small fraction of the annual developer projections would include landowners of smaller redevelopment parcels developing their land.
5. For the time frame after 2020, PSRC FAZ 3310 population and household growth projections were used to account for additional development and/or potential final phases of Yarrow Bay development.
6. The percentages used in Black Diamond PAA FEIS Table 1.3's column entitled "Increase due to PAA" is used to assume the amount of new households and population living in the City's PAAs.

The following assumptions were used for employment forecasts:

7. For Yarrow Bay Communities' assumed jobs, the number of square feet in retail and non-retail uses provided by Yarrow Bay were converted into an estimated number of jobs. The jobs were divided evenly among the years that Yarrow Bay estimated that they would be developing their residential uses.
8. For non-Yarrow Bay jobs, an annualized percentage of job growth was used from PSRC projections for FAZ 3310. The annualized percentages were computed for the period up to 2010, for 2010-2020, and for 2020-2025.

## Results

The resulting projections are shown in the following tables:

*Households and Population Forecasts*

Year	Assumed Growth Rate	Yarrow Bay Assumptions	Households	Population
2006			1,578	4,085
2007	2.3%		1,578	4,085
2008	2.3%		1,614	4,179
2009		250	1,651	4,275
2010		250	1,901	4,868
2011		600	2,151	5,460
2012		600	2,751	6,882
2013		450	3,351	8,304
2014		450	3,801	9,371
2015		450	4,251	10,437
2016		450	4,701	11,504
2017		450	5,151	12,570
2018		450	5,601	13,637
2019		450	6,051	14,703
2020		150	6,501	15,770
2021	1.3%		6,651	16,125
2022	1.3%		6,738	16,335
2023	1.3%		6,825	16,547
2024	1.3%		6,914	16,762
2025	1.3%		7,004	16,980

*Employment Projections*

Year	Assumed Growth Rate	Yarrow Bay Assumptions	Jobs
2006	2.3%		470
2007	2.3%		481
2008	2.3%		492
2009	2.3%		503
2010	2.5%		515
2011	2.5%	198	528
2012	2.5%	198	739
2013	2.5%	198	955
2014	2.5%	198	1,177
2015	2.5%	198	1,404
2016	2.5%	198	1,637
2017	2.5%	198	1,876
2018	2.5%	198	2,121
2019	2.5%	198	2,372
2020	2.5%	198	2,629
2021	2.2%		2,885
2022	2.2%		2,948
2023	2.2%		3,013
2024	2.2%		3,079
2025	2.2%		3,147

The results of the projections were compared to both the FEIS Preferred Alternative and the King County Targets for City of Black Diamond. As can be seen in the table below, all the results were within the build-out numbers anticipated in the FEIS Preferred Alternative. In addition, the projections for households and jobs met the 2022 targets set in the King County Countywide Planning Policies.

	FEIS Preferred Alternative (Build-out)	King County Targets for City of Black Diamond (2022)	2025 Projections
Households	7,105	1,099	7,004
Population	18,473		16,980
Jobs/Employment	11,557	2,525	3,147

## References

- King County Countywide Planning Policies, updated July 2006. Revised Table LU-1: King County 2001-2022 Household and Employment Targets
- Puget Sound Regional Council 2006. 2006 Forecasts of Population and Employment - Sub-County (small area). [Edition (Document number, if known.)] Seattle, WA. PSRC, Data Systems and Analysis. Released October 26, 2006.
- Personal communication with MacDuff, David. General Manager, Black Diamond Yarrow Bay Communities, Kirkland, WA October 26, 2006 - meeting.

## Appendix C

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Black Diamond Historic Preservation

# Historic Preservation

## Black Diamond History

*(The following history was prepared by Diane Olson for the Voice of the Valley newspaper)*

In 1880, the Black Diamond Mining Company of Nortonville, California sent Victor Tull north to King County to search for high quality coal. They hoped to locate something even better than the rich veins being worked at the Newcastle mine.

The rich McKay vein was discovered. It spread from Franklin to Ravensdale, with Black Diamond right in the middle of it all. The result of his discovery made Black Diamond the highest producer of coal in King County for 1895 and for many years thereafter. Black Diamond was the king of King County, and it made a significant contribution to the growth and prominence of Seattle on the west coast. Tull's prospecting brought mine president P. B. Cornwall and his engineer Morgan Morgans to the area in June 1882.

At that time, the decision was made to invest in the fields. A tent popped up, housing the men sent up by the company to establish the mine. By 1884, the Columbia and Puget Sound Railroad had built the narrow-gauge rail from Renton to Black Diamond. By March 1885 the first shipment of commercial quality coal left the town for Seattle's ports.

Many of the Welsh miners and their families moved en-masse with the company from Nortonville in 1884. The company had hired 35 carpenters to build their houses. Prospects of work drew immigrants from Italy, Austria, Yugoslavia, Finland and a few from Belgium, France and Poland. By the turn of the century, Black Diamond boasted about 3,000 residents.

There were numerous coal mines in town, as well as, the Franklin mines about three miles east of Black Diamond. One of the Black Diamond mines, number 11, was over a mile deep before explosions forced its closure in 1927.

The small businesses bordered the rail tracks, which ran through town past the depot, with a spur up Lawson hill to Lake 12 and another spur to Franklin and Kummer. It was an isolated community, which forced the residents to create their own forms of entertainment. There were sports, musical groups, plays, and social clubs. A walk up the Franklin rail in the moonlight was a great way to go courting.

In 1904, Pacific Coast Company purchased the mines and established the company businesses, such as "the company store." The advent of prohibition brought a new source of income to the area. Many visitors from Seattle and Tacoma came to buy another Black Diamond product -- bootleg whiskey.

In 1921, a strike riddled the company. The company imported strike-breakers. Strikes and strike-breakers were not new to this area, but this time, the striking miners who had been forced out of their houses by the company, built a new town on the plateau just west of Black Diamond. They called it Morganville, after Tim Morgan the farmer who owned the land where they built.

The advent of oil brought the decline of coal and in turn, Black Diamond. By the 1930's over half the houses were empty and cows were regular pedestrians around town. Highway 169, built through the community in the 1930's is probably what saved it from extinction that took the Franklin, Bayne, Durham and Hyde communities.

World War II brought a small boom to the area and in the late 1940's, Palmer Coking Coal purchased the mines from Pacific Coast Coal Company.

The City was incorporated in 1959.

A significant annexation in 1998 increased the City's population by 82% and brought the lakeside community of Lake Sawyer into the City limits.

## **Inventory of Historic Structures and Sites**

Preserving irreplaceable cultural features reflects local values about the unique heritage of Black Diamond. There are a number of historical sites and buildings in Black Diamond that date back to the early days of mining at the turn of the century.

These sites are identified on **Table D-1**. There are many other locally significant buildings deserving of recognition and preservation. The City's first hospital/medical office is located in the house across the street from City Hall. Many of the houses in the City exemplify the coal company housing built for the miners. In Old Town they are located along SR-169, First, Second, Fourth and Fifth Avenues. The same is repeated in Morganville on Morgan Street and Union Drive.

The Comprehensive Plan recognizes the importance of retaining these treasures. Likewise, other structures in town serve as reminders of the heritage of the City. The Comprehensive Plan supports the preservation and rehabilitation of structures through the implementation of community character design guidelines. The protection of registered historic structures and sites will be an important part of the guidelines. New infill development within these districts will be encouraged to mimic

and reflect the style and pattern and scale of the historical development. For example a new street front commercial building could include ground floor retail and offices or apartment units above.

The City of Black Diamond will work with King County through an interlocal agreement to provide landmark designation and protection services for the historic buildings, structures, districts, sites and objects within the city limits. This arrangement became official with the King County on June 5, 1995. A survey of historic properties in the City of Black Diamond was undertaken in November and December of 1997, resulting in an inventory of 64 individual buildings, objects, or sites, and 2 groups of buildings. While this list represents an update of the inventory presented in the 1996 Comprehensive Plan, it does not include historic properties that may be present in any of the areas annexed by the City after 1997, nor does it include those structures built between 1957 and 1968, which are now old enough to be considered for landmark status but were not eligible as of the 1997 survey. Considering these factors, another update of the inventory would be appropriate at the next Comprehensive Plan update.

Black Diamond Historic Resource Inventory (1997)

Address	HRI#	Hist. Name	Common Name	Date Bld	Status
32627 RAILROAD AV	0812	Black Diamond Depot	Black Diamond Historical Museum	1886, 1904	State Register
32426 6TH AV (PO Box 169)	0813	St. Barbara's Catholic Church	St. Barbara's Catholic Church	1910-11	
Roberts Dr / Branch Rd nr Cemetery	0814	Union Stump	Union Stump	1907-1950	State Register
Railroad Ave. R-O-W; to the South of the Black D	0815	Black Diamond Jail		c.1909	
32525 RAILROAD AV ? 32707	0816	The Black Diamond Store	The Black Diamond Store	c. 1900	
24431 SE 325th SI	0817	Black Diamond Cemetery	Black Diamond Cemetery	1886-present	BD Landmark, Nat'l Register
32721 RAILROAD AV 32700	0819	Black Diamond Post Office/Koerner's Drug	Old Confectionery Art Gallery	c. 1893-1912	
24311 MORGAN ST	1054	[Cabin]	Miners' Cabin	c. 1910	BD Landmark
25312 3RD AV	1465	PCCC House No. 263 - Harry M. & Margaret McDowell House		c. 1896	
32406 3rd Avenue	1466	PCCC House No. 104 - A.B. (Fred) Tonkin House		c. 1887	
32503 3RD AV	1467	PCCC House No. 277 - Old School Building		c. 1887	
97 3RD AV	1468	PCCC House No. 100		c. 1887	
32514 3RD AV	1469	PCCC House No. 98 - Harrington House		c. 1887	
32524 3RD AV	1470	PCCC House No. 96 - Habenicht House	Lyle House	c. 1887	
25501 SE 328TH ST (110 LAWSON ST)	1471	PCCC House No. 320 - Dr. Malory Dentist Office & Home		c. 1887	
32724 3RD AV	1472	PCCC House No. 73	George Wake House	c. 1887	
32730 3RD AV	1473	PCCC House No. 250		c. 1887	
32814 3RD AV	1474	[House]	Bill Thompson House	c. 1887	
THIRD AVENUE	1475	Third Avenue/New Road	3rd Avenue (New Road) Group	c. 1887-1896	
25813 LAWSON ST	1476	PCCC House No. 389		c. 1896 (Moved c.1912)	
25807 LAWSON SI	1477	PCCC House No. 391		c. 1896 (Moved c.1912)	
25732 LAWSON ST	1478	PCCC House No. 369		c. 1896 (Moved c.1912)	
varies	1479	Lawson Road	Lawson Road Group	1896-1912	
25707 LAWSON ST	1480	[House]		c. 1900	
25630 LAWSON ST	1481	PCCC House No. 55	Darby House	c.1900 (Moved c.1912)	
25615 LAWSON ST	1482	PCCC House No. 335		c.1896 (Moved c.1912)	
25517 SE 328TH ST (110 LAWSON ST)	1483	Black Diamond Hospital	Dr. Botts Home & Office	1910	
	1484	[Gymnasium]	Old School Gymnasium	c.1921 (Moved c. 1925)	
32701 5TH AV	1485	PCCC House No. 60 - Mary Casin House	Trover House	c. 1896 (Moved c.1914)	
32910 5TH AV S	1486	PCCC House No. 335 - Joe Morganti House		c. 1887	
33118 3RD AV	1487	John Banchemo House		c.1896	
33118 3RD AV	1488	John Banchemo Barn		c.1914	
32232 5TH AV	1489	PCCC House No. 375 - Carolina Banchemo House		c.1906	
25203 MERINO ST	1490	PCCC House No. 217 - Ancito Magnani House		1926	
25203 MERINA ST	1491	PCCC House No. 203 - Marie Magnani House		c. 1900	
32901 MERINO ST	1492	PCCC House No. 222 - Aurora Pagani House		c. 1887	BD Landmark
32529 First Ave / 252nd PI SE	1493	PCCC House No. 141	Earl Stefflue House	c. 1887	
147 1ST AV / 252nd PI SE	1494	PCCC House No. 147	Benadetti House	c. 1887	
25025 MORGAN ST	1495	PCCC House No. 234	Harry Thompson House	c.1896	
25023 MORGAN ST	1496	PCCC House No. 235		c.1896	
25222 PARK ST	1497	[House]	School Principals' House	c.1900 (Moved c.1918)	
24817 MORGAN ST	1498	John H. Thompson House		1920	
24727 MORGAN ST	1499	[House]		1900	
24717 MORGAN ST	1500	[House]		c.1900 (Moved c.1921)	
24619 MORGAN ST	1501	[House]		c.1900 (Moved c.1910)	
24306 ROBERTS DR	1502	Gattavara's Store	Dinner House Restaurant	1922	
24211 ? ROBERTS DR	1503	Erole Vernaklli House		1914	
24203 ROBERTS DR	1504	Garrett 's Gas Staion & Store		1922	
24204 ROBERTS DR	1505	Ester J. Morgan House		1910	

24201 ROBERTS DR	1506 David C. Garrett House	1912
24124 ROBERTS DR	1507 Frank Orevik House	1911
24101 AUBURN-BLACK DIAMOND RD	1508 John C. Cilicos House	1922
24029 ROBERTS DR	1509 Elizabeth Jones House	1921
24104 Roberts Drive	1510 Jazbec-Zupan House	1922
32223 UNION DR	1511 E. Moisió House	1922
32218 MORGAN ST	1512 John Matson Cabin	1922
23901 ROBERTS DR	1513 Enrico Guidetti House	1922
32427 MORGAN ST	1514 Abromo Pennacchi House	1922
32607 HIGHLAND DR	1515 Casper Erath House	1922
32700 Blk of Union Dr	1516 Casper Erath Cabin	1921
23703 ROBERTS DR	1517 [House]	c. 1900
26209 LAWSON ST	1518 PCCC House No. 43 - Selina Jackson House	c. 1896
32500 Blk 262nd Ave SE	1519 Lawson Hill Mine	1910
32828 3rd Ave SE	1520 [Mine]	1885
25314 323RD ST SE	1521 Black Diamond Ballfield/	c. 1915
	Lawson Hill Mine Site / Disaster Site	
	Mine Hoist Foundation	
	School Yard	

**APPENDIX D**  
**EXAMINER'S EIS ADEQUACY DETERMINATION**  
**THE VILLAGES**

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

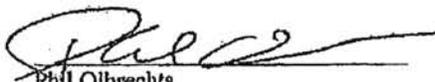
IN RE: MASTER PLANNED  
DEVELOPMENT APPLICATION  
FOR THE VILLAGES, PLN09-  
0017

SEPA APPEAL NOS. PLN09-0040,  
PLN09-0041, PLN 09-0044

HEARING EXAMINER  
DECISION - ERRATA

Page 9 of the final decision on the above-captioned matter incorrectly identifies the Villages SEPA Appellants as the Lawson Hills SEPA Appellants. Please replace page 9 of the Decision with the attached.

DATED this <sup>11<sup>th</sup></sup> ~~29<sup>th</sup>~~ Day of <sup>May</sup> ~~April~~, 2010.

  
Phil Olbrechts  
City of Black Diamond Hearing Examiner

ORIGINAL

1 C. Index of Prehearing Documents: These documents were identified in pre-  
2 hearing exhibit lists submitted by the SEPA Appellants.

3 D. Black Diamond Emails for the Villages-Lawson Hills MPDs: These were  
4 emails that the SEPA Appellants and Examiner exchanged on SEPA appeal issues.

#### 5 IV. PROCEDURAL ISSUES

##### 6 A. Findings of Fact:

7 1. Issuance of FEIS: The City of Black Diamond ("City") issued the TV  
8 FEIS on December 11, 2009.

9 2. Appeals. The SEPA Appellants filed three appeals on the TV BIS on  
10 December 28, 2009. The Appellants are as follows:

- 11 a. Chris Clifford, along with several co-appellants, Ex. CBD-14.
- 12 b. William and Vicki Harp, Ex. CBD-10.
- 13 c. Joe May, Ex. CBD-9.

14 The Exhibits identified above (CBD 9, 10 and 14) will be referenced as the "Appeal  
15 Statements." The parties to the appeals identified above will be referenced as the  
16 "SEPA Appellants."

17 3. Applicant. The Applicant is BD Village Partners.

18 4. Proposal Description: BD Village Partners is requesting approval of a  
19 Master Planned Development (MPD) pursuant to Black Diamond Municipal Code  
20 18.98, for The Villages MPD. Proposed uses include low, medium and high density  
21 residential; retail, commercial, office; light industrial; educational, recreational and  
22 open space. The requested entitlement is for 4,800 dwelling units and 775,000 square  
23 feet of retail, offices and light industrial on 1,196 acres. If approved, the request will  
24 result in the rezoning of portions of the property from the current R6 Single Family  
25 Residential and CC Community Commercial zones to MPD.

The Villages project consists of two subareas, the Main Property and the North  
Property (also known as Parcel B). The "Main Property" is located primarily south of  
Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2  
miles south and eventually east to SR-169 along the southern city limits. A portion of  
the Main Property (aka Parcel C) is located on the north side of Auburn-Black  
Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is  
located to the west of SR 169, approximately two miles north of the Main Property  
and north of SE 312th Street (if extended). The North Property is south of and  
adjacent to the North Triangle property that is part of the proposed Lawson Hills  
MPD project.

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

IN RE: MASTER PLANNED  
DEVELOPMENT APPLICATION  
FOR THE VILLAGES, PLN09-  
0017

SEPA APPEAL NOS. PLN09-0040,  
PLN09-0041, PLN 09-0044

**HEARING EXAMINER  
DECISION**

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**ORIGINAL**

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**I. EXECUTIVE SUMMARY**

The Villages Final Environmental Impact Statement (TV FEIS) is adequate. An EIS is adequate if it contains a reasonably thorough discussion of probable significant adverse environmental impacts. The TV FEIS satisfies this standard. To be sure, the EIS could be improved. The appellants of the EIS ("SEPA<sup>1</sup> Appellants") have identified several shortcomings in the EIS. Many of these shortcomings will be addressed through enhanced mitigation of the MPD permit, including mitigation

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<sup>1</sup> "SEPA" stands for the Washington State Environmental Policy Act, Chapter 43.21C RCW. SEPA requires the TV FEIS that is the basis of the EIS appeals subject to this decision.

1 regarding noise, traffic and Green Valley Road. Overall, however, the EIS provides a  
2 more than adequate analysis of environmental impacts.

3 The writers of the FEIS<sup>2</sup> were faced with a monumental challenge. They had to  
4 address all of the impacts of the largest development ever proposed in King County in  
5 a manner that did not overwhelm and confuse the reader with an overload of  
6 information and complex technical analysis. The writers met the challenge by  
7 preparing a fairly easy to read document that is backed by hundreds of pages of  
8 technical reports and data. For the vast majority of impacts, the TV FEIS  
9 successfully alerts the reader to the most significant and vital information on  
10 environmental impacts.

11 The SEPA Appellants established a few instances where the TV FEIS failed to  
12 provide this vital information. This vital information was either not disclosed in the  
13 main text of the TV FEIS, or the text and appendices both failed to identify and/or  
14 adequately assess vital information on probable significant adverse environmental  
15 impacts. However, the adequacy standard does not require perfection. It requires  
16 reasonableness. This fairly broad standard allows the Examiner to assess the  
17 significance of shortcoming in the context of the entire scope of the EIS and the  
18 benefits of requiring the EIS or portions of it to be redone. Under this reasonableness  
19 analysis, all of the issues raised by the SEPA Appellants were relatively minor  
20 ("unfortunate but not fatal" under the case law) or there was little benefit found in  
21 additional TV FEIS review.

22 The most difficult issue by far in the TV FEIS was the adequacy of the Lake Sawyer  
23 water quality analysis. Development in the Lake Sawyer watershed has the potential  
24 to exact devastating consequences upon Lake Sawyer. Phosphorous from the  
25 stormwater runoff of development can result in blue-green algae blooms, which in  
turn can result in the release of toxins, closure of beaches, aesthetic blight through  
production of a green surface scum and damage to endangered fish. Due to past  
water quality issues, the US Environmental Protection Agency has designated Lake  
Sawyer an impaired water body under the Clean Water Act. This has triggered years  
of study and modeling with the input of a wide array of stakeholders, including Lake  
Sawyer residents, state agencies and representatives of the City of Black Diamond  
("City"). One of the many documents to come out of these efforts was the Lake  
Sawyer Management Plan ("LSMP").

Much of the debate during the SEPA appeals concerned the adequacy of the LSMP  
phosphorous mitigation. The Applicant based its Lake Sawyer water quality analysis  
upon the LSMP. The LSMP includes years of data collection on Lake Sawyer water  
quality, a detailed assessment of phosphorous generation from future development

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<sup>2</sup> Reference to the "FEIS" as opposed to the Villages FEIS or Lawson Hills FEIS encompasses both the Villages and Lawson Hills FEIS.

1 and a comprehensive list of mitigation measures. However, the SEPA appellants  
2 successfully established that the LSMP makes no assurance that its mitigation  
3 measures will prevent the adverse impacts of phosphorous contamination, despite the  
4 clearly erroneous belief of the Applicant's consultant that it would. The SEPA  
5 Appellants also established that under the modeling used in the LSMP to predict  
6 future phosphorous levels, there was a reasonable chance that the MPD proposals  
7 alone could "tip" Lake Sawyer into producing the blue-green algae blooms and all  
8 associated adverse impacts. The SEPA appellants call the phosphorous levels at  
9 which the algae begins to wreak havoc the "tipping point."

10 If the LSMP was the final word on the issue, the City would be tasked with drafting a  
11 new TV FEIS. However, the LSMP was released in 2000 and based upon data from  
12 1995. In 2009 the Washington State Department of Ecology ("DOE") released a  
13 Water Quality Implementation Plan, designed to implement measures to protect Lake  
14 Sawyer Water Quality. In that document DOE concluded that if specified mitigation  
15 measures were followed, new development would not jeopardize Lake Sawyer water  
16 quality. DOE employed a standard that prohibits phosphorous levels from exceeding  
17 a 5% risk of reaching the tipping point. The Applicant provided unrefuted testimony  
18 that the MPDs do incorporate the standards required by DOE to meet the 5% risk  
19 standard. The Implementation Plan also reveals that Lake Sawyer water quality has  
20 improved dramatically since the 1995, the base year for LSMP data. Lake Sawyer is  
21 no longer anywhere near the tipping point and it appears unlikely that the MPD  
22 proposals would exceed the tipping point, given that the Villages and Lawson Hills  
23 MPDs only take up 10% of the land area and 4% of the developable area of the Lake  
24 Sawyer watershed.

25 The DOE Implementation Plan provides no analysis or modeling to show how DOE  
determined that its recommended conditions for new development would preserve  
Lake Sawyer water quality. The modeling in the LSMP was left unchanged in the  
Implementation Plan. There is certainly a gap of information in the record that could  
be of use in assessing the phosphorous impacts of the project. However, the purpose  
of the LSMP and Implementation Plan is to provide a watershed-wide uniform  
standard to address phosphorous impacts. Any additional analysis required of the  
Applicant would necessarily entail new modeling based on full build out in order to  
determine the Applicant's proportionate allocation of phosphorous loading to Lake  
Sawyer. If the Applicant's analysis finds that build-out won't preserve water quality  
as concluded by DOE, the Applicant would be subject to a proportionate allocation  
that differs from those used by the government agencies and developers relying upon  
the conclusions of the Implementation Plan. Subjecting the Applicant to this  
disparate treatment ultimately does little to preserve water quality and would be an  
unreasonable requirement given the watershed-wide standard set by DOE.

Although it would not be reasonable and be of limited benefit to have the Applicant  
redo the LSMP, the SEPA Appellants have raised valid questions about the utility of  
the LSMP and the gap between the modeling results of the LSMP and DOE's

1 conclusions that development can proceed in the Lake Sawyer watershed without  
2 jeopardizing water quality. Information outside the record of his proceeding may or  
3 may not be readily available to these questions. The MPD conditions of approval will  
4 encourage the City Council to investigate these issues and to promote a reevaluation  
5 of the LSMP and Implementation Plan if necessary to protect Lake Sawyer water  
6 quality.

7 Despite the adequacy of the TV FEIS Lake Sawyer mitigation and analysis, there was  
8 a serious shortcoming in the identification of potential impacts in the text of EIS. The  
9 TV FEIS text mentions that Lake Sawyer has phosphorous problems, but it does not  
10 identify the consequences of those problems, i.e. blue-green algae blooms, toxins,  
11 beach closures etc. Absent this paragraph the Examiner has to conclude that the EIS  
12 is still adequate given the overall thoroughness of the document and the analysis of  
13 Lake Sawyer that is included. The reference to phosphorous problems in the text and  
14 technical assessment in the appendices would at least put the reader on notice that  
15 water quality is an issue for Lake Sawyer. The extensive discussion of phosphorous  
16 impacts in the SEIS appeals provided the public a detailed accounting of phosphorous  
17 impacts and this decision provides that information to the Council.

18 Perhaps the second greatest shortcoming of the TV FEIS is its analysis of noise.  
19 Some of the noise levels identified in the TV FEIS will generate levels of 90 db on  
20 some properties, which a SEPA Appellant expert testified is the equivalent of a fire  
21 alarm. These noise levels are primarily attributable to tree clearing activities, which  
22 presumably will not be adjacent to residences for extended periods of time (there are  
23 only so many trees). However, truck traffic needed to carry away fill could  
24 conceivably involve 153,000 two-way trips over the course the 15-year development,  
25 as testified by Thomas Hansen. According to the TV FEIS, dump trucks can generate  
82-92 dBA within 50 feet from a residence. The TV FEIS noise analysis does a good  
job in identifying noise sources and their impacts. However, it doesn't take into  
account the exceptional scale and duration of the MPD projects. In this context,  
construction noise is not "temporary" as contemplated in typical noise regulations,  
such as those adopted by DOE. The TV FEIS should have included an assessment of  
noise duration and mitigation that was reasonably designed to protect residents during  
this time period.

As with the failure of disclosure in the Lake Sawyer analysis, the shortcomings in the  
noise analysis are not by themselves sufficient to render the entire TV FEIS  
inadequate. The noise appeal only concerned impacts to a handful of property  
owners, adequate analysis and mitigation can be handled through MPD conditions  
and it is very unlikely that the Council would conclude that either a significant  
redesign or one of the proposed alternatives is appropriate due to the impacts on a  
limited number of people. Additional analysis and mitigation will be required in the  
conditions of MPD approval, including a consideration of more aggressive mitigation,  
such as sound-proofing affected homes if reasonable and necessary.

1 As with any large development project, traffic is a major issue with the MPDs. Most  
2 of the issues raised by the SEPA Appellants highlight reasonable differences of  
3 professional opinion. The traffic expert hired by the City, John Perlic, was highly  
4 credible and qualified to take charge of the City's traffic analysis. Despite Mr.  
5 Perlic's expertise, there are three areas in the traffic analysis that did not hold up  
6 particularly well. The first was the use of a regional traffic model to project local  
7 traffic impacts. Maple Valley raised this issue, asserting that its local traffic model  
8 was more accurate than the Puget Sound Regional Council ("PSRC model") used by  
9 Black Diamond. Maple Valley and Black Diamond both had good reasons for the use  
10 of their respective models. Ultimately, the Examiner must provide substantial weight  
11 to the determination of the SEPA Responsible Official that the EIS is adequate, and  
12 this burden of proof requires ruling in favor of Black Diamond's traffic engineer.  
13 However, there are definite advantages to using a more localized traffic model and  
14 the Examiner will address this in the conditions of approval recommended for the  
15 MPD.

16 The second area of concern was Mr. Perlic's use of a 0.97 "peak hour factor"  
17 ("PHF"). This factor is used to measure variability during peak hour traffic and  
18 ultimately influences the amount of traffic projected for a project. The SEPA  
19 Appellants established that the PHF used by Mr. Perlic was at the outer boundaries of  
20 accepted professional judgment. The PHF was inflated and served to underestimate  
21 traffic impacts within intersections. Even so, the SEPA Appellant's traffic expert  
22 admitted that in some cases a PHF of 0.97 would be appropriate, but that would be  
23 extremely rare. Use of a lower PHF would probably have been more accurate, but  
24 its use does fall within the outer limits of professional judgment. The PHF used by  
25 Mr. Perlic does not affect the overall adequacy of the EIS, but sufficient evidence has  
26 been provided to require the use of a more mainstream factor as a condition of MPD  
27 approval.

28 The third traffic issue that needs greater attention is the traffic impacts to Green  
29 Valley Road. The Road has Heritage Status under the King County Historic  
30 Preservation Program. Testimony from several citizens makes it clear that this road is  
31 a historic, aesthetic and recreational resource. The road is frequently used by  
32 bicyclists, horses and farm equipment. The MPDs will add 300-400% traffic to this  
33 community resource. As a condition of MPD approval, further analysis should be  
34 undertaken to find ways to discourage MPD traffic from using Green Valley Road,  
35 such as the use of traffic calming devices like medians and speed bumps. The factors  
36 that merit special treatment of Green Valley Road are subjective and it is within the  
37 parameters of a "reasonable discussion" that the TV FEIS failed to single out Green  
38 Valley Road for additional analysis.

39 Another traffic issue that probably does not rise to the level of an EIS deficiency but  
40 is still worth addressing is SEPA Appellant Judith Carrier's concerns regarding Plass  
41 Road. Ms. Carrier believes that traffic congestion on SR 169 would lead some people

1 to bypass a portion of SR 169 by using Plass Road. This road is undeveloped and  
2 does not have the capacity to handle large volumes of traffic. The City's traffic  
3 expert, John Perlic, testified that it's unlikely that persons would choose to use Plass  
4 Road due to its low speed limit (20 mph versus 45 mph on SR 169) and because it's  
5 undeveloped. This may be the case but there's little doubt that traffic will increase on  
6 Plass Road if there is any congestion on SR 169. The Applicant has offered to  
7 support a vacation of Plass Road if the adjoining property owners and the City and  
8 King County do not object. The MPD will be conditioned to require the Applicant to  
9 pursue a street vacation and/or to work with the City Council in creating a cul de sac  
10 on Plass Road.

11 The TV FEIS Fact Sheet also failed to identify that the project would necessitate a  
12 hydraulic permit ("HPA") to address impacts to fish bearing streams. This omission  
13 was a clear violation of SEPA procedural rules. The Washington State Department of  
14 Fish and Wildlife ("WDFW") did not comment on the TV FEIS until after the close  
15 of the TV FEIS comment period, when the SEPA Appellants notified them of the  
16 project. HPAs are administered and issued by WDFW. WDFW may well have  
17 failed to provide timely comments because it didn't see that its jurisdiction would be  
18 invoked under the HPA process. However, the comments that WDFW did finally  
19 provide failed to reveal anything of substance that pertained to the nonproject level of  
20 the TV FEIS. WDFW merely stated that HPA and other permits would be required  
21 for those portions of the project that affects fish bearing streams and wetlands.  
22 Nothing in the WDFW comments or anything else in the record suggests that more  
23 timely comments from WDFW would have resulted in a need to consider any  
24 significant design changes to the MPD proposals. The omission ultimately does not  
25 affect the overall adequacy of the TV FEIS.

16 Many of the SEPA Appellants and persons who testified on the MPD proposals raised  
17 concern over the poor audio recording on the public hearing held on the Draft EIS.  
18 There were approximately 300 gaps in the audio recording of the hearing. No  
19 evidence was presented to show that any of this missing information would or should  
20 have made a difference in the analysis of the TV FEIS. The Examiner's review is  
21 limited to determining whether the EIS is adequate. The gaps in the Draft EIS audio  
22 recording are only relevant to the adequacy standard if they relate to the adequacy of  
23 analysis in the EIS. Had someone testified that they made some comments on  
24 significant impacts during an audio gap and the substance of these comments had  
25 never been considered by the EIS drafters, this could have made a difference. In  
the same vein, there were portions of the technical appendices that were missing in  
versions of the Draft EIS distributed for public comment. Since there was no  
evidence presented that these missing documents affected the adequacy of the TV  
FEIS, the missing documents also do not affect TV FEIS adequacy.

The paragraphs above represent the sum total of all deficiencies that the Examiner  
found in the TV FEIS. Taken together, they do not justify a finding of inadequacy.  
Given the broad range of impacts that were thoroughly discussed in the TV FEIS, the

1 deficiencies identified above are relatively minor in comparison. Overall, the TV  
2 FEIS provides a reasonably thorough discussion of environmental impacts.

3 Although the SEPA Appellants successfully identified the above TV FEIS  
4 deficiencies identified above, there were several instances where their concerns did  
5 not reveal any EIS deficiency. The most significant of these issues was schools. The  
6 TV FEIS does not provide any detailed analysis on school impacts. The TV FEIS  
7 assumes that schools will be located within the MPD project areas, even though the  
8 most recent information suggests that it's fairly likely some of the schools will be  
9 located outside of the project area. The SEPA rules clearly provide that only a  
10 general discussion of mitigation measures such as schools is required for an EIS.  
11 Within this general discussion a priority should be placed upon cumulative impacts,  
12 i.e., impacts that build upon the impacts generated by the MPD proposals. Many of  
13 the school impacts the SEPA Appellants raise, such as impacts on wells outside the  
14 MPD, are not cumulative and can be addressed in the environmental review of a  
15 specific school proposal without detracting from the effectiveness of the TV FEIS in  
16 its discussion of overall impacts. The traffic and other cumulative impacts were  
17 addressed in the TV FEIS. It's unclear, but possible, that some of this traffic analysis  
18 was premised upon an erroneous understanding of the location of the schools. Given  
19 that the location of the schools has been a moving target and their final location and  
20 number is still not certain, the Applicant's general assessment of school impacts is  
21 reasonable and meets EIS requirements of adequacy.

22 The SEPA Appellants raised several other EIS issues in addition to those identified  
23 above. Most of those remaining issues the SEPA Appellants did not pursue beyond  
24 mentioning them in their appeal statements. Insufficient evidence was presented to  
25 support most of those issues or, as a matter of law, those issues were not germane to  
an EIS adequacy appeal. All of those remaining issues are addressed in more detail  
below or in the Order on Dismissal, Email Ex. 300.

## 18 II. TESTIMONY

19 A comprehensive summary of all testimony will be provided with the MPD  
20 permitting decisions. As required by SEPA consolidation rules, all testimony in The  
21 Villages hearings, including testimony related to the MPDs as opposed to SEPA  
22 issues, can be considered for the decision on SEPA adequacy.

## 21 III. EXHIBITS

22 There were several hundred exhibits admitted into evidence. The Exhibit lists are  
23 attached and summarized as follows:

- 24 A. Index of "H" Documents: These exhibits were admitted during the hearings.
- 25 B. Black Diamond MPD Hearing Exhibits: These documents, primarily  
composed of written comments from citizens, were submitted during the hearing and  
admitted at the end of the hearing process.

1 C. Index of Prehearing Documents: These documents were identified in pre-  
2 hearing exhibit lists submitted by the SEPA Appellants.

3 D. Black Diamond Emails for the Villages-Lawson Hills MPDs: These were  
4 emails that the SEPA Appellants and Examiner exchanged on SEPA appeal issues.

#### 5 IV. PROCEDURAL ISSUES

##### 6 A. Findings of Fact:

7 1. Issuance of FEIS: The City of Black Diamond ("City") issued the TV  
8 FEIS on December 11, 2009.

9 2. Appeals. The SEPA Appellants filed three appeals on the TV EIS on  
10 December 28, 2009. The Appellants are as follows:

11 a. Chris Clifford, along with several co-appellants, Ex. MG-9.

12 b. Melanie Gauthier, Ex. MG-8

13 c. Cynthia and William Wheeler, Ex. CBD-11.

14 The Exhibits identified above (MG-8, MG-9 and CBD-11) will be referenced as the  
15 "Appeal Statements." The parties to the appeals identified above will be referenced  
16 as the "SEPA Appellants."

17 3. Applicant. The Applicant is BD Village Partners.

18 4. Proposal Description: BD Village Partners is requesting approval of a  
19 Master Planned Development (MPD) pursuant to Black Diamond Municipal Code  
20 18.98, for The Villages MPD. Proposed uses include low, medium and high density  
21 residential; retail, commercial, office; light industrial; educational, recreational and  
22 open space. The requested entitlement is for 4,800 dwelling units and 775,000 square  
23 feet of retail, offices and light industrial on 1,196 acres. If approved, the request will  
24 result in the rezoning of portions of the property from the current R6 Single Family  
25 Residential and CC Community Commercial zones to MPD.

The Villages project consists of two subareas, the Main Property and the North  
Property (also known as Parcel B). The "Main Property" is located primarily south of  
Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2  
miles south and eventually east to SR-169 along the southern city limits. A portion of  
the Main Property (aka Parcel C) is located on the north side of Auburn-Black  
Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is  
located to the west of SR 169, approximately two miles north of the Main Property  
and north of SE 312th Street (if extended). The North Property is south of and  
adjacent to the North Triangle property that is part of the proposed Lawson Hills  
MPD project.

1 The details of the Villages MPD are outlined in the Master Planned Development  
2 application, dated 5/11/09. Subsequent to the issuance of the Villages TV FEIS, the  
3 Applicant revised its application on 12/31/09. The Villages EIS includes a 12/31/09  
4 proposal to connect the "South Connector" directly to SR 169 instead of Green  
5 Valley Road as proposed in the 5/11/09 application. Beyond this there is no  
6 information in the record as to whether the Villages EIS addresses the other 12/31/09  
7 modifications. The assessment of EIS adequacy in this appeal decision only relates to  
8 the proposal as detailed in the 5/11/09 application. The Examiner also finds that the  
9 5/11/09 application sufficiently describes the project for environmental review.

10 5. Hearing. The hearing on the Villages MPD exceeded 50 hours in  
11 length. The hearings were continued day to day, starting on March 6, 2010. The  
12 verbal testimony concluded on March 22, 2010. The record was left open for written  
13 comment from the City, Applicant and Maple Valley on the adequacy of the traffic  
14 modeling used in the TV EIS and the different modeling advocated by Maple Valley.  
15 Final written comments on the traffic issue were due from the City on April 12, 2010.  
16 The record was also left open indefinitely to allow the SEPA Appellants an  
17 opportunity to review and voice any objections to exhibits that had not been entered  
18 into the record. The same documents were made available at City Hall for any other  
19 interested citizens. The Examiner asked the hearing audience if there were any  
20 objections to addressing the admission of exhibits in this fashion and no objections  
21 were made. After the close of the verbal portion of the hearing the deadline for  
22 objections to exhibits was set for 4/13/10. No objections were filed by the SEPA  
23 Appellants.

24 6. Not Enough Time: The greatest procedural concern for project  
25 opponents was the timeframe. Many citizens, the SEPA appellants in particular, felt  
that there was not enough time to consider the Environmental Impact Statements or  
the master plan applications. The MPD hearings were scheduled to begin on  
March 6, 2010. The FEIS for the projects were issued on December 11, 2009. The  
SEPA appellants were given almost three months to prepare their appeals. The draft  
environmental impact statements were issued on September 1, 2009, giving the SEPA  
appellants advance notice of the major issues they would be confronting. Although  
this may appear to be a lot of time, the Council should recognize that the FEIS  
contained hundreds of pages of technical analysis and the SEPA appellants are lay  
persons with no technical or legal expertise to even have a remote understanding of  
how to begin their appeals. The appellants were fortunate enough to have hired  
probably the best legal representation available for their type of issues. This attorney  
was skilled enough to mount a comprehensive attack with what probably amounted to  
limited resources. His tactics included using the threat or actual use of the  
Examiner's subpoena authority to compel attendance of government expert witnesses.  
Overall it appears that the SEPA appellants were able to address all of the significant  
issues related to the EISs. However, there is no question that all parties and the

1 Examiner himself were under intense pressure to meet the decision deadlines imposed  
2 by local code and state law.

3 **B. Conclusions of Law:**

4 1. Not Enough Time. State and local permit processing deadlines  
5 mandated the March 6, 2010 deadline. Before the hearings commenced, the City was  
6 legally required to issue a final decision on the SEPA appeals (from the Examiner) by  
7 March 28, 2010 and a final decision on the MPD applications (from the City Council)  
8 by the end of April, 2010. The Applicant had the authority to waive these deadlines  
9 (or at least absolve the City of liability), but declined to do so at the request of the  
10 Examiner before the hearings commenced. See *Email Ex. 156* (Examiner to  
11 applicant: "If the applicant provides a written waiver to objection over extending  
12 review periods, I will continue the hearing dates. The applicant is strongly  
13 encouraged to waive."); *Email Ex. 159* (Applicant concurring with City that hearing  
14 dates should not be rescheduled).

15 Permit processing deadlines are to be taken very seriously. They can serve as a  
16 source of significant liability for the City. See *Westmark v. Burien* 140 Wn. App. 540  
17 (2007). In the Burien case, the trial court awarded a \$10.7 million dollar judgment  
18 against the City for taking too long to make a permitting decision on a 175 unit  
19 apartment building. The delay in that case was three and a half years, which is  
20 probably not the type of additional time that the SEPA appellants had in mind.  
21 However, the MPDs are obviously several magnitudes greater in scale than a 175 unit  
22 apartment building. A delay of even a few months for a project this size could  
23 conceivably result in significantly more liability than a delay in years for a relatively  
24 small apartment building.

25 The strict deadlines that applied to the master plan applications originated in state law  
and were incorporated into the Black Diamond Municipal Code. RCW 36.70B.080(1)  
generally requires decision makers to issue a final permit decision within 120 days  
of the filing of a complete application. BDMC 18.08.100(C)(2) incorporates this  
state mandate by requiring staff to set processing deadlines for MPD applications  
that do not exceed 120 days. The master plan applications for this case were deemed  
complete in late December. BDMC 18.08.220 provides that decisions on EIS appeals  
must be issued within 90 days from the date an appeal is filed, which is March 28,  
2010 for the subject appeals.

At the time that the Applicant vested its permit applications, there was no exception  
to these deadlines. This was unfortunate because RCW 36.70B.080(1) allows local  
jurisdictions to provide for longer processing deadlines for EIS appeals and permit  
applications that involve special circumstances. Given that the subject applications  
comprise the largest development project in King County, the Council would have

1 been well justified in adopting extended permit processing deadlines<sup>3</sup> for master plan  
2 applications.

3 The Council is no doubt aware that it did adopt an ordinance allowing for extended  
4 deadlines. There are two reasons the Examiner was unable to take advantage of this  
5 ordinance to postpone the March 6, 2010 hearing date. The first reason is that there is  
6 substantial legal uncertainty that the Examiner could apply the ordinance to permits  
7 that have already vested. Under Washington's vested rights doctrine, cities cannot  
8 change the permitting criteria once the applicant has filed a complete permit  
9 application. See, e.g., *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d  
10 242 (2008)<sup>4</sup>. In lay language, the permit is "grandfathered in" once the applicant has  
11 submitted all the required information. The courts have not directly addressed  
12 whether the vested rights doctrine applies to procedural requirements such as  
13 permitting deadlines. However, the only law journal article addressing the issue  
14 concludes that the courts have at least indirectly concluded that vesting does apply to  
15 procedural requirements. See, *Wynn*, Seattle University Law Review, V. 24, p. 851  
16 with the procedural vesting discussion at pages 879-882. The City Council adopted  
17 Ordinance 10-935, which extended the due date for SEPA appeal decisions, on  
18 February 18, 2010, well after the two MPD applications had vested. Given the legal  
19 uncertainty of the applicability of the ordinance to the MPD applications, the  
20 Examiner could not take the risk of applying it given the huge liability involved if the  
21 gamble proved wrong.

22 The second reason the Examiner did not apply Ordinance 10-935 to extend the  
23 March 6, 2010 deadline is because the City Attorney's Office advised that the  
24 Council did not adopt the ordinance with the intent of extending the March 6, 2010  
25 hearing date. When the SEPA appellants notified the Examiner about Ordinance 10-  
935, the Examiner advised the Applicant that they were "strongly encouraged" to  
waive the decision deadline and agree to an extended hearing date. The Applicant  
and the City Attorney's Office both objected. The City Attorney's Office sent an  
email to the Examiner providing as follows:

*Black Diamond opposes any continuance of the hearings, now  
scheduled to begin on March 6. While we recognize that Mr. Bricklin  
was brought into this matter only recently (as were we), the hearing  
dates had been set with the input of his clients, as well as all other  
parties. In reliance on that schedule, the City has secured facilities*

<sup>3</sup> RCW 36.70B.80(1) can be interpreted as allowing the Council to make project specific deadline  
extensions without any code amendment, even after a permit had vested. In any event, the Council did  
not adopt any findings allowing for an extended MPD review period prior to the MPD hearing dates.

<sup>4</sup> The Bonney Lake case is the most recent case on vested rights and there the court specifically  
declined to extend the vested rights doctrine to site plan review. However, the courts have extended  
the vested rights doctrine to a wide range of other permits including conditional use permits, grading  
permits, septic tank permits, and shoreline permits.

1 and audio equipment for the hearings, and public notice has been  
2 provided. The public notice includes approximately 1,850 mailed  
3 notices, advertisement in three separate newspapers, posting of notice  
4 boards, and posting at City facilities and on the City's website. All  
5 parties have also (or should have) confirmed the availability of  
6 witnesses for the hearings as scheduled.

7 In addition, after speaking earlier this morning with the Mayor and  
8 City management, I can advise that the intent of the ordinance adopted  
9 by the City Council last night is not to confer upon the Examiner the  
10 ability to extend the existing 90 day limitation set forth in BDMC  
11 18.08.220.B to hear any appeal. Rather, and as originally requested  
12 of the City Council by appellants Proctor and Wheeler (the original  
13 citizen-sponsors of this ordinance), the intent of the ordinance is to  
14 provide the examiner with additional time to render his decision, upon  
15 entry of the necessary findings. That intent is clearly identified in the  
16 Council Agenda Bill attached to Mr. Bricklin's e-mail.

17 The ordinance attached to Mr. Bricklin's e-mail will not become  
18 effective, pursuant to state law, until February 28. If necessary, the  
19 Mayor is prepared to call a special meeting of the City Council next  
20 week in order to amend this ordinance to expressly reflect this  
21 clarification...

22 2. Separate Hearings: The SEPA Appellants argued that the Lawson  
23 Hills and Villages MPD applications should have been consolidated into one hearing.  
24 BDMC 18.08.130 and RC 36.70B.120 allow for the consolidation of multiple permit  
25 applications for single projects. However, these provisions do not authorize the  
consolidation of permit applications from different projects. Further, RCW  
36.70B.120 only authorizes consolidation of permit applications if requested by the  
applicant. In this case the Applicant objected to consolidation of its permit  
applications. The City has no authority to require consolidation over the objection of  
the applicant.

3. Consolidation of SEPA Appeals with MPD Applications: Although  
the City does not have the authority to require the consolidation of the Villages and  
Lawson Hills MPD applications, it is required to consolidate the Villages EIS appeal  
into the hearing on the MPD application. WAC 197-11-680(3)(a)(v) provides that the  
EIS appeal must be consolidated with the MPD hearing in a single simultaneous  
hearing before one officer.

4. Segregation of SEPA Testimony from MPD Testimony: Although the  
Examiner must consolidate the TV FEIS hearing with the Villages MPD hearing, this  
does not deprive the Examiner of the authority to segregate EIS testimony from MPD  
testimony. The Examiner also has the authority (which was exercised in this hearing)

1 to limit EIS testimony to the SEPA Appellants. Black Diamond, like most if not all  
2 other cities and counties, imposes strict requirements for the filing of administrative  
3 appeals – time limits are enforced, filing fees are required and the appeals must  
4 identify appeal issues. None of these requirements would have much meaning if  
5 people can circumvent them by showing up at a hearing and testifying on an appeal  
6 filed by someone else. The Examiner only has jurisdiction to hear appeals from  
7 people who complied with jurisdictional requirements, i.e., the requirements for filing  
8 a SEPA appeal.

9  
10 5. All Evidence Available for Decision: As previously mentioned, WAC  
11 197-11-680(3)(a)(v) requires a single “simultaneous” hearing when an EIS appeal is  
12 consolidated with an MPD hearing. In construing legislation (and regulations) no  
13 word should be treated as surplusage. Every word must be given meaning.  
14 “Simultaneous” must mean something different than “single.” The only additional  
15 meaning that “simultaneous” can be interpreted to add to the “single” hearing  
16 requirement is that all of the evidence in the hearing must be “simultaneously”  
17 available for any of the land use decisions subject to the hearing. This is consistent  
18 with the Regulatory Reform Act, Chapter 36.70B RCW definition of a hearing, where  
19 the focus in the definition of a hearing is the evidence submitted in the hearing. RCW  
20 36.70B.020(3) defines an “open record hearing” as a hearing conducted by a single  
21 hearing body that “creates the local government’s record through testimony and  
22 submission of evidence and information.”

23  
24 The combination of the “simultaneous” hearing requirement with the jurisdictional  
25 requirements for SEPA appeals has created some confusion amongst the public. The  
ground rules are actually not that complicated. Only EIS Appellants may testify on  
EIS appeal issues, but the entire record is available to the Examiner to review EIS  
adequacy and compliance with the MPD criteria. Consequently, even though Maple  
Valley was excluded from the EIS appeal, the Examiner may use its testimony on  
transportation-related MPD criteria relating to transportation issues to review the  
transportation adequacy issues raised by the SEPA Appellants. Similarly, the  
evidence presented during the SEPA appeals can be used to craft conditions for MPD  
approval to the extent that the SEPA testimony is relevant to MPD approval criteria.

Some may question why testimony had to be segregated if the simultaneous hearing  
requirement mixes all the evidence anyway. A quick review of the transcripts should  
reveal a ready answer. EIS Appeal proceedings are highly legalistic, with an  
emphasis upon expert witnesses, cross-examination, evidentiary objections and  
lawyers. Unlike the MPD portion of the hearing in which the Applicant has the  
burden of proof, the SEPA Appellants have the burden of proof in a SEPA Appeal.  
Under procedural due process, this burden of proof gives the SEPA Appellants the  
right to have the first and final word on their appeal issues. Segregation of the  
hearing facilitates the accommodation of that right. By contrast, MPD hearings are  
not dominated by lawyers or evidentiary objections. The emphasis is upon making it  
easy for people to express their opinion, without intimidating them by threats of cross

1 examination and objections. Segregation of an EIS appeal from the testimony on the  
2 underlying permit application is a common strategy employed by hearing examiners  
3 to address the procedural differences between a permit decision and a SEPA appeal.  
4 The Villages hearings serve as a good example of why that segregation is necessary.

5 6. Jurisdiction/Authority/Review Process: The jurisdiction of the  
6 Hearing Examiner to hear the appeals on EIS adequacy is subject to extensive  
7 discussion in the Examiner's Second Revised Prehearing Order, Email Ex. 165. As  
8 determined in the Order, the Examiner has jurisdiction to hear the EIS Appeals. The  
9 Examiner's decision is final, appealable to superior court.

10 7. Consideration of Revisions to MPD after TV FEIS Issuance: Any  
11 substantial revisions to the MPD application after issuance of the TV FEIS require  
12 additional environmental review to precede or accompany the staff recommendation  
13 on the application to the Examiner and City Council.

14 WAC 197-11-055(3)(a) provides that a final TV FEIS or threshold determination  
15 shall normally precede or accompany a final staff recommendation in a quasi-judicial  
16 proceeding. WAC 197-11-600(3)(b) provides that a new threshold determination or  
17 supplemental EIS shall be required for any substantial changes to a proposal that are  
18 likely to have significant adverse environmental impacts. Consequently, any of the  
19 12/31/09 revisions that would trigger additional environmental review cannot be  
20 considered by the Examiner or City Council, since the additional environmental  
21 review did not accompany the staff report on the Villages MPD.

22 The SEPA Responsible Official is responsible for determining whether the 12/31/09  
23 revisions require additional environmental review. The SEPA Responsible Official  
24 has subjected the 12/31/09 revisions to the MPD staff report, suggesting that he did  
25 not find a need for additional environmental review.<sup>5</sup> The decision of the SEPA  
Responsible Official to not require additional environmental review is not subject to  
administrative appeal. See WAC 197-11-680(3)(a)(iii). Consequently, it is not  
within the Examiner's authority to consider the issue. The City proceeds at its own  
risk in considering the 12/31/09 revisions without further environmental review.  
Since the issue is not subject to administrative appeal, the absence of environmental  
review can be brought up for the first time during judicial review.

## V. Standard of Review/Overall Adequacy

### A. Standard of Review:

The standard of review for EIS adequacy is the "rule of reason", defined as "a  
reasonably thorough discussion of significant aspects of the probable environmental

<sup>5</sup> For future reference, the SEPA Responsible Official could have issued a SEPA addendum on the  
revisions, making it clear that he found no additional environmental review necessary.

1 consequences.” *Klickitat County Citizens Against Imported Waste v. Klickitat*  
2 *County*, 122 Wn.2d 619, 633 (1994). Under the broad rubric of a “reasonable”  
analysis, the courts have highlighted what is meant by the rule of reason as follows:

3 1. The rule of reason is “in large part a broad, flexible cost-effectiveness  
4 standard.” *Id.* “...the EIS need include only information sufficiently beneficial to the  
decision making process to justify the cost of its inclusion.” *Id.* at 641.

5 2. Under the rule of reason, “an EIS need not list every remote,  
6 speculative, or possible effect or alternative.” *Id.* at 631.

7 3. “Impacts or alternatives which have insufficient causal relationship,  
8 likelihood, or reliability to influence decision makers are “remote” or “speculative”  
and may be excluded from an EIS.” *Id.*

9 4. Challenges may not “flyspeck” an EIS; omissions in analysis may be  
10 “unfortunate, but not fatal.” *Mentor v. Kitsap County*, 22 Wn. App. 285, 290 (1978).

11 5. The “comprehensive review envisioned by SEPA is to be detailed and  
12 does not invite a lackadaisical approach.” *Leschi Improvement Council v.*  
*Washington State Highway Commission*, 84 Wn.2d 271, 280 (1978).

13 6. SEPA requires agencies to take a “hard look” at environmental factors.  
14 *PUD No. 1 of Clark County v. PCHB*, 137 Wn. App. 150, 158 (2007).

15 **B. Programmatic Review v. Project Review:**

16 The parties appear to agree that the MPD review is a nonproject as opposed to project  
17 action. The Examiner also agrees that MPD review qualifies as nonproject action  
18 because it involves “regulations that contain standards controlling use or modification  
of the environment” as opposed to “a construction or management activity located in  
19 a defined geographic area.” See WAC 197-11-704(2)(a) and (b). An agency has  
more flexibility in preparing an EIS on a nonproject action “because there is normally  
20 less detailed information available on their environmental impacts and on any  
subsequent project proposals.” WAC 197-11-442. The SEPA Appellants have  
21 pointed out that the MPD does have some characteristics of a project action due to the  
specificity of improvements proposed and, in a broader sense, because the review is  
22 treated as a quasi-judicial proceeding. This is quite true, but hybrid actions are  
covered in the nonproject regulations that specify that the level of detail must be  
23 appropriate “to the scope of the nonproject proposal and to the level of planning for  
the proposal. *Id.* Given these requirements, the level of detail is expected to be  
24 comparatively high for project specific impacts.

25 **C. Burden of Proof**

1 The hearing examiner must give "substantial weight" to the Responsible Official's  
2 determination that the EIS is legally adequate. RCW 43.21C.090; BDMC  
3 19.04.250(E). BDMC 18.08.220(D) provides further that the decision of the  
4 responsible official shall only be overturned if it is clearly erroneous. BDMC  
5 18.08.220(D) also provides that the appellant shall carry the burden of proof in the  
6 appeal and that the burden of proof shall be met by a preponderance of the evidence  
7 in order for the appellant to prevail.

8 **D. Overall Adequacy.**

9 The adequacy of each issue raised by the SEPA Appellants is discussed in detail  
10 below. However, the reasonableness standard is also broad enough to encompass an  
11 assessment of deficiencies in light of the overall thoroughness of scope of an EIS.  
12 The Executive Summary provides an overview of all of the significant EIS  
13 deficiencies within the context of the overall thoroughness of the EIS. The number of  
14 deficiencies is fairly minor within the context of the extensive review of  
15 environmental impacts in the EIS. The deficiencies can be remedied by further  
16 analysis and mitigation under the MPD conditions of approval without depriving the  
17 decision maker of significant information to assist in the decision making process.  
18 Given these circumstances, it would certainly not be cost effective, as referenced in  
19 COL No. 14, to require the entire review process to commence anew to address  
20 problems that can be resolved under MPD conditions of approval. Overall, the FEIS  
21 is adequate.

22 **VI. EIS APPEAL ISSUES**

23 **A. Lake Sawyer Water Quality**

24 Due to the complex nature of Lake Sawyer water quality, this topic will be presented  
25 in narrative format. Section headers should be considered findings and conclusions  
in addition to all of the findings and conclusions made in the text as well.

The SEPA Appellants have described Lake Sawyer water quality as at a "tipping  
point" between ecological health and devastation. Lake Sawyer also serves as a  
tipping point on the adequacy of both MPD EISs. Determining the adequacy of the  
Lake Sawyer water quality analysis was by far the most difficult decision to make on  
the SEPA EIS appeals. The SEPA Appellants presented a compelling case that the  
MPDs could indeed tip the quality of Lake Sawyer into a condition where blue-green  
algae would bloom and create health hazards, beach closures, aesthetic blight and  
harm endangered fish. However, DOE has identified conditions that, if followed by  
new development, would meet TMDL. TMDL is a limit on phosphorous loading and  
concentration to Lake Sawyer that if followed, creates a 5% or less chance of  
surpassing the tipping point. The DOE conclusions are based upon a series of  
scientific studies that assess Lake Sawyer water quality. These studies are based  
upon years of data, collaborative efforts from a broad array of stakeholders and

1 extensive modeling and assessment of impacts. The MPD proposals are consistent  
2 with the conditions DOE has imposed for TMDL compliance. The Applicant has  
3 adopted the recommended mitigation of these studies to mitigate its water quality  
4 impacts. The studies used and prepared by DOE serve as a standard of water  
5 protection for the entire Lake Sawyer watershed. Any additional information  
6 required of the Applicant, short of subjecting it to a different standard than that  
7 prepared by DOE, would not provide any useful information.

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10  
11 **1. Lake Sawyer is a Significant Water Body**

12 Lake Sawyer is the fourth largest lake in King County, covering 280 acres. Ex. NR-  
13 TV-11, p. ES-1. Its watershed encompasses 8,300 acres. Ex. H-9, p. vii. Over 200  
14 people live upon its shorelines. The lake is used extensively for recreational purposes  
15 such as sailing, water skiing, scuba diving, swimming, picnicking, wildlife  
16 observation and aesthetic enjoyment. Ex. NR-TV-11, p. ES-1. Public access is  
17 provided by two city parks, one on the northwest side of the lake and another on the  
18 southern end of the lake. The lake provides habitat for three federally listed species:  
19 steelhead, Coho and Chinook salmon. TV FEIS at 4-71, 4-73.

20  
21  
22 **2. Phosphorous Poses a Significant Threat to Lake Sawyer Water  
23 Quality**

24 The role that phosphorous plays in the water quality of a lake was well summarized in  
25 the DOE Lake Sawyer Water Quality Implementation Plan, Ex. H-9, which provides  
at p. 6 as follows:

*Phosphorus is a basic element found in nature, and is also a primary nutrient that all living organisms need to survive. Lakes typically build up phosphorus levels as they age, and ultimately fill in with vegetation and sediment, a process that usually takes thousands of years. This process is called eutrophication. Increased amounts of phosphorus due to human activity can accelerate eutrophication and be detrimental to a lake's water quality and its beneficial uses. Higher levels of phosphorus from sediment, fertilizers, waste, and other sources can cause excessive plant and algae growth, which in turn may have unfavorable impacts to water clarity, aquatic habitat, fish survival, swimming, boating, and aesthetic enjoyment (Murphy et al. 2002). Human activities, such as home building, road construction, and deforestation, can drastically speed up a lake's aging process and adversely affect lake uses.*

*In lakes of the Puget Sound Lowlands, phosphorus is often the nutrient in least supply, meaning that biological productivity is often limited by the amount of available phosphorus (Abella, 2009). Thus, for lakes such as Lake Sawyer, phosphorus is usually the main nutrient that*

1 drives the eutrophication process. Though other nutrients, such as  
2 potassium and nitrogen, can affect surface water quality, the amount  
3 of phosphorus being transported through various sources and  
4 pathways, such as human and animal waste, fertilizers, and  
5 stormwater in the watershed, often limits the amount of algal growth  
6 and aquatic plants (Minnesota Department of Agriculture, 2004).  
7 Nutrient levels generally determine a lake's level of biological activity  
8 or trophic state.

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Lakes with low levels of biological activity are classified as  
oligotrophic. Those with moderate biological activity are mesotrophic.  
When lakes get older, or when they are polluted with excessive levels  
of nutrients and have high biological activity, they are considered  
eutrophic. Lakes with lower levels of biological activity have better  
water clarity and are more desirable for swimming and boating  
activities.

When a lake reaches a eutrophic state the consequences are serious. Blue-green algae bloom creating toxics that are lethal to aquatic life, birds and shore animals, including cats and dogs. The blue-green algae form a scum over lake surfaces, causing beach closures. Testimony of Abella, 3/8/10, p. 555. The toxins are also under study as a cause for liver ailments in humans. *Id.* A eutrophic state also harms coldwater fish. Coldwater fish need to stay in the lower, colder layers of a lake. A eutrophic state deprives the lower waters of necessary oxygen and leaves it in the warmer upper layers. Zisette testimony, 3/6/10, pp. 72-73.

Lake Sawyer has an unfortunate history of problems associated with elevated phosphorous levels. In the 1970s, evidence of failing septic systems in the Lake Sawyer watershed resulted in a decline in water quality in Lake Sawyer and the rivers that feed into it. To correct this problem the City of Black Diamond constructed a sewage treatment plant in 1981. A unique feature of the treatment plant was that its treated effluent was discharged into a natural wetland, which ultimately discharged into Lake Sawyer. Implementation Plan, p. 1. The treated effluent caused a significant degradation of Lake Sawyer water quality. As phosphorous levels went up, algae blooms occurred. A green scum covered the lake, rendering the lake virtually unusable for all recreational and other public activities. Testimony of Wheeler, Tr. 3/19, pp. 3647-3648. Due to the water quality problems caused by the treated sewer water, the Department of Ecology required the diversion of the effluent from the natural wetland to a secondary treatment plant in Renton via a King County sewer line. Implementation Plan, p. 1. This diversion was completed in 1992. *Id.* Despite the diversion, Lake Sawyer water quality took several years to recover, finally reaching what DOE considered to be acceptable (consistent with TMDL as discussed below) levels in 1998. Implementation Plan, p. 11-12. Lake Sawyer had phosphorous concentrations of 12 to 23 micrograms/L from 1990 to 1998. From 1999 to 2007 the phosphorous levels have been in the 8 to 16 microgram/L range. *Id.*

1 As a result of Lake Sawyer's water quality problems, DOE listed Lake Sawyer as an  
2 "impaired water body" pursuant to the requirements of the Clean Water Act. The  
3 Clean Water Act requires a total maximum daily load (TMDL) to be developed for  
4 impaired water bodies. The TMDL is subject to approval by the US Environmental  
5 Protection Agency. The TMDL sets a limit to the amount of phosphorous that is  
6 allowed into a water body. Implementation Plan, p. 3. EPA approved a phosphorous  
7 loading capacity TMDL for Lake Sawyer at 715 kilograms of phosphorous per year.  
8 Wheeler Ex. 20, p. 1. This means that all external sources of phosphorous may not  
9 exceed a total of 715 kilograms per year. This corresponds to an in-lake  
10 concentration of 16 micrograms/L. Implementation Plan, p. 5.

11 **3. The Lake Sawyer Management Plan and 2009 Lake Sawyer Water  
12 Quality Implementation Plan Provide a Highly Credible and  
13 Thorough Review of Phosphorous Impacts and Control for  
14 Development in the Entire Lake Sawyer Watershed; the  
15 Management Plan does not Conclude or Warrant that its  
16 Recommended Mitigation will Satisfy TMDL.**

17 In 2000 King County prepared the Lake Sawyer Management Plan, Ex. NR-TV-11  
18 ("LSMP"). It is considered a supporting document of the Lake Sawyer TMDL. H-9,  
19 p. 1. The purpose of the LSMP was to complete a Phase 1 study initiated in 1989-90.  
20 LSMP, p. 1-5. The primary purpose of the Phase 1 Study is to assess the impact of  
21 the water treatment plant diversion on water quality, update the lake's nutrient and  
22 water budgets, and to evaluate and recommend restoration alternatives that will  
23 maintain and protect Lake Sawyer's water quality and beneficial uses. *Id.* The  
24 LSMP was based upon years of data collection and employed the input of several  
25 stakeholders representing public and private organizations. It included a detailed  
projection of phosphorous levels at full build out of the Lake Sawyer watershed, with  
and without recommended mitigation<sup>6</sup>.

The LSMP makes no assurance that its recommended mitigation will achieve TMDL  
and the Examiner does not find that they were made for that purpose. The LSMP lists  
several lake management goals at Table 6-1 and the LSMP expressly states that  
"these goals were used in the analysis of management strategy alternatives to develop  
the plan recommendations." The management goals include maintaining the  
mesotrophic status of the lake but none mention meeting TMDL. The LSMP  
identifies several mitigation measures directed at the Lake Sawyer watershed to  
control phosphorous loading. LSMP, Chapter 6. If these measures fail to reach or  
maintain lake management goals, the LSMP identifies "contingency in-lake  
measures" to improve water quality. LSMP at 6-22. These measures consist of

<sup>6</sup> This document will use "restoration" -- the term used in the LSMP -- interchangeably with  
"mitigation." Technically the "restoration" measures include "mitigation" of future development, such  
as the MPDs.

1 buffered alum treatment (treating the lake with alum) and hypolimnetic aeration and  
2 circulation (pumping oxygen into the lake through a piping system). Notably, the  
3 LSMP wasn't even confident that the watershed and in-lake measures combined  
4 would meet the general water quality goals: "Prior to implementation, the City of  
5 Black Diamond, King County and Ecology will want to confirm that some  
6 combination of in-lake and watershed controls will be able to achieve water quality  
7 goals." Wheeler Ex. 20(e), Appendix I of LSMP, p. 7. Table 6-3 of Appendix I  
8 shows a lake phosphorous concentration of 31 micrograms/L for build out with  
9 "watershed controls" and 37 micrograms/L for build out with "internal load control."  
10 It is unclear, but likely, that these categories of mitigation measures encompass all the  
11 mitigation measures recommended in the LSMP. The resulting concentrations are  
12 significantly above the 16 microgram/L TMDL limit.

13 In 2009 DOE released the Lake Sawyer Total Phosphorous Maximum Daily Load  
14 Water Quality Implementation Plan, Ex. 9 ("Implementation Plan"). It is considered  
15 the follow up document to the Lake Sawyer Total Phosphorous TMDL. Ex. H-9, p.  
16 2. It provides a framework for corrective actions to address sources of phosphorous  
17 pollution in Lake Sawyer and the surrounding watershed. Unlike the LSMP, it did  
18 not include any modeling of future lake conditions. Like the LSMP, the  
19 Implementation Plan was based upon the input of several stakeholders participating  
20 in the Lake Sawyer Steering Committee, consisting of representatives of DOE; King  
21 County; City of Black Diamond; King County Conservation District; Washington  
22 Department of Fish and Wildlife; the Muckleshoot Indian Tribe; and local watershed  
23 residents.

24 The corrective actions identified in the Implementation Plan largely mirrored the  
25 mitigation recommended in the LSMP, with the important distinction that the  
Implementation Plan also contemplated the City's adoption of the 2005 Stormwater  
Management Manual for Western Washington. The Implementation Plan concluded  
that with the adoption of the 2005 DOE Manual and a monitoring program for the  
implementation projects that the City of Black Diamond would meet TMDL.

Based upon the above and the plans themselves, the Examiner finds that the LSMP  
and the Implementation Plan build upon years of research and hundreds of pages of  
scientific analysis. The plans are the result of significant collaboration of all major  
stakeholders. The conclusions on TMDL compliance are made by the Department of  
Ecology, whose primary mission and expertise is the protection of environmental  
resources, such as Lake Sawyer.

**4. The Villages and Lawson Hills FEIS fail to adequately disclose  
potential phosphorous impacts to Lake Sawyer**

As previously determined, Lake Sawyer is a significant environmental and  
recreational resource for the Black Diamond community. The impacts of  
phosphorous on this resource have also been an on-going significant concern for the

1 Black Diamond community. Black Diamond constructed a sewage treatment plant in  
2 1981 due to the water quality impacts of failing septic systems on Rock Creek,  
3 Grinder Creek and Lake Sawyer. Lake Sawyer water quality once again became an  
4 issue when water quality problems forced the City to divert treated effluent from a  
5 wetland feeding into Lake Sawyer to a sewer line connecting to King County  
6 treatment facilities in Renton in 1992. Implementation Plan, p. 1. As discussed in  
7 both the LSMP and the Implementation Plan, volunteers in the area over the last  
8 several years have participated in lake monitoring programs and are active in  
9 assessing and recommending implementation projects. City of Black Diamond staff  
10 and the Black Diamond City Council have been active in assessing and implementing  
11 phosphorous control measures.

12 Despite the rigor of the scientific analysis conducted in the LSMP and the  
13 Implementation Plan, it is clear from those documents that there is still a great deal of  
14 uncertainty in predicting phosphorous loading. The LSMP acknowledges this  
15 uncertainty by recommending contingency measures should recommended mitigation  
16 fail to protect water quality. The modeling in the LSMP falls far short of predicting  
17 the current phosphorous concentrations in Lake Sawyer – the baseline in the model is  
18 84% above the 715 kg/yr TMDL while the most recent data in 2007 shows that Lake  
19 Sawyer could be as much as 50% below the lake concentration TMDL. See Wheeler,  
20 Ex. 20; Implementation Plan, p. 12. The 1992 diversion of effluent highlights the  
21 shortcomings of predicting phosphorous loading – the initial drainage of the effluent  
22 into a natural wetland, termed an “innovative project” was based upon the erroneous  
23 conclusion that the natural wetland would prevent phosphorous contamination of  
24 Lake Sawyer. Implementation Plan, p. 1. The TMDL itself only presents a risk of  
25 eutrophic status. It is set at a 5% risk of eutrophication. See LSMP, Appendix F,  
2/11/93 Wong Memo.

17 WAC 197-11-080(3) requires environmental review to provide a worst case scenario  
18 and likelihood of occurrence when acting in the face of uncertainty, to the extent the  
19 information can be reasonably developed. Given the uncertainty in the potential  
20 eutrophication of Lake Sawyer, the Villages and Lawson Hills EISs should identify  
21 the impacts of eutrophication to notify the decision maker of what could happen, even  
22 if the risk of that occurring is within the level of risk adopted by the TMDL  
23 conclusions in the Implementation Plan.

21 Neither the Villages EIS or the Lawson Hills EIS adequately identifies the impacts  
22 associated with reaching eutrophic status, e.g. the health hazards, beach closures,  
23 harm to endangered fish and aesthetic blight discussed in I(B) of this document are  
24 not identified. The Villages contains a fairly good description of the history of  
25 phosphorous problems associated with Lake Sawyer, but there is no recitation of  
specific impacts. Inexplicably, the Lawson Hills EIS doesn't even include the  
background information. It just mentions in one sentence that Lake Sawyer “...has a  
303(d) listing for phosphorous, based upon past water quality problems” and in  
another sentence that “Lake Sawyer is susceptible to eutrophication.” LH EIS, p.

1 4.36 and 5-11. The appendices to both EISs also fail to identify specific impacts.  
2 65% of the Village and 100% of Lawson Hills drains into Lake Sawyer.

3 Given the prominence that Lake Sawyer water quality plays in the Black Diamond  
4 community, the significance of phosphorous impacts and the uncertainty in the  
5 science backing Implementation Plan, it was unreasonable for the EIS to fail to warn  
6 of the specific problems that could arise from phosphorous contamination of Lake  
7 Sawyer. Given the large amount of development involved in the MPD proposals, the  
8 information on specific impacts could spur decision makers into advocating for  
9 updated modeling the LSMP or a greater commitment to implementing the regional  
10 mitigation measures identified in the Implementation Plan. Given the overall scope  
11 and context of the EIS, the failure to include these specific impacts cannot by itself  
12 justify a finding of inadequacy for the entire document, especially given that the  
13 reference to eutrophication in both documents does provide inquiry notice to persons  
14 concerned about water quality.

15 **5. The Villages and MPD projects are within the phosphorous**  
16 **loading assumptions employed by the LSMP.**

17 The Applicant has not chosen to conduct its own analysis of how much phosphorous  
18 the MPDs will discharge to Lake Sawyer. Instead, it relies upon the phosphorous  
19 loading estimates of the Lake Sawyer Management Plan ("LSMP"), prepared by King  
20 County in 2000. Through extensive analysis and testimony, the Applicant has  
21 established that the MPD projects are consistent with the assumptions used by the  
22 LSMP in predicting phosphorous loading. In point of fact, the preponderance of  
23 evidence in the record establishes that the LSMP significantly overstates the amount  
24 of phosphorous generated by the proposed development.

25 The record of this proceeding conclusively establishes there are three factors that  
result in an overstatement of phosphorous loading in the LSMP model. The first  
factor is that the LSMP overstates the amount of the MPD development area that  
drains to Lake Sawyer. The Applicant's geotechnical consultants performed 110 test  
borings to determine the location of impermeable surfaces and the resultant  
subsurface flows of stormwater. Tr. 2641. Through this geotechnical analysis the  
Applicant determined that 30% of the project area does not drain into Lake Sawyer as  
assumed in the LSMP. Kindig Testimony, 3/12/10, pp. 2032-2033.

The second factor is that the LSMP overstates the amount of the development in the  
MPD project area. As shown in Exhibit H-8 and as testified by Al Fure, the LSMP  
overstates development of the MPDs by 25%. Fure testimony, 3/12, p. 2007.

The third factor is the baseline used for the phosphorous concentration of the lake.  
The LSMP model was based upon in-lake phosphorous concentrations from March  
1994 through April 1995. See Wheeler Ex. 20(e), Appendix C, Figure E6. The  
concentrations during this base period ranged from 20 to 60 micrograms/L,  
significantly higher than the TMDL concentration of 16 microgram/L. As shown at

1 p. 12 of the Implementation Plan, the 2007 phosphorous concentration was 8 or 9  
2 micrograms/L. *Id.* The "typical year" baseline used in the LSMP model was 84%<sup>7</sup>  
3 over TMDL. Wheeler Ex. 20. The significant disparity in current phosphorous  
4 concentrations and those used in the baseline of the LSMP model is probably due to  
5 the five year recovery period of the lake from the treatment plant diversion in 1992.  
6 *Id.* Table 6-7 of the LSMP, which provided the projections on future phosphorous  
7 loading, noted that "it is assumed that internal loading will not change in the future."

8 A fourth factor may be the City's adoption of the 2005 DOE Stormwater Manual.  
9 The LSMP was based upon the application of the 1992 stormwater manual and the  
10 MPDs will use the 2005 manual. Abella testimony, 3/8/10, p. 558. As noted in the  
11 testimony of Sally Abella, a SEPA Appellant witness, the 2005 manual provides  
12 "better by far" phosphorous safeguards than the 1992 manual. Abella Testimony,  
13 3/8/10, p. 564. However, the benefits of the 2005 Manual may already be integrated  
14 into the LSMP model. One of the recommended stormwater controls in the LSMP is  
15 the adoption of the 1998 King County Surface Water Design Manual. LSMP, p. 6-6  
16 to 6-7. In the alternative the LSMP recommends adoption of the "Lake Protection  
17 Standard", a component of the King County Surface Water Design Manual. In  
18 recommending these standards, the LSMP focuses upon the fact that they have a  
19 phosphorous treatment reduction goal of 50%, which is the same standard required  
20 under the 2005 DOE Manual. If the 2005 DOE Manual does not provide any level of  
21 phosphorous protection better than the 1998 King County Manual, the City's  
22 adoption of the 2005 DOE Manual is simply an adoption of one of the LSMP  
23 mitigation measures and its actions fall squarely within the LSMP modeling.  
24 However, if the 2005 DOE Manual provides better protection than the 1998 King  
25 County Manual, as is probably the case, then the LSMP model can be said to  
overstate phosphorous levels of future build out.

There is no evidence in the record that identifies any factors that would result in an  
underestimation of phosphorous loading in the LSMP. Sally Abella testified that the  
LSMP was outdated, but from that factor Ms. Abella could only conclude an updated  
LSMP could "go either way" in changing the outcome of phosphorous loading  
predictions. Ms. Abella testified that the LSMP is based upon data and development  
regulations from 1995. *Id.* At p. 174. She noted that development projections in the  
LSMP may not be accurate, due to possible changes in Black Diamond  
comprehensive plan policies and development regulations and Black Diamond  
annexations that occurred subsequent to 1995. *Id.* At p. 179. The Applicant  
addressed Ms. Abella's concerns about projected MPD development in the  
preparation of Ex. H-8 and the testimony of Al Fure, who as noted previously  
concluded that the LSMP actually overestimates development within the MPD project  
areas.

<sup>7</sup> The LSMP phosphorous loading baseline was based on kg/L, so the Examiner was only able to  
provide a % over TMDL as opposed to a conversion to micrograms/L.

1 In short, the record identifies three factors that markedly skew the LSMP assumptions  
2 to overstate MPD phosphorous loading. No factor was offered into the record to that  
3 understates phosphorous loading. The evidence in the record conclusively establishes  
4 that the LSMP overstates the amount of phosphorous loading from the MPDs.  
Consequently, the MPDs are well within the LSMP assumptions for phosphorous  
loading.

5 **6. The Villages and Lawson Hills MPDs Adequately Mitigate**  
6 **Phosphorous Impacts to Lake Sawyer**

7 The Washington State Department of Ecology has concluded that mitigation  
8 measures recommended in the LSMP will satisfy the TMDL for Lake Sawyer. The  
9 SEPA Appellants do not dispute the data or methodology used in the LSMP to assess  
10 the effectiveness of mitigation. They point out that the data and methodology shows  
11 that the MPD projects will load phosphorous in excess of TMDL and that this  
phosphorous loading will approach (but not exceed on its own) the eutrophication  
point for Lake Sawyer. This information is insufficient to refute the conclusions of  
DOE.

12 The conclusions of DOE are expressed in the Lake Sawyer TDML Water Quality  
13 Implementation Plan, Ex. H-9 ("Implementation Plan"). DOE published the  
14 Implementation Plan in 2009. The Implementation Plan implements the LSMP by  
15 providing a framework for corrective actions to address ongoing and future sources of  
16 phosphorous pollution in Lake Sawyer and the surrounding watershed.  
17 Implementation Plan, p. v. DOE concludes at p. 31-32 of the Implementation Plan  
18 that the City will establish compliance with the TMDL under the following  
19 conditions: compliance with the Western Washington Phase II Municipal Stormwater  
20 Permit, compliance with the 2005 Ecology Western Washington Stormwater Manual  
21 and the continuation of a water quality monitoring program in coordination with  
22 implementation projects. Dr. Kindig testified that, as designed, the MPD projects  
23 meet the DOE conditions for consistency with the TMDL. Dr. Kindig's testimony on  
24 this point was unrefuted. Robert Zisette, the Appellant's water quality expert, agreed  
25 that the mitigation implementation measures identified in the Implementation Plan are  
incorporated into the MPD proposals. Zisette testimony, 3/19/10. The Examiner  
finds that the Master Plan proposals meet the conditions for DOE's finding of TMDL  
compliance.

The SEPA Appellants assert that compliance with the mitigation measures outlined in  
the LSMP (and presumably the Implementation Plan) are not sufficient to comply  
with the Lake Sawyer TMDL or to prevent Lake Sawyer from reaching eutrophic  
status. As to TMDL compliance, Mr. Zisette did an interpolation of the modeling  
used to predict phosphorous loading for total build out to determine that the  
phosphorous loading attributable to the MPD proposals, with LSMP stormwater  
controls, would generate an additional 353 kg/yr above the 715 TMDL limit. See

1 Wheeler Prehearing Ex. 20. In making this calculation Mr. Zisette roughly used the  
2 same MPD area calculated by the Applicant as draining into Lake Sawyer, employing  
3 the area outlined in Exhibit H-7. Had Mr. Zisette used the higher developable area  
4 assigned by the LSMP model to the MPD proposals, his phosphorous loading results  
5 would have been higher.

6 Mr. Zisette's TMDL calculations did not reveal any new information that wasn't  
7 readily apparent to DOE when it found TMDL compliance in the Implementation  
8 Plan. It is important to note that beyond adjusting downward for development area,  
9 Mr. Zisette's calculations did not alter any of the assumptions used in the LSMP  
10 model. The LSMP model predicted a total phosphorous load of 2,255 kg/yr at build  
11 out, which is 1,540 kg/yr above TMDL. Mr. Zisette's calculation merely showed that  
12 the MPD's proportionate share of this excess phosphorous is 353 kg/yr. All of this  
13 information is easily predictable from the LSMP. The baseline "typical year" in the  
14 LSMP model was already 627 kg/yr above TMDL. Given this context and the  
15 presumed assumption in the LSMP model that all nonpoint source development  
16 contributes phosphorous, any new development would increase the phosphorous load  
17 to somewhere between the baseline and the 2,255 kg/yr build out amount.

18 Mr. Zisette's calculations touch upon the most difficult issue of the Lake Sawyer EIS  
19 appeals: how could DOE conclude that the Lake Sawyer 715 kg/yr TMDL would be  
20 reached when the LSMP model predicted 2,255 kg/yr at full build out? The LSMP  
21 and the Implementation Plan do not provide any explanation. As noted by the SEPA  
22 appellants, the mitigation measures in the LSMP don't get you there - Table 6-7 of  
23 the LSMP reveals that all mitigation measures combined only attain an annual  
24 phosphorous loading of 1,793 kg/yr, still well above the 715 kg/yr. These mitigation  
25 measures include public improvements that cost eight to twelve million dollars to  
implement. See LSMP, p. 6-24 and 6-26. Nothing in the record suggests that these  
improvements have occurred and, in fact, the Implementation Plan states generally  
that most mitigation measures have not been funded. Implementation Plan, p. 12.

Balanced against the gap between the LSMP build out phosphorous loading  
projections and the TMDL is the fact that this gap was apparent in the LSMP and  
DOE still found TMDL compliance. DOE has the expertise and authority to oversee  
TMDL on behalf of the EPA. There is nothing in the record to suggest that DOE  
would have any self-interest or political reason to find TMDL compliance when that  
was not the case. The Applicant raised the issue of DOE approval prior to the  
Appellants' rebuttal and nothing was offered by the Appellants to explain why DOE  
would reach such a conclusion if there was no reasonable basis for it. It is  
noteworthy that DOE placed emphasis upon compliance with the City's NPDES  
permit and the 2005 Stormwater Manual for compliance with TMDL. The 2005  
Stormwater Manual was not used in the LSMP and, as testified by the Appellant's  
expert, the 2005 Manual is significantly more effective in controlling phosphorous  
than the 1992 Manual that was used in the LSMP. The Implementation Plan also  
noted at p. 12 that the TMDL target of 16 micrograms/L has been met since 1998,

1 down to 8 or 9 micrograms/L in 2007. This is a substantial improvement over the  
2 "typical year" baseline used in the LSMP model, which was 84%<sup>8</sup> over TMDL. Also,  
3 as identified in Mr. Zisette's analysis, Wheeler Pre-hearing Exhibit 20, these recently  
4 low figures are probably the result of a five year recovery period from the diversion  
5 of sewage treatment plan effluent. Consequently, the low numbers are probably not a  
6 temporary state of the lake (setting aside the impacts of future development). Given  
7 the objectivity and expertise of DOE, the use of the 2005 DOE stormwater manual,  
8 the significant improvement in Lake Sawyer water quality that was not factored into  
9 the LSMP modeling, and the substantial weight that the Examiner must provide to the  
10 determination of the SEPA responsible official, the Examiner finds that the DOE's  
11 conclusions on TMDL compliance provide reasonable assurance on the adequacy of  
12 the mitigation measures incorporated into the MPD proposals.

13 In addition to stating that the MPD projects will exceed TMDL, the SEPA appellants  
14 also assert that the proposals may cause Lake Sawyer to exceed 24 micrograms/L, the  
15 "scientific dividing line between a mesotrophic and eutrophic lake." Bricklin post-  
16 hearing brief, p. 16. The SEPA appellants found this dividing line in Table 4-10 of  
17 the LSMP, which provides that under the "Carlson's Trophic State Index" lakes reach  
18 eutrophic status at 24 micrograms/L. The meaning of this "dividing line" is not  
19 explained in the LSMP. The TMDL is set at a point where there is a 5% chance of  
20 reaching eutrophic status. See LSMP, Appendix F, 2/11/93 Wong Memo. The  
21 eutrophic risk associated with 24 micrograms/L is not identified in the LSMP,  
22 although one has to conclude it is significantly more than the TMDL, which at 16  
23 micrograms/L has a 50% less phosphorous concentration. The SEPA Appellants then  
24 point to Table 6-3 of Appendix I to the LSMP, which provides that the current  
25 condition of Lake Sawyer is at 23 micrograms/L and that build-out of the watershed,  
with watershed controls, will reach 31 micrograms/L.

Table 4-10, if reflective of current conditions, does show that Lake Sawyer is at the  
"tipping point", just one microgram/L from eutropic status. If Lake Sawyer is indeed  
this close to eutrophic status, there is a reasonable chance that the MPD proposals  
could tip the balance into eutrophic status. Under this scenario, additional EIS  
analysis study would be merited. However, Table 4-10 does not reflect current  
conditions. As discussed previously, the Implementation Plan shows the current state  
of the lake at 8 or 9 micrograms/L and these levels are anticipated to be stable, absent  
further development. The lake concentration has been under 16 micrograms/L since  
1998. There is nothing to suggest in the record that the MPD proposals, alone, will  
push the phosphorous concentration beyond the 24 micrograms/L given the current  
conditions of Lake Sawyer. Mr. Zisette testified that as little as a 5% increase could  
push Lake Sawyer into eutrophic status, but he did not explain the basis of this  
conclusion or identify whether he had taken into consideration the current state of the

<sup>8</sup> The LSMP phosphorous loading baseline was based on kg/L, so the Examiner was only able to  
provide a % over TMDL as opposed to a conversion to micrograms/L.

1 lake as identified in the Implementation Plan. Zisette testimony, 3/19/10, p. 3640.  
2 All of Mr. Zisette's calculations (e.g. Wheeler Ex. 20) had been based upon the  
3 "current" status of the lake as identified in the LSMP, which was set at 23  
4 micrograms/L.

5 In reaching these conclusions it is not lost on the Examiner that the Applicant must  
6 discredit data in the LSMP at the same time that it relies upon it as its EIS analysis. A  
7 final and important inquiry on the LSMP is whether, given the apparent  
8 shortcomings of the LSMP, the Applicant should have updated and/or refined the  
9 LSMP for its analysis. Under the broad adequacy standard of a "reasonable"  
10 discussion of environmental impacts, it is pertinent to evaluate the utility of any  
11 additional information. As shall be discussed, any additional information that could  
12 be reasonably required of the Applicant would not yield any useful information. The  
13 Applicant could only provide a useful analysis if it essentially rewrote the LSMP,  
14 which is not a reasonable requirement.

15 On the utility of additional information, Mr. Zisette testified that the Applicant failed  
16 to determine how much phosphorous the MPDs would add to Lake Sawyer. He noted  
17 that the Applicant could have easily made this determination since it had data on both  
18 projected stormwater volumes and phosphorous concentrations. The Applicant did  
19 not rebut this testimony and the Examiner finds that the phosphorous loading would  
20 not have been unreasonably difficult to compute. However, this additional  
21 information would not have provided anything of significant use to the decision  
22 maker. As ably demonstrated by Mr. Zisette, there's no question that under the  
23 modeling of the LSMP that the MPD phosphorous loading would exceed TMDL, no  
24 matter what amount of phosphorous was generated by the projects. Similarly, these  
25 computations would not be of much use in an assessment of the EIS alternatives.  
TMDL would be exceeded in both the 24% development reduction in Alternative 3  
and the more than 50% reduction in Alternative 4.

Of course, with more work<sup>9</sup> the Applicant could recalibrate the LSMP model to  
include current lake conditions, the Applicant's adjustments to the drainage basins  
and the benefits of the 2005 stormwater manuals. In short, the Applicant would  
prepare its own LSMP. The resulting information could indicate how close the MPDs  
will bring Lake Sawyer to TMDL and what the Applicant's proportionate share of  
phosphorous loading would have to be in order to keep full build out below TMDL.

<sup>9</sup> In its closing brief the Applicant asserts that requiring it to prepare its own management plan would be unreasonable given that the MPDs only take up a fraction of future build out. There was no testimony on this issue so the Examiner has insufficient information to draw any conclusions. Certainly, it would be unreasonable to require the Applicant to take hundreds of test borings throughout the watershed to reevaluate the contours of the drainage basins. However, it does appear that useful and more accurate information could be derived by relatively simple refinements to the LSMP modeling, by measures such as using current lake conditions for a baseline.

1 The price of this additional information is to hold the Applicant to a different standard  
2 than the watershed standards developed in the LSMP and the Implementation Plan.  
3 Along these lines, any proportionate share analysis would be meaningless unless  
4 other development and regional watershed implementation measures are held to the  
5 same standard. The only watershed standard is the LSMP and Implementation Plan.  
6 Further, any conclusion that the MPDs would fail to meet TMDL would be directly  
7 contrary to the findings of DOE, made in 2009, that the MPDs would satisfy TMDL.  
8 Given these factors, the reliance of the Applicant upon the LSMP, instead of its own  
9 calculations, provides a reasonably thorough discussion of stormwater impacts to  
10 Lake Sawyer as required for an adequate EIS.

11 **7. Dr. Kindig's Conclusions on Stormwater Phosphorous  
12 Concentrations and Treatment Efficiencies are Adequate.**

13 The SEPA Appellants presented a considerable amount of argument and testimony  
14 challenging the assumptions made by the Applicant in concluding that its proposed  
15 stormwater facilities would reduce phosphorous in stormwater by 50% as  
16 recommended in the LSMP and required by the 2005 DOE Stormwater Manual.  
17 They also challenge the phosphorous concentrations assumed by Dr. Kindig for  
18 untreated stormwater.

19 As to the untreated stormwater, Dr. Kindig used data from only one development  
20 project when data is readily available from numerous other projects in a national data  
21 base. *See* Bricklin Closing Brief, p. 26-27. Dr. Kindig testified that he preferred to  
22 rely upon the one project utilized in his study because it is local and takes into  
23 account the unique weather of the Pacific Northwest, which results in phosphorous  
24 concentrations that differ from other regions in the country. However, as noted by  
25 the SEPA Appellants, the data in the national data base can be tailored to only reflect  
projects in the Pacific Northwest. *Id.*

As to treatment efficiencies, the Dr. Zisette testified that Dr. Kindig did not take into  
account stormwater that bypasses stormwater ponds during storm events. Mr. Zisette  
also testified that studies finding a 50% treatment rate are based upon much higher  
phosphorous influent concentrations than those that will occur in the MPDs.  
Treatment efficiencies go down with lower influent concentrations. Finally Mr.  
Zisette also testified that the 50% rate is based upon peak performance of new  
facilities and that this rate will go down for a facility with time. *Id.* at p. 27-29. Dr.  
Kindig responded that the overflow is a relatively rare occurrence accounting for only  
5% of stormwater. The Applicant also asserts that the influent concentrations are  
higher than those assumed by Mr. Zisette, because Mr. Zisette allegedly did not take  
into account that influent into the facilities came from multiple sources, such as roads,  
where phosphorous concentrations are high. The record is unclear as to whether Mr.  
Zisette took this into consideration or not. The MPDs also include a monitoring plan  
to ensure that they are designed to meet the 50% treatment requirements of the 2005  
DOE Stormwater Manual. If not already proposed, the MPD should be conditioned

1 to require an improvement to the stormwater facilities if monitoring reveals less than  
2 50% removal. It is also noteworthy that the DOE Stormwater Manual requires 50%  
3 treatment, at least creating an implication that DOE considers this level of treatment  
4 achievable.

5 The disagreements between Dr. Kindig and Mr. Zisette fall squarely within  
6 differences in professional judgment. Both experts are highly qualified and both have  
7 a side to advocate – Mr. Zisette was hired to find problems with the stormwater/water  
8 quality analysis and Dr. Kindig was hired by and works for the Applicant. The SEPA  
9 responsible official has determined that the stormwater analysis is adequate and the  
10 Examiner must give substantial weigh to this determination. Consequently, the  
11 Examiner finds the analysis, discussion and mitigation measures adequate. Dr.  
12 Kindig's use of one data source for influent concentrations when additional data is  
13 readily available is a little troubling. The Examiner may recommend as an MPD  
14 condition of approval that a broader range of data be employed in designing  
15 stormwater facilities.

16 **B. Noise**

17 **Findings of Fact:**

18 1. Page 8-10 of the Harp Appeal Statement raises concerns that the FEIS  
19 does not adequately disclose and analyze the impact of construction noise on their  
20 homes. Their Appeal Statement limits their noise concerns to three residences "on  
21 acreage listed on page 3-29 of the Villages EIS." Their appeal regarding noise  
22 impacts is construed as limited to these residences, which includes the residence of  
23 Cindy Proctor, another SEPA Appellant.

24 2. Specifically, the Harps and Ms. Proctor allege that the FEIS did not  
25 adequately address the impact of construction noise on their property, that the FEIS  
failed to disclose the duration of construction noise, and that the FEIS failed to  
disclose the location of the sources of expected noise. See Harp Appeal Statement, p.  
8-9.

3. In both the Villages and Lawson Hills FEISs, the Applicants have  
devoted a section of Chapter 3 to noise impacts of the proposed MPD construction.  
The Applicants have provided noise studies describing the existing noise levels in the  
area of the proposed development. Existing noise levels along SR 169 have been  
measured between 54 and 66 decibels (dBA), depending largely on the speed of  
vehicles. Noise levels have been measured at 62 dBA on Roberts Drive/Auburn-  
Black Diamond Road at the City offices, but noise levels in residential areas at a  
distance from major roads drop to between 46 and 53 dBA, with noise levels in more  
rural and undeveloped areas as low as 31 dBA. Lawson Hills FEIS & Villages FEIS,  
p. 3-25.

1           4.     In both the Villages and Lawson Hills FEISs, the Applicants have  
2 described various standards for noise control. The Applicants disclosed that,  
3 generally, 55 dBA is an acceptable level of outdoor noise in a residential area per the  
4 "environmental designation for noise abatement" classification system utilized by  
5 Washington State and the U.S. Department of Housing and Urban Development  
6 Index. Lawson Hills FEIS & Villages FEIS, p. 3-27. The Federal Highway  
7 Administration Noise Criteria indicate that 52 dBA is an acceptable noise level for  
8 the interior of a residence. Lawson Hills FEIS & Villages FEIS, p. 3-28.

9           5.     Also in both the Villages and Lawson Hills FEISs, in Exhibit 3-12, the  
10 Applicants have included a table with the estimated decibel level at varying distances  
11 from the source activity. For example, the activity of clearing is listed as creating  
12 noise levels of 80 to 96 dBA at 50 feet from the source, 74 to 90 dBA at 100 feet  
13 from the source, and 68 to 84 dBA at 200 feet from the source.

14           6.     In addition, both FEISs include the following statement: "The parties  
15 most likely to be affected by construction noise include residents adjacent to the site  
16 including single-family residential development to the east on both sides of Roberts  
17 Drive and one resident to the west of the property south of Roberts Drive which could  
18 experience peak noise levels up to 90 dBA." Lawson Hills FEIS & Villages FEIS, p.  
19 3-29. Both Mr. Jerry Lilly, expert acoustical consultant for the Appellants, and Mr.  
20 Richard Steffel, principal consultant with Environ International Corporation for the  
21 Applicants, testified that they believed this statement to be referring specifically to  
22 the Harps' property, though the FEIS did not specifically indicate that in the text. Tr.  
23 at 795, 2760. Mr. Lilly testified that 90 dBA is "shockingly loud," equivalent to a fire  
24 alarm sounding in your house. Tr. at 795.

25           7.     Neither FEIS nor their Technical Appendices disclose the anticipated  
duration of each of the construction activities listed in the table in Exhibit 3-12. Tr. at  
795-96.

          8.     Thomas Hanson, a member of the public, was the only person to  
provide testimony regarding the duration of construction noise. Mr. Hanson testified  
that Yarrow Bay is proposing to remove 4,753,000 cubic yards of dirt during  
construction. Approximately 1,685,000 cubic yards of fill will be needed to replace  
the dirt removed. Tr. at 1640. One of the conditions placed on the Yarrow Bay  
development is that the dirt removed must be used as fill. Consequently, trucks will  
presumably not be used to export the entire 4.7 million cubic yards of dirt. Thus,  
approximately 3,680,000 cubic yards of dirt would have to be removed from the site.  
This is equivalent to approximately 153,000 truckloads of material being exported. If  
ten truckloads are removed per hour, eight hours per day, five days per week, that  
would be 400 truckloads a week for about 7.35 years. Tr. at 1640. Exhibit 3-12  
states that dump trucks operate at 82-94 dBA 50 feet from the source and 76-88 dBA  
100 feet from the source.

1 9. Both FEISs also identified possible noise mitigation measures,  
2 including limiting the hours of construction, employing quieter tools, and locating  
3 equipment as far as possible from residences, and turning equipment off while not in  
4 use. Lawson Hills FEIS & Villages FEIS, p. 3-30. The MPD Rebuttal package,  
5 dated March 22, 2010, also states that the Applicant has agreed to implement a noise  
6 reduction program and to accept cessation of construction activities as a potential  
7 penalty if the best management practices mitigation measures identified in the EIS are  
8 not followed.

9 10. In addition to the foregoing, Appendix C provided background  
10 information regarding the decibel scale, with common examples to illustrate how loud  
11 a certain decibel level may sound to a normal recipient. Appendix C also includes the  
12 ranges of decibels at which hearing loss and other physiological effects may occur  
13 due to sustained or long-term exposure to noise. Appendix C, Technical  
14 Memorandum dated November 16, 2009 from Susan Graham to City of Black  
15 Diamond.

16 11. Appendix C also identified the five locations where sound level  
17 measurements (SLMs) were taken to establish the base line or existing environmental  
18 noise level along SE Auburn-Black Diamond Road/Roberts Drive. Mr. Steffel  
19 submitted a Declaration with the Applicants' Rebuttal to Additional Public Testimony  
20 also indicating that the SLMs were taken after a traffic detour on SR 169 was  
21 discontinued to ensure that unusual traffic conditions were not present to influence  
22 the findings of the noise analysis.

23 12. At least one member of each household referenced on page 3-29 of the  
24 Villages FEIS suffers from medical conditions which may be exacerbated by the  
25 construction noise. Harp Appeal of the Villages FEIS, pp. 8-9.

13 13. The Harps' appeal mentions only three residences that are specially  
14 affected by the impacts of construction noise. According to the Harps, their residence  
15 is located within 35 feet of the Villages main property.

16 **Conclusions of Law:**

17 1. The FEIS and its Technical Appendices reasonably disclose, discuss,  
18 and substantiate the loudness of construction noise that may be attributable to the  
19 proposed development. Exhibit 3-12 of the Villages and Lawson Hills FEISs  
20 includes a table outlining the decibels to be expected from various construction  
21 activities, including clearing, grading, paving, pouring foundations, building  
22 construction, and finishing according to distance from the source. In addition,  
23 Technical Appendix 6 described the decibel system such that a lay decision maker,  
24 with no acoustical engineering background, could determine the potential volume of  
25

1 construction noise. Appendix C, Technical Memorandum dated November 16, 2009  
2 from Susan Graham to City of Black Diamond.

3 2. Furthermore, both Mr. Lilly and Mr. Steffel agree that the passage in  
4 the FEISs referenced in Finding of Fact NO. 6, identifying a possible decibel level of  
5 90 dBA during construction, referred to the Harp property specifically. Therefore,  
6 there should be no confusion regarding site-specific potential noise impacts with  
7 respect to the Harp property. The possible 90 dBA level was adequately disclosed in  
8 the FEIS such that both experts, and even the Harps themselves, identified the  
9 reference. Lawson Hills FEIS & Villages FEIS, p. 3-29; Harp Appeal of the Villages  
10 FEIS, pp. 8-9.

11 3. The Applicant proved that the existing noise levels in the FEIS were  
12 sufficiently accurate. Mr. Steffel's Declaration stated that the SLMs were measured  
13 when the traffic detour would not compromise their accuracy. Though the Appellants  
14 indicated in their appeal that seasonal or mine traffic also contributed to the SLMs'  
15 overstatement of the existing traffic noise levels, the Appellants have not submitted  
16 any evidence in the record demonstrating the extent to which these factors contributed  
17 to this overstatement. Consequently, the SLMs were adequately disclosed and  
18 substantiated for purposes of the FEISs.

19 4. The FEIS and its Technical Appendices do not adequately disclose or  
20 discuss the duration of the construction noise impacts. Mr. Lilly testified that there is  
21 no information in the record disclosing the duration of the noise generated by  
22 construction, and a reading of the FEIS and accompanying Appendices confirms this  
23 testimony. Tr. at 795-96. While a decision maker could infer the loudness of a  
24 particular construction activity based upon the table in Exhibit 3-12, he could not  
25 assess the overall impact upon surrounding and adjacent property owners as  
construction progresses for fifteen years. With a more moderate sized project,  
duration would not be a concern since construction would cease within a relatively  
short period of time. That is not the case for the MPDs, where construction activities  
could go on as long as 15 years. The Examiner recognizes that the 90 dBA clearing  
activities will probably be of short duration, since there are only so many trees  
adjacent to the properties of the SEPA Appellants. However, truck traffic, as testified  
by Mr. Hanson (see Finding of Fact No. 8 above) could involve over 150,000 trips  
over the 15 year construction period. As noted previously dump trucks exceed 90  
dBA for receivers within 50 feet. The construction noise exemptions in the noise  
standards adopted by DOE and other agencies do not adequately address construction  
noise impacts associated with the scale and construction duration of the MPD  
proposals. As amply demonstrated in the testimony and FEIS, long term exposure to  
high noise levels can lead to health problems. The duration of construction noise  
impacts is a significant impact that has not been adequately addressed in the EIS.

5. It is reasonable to require that the Applicants identify with specificity  
the decibel levels that could be heard by a resident on each property that could

1 reasonably be subject to unhealthy noise levels due to construction. Though an EIS is  
2 not intended to be a compendium of every conceivable effect of a proposed project, it  
3 is reasonable to require such a site-specific analysis for properties where noise levels  
4 reasonably could reach unhealthy levels -- continuous exposure above 70 dBA, as  
5 identified in Appendix C, Technical Memorandum on Noise (November 16, 2009).  
6 *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d  
7 619, 641, 860 P.2d 390 (1993).

8 6. Although the TV FEIS does not adequately address noise impacts  
9 upon the Harp and potentially the Proctor property, this does not render the entire  
10 FEIS inadequate. The noise appeal was limited to impacts upon the three residences  
11 identified in Finding of Fact No. 1. Mitigation and further analysis of noise impacts  
12 upon those properties can be handled under the MPD conditions of approval without  
13 having any substantial impact upon the noise analysis conducted in the EIS. Further,  
14 the information in the FEIS was sufficient to notify the decision maker that noise  
15 impacts could be severe for some property owners, such as the Harps and Ms.  
16 Proctor.

### 17 C. Transportation

#### 18 Findings of Fact:

19 1. Several witnesses testified regarding transportation impacts.  
20 Witnesses for the SEPA Appellants included:

21 a. Mr. Ramin Pazooki, Local Agency and Development Services  
22 Manager, Washington State Department of Transportation,

23 b, Mr. Matthew Nolan, Traffic Engineer, King County  
24 Department of Transportation,

25 c. Dr. Natarajan Janarathanan, Transportation Planning Engineer,  
the consulting firm Fehr and Peers, and

d. Mr. Ross Tilghman, Principle, the consulting firm Tilghman  
Transportation Planning.

Witnesses for the City included John Perlic, Transportation Division Manager, the  
consulting firm Parametrix, and Steve Pilcher, SEPA Responsible Official, City of  
Black Diamond.

Each of these witnesses is well-qualified and highly credible.

2. In addition to the expert testimony, several SEPA Appellants and lay  
witnesses also testified regarding transportation issues during the EIS portion of the

1 hearing. These included SEPA Appellant Judith Carrier and local residents Robert  
2 Taeschner, Susan Ball and Lori Seaman.

3 3. During the Master Planned Development public hearings, information  
4 relevant to the transportation portion of the EIS was introduced. Information with  
5 bearing on the EIS decision criteria is considered herein.

6 4. The City hired the third party consulting firm Parametrix to produce  
7 the environmental impact statement review of transportation impacts.

8 5. Parametrix employed an unusually extensive scoping process to gather  
9 input from the stakeholders and design the methodology, size and parameters of the  
10 study area. King County, Washington Department of Transportation, and SEPA  
11 responsible officials and transportation professionals from neighboring jurisdictions  
12 were invited to participate. Representatives from Maple Valley, Covington, Auburn  
13 and Washington Department of Transportation participated. Participants provided  
14 input and concurred with the size of the study area, scope of the review, intersections  
15 to be studied, and the broad methodology and assumptions of the analysis including  
16 trip generation, distribution and assignment. At these scoping meetings, Parametrix  
17 supplied preliminary data on trip distribution and project traffic Tr. pages 1,487-  
18 1,493.

19 6. Significant transportation related issues raised during the SEPA EIS  
20 hearing and MPD hearings included:

21 a. The choice of transportation demand model used;

22 b. Methodological assumptions including the background traffic  
23 projections, the analysis of queue lengths from intersections and cycle timing, the  
24 choice of projected peak hour factor, the internal trip capture rate, the analysis of  
25 mode split and others;

c. Impacts to roads within the City of Black Diamond including  
Railroad Avenue;

d. Safety issues and impacts to area rural roads;

e. The level of detail and type of information presented in the  
EIS;

f. The determination of appropriate impacts and mitigation  
measures; and

g. The timing of mitigation and the assignment of financial  
responsibility for those impacts.

1  
2 7. In preparing the transportation analysis, Parametrix used two models –  
3 the Puget Sound Regional Council demand model and a modified version of the City  
4 of Black Diamond's transportation model. The City of Maple Valley's representative  
5 Mr. Natarajan Janarthanan testified that because the PSRC model is regional in  
6 nature, the use of the PSRC regional model was inappropriate for the purposes of  
7 determining local impacts and mitigation due to the lack of local validation and the  
8 coarse structure of the model with regard to the size of transportation analysis zones.  
9 Exhibit 15, Janarthanan First Declaration, pages 10-13 and Exhibit 67, Janarthanan  
10 Second Declaration pages 1-2. Dr. Janarthanan noted the PSRC model was created to  
11 identify systems level impacts at freeways and major arterial networks and is more  
12 fully developed in some parts of the region than others. He stated the unmodified  
13 PSRC model does not contain a level of detail sufficient to be appropriate for  
14 measuring the local development impact of analysis for these projects. He further  
15 noted the PSRC model is not validated for use in this region. Exhibit 15, Janarthanan  
16 First Declaration, page 11. Mr. Perlic agreed Parametrix had not re-validated the  
17 model for use in this area Tr. page 1,582.

18 Dr. Janarthanan suggested the appropriate model to use would be the City of Maple  
19 Valley's model because it has been validated recently and contains fine grained  
20 information for the communities of Black Diamond, Covington, Kent, Maple Valley  
21 and Auburn. Exhibit 15, Janarthanan First Declaration pages 17, and 23-25. Mr.  
22 Perlic testified the City of Maple Valley model, being a local model would not be  
23 sufficient to determine regional impacts. Mr. Perlic also noted the City of Maple  
24 Valley model would be inaccurate for trips going south to Enumclaw because of the  
25 gross assumptions about the external zones. Perlic Declaration page 16. Janarthanan  
testified that the PSRC and Black Diamond models together are not capable of  
accurately estimating the impact on Maple Valley. Exhibit 15, Janarthanan First  
Declaration page 17. Dr. Janarthanan also testified he would rather see the analysis  
use one single model to analyze all the impacts within the study area Tr. page 1,438.  
The PRSC model is superior for determining regional impacts and does provide high  
level impacts analysis data. The Maple Valley model provides a better picture of the  
very localized impacts of the projects.

8. In analyzing increase in traffic volume, Parametrix assumed a 1.5%  
growth rate in background traffic over the next 15 years, based on 5-10 years of  
traffic counts and predictions from the PSRC model. Tr. page 1,494. Dr. Janarthanan  
testified that due to the expected length of build out of the project and the variability  
of growth over a long time frame, they would have used land use models to estimate  
future growth rather than recent growth trends. Exhibit 15, Janarthanan First  
Declaration pages 9. Dr. Janarthanan testified that in the case when the future  
analysis year is more than five to six years beyond the current year, one should not  
simply use a historical annual growth rate to estimate the background growth. It  
would be advisable to use a travel demand model. Exhibit 15, Janarthanan First

1 Declaration page 8. Dr. Janarthanan agreed that the model used by Parametrix would  
2 provide a conservative analysis with respect to total future traffic by overstating the  
3 need for future infrastructure improvements. However, by estimating a higher  
4 number of total trips, this method would also reduce the pro-rata contribution from  
5 the developments and would influence both the calculation of impacts and necessary  
6 mitigation measures with respect to the development. The calculation advocated by  
7 Dr. Janarthanan would result in higher contribution by the Applicant toward  
8 mitigation projects in Maple Valley Exhibit 15; Janarthanan First Declaration pages  
9 23-25.

6 9. The FEIS did not include a detailed analysis of potential queue lengths  
7 resulting from increased traffic. Mr. Tilghman testified that long queues at  
8 intersections posed a safety hazard from motorists coming upon an unexpected back  
9 up due to queues and that queues from adjacent intersections overlapping might cause  
10 gridlock. Tr. page 594-600. Mr. Pazooki testified that WSDOT provided a standard  
11 request as part of the DEIS a queue analysis and an analysis of volume over capacity  
12 at individual intersection legs as part of an EIS. Tr. page 1,444-1,445. Mr. Perlic  
13 testified that queue analyses are more appropriately done at the project level, because  
14 the determination of whether there is a significant adverse impact analysis will occur  
15 in conjunction with construction, rather than trying to guess what will happen 15  
16 years from now. A queue analyses at the project level will allow consideration of  
17 signal timing, actual volumes, intersection design, and will more accurately predict  
18 what the specific mitigation needs would be, such as whether a left turn lane is  
19 needed to be added, and the necessary length of that left turn lane. Tr. pages 1,472-  
20 1,512. Mr. Pazooki stated WSDOT felt this information was needed now rather than  
21 later in the MPD process. Tr. page 1,447.

16 10. The FEIS did not address individual turning movement failures at the  
17 various "legs" of each intersection. The FEIS concluded that all proposed  
18 alternatives would result in increased traffic volumes and delays, some resulting in  
19 failing levels of service. The Transportation Technical Report analyzed individual  
20 turning movements, but the FEIS itself only addressed failing intersections.  
21 Appellants assert that while concurrency regulations only require analysis of delay  
22 averages for the entire intersection, a full analysis should have been done addressing  
23 legs of each intersection to determine impacts of individual turning movements. Tr.  
24 pages 1,443. Both Mr. Perlic and Mr. Tilghman testified that it is standard practice to  
25 analyze the entire intersection because mitigation is tied to failure of the whole  
intersection. Tr. pages 1,527 and 607. Mr. Pazooki testified that WSDOT requested  
information about individual legs of intersections and that that information was a  
standard EIS item for inclusion. Tr. pages 1,444-1,447.

24 11. The peak hour factor measures the variability of traffic flow within  
25 that particular hour. The peak hour factor is the total hour's volume divided by the  
peak 15-minute volume times four. The more aberrant any given 15-minute period is,  
the smaller that ratio becomes, indicating a greater intensity of traffic due to delays.

1 The lower the peak hour factor, the lower the level of service rating. In urban and  
2 near-urban situations, peak-hour ratios are frequently about 0.85 to 0.94. A factor  
3 approaching 1.0 indicates either wide open traffic conditions with no delays and an  
4 absolutely uniform flow, or severe congestion where cars are unable to move. As  
5 volumes increase, the factor will have an ever greater influence and may result in a  
6 lowering of level of service rating. When transportation impacts are analyzed as part  
7 of an FEIS, an increased peak hour factor is applied to reflect build-out or increased  
8 traffic over a particular horizon period. According to Mr. Perlic's Declaration, a peak  
9 hour factor default value of 0.92 is reasonable when there are greater than 1,000  
10 vehicles expected to enter an intersection while a more conservative peak hour factor  
11 below 0.90 is likely to occur when entering volumes are lower than 1,000 vehicles.  
12 Perlic Declaration, Attachment C, page 49, and paragraph 3.

13 12. At dispute is the proper increased peak hour factor to apply.  
14 Parametrix applied a peak hour factor of 0.97, on the premise that 85% of the 39  
15 intersections addressed in the FEIS had peak hour factors of 0.92 or more, and an  
16 adjustment of 0.05 would be warranted to reflect the reality of additional congestion  
17 and volumes in traffic projected to occur in a 15- to 20-year period. Tr. pages 1,529-  
18 1,524. The Appellants argue that a peak hour factor of 0.97 is too high, and  
19 artificially improves conditions, resulting in fewer failing intersections. Tr. pages  
20 584-587. The Highway Capacity Manual, on which the level of service procedures  
21 are based, recommends a fault value of 0.92. Perlic Declaration, Attachment C, page  
22 49. A recent National Cooperative Highway Research Program report that looked at  
23 a variety of analysis factors and determined that the 0.92 peak-hour factor is a  
24 reasonable assumption to make. Perlic Declaration, Attachment D, page 14. While  
25 Mr. Tilghman would not rule out ever using a peak hour factor of 0.97, he said it was  
extremely rare. Tr. page 585-587.

17 13. The internal trip capture rate is a measure of the number of trips that  
18 would be generated by the project and stay within the project rather than access the  
19 roadway system. An example of this would be a resident who travels to work at an  
20 office site within the project. Mr. Perlic testified Parametrix had used the Institute of  
21 Traffic Engineers manual to determine internal capture. Perlic Declaration,  
22 Attachment C, page 7. He testified and Mr. Nolan of King County Tr. page 520-523  
23 agreed this is the standard method for determining trip generation. In the City's  
24 comments to the DEIS, Maple Valley expressed concern that the internal trip capture  
25 rate would be too low and understate impacts from the project. Matt Nolan from  
King County testified the County was concerned the rate was overly optimistic and  
requested the analysis include studies of trip capture rates from recent, local master  
planned developments including Snoqualmie Ridge, Redmond Ridge, Issaquah  
Highlands and others. Tr. page 520-523.

14 14. The FEIS did not identify safety concerns as a probable significant  
adverse impact. Mr. Nolan testified King County was concerned about safety on the  
rural roads including Southeast Green Valley Road. Tr. 389. Mr. Nolan identified

1 concerns including safety issues and issues related to the physical geometry of the  
2 roads, problems with site distances, and curves in the roads. Tr. 427. Mr. Nolan  
3 further testified that he was not aware of any piece of the Draft Environmental Impact  
4 Statement or the Final Environmental Impact Statement that specifically addresses  
5 potential safety issues related to the increased volumes on the rural unincorporated  
6 King County roads. Tr. 428.

7 Ms. Carrier introduced the Department of Transportation accident history detail  
8 report, showing reported collisions that occurred on Southeast Green Valley Road  
9 from Auburn/Black Diamond Road to State Route 169, January 1, 2001 through  
10 October 31, 2009 Exhibit IJ. Mr. Clifford introduced an updated version of the  
11 report, which includes details of all reported accidents in that area from 2001 through  
12 2009. Exhibit H22. The Department of Transportation accident history detail report  
13 included a period during 2008, during which traffic volumes increased substantially  
14 due to a detour resulting from a bridge closure. Ms. Carrier also raised additionally  
15 concerns regarding the failure of the FEIS to analyze an additional eastern outlet to  
16 SR-169 from the Villages. She stated that many of the proposed projects are not  
17 going to be funded, and that there will be no highway capacity improvements for a  
18 very long time on SR 169. Without these projects, the existing roads will simply not  
19 be safe enough for increased travel, nor will they be able to maintain the necessary  
20 levels of service regarding traffic. Tr. pages 199 & 205.

21 Mr. Perlic testified that he would have expected the number of accidents to increase  
22 as traffic volumes increase in conjunction with the project. In spite of the increased  
23 traffic during that period, the number of accidents did not increase from the average  
24 for this nine-year reported period. Tr. pages 1,541-1,543.

25 Mr. Perlic stated that in his traffic analysis, he found no high incident intersections;  
the accidents in the study area were random and not tied to any particular hazards on  
the roads. Mr. Perlic noted while some of the safety impacts are mitigated by the  
improvements called for in the FEIS, the randomness of the accidents makes it  
difficult to predict and impose more specific mitigation that would decrease the risk.  
He further testified there is no known way to analyze safety impacts except to  
evaluate the particular configuration of a high-accident location. Tr. pages 1,541 -  
1,543.

15. The FEIS addressed levels of service and included a reasonable  
discussion of the impacts resulting from increased traffic volumes and decreased  
levels of service. The FEIS generally describes mitigation measures in general and in  
more extensive terms in the body and technical appendices. The Applicant has also  
proposed a monitoring plan and a mid-point review condition to analyze  
transportation impacts and ensure the mitigation measures are effective. The  
mitigation measures proposed by the FEIS did not discuss whether funding exists to  
implement the measures, or whether such measures are feasible. Forty-six  
intersections were identified for review in the scoping process, an unprecedented

1 number for a non-project FEIS. In accordance with standard practice and the City of  
2 Black Diamond code, entire intersections (rather than portions thereof) were studied  
3 at PM peak hours, to address the most congested time of day. When the levels of  
4 service become unacceptable, mitigation is identified to reduce delays and return to  
5 acceptable levels of service. Additional review and potential additional mitigation  
6 will be done in conjunction with specific projects. Appellants also argue that the  
7 FEIS analysis should have included a review of other times, such as morning  
8 commutes, in addition to the PM peak hour analysis. (Exhibit 211, Janarthanan Third  
9 Disclosure, page 10. Mr. Perlic explained that it is customary to use the highest travel  
10 hour so mitigation is imposed for the worst-case traffic scenarios. Perlic Declaration,  
11 page 24. Dr. Janarthanan testified that a full disclosure of impacts would indicate  
12 failing intersections during the AM peak hour as well Exhibit 211, Janarthanan Third  
13 Disclosure, page 10.

14 The FEIS did not include an analysis or estimate of anticipated increases in travel  
15 times. The Appellants assert that the FEIS should have included a discussion of how  
16 the projects would impact travel times, arguing that such a discussion would be more  
17 meaningful to the decision-makers than LOS analyses. Tr. page 594. Mr. Perlic  
18 testified that travel time analyses are not typically provided in a programmatic FEIS.  
19 Tr. page 2,467-2,468.

20 16. It is anticipated that traffic on the Green Valley Road will increase by  
21 as much as 300 - 400%. Tr. page 476. Green Valley Road currently has very low  
22 traffic volumes, and the anticipated increase in traffic volumes resulting from the  
23 project will not exceed Green Valley Road's capacity. Testimony from Mr. Perlic  
24 indicated that intersections along Green Valley Road can handle the projected  
25 increase in traffic. Tr. pages 476-478. Green Valley Road has been designated under  
King County's Historic Heritage Corridor. It is a historical, aesthetic and recreational  
resource of the City. The anticipated increases in traffic on Green Valley Road will  
most likely impact the rural nature of the road. Tr. page 388-389. SEPA's required  
environmental review must include aesthetics, recreation and historic preservation.  
See WAC 197-11-448(2)(b)(iv)-(vi). Testimony was also presented that bicyclists and  
pedestrians may also face safety hazards, especially on Green Valley Road. Tr. 611,  
page 466. The FEIS does not address these impacts.

Green Valley Road also is a major concern of Ms. Carrier. She states that it has  
limited or no roadway shoulders, has trees and fences in very near proximity to the  
roadway, and very curvilinear alignment. Additionally, Green Valley Road has a  
high number of large animals that regularly cross the road, and increased traffic on  
the road creates a higher likelihood of accidents and also threatens the general  
livelihood of the animals in regards to safety and habitat. There is also a high volume  
of bicyclists on the road, as well as hikers, joggers, tubers, swimmers, outdoor  
groups, and fishermen using the shoulder, and only one-tenth of a mile of legal  
passing zone. Tr. pages 209-212. In addition to safety concerns on Green Valley  
Road, Ms. Carrier is also concerned about its historic and aesthetic qualities. It is a

1 designated Heritage Corridor, and goes back to 1884. There are also many historical  
2 homes and sites, as well as an agricultural district and farmland, which King County  
3 has designated as a significant area in need of protection. The farm areas have their  
4 own safety issues regarding farm equipment crossing the road. Additional traffic on  
5 the road will require mitigation factors that would disrupt the nature of the historic  
6 and agricultural areas to an irreversible degree. Tr. pages 213-215.

7 17. The City's Comprehensive Plan designates Railroad Avenue as a  
8 collector road, with a level designation of C, and whose purpose is to collect and  
9 distribute traffic between local roads and arterial system. Mr. Perlic testified that  
10 Railroad Avenue has sufficient capacity to handle projected increases in traffic. Tr.  
11 pages 1,535-1,536. Railroad Avenue is part of the City's Old Town historic district  
12 overlay. The Comprehensive Plan policies state that the historical character "should  
13 be retained and enhanced, and this area should become the focus of tourist and  
14 specialized retail activities." (Black Diamond Comprehensive Plan, *Commercial and  
15 Mixed Use Development Policies* Old Town Mixed Use.) The Comprehensive Plan's  
16 objectives and policies look to "Maintain those historical qualities in the environment  
17 that bring value to the community." (Black Diamond Comprehensive Plan, 5.6.8.  
18 Historic Preservation Objective, Policies and Concept Historic Preservation Objective  
19 and Policies, Objective LU-7). The Appellants are concerned that increased traffic  
20 will destroy the historical character of Railroad Avenue. Tr. pages 1,015-1,016.  
21 However, Mr. Perlic named several other roads in the area, such as the main roads  
22 through North Bend and Snoqualmie, with historical characteristics similar to  
23 Railroad Avenue that have been able to retain their rural character in spite of  
24 development and increases in traffic. Mr. Tilghman testified the specific section of  
25 Railroad Avenue is being reconfigured to have head-in parking and that under the  
City's design standards the volume for a collector assumes there is no parking lane.  
These are two very different scenarios here. Tr. 1,015. Mr. Tilghman also noted that  
despite the road's designation, it functions like a local access street due to the head-in  
parking and is therefore, not functionally capable of safely handling the proposed  
project traffic. Tr. Pages 1,015-1,016.

19 18. Judith Carrier, one of the SEPA Appellants, has raised concerns that  
20 the TV FEIS did not adequately address and disclose the environmental impacts  
21 arising from the potential for increased traffic along Plass Road/257th Ave. SE. Tr.  
22 201-222; 2269-2276. Plass Road can serve as a bypass to traffic on SR 169 through a  
23 connection between SR 169 and Green Valley Road. It connects Green Valley Road  
24 to an alternate route for persons travelling to SR 169 from the Villages. John Perlic  
25 testified that there is no mention of Plass Road within the EIS. Tr. 2543. Mr. Perlic  
stated that it is possible that some small portion of traffic may reroute onto Plass  
Road in order to avoid increased traffic on surrounding roads, but that no studies have  
been done to look into the matter. Vol. VIII pgs. 2545-2546. Mr. Perlic states that he  
does not believe a reroute is likely due to the current state of Plass Road, which is just  
gravel in parts, has potholes, and can be travelled at only 20 miles per hour; whereas  
SR169 is in much better condition, and although it may be more congested, the posted

1 speed is 50 miles per hour. Tr. 2702 & 2707. Mr. Perlic points out that even if a  
2 small number of drivers do choose to use Plass Road as an alternative that will not  
3 result in a probable significant adverse impact. Tr. 2702. Finally, Mr. Perlic stated  
4 that a further reason Plass Road is not a feasible alternative route is due its absence  
5 from the Comprehensive Plan list for road improvements, which results in the road  
6 remaining in its current condition. Tr. 2737. On behalf of the Applicant, Nancy  
7 Rogers states that the Applicant has no intention of using Plass Road and would agree  
8 to vacate a portion of the road to assure no use if there is support from Plass Road  
9 residents, the City of Black Diamond and King County Applicant's Rebuttal to  
10 Additional Public Testimony, pg. 7; Applicants' Closing Brief in Support of EIS  
11 Adequacy, pg. 35.

12 19. The FEIS contains no discussion of the traffic impacts posed by  
13 construction of the proposed projects. It is clear that the many years of construction  
14 arising out of the extensive development proposed by applicant will result in ongoing  
15 construction traffic impacts.

16 20. The FEIS did not go into great detail with regards to Alternatives 3  
17 and 4; it merely noted the percentage increase posed by each alternative.

18 21. Jeff Dixon, Principle Planner, City of Auburn testified that the analysis  
19 does not adequately depict mode split and does not characterize the impacts of  
20 development on the Auburn Regional Transit Station's parking garage or overflow  
21 parking onto adjacent city streets Exhibit 16.

#### 22 **Conclusions of Law:**

23 1. Although many facets of the transportation analysis could have been  
24 better, the choices made by Parametrix are all within the parameters of reasonably  
25 justified professional judgment, especially given the substantial weight that must be  
given to the SEPA Responsible Official's determination that the analysis is adequate.  
The FEIS contains a reasonably thorough discussion of significant adverse  
transportation impacts of the proposed project at the programmatic level of analysis.  
However, the use of a regional model to project local traffic impacts, the divergence  
in the effect of modeling assumptions, along with concern related to the effect of the  
choice of models on potential impacts and mitigation will lead the Hearing Examiner  
to recommend additional mitigation measures based on the outcome of this  
subsequent study in the MPD.

2. While the FEIS did not identify safety concerns as a probable  
significant adverse impact, the Appellants did not present evidence that these issues  
could be adequately addressed at this higher level review. It is reasonable to  
conclude that decision-makers would recognize that vehicle accidents will increase  
proportionately with increased traffic volumes.

1 3. It was not necessary that the FEIS discuss the anticipated increases in  
2 travel times resulting from increased traffic. The FEIS addressed levels of service  
3 and contained a reasonable discussion of the impacts resulting from increased traffic  
4 volumes and decreased levels of service. The LOS analysis is the more customary  
5 manner to address traffic issues. The Growth Management Act requires an LOS  
6 analysis to gauge the performance of local transportation systems. RCW  
7 36.70A.070(6)(a)(iii)(B). City and County elected officials deal with level of service  
8 on a regular basis in their review of planning documents required by the Growth  
9 Management Act and their review of land use applications. Mitigation is based on  
10 level of service; thus a discussion of LOS is more meaningful than increased travel  
11 times. Mitigation is shown when the levels of service become unacceptable. It is  
12 reasonable to conclude that decision-makers are familiar with LOS analysis;  
13 additional analysis of anticipated increases in travel time was not necessary. This  
14 information was sufficient to inform the City of the environmental impacts associated  
15 with making a reasoned decision regarding MPD approval, and allow its officials to  
16 make reasoned decision.

17 4. Use of the PM peak hour analysis was sufficient to establish necessary  
18 mitigation for traffic increases. While Appellants would have the FEIS address other  
19 times, including AM peak hours, as Mr. Perlic testified it is customary to use the  
20 highest travel hour so mitigation is imposed for the worst-case traffic scenarios. The  
21 FEIS is not intended to be a compendium of every conceivable effect or alternative.  
22 The information presented was sufficient to enable the decision-makers to understand  
23 the effects of the traffic. Moreover, Appellants have not met their burden of showing  
24 evidence of an impact not addressed.

25 5. Analysis of whole intersection failure was sufficient to establish  
26 necessary mitigation. The City's LOS standard for intersections applies to the whole  
27 intersection, and Mr. Perlic and Mr. Tilghman both testified that it is standard practice  
28 to analyze the entire intersection because mitigation is tied to failure of whole  
29 intersection. While Appellants would have the FEIS also examine the various legs of  
30 each intersection, such detail is inappropriate for the FEIS itself; this analysis is  
31 included in the Transportation Technical Report. Analysis of the LOS at intersections  
32 contained a reasonably thorough discussion of significant aspects of probable  
33 environmental consequences

34 6. Green Valley Road contains aesthetic, recreation and historic elements  
35 that are not addressed in the FEIS. While Green Valley Road's designation under  
36 King County's Historic Heritage Corridor program has no regulatory significance, an  
37 environmental review under SEPA must include aesthetics, recreation and historic  
38 preservation. See WAC 197-11-448(2)(b)(iv)-(vi). King County's designation  
39 supports the conclusion that Green Valley Road is an aesthetic, recreational and  
40 historic resource. However, it is recognized that this is ultimately a subjective  
41 determination. As Mr. Perlic testified, analyzing impacts to "rural character" would  
42 be speculative and subjective. Consequently, it would not be reasonable to find the

1 EIS inadequate on impacts that cannot be objectively assessed and could be subject to  
2 reasonable differences of interpretation. However, the Examiner will recommend  
3 added mitigation in MPD to control traffic on Green Valley Road, potentially  
4 including features such as traffic calming devices and bicycle lanes.

5 7. Railroad Avenue is characterized in the City's Comprehensive Plan as  
6 a collector arterial. The Appellants raised issues regarding the ability of Railroad  
7 Avenue to safely carry the additional traffic due to the projects given its existing  
8 physical function as a head-in parking local access street. The Appellants suggested  
9 this road is misclassified giving the impression it can handle more traffic than it can.  
10 While there is concern regarding the safety, capacity and historical aspects of  
11 Railroad Avenue that are designated for preservation by the City's Comprehensive  
12 Plan, testimony indicated that the historic nature could be retained in spite of  
13 increased traffic impacts, as had been done in North Bend and Snoqualmie.  
14 Moreover, analyzing impacts to "rural character" would be speculative and  
15 subjective. The EIS is not responsible for potential errors in the City's roadway  
16 classification system. As labeled, Railroad Avenue is a collector arterial, a  
17 designation that suggests the road is able to carry a greater traffic capacity than is  
18 proposed from the projects. Appellants have not met their burden of showing  
19 evidence of an impact that could be addressed in the FEIS.

20 8. Although Mr. Perlic testified that it is unlikely that there will be much  
21 traffic generated on Plass Road by the MPD projects, it is very possible this could  
22 occur if congestion becomes a problem on SR 169. As noted in the Standard of  
23 Review section of this decision, an EIS is not required to address every conceivable  
24 impact of a project. The off-chance that SR 169 will become congested enough to  
25 motivate drivers to use Plass Road to by-pass traffic probably falls under the "every  
conceivable" category and does not affect the adequacy of the EIS. However, Ms.  
Carrier and the Applicant have proposed some reasonable solutions to this problem in  
case Ms. Carrier's fears do materialize. For this reason, the Examiner will  
recommend some MPD conditions along the lines recommended by the Applicant  
and Ms. Carrier.

9. While the FEIS gave short shrift to Alternatives 3 and 4, merely noting  
the percentage increase posed by each alternative, failure to go into more detail is not  
fatal to the validity of the FEIS. The SEPA Responsible Official made a  
determination that the FEIS adequate. The FEIS provided sufficient information to  
enable the decision-makers to making a reasoned choice among alternatives. The  
issues that Appellants claim should have been addressed in more detail with regard to  
each alternative, such as safety, hours of commute analyzed, character and travel  
times are discussed elsewhere herein, and were not necessary for the validity of the  
FEIS.

10. It was not necessary that the FEIS address the feasibility of  
implementing mitigation measures. SEPA requires the FEIS to discuss reasonable

1 mitigation measures that would significantly mitigate impacts, and indicate what the  
2 intended environmental benefits of mitigation measures are for significant impacts.  
3 WAC 197-11-440. The FEIS *may* discuss the economic practicability of mitigation  
4 measures *if* there is concern about whether a mitigation measure is capable of being  
5 accomplished. *Id.* It *need not* analyze mitigation measures in detail unless they  
6 involve substantial changes to the proposal causing significant adverse impacts, and  
7 those measures will not be subsequently analyzed under SEPA. *Id.* In this case, the  
8 measures will be subsequently analyzed, and it would be premature to attempt to  
9 analyze the feasibility of implementation of mitigation measures at this juncture. Such  
10 an analysis is of limited use given the multitude of other factors that could derail the  
11 project. Cost-sharing arrangements may be addressed by development agreements  
12 entered into between the developer and City.

8 These issues are more appropriately addressed later as part of the review of the  
9 specific project pieces when the City has the permitting authority to condition the  
10 project on implementation of mitigation measures. If level of service impacts mandate  
11 mitigation, any development can only proceed if mitigation is actually implemented.  
12 While SEPA does not require the FEIS to discuss mitigation measures in detail in all  
13 instances, mitigation must be reasonable and capable of being accomplished. If  
14 mitigation is determined to be unfeasible at the time the project will be built, then  
15 GMA concurrency will prevent the development from proceeding. Consequently,  
16 any feasibility analysis at this point would only speculate on whether the development  
17 will proceed to completion if approved.

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

21 12. Application of the 0.97 peak hour factor does not make the FEIS  
22 inadequate. While there was testimony that a 0.92 peak hour factor is the accepted  
23 standard, applying that factor to an intersection already at 0.92 or higher would be  
24 superfluous, and a higher factor would be appropriate. The City should have done an  
25 individual analysis of each intersection under consideration, and applied a factor  
appropriate to that intersection. However, the application of the 0.97 peak hour factor  
does not fall beyond the range of professional judgment, and is not clearly erroneous;  
substantial deference must be given to substantial deference the SEPA Responsible  
Official's determination that FEIS is adequate. Application of a higher than  
necessary peak hour factor is not a conservative analysis with respect to the project's

1 pro-rata impacts. The Hearing Examiner will recommend additional conditions for  
2 this topic as part of the MPD.

3 13. Parametrix's use of a 1.5% growth rate in background traffic based on  
4 recent growth trends was within the bounds of professional judgment. The  
5 background rate of growth is subject to change and a straight line projection based on  
6 historical trends may under or overstate total background traffic and therefore affect  
7 the calculated share of pro-rata project impacts. A high background growth is  
8 conservative with respect to total impacts in that it will increase apparent impacts and  
9 required mitigation. A higher rate is not conservative with respect to the project's  
10 pro-rata contribution to those impacts because higher background traffic figures  
11 would reduce the project's perceived pro-rata contribution to the impact and reduce  
12 the project's share of mitigation proportionately to the increase in background traffic  
13 assumptions. Although the Applicant's projections may not be the most accurate  
14 methodology, they are reasonable, within the bounds of professional judgment and  
15 suffice under the substantial weight standard. Appellants did not meet their burden of  
16 showing the calculation was erroneous or why the SEPA responsible official's  
17 judgment should be overruled. However, the Hearing Examiner will recommend  
18 additional conditions for this topic as part of the MPD.

19 14. It is clear that the many years of construction arising out of the  
20 extensive development proposed by applicant will result in ongoing construction  
21 traffic impacts. The FEIS did not address the traffic impacts posed by construction of  
22 the proposed projects. However, mitigation of such impacts is more appropriately  
23 handled at each phase of the project. There is no evidence that addressing these  
24 impacts at this stage of environmental review would result in a more effective  
25 mitigation. SEPA allows the City to determine the appropriate scope and level of  
detail of environmental review to coincide with meaningful points in their planning  
and decision-making processes, and to focus on issues that are ready for decision and  
exclude from consideration issues already decided or not yet ready. WAC 197-11-  
060(5). Construction impacts are such issues not ripe for consideration. The City's  
Engineering and Construction Standards will require a traffic control plan that will  
address the specific impacts prior to commencement of construction.

15 15. As is evident from the findings above, the EIS traffic analysis is  
16 adequate but in several instances there are more accurate methodologies and  
17 assumptions available to ensure more complete mitigation. The Examiner will  
18 recommend conditions on the MPD that incorporate the better methodologies and  
19 assumptions.

20 **D. Faulty Audio Recording of DEIS Hearing**

21 **Findings of Fact:**

1 1. Page 3 of the Gauthier Appeal Statement, p. 5 of the Clifford Appeal  
2 Statement, p. 2 of the Wheeler Appeal Statement, and p. 2 of the Harp Appeal  
3 Statement all express concern over the poor audio recording of the hearing on the  
4 Draft EIS for both MPD projects.

5 2. A transcription of the audio recording identifies over 300 "inaudible"  
6 gaps in the recording. See Transcript attached to Harp Appeal Statement. The  
7 testimony from at least one individual is completely missing from the recording.

8 **Conclusions of Law:**

9 1. There is no legal requirement for the recording of a hearing on a Draft  
10 EIS.

11 2. Procedural errors occurring during the EIS process are reviewed under  
12 the rule of reason. Where such errors are not consequential, they must be dismissed  
13 as harmless. *Klickitat County Citizens Against Imported Waste v. Klickitat County*,  
14 122 Wn.2d 619, 637 (1993).

15 3. As noted in the Examiner's Order on Motions to Dismiss, Email Ex.  
16 300, p. 10-11, the gaps in the recording are relevant to a determination of adequacy if  
17 they reveal that significant impacts presented by the citizens were not considered in  
18 the FEIS. No evidence was presented that this occurred. The record fails to establish  
19 that the audio recording had any relevance to the adequacy of the FEIS.

20 **E. Schools**

21 **Findings of Fact:**

22 1. Page 12 of the Clifford Appeal Statement asserts that the FEIS  
23 inadequately addresses school impacts, including the impacts caused by the  
24 construction of new schools to serve the project.

25 2. Mr. Clifford has raised concerns that because of the schools' location  
outside of the UGA, certain impacts related to school construction were not  
accounted for in the TV FEIS. Namely, the TV FEIS did not account for the increase  
in traffic in rural King County and for the effects related to an increase in impervious  
surfaces on nearby wells and septic systems. Tr. at 13.

3. Mike Nelson, the Superintendent of the Enumclaw School District,  
testified that in August 2006, the Enumclaw School District began negotiations with  
the City of Black Diamond and Yarrow Bay Development to develop a three-party  
Comprehensive School Mitigation Agreement. Tr. at 850-51.

4. According to the testimony of Mr. Nelson, the parties to the  
Comprehensive School Mitigation Agreement "firmed up" the location of the

1 elementary and middle schools identified in Finding of Fact No. 1 in April 2009 and  
2 the location of the high school in late August or early September 2009. Tr. at 878-79.  
3 These sites were not made known to the public before October 8, 2009, and Mr.  
4 Nelson gave a PowerPoint presentation at a public meeting on October 26, 2009,  
5 describing the details of the Agreement. Tr. at 852.

6 5. Additional public meetings were held on November 5, 2009, and  
7 November 12, 2009, at which time, a map of the location of the schools was  
8 distributed to the public. The map distributed at these public meetings depicted four  
9 schools, one elementary, two middle, and one high school to be located outside of the  
10 UGA and Black Diamond City limits. Tr. at 853-54. A middle school and  
11 elementary school will be located south of the Villages development, directly north of  
12 SE Green Valley Road. In the testimony, this site was described as the "twin school  
13 site." Another middle school has been proposed to be located to the west of the  
14 Villages, and a high school has been proposed to be located north of the Villages near  
15 Lake Sawyer. Pre-hearing Exhibit Bortleson 15.

16 6. The Comprehensive School Mitigation Agreement has not yet been  
17 signed by the respective parties and remains in draft form. Tr. at 527.

18 7. The "Summary of the Comprehensive School Mitigation Agreement,"  
19 contained in Appendix K of both the Lawson Hills and the Villages TV FEIS,  
20 provides that Yarrow Bay shall convey property for school sites upon the occurrence  
21 of three events: (1) The District must secure construction financing; (2) Yarrow Bay  
22 must receive final plat approval for various stages of the development; and (3) Mr.  
23 Paul Reitenbach of the King County Department of Development and Environmental  
24 Services testified that the District would have to obtain a conditional use permit to  
25 locate the school in rural King County. See Tr. at 518. As Mr. Nelson stated, the  
schools will be owned and operated by the Enumclaw School District. Tr. at 889.

8. The Comprehensive School Mitigation Agreement contains provisions  
to locate the schools within the UGA and the City of Black Diamond in the event that  
King County denies conditional use permits for rural schools. Tr. at 890.

9. With respect to possible impacts on wells and septic systems, Mr. Gil  
Bortleson, a water chemist and a SEPA Appellant of this action (on Mr. Clifford's  
team), testified that building the twin school sites south of the Villages along Green  
Valley Road would create a "high risk" of drying out approximately ten shallow wells  
serving neighboring residents in rural King County. Tr. at 137. In addition, Mr.  
Bortleson indicated that increased runoff from the school sites would drain to the  
west, potentially flooding septic systems located in that area. Tr. at 144. Mr.  
Bortleson also expressed concern over the transport of sediments to Green River from  
the school sites. Mr. Bortleson has a Ph.D. in water chemistry. He has worked in the  
Water Resources Division of the US Geological Survey for 30 years, where he has

1 developed extensive experience in analyzing impacts to lakes, estuaries, streams and  
2 groundwater.

3 10. Mr. Bortleson did not review any site plan for the proposed school  
4 construction prior to giving his testimony and assumed that the entire twin school site,  
5 70 acres of land, would be paved or graded, creating 70 acres of new impervious  
6 surface. Tr. at 148.

7 11. Mr. Bortleson was not able to give any testimony with respect to the  
8 quantity of water that currently infiltrates to the wells that would not infiltrate to the  
9 wells after the project. Tr. at 153. He also was not able to answer any question  
10 regarding the amount of surface water infiltration needed to sustain the operation of  
11 the at-risk wells. Tr. at 154.

12 12. With respect to the potential traffic impacts created by locating schools  
13 outside of the UGA, Mr. John Perlic, a Parametrix employee who drafted the  
14 transportation section of the TV FEIS, testified for the City of Black Diamond that  
15 when he conducted traffic analysis, the schools were considered to be located within  
16 the project site. Tr. at 1580, 2540. On March 11 during cross-examination, Mr.  
17 Perlic stated that he did not have specific site locations for schools when he  
18 conducted his trip generation analysis: "We didn't have specific site locations, but we  
19 knew generally within upper Lawson versus lower Lawson or which part of the  
20 Villages but not specific sites." Tr. at 1579. On cross-examination on March 16,  
21 however, Mr. Perlic stated that he did have particular school locations in mind, at  
22 least for the high school, though he could not recall exactly where the location was.  
23 Tr. at 2535. The Technical Appendix B to the Lawson Hills and the Villages TV  
24 FEIS also does not indicate exactly where the schools were assumed to be located for  
25 purposes of traffic analysis. Mr. Perlic did indicate, however, that the high school  
was located in the main Villages property for purposes of the traffic study. Tr. at  
2535.

18 13. Mr. Perlic testified that locating the high school outside of the project  
19 site would not significantly change the traffic analysis if the same access road were to  
20 be used. Tr. at 2540-41. Mr. Perlic also stated that the location of the high school  
21 would generally only affect the AM Peak Hours analysis, which was conducted on a  
22 limited basis. AM Peak Hours analysis was conducted at only 6 intersections within  
23 the project area because traffic is heaviest during the PM Peak Hours. Tr. at 2541-42.

24 14. Appendix B of the TV FEIS regarding transportation appears to only  
25 examine AM Peak calculations for a total of four schools: one elementary school with  
800 students in Lawson Hills, one elementary school in the Villages with 1,500  
students, one middle school in the Villages with 550 students, and one high school in  
the Villages with 1,200 students. *See, e.g.,* Table 10, Page 3-7, Appendix B.  
However, Susan Graham, also employed by Parametrix, indicated that at the time the  
DEIS and TV FEIS were drafted, it was a known fact that the projects, if completed,

1 would create the demand for a total of seven schools. Tr. at 907. Ms. Graham also  
2 indicated that for purposes of the DEIS and TV FEIS, Parametrix identified the need  
3 for seven school facilities, but did not address where those schools would be located.  
4 Tr. at 936.

5 **Conclusions of Law:**

6 1. WAC 197-11-660(2) provides: "EISs are not required to analyze in  
7 detail the environmental impacts of mitigation measures, unless the mitigation  
8 measures: (a) Represent substantial changes in the proposal so that the proposal is  
9 likely to have significant adverse environmental impacts, or involve significant new  
10 information indicating, or on, a proposal's probable significant adverse environmental  
11 impacts; and (b) Will not be analyzed in a subsequent environmental document prior  
12 to their implementation." (emphasis added). The new schools serve as mitigation by  
13 satisfying the demand for school facilities created by the MPDs. The testimony of  
14 Mr. Reitenbach clearly indicates that, in order for the schools to be built outside of  
15 the UGA, conditional use permits must be obtained from King County. Tr. at 518. A  
16 "subsequent environmental document," namely an environmental checklist or EIS,  
17 will be required under SEPA as part of the future process of obtaining such a permit.  
18 Accordingly, the environmental impacts of school construction in specific locations  
19 did not need to be analyzed in detail in the EIS.

20 2. WAC 197-11-660(2) only absolves the City from conducting a  
21 detailed analysis of the environmental impacts of schools. It still requires a general  
22 discussion. The FEIS comply with this requirement by identifying the level of  
23 service (LOS) standards for school facilities in the Enumclaw School District,  
24 calculating student generation caused by the development, identifying possible school  
25 mitigation fees to ensure that the availability of school facilities will not lag behind  
the demand for those facilities, and deferring to the City's MPD regulations (BDMC  
18.98.080.A14), which allow school impacts to be mitigated at the time of MPD  
approval by the City Council through a separate agreement. The Villages and  
Lawson Hills TV FEIS, pp. 3-80 - 3-85. Because the City's regulations allow such a  
procedure, the discussion of school impacts meets the standard of WAC 197-11-  
660(2), requiring a general discussion of environmental impacts of mitigation  
measures.

3. The Appellants argue that the failure to disclose and discuss the  
location of schools outside of the UGA equates to a failure to address the cumulative  
environmental impacts of the project. The SEPA Rules require that EISs must  
analyze "cumulative impacts." WAC 197-11-060(4)(e); WAC 197-11-792(2)(c)(iii).  
A focus upon cumulative impacts early in the review process assures the most  
efficient design and use of infrastructure. A discussion of cumulative impacts is an  
appropriate part of the "general" discussion required for mitigation under WAC 197-  
11-660(2). While there is no definition of a "cumulative impact" in the SEPA Rules,  
"cumulative impacts seem to be the combined effects of the proposal along with those

1 of other actual or potential proposals.” Richard L. Settle, *The Washington State*  
2 *Environmental Policy Act: A Legal and Policy Analysis* § 14.01[1][c][iii] (21st ed.  
3 2009). Additional projects do not require review in an EIS for cumulative impacts if  
4 they are either substantially independent from the proposed action or are not  
5 necessary to meet the project's purpose and need. *Gebbers v. Okanogan County PUD*  
6 *No. 1*, 144 Wn. App. 371, 380, 183 P.3d 324 (2008). Although the schools are clearly  
7 dependent upon the MPDs in the sense that they would probably not be built within  
8 the near future without them, they do have independent characteristics to the extent  
9 that environmental impacts do not build upon those of the MPD projects. An  
assessment of independence in this manner is consistent with the Settle conclusion  
that cumulative impacts are the “combined effects of the proposal” with other  
proposals. A focus upon impacts that build upon each other is also consistent with  
the goals of environmental review from a practical standpoint, since no benefits are  
lost by segmenting environmental review of impacts that are independent from each  
other.

10 a. The TV FEIS address the cumulative traffic impacts of the  
11 schools. According to Mr. Perlic’s testimony, he assumed that all schools would be  
12 located within the project sites and inside the UGA for purposes of his traffic  
13 analysis, though the testimony is inconclusive with regard to whether Mr. Perlic  
14 conducted the traffic analysis with a particular site in mind, and if he did, where that  
15 site was located. Tr. at 1580, 2540. Nevertheless, Mr. Perlic calculated the trips that  
16 would be generated by school traffic and considered this when he evaluated the AM  
peak numbers at six different intersections within the project site. Tr. at 2535. The  
Appellants have not demonstrated that this analysis was deficient. Thus, if the  
schools are located within the UGA boundary, the TV FEISs, and specifically  
Technical Appendices B, adequately evaluated the cumulative traffic impacts that  
will be caused by school construction.

17 b. Even assuming that the schools will be located outside of the  
18 UGA boundary, which according to the testimony is not by any means certain, the  
19 Appellants have failed to sustain their burden of proving that the Applicants’  
20 discussion of cumulative impacts was inadequate. The record is devoid of evidence  
21 suggesting that aspects of the current MPD construction and planned road  
22 improvements will be rendered inadequate or that a waste of resources will occur if  
23 the planned infrastructure improvements are constructed without consideration of  
24 school impacts. Mr. Perlic stated that only AM peak traffic calculations could change  
25 if different access roads are used, specifically to access the high school. Tr. at 2541-  
42. However, appellants did not provide evidence suggesting which, if any, of Mr.  
Perlic’s calculations would be rendered inadequate and how that may affect the  
proposed MPD construction and the associated planned road and intersection  
improvements.

c. The traffic impacts on rural King County are cumulative. As  
discussed in the traffic section of this decision, traffic generated by the MPDs will

1 increase traffic on Green Valley Road by 300-400%. It was further found that these  
2 anticipated increases in traffic (presumably not including school traffic) will not  
3 exceed the capacity of the road, so no road improvements are anticipated as a result of  
4 the MPDs. It would have been useful to know if the additional traffic generated by  
5 the proposed schools would exceed the capacity of Green Valley Road and trigger  
6 improvements. However, the burden is on the SEPA Appellants to provide some  
7 evidence that traffic generated from the proposed schools could exceed capacity.  
8 Since no such evidence was provided, the Examiner must conclude that traffic added  
9 by the schools would not create a significant cumulative impact.

10  
11 d. The impacts identified by Gil Bortelson, the Appellants' water  
12 chemist, are not cumulative because they are independent of the MPD development.  
13 The only impacts Mr. Bortelson identified are to wells and septic systems outside of  
14 the MPD site. These impacts can be effectively evaluated when a specific proposal  
15 for school construction is submitted for permit review.

16  
17 4. The general discussion of impacts of mitigation measures required by  
18 WAC 197-11-660(2) is also qualified by the limitation that this discussion does not  
19 need to include impacts that are remote and speculative. WAC 197-11-060(4)(a);  
20 WAC 197-11-782.

21  
22 a. The impacts of school construction are too remote and  
23 speculative to warrant detailed environmental review in the MPD EIS. First,  
24 testimony is conflicting with respect to whether the location of the schools outside of  
25 the UGA has actually been conclusively determined and when school construction  
will occur. The Comprehensive School Mitigation Agreement is still in draft form,  
and in fact provides for measures to locate the schools within the development site if  
King County denies the necessary conditional use permits. Tr. at 527, 890.  
Furthermore, it is unknown whether the population growth will warrant the school  
construction at issue, when final plat approval will be granted for multiple stages of  
development for Lawson Hills and the Villages, and whether the necessary funding  
will be secured. See "Summary of the Comprehensive School Mitigation  
Agreement," contained in Appendix K of both the Lawson Hills and the Villages TV  
FEIS. As Mr. Nelson testified, these schools will not be owned and operated by  
Yarrow Bay. Tr. at 889. Thus, despite the fact that Mr. Nelson testified the school  
sites were "firmed up" by April and late August/early September of 2009, there are  
many conditions that have yet to occur before the schools will be built, which may  
take years.

26  
27 b. The impacts identified by Mr. Bortelson were also speculative.  
28 Though Mr. Bortelson identified a "high risk" that surrounding wells would dry out  
29 as a result of the twin site school construction, he was unable to even identify the  
30 level of water necessary to sustain the wells and had not examined a site plan prior to  
31 giving his testimony. Tr. at 148, 154.

1           5.     With respect to sediment impacts to Green River testified by Mr.  
2 Bortleson, the record is unclear as to whether the sediment would create significant  
3 impact or that it would add to any other sediment generated by the MPDs. Given the  
4 substantial weight that must be given to the SEPA Responsible Official, the Examiner  
5 cannot find that sediment impacts would be cumulative or significant to qualify for  
6 the general discussion required of mitigation measures.

7 **F.     Wildlife**

8 **Findings of Fact:**

9           1.     Page 14 of the Clifford Appeal Statement, p. 15 of the Wheeler Appeal  
10 Statement and p. 11 of the Harp Appeal Statement all express concern over  
11 development impacts upon wildlife.

12           2.     Appellant Clifford has raised concerns that both FEISs were prepared  
13 without the benefit of site investigations, and that they are superficial and erroneous.  
14 Tr. at 13-14.

15           3.     Appellants Wheeler, et. al., raised concerns that neither of the FEISs  
16 disclose the impact that the projects will have on elk herds, and do not provide  
17 adequate analysis on the effectiveness of proposed wildlife corridors. See Wheeler  
18 Post-Hearing Brief at 54.

19           4.     Appellants Wheeler offered the testimony of Bruce Richards, a Dept.  
20 of Fish and Wildlife (DFW) employee, as their expert on wildlife. Tr. at 46.

21           5.     Having assisted in preparing other EISs on wildlife in nearby regions  
22 and having a degree in biology, Appellant Clifford offered his own testimony as an  
23 expert on wildlife. Tr. at 164.

24           6.     Applicant offered the testimony of Jason Knight, a wildlife biologist  
25 with Wetland Resources, as its expert on wildlife. Tr. at 2406.

          7.     According to the testimony of DFW employee Richards, there are elk  
groups at both the Villages and Lawson Hills sites. Being residential elk groups, they  
do not migrate in and out of this region. Mr. Richards thought that the EIS was well  
written, professionally done and contained a lot of information, but he also thought it  
did not speak to what was going to happen as a result of the projects. He felt that the  
EIS lacked effort in translating loss of habitat to impact on wildlife. He was adamant  
that any development, regardless of size, impacts wildlife and that such impacts are  
forever. Mr. Richards also opined that there was no way to mitigate such impacts.  
He did not feel that protecting a portion of the land that already serves as habitat was  
mitigation. He added that the corridors proposed already serves as elk habitat. He  
noted that elk are listed by the state as game species. He also noted that with habitat's

1 landscape changes, there is always the possibility that protected species, like a bald  
2 eagle, will take up residence. He felt that the EIS were deficient because they do not  
3 mention which species will survive and which will be lost despite mitigation and  
4 open spaces. He opined that elk would disperse into different areas as a result of  
5 development. He noted that band tailed pigeons migrate past the area in late summer,  
6 but neither they nor bald eagles nest at the subject sites. He also noted that there is  
7 the possibility of elk tearing down fences, invading yards and causing property  
8 damage. He added that bears do not move as a result of development and will be a  
9 problem to deal with, as will mountain lions. Finally, he noted that the EIS correctly  
10 addressed the impact of development on wildlife, which was that detrimental impact  
11 will occur. Tr. at 46-68.

12 8. According to testimony of Clifford, band tailed pigeons do nest in the  
13 area if one looks closely during mating season. He noted that there are a lot more  
14 species on the subject sites than those considered in the EIS. He opined that no  
15 survey was conducted for the EIS and the species listed were based on habitat wildlife  
16 profile prepared by other organizations like the DFW. He was adamant that thorough  
17 site survey should be required for an EIS. According to him, the EIS is superficial  
18 and does not address each site specifically. Tr. at 164-191.

19 9. According to testimony of Knight, about thirty days of site  
20 investigations were conducted in 2005, 2007 and 2008 for the EIS. He noted that the  
21 EIS contains a summary of species, however the appendix to the EIS contains a  
22 detailed list of all species considered for the EIS. He also noted that band tailed  
23 pigeons need mineral springs at their breeding site, which are not found at the subject  
24 sites. He added that no endangered or threatened species were found at the sites,  
25 which is also consistent with the findings by the DFW. He opined that development  
may benefit elk population because elk feed on landscape that is more likely to be  
present as a result of development. He also thought the contiguous corridors would  
provide adequate passage for wildlife. He noted that the corridors were sufficiently  
wide and met state guidelines. According to him, the EIS describes the impact of  
development on elk, discusses the impact of development on wildlife and proposes  
mitigation in the form of contiguous wildlife habitat corridors, road design,  
landscaping and open space. Finally, he added that the wildlife section of the EIS  
was prepared and based on findings from site investigations, records from DFW, PHS  
maps and knowledge acquired from similar sites in the region. Tr. at 2406-66.

10. In order to determine the types of wildlife and habitat present on the  
sites, a resource study was conducted, which involved multiple site investigations  
throughout several different months and years, in addition to research of records and  
documents from DFW and other agencies. Tr. at 178-180 and 2407.

11. Though a detailed catalog of species was prepared for the FEIS, the  
sites were not found to be habitat for any threatened, endangered or sensitive species  
of wildlife. Tr. at 60-61 and 2410-11.

1           12. The Davidson family put together a detailed journal spanning several  
2 years (since 2001) of their observations of wildlife around their home, see Exhibit H-  
3 6. Some of the wildlife they observed is not identified by the Applicant's consultant.  
4 However, the Davidson observations do not establish that any threatened, endangered  
5 or sensitive wildlife species nests or resides in the project area.

6           13. Appellants failed to prove that any threatened, endangered, or sensitive  
7 wildlife species are present at the sites. While the band tailed pigeons may be found  
8 during their migration, evidence presented support the findings that they do not  
9 inhabit or nest at the sites. Tr. at 60-61 and 2410-11.

10           14. The FEIS discloses and discusses the presence of a bald eagle nest off  
11 site near Lake Sawyer. See the Villages FEIS at 4-74.

12           15. The FEIS, including appendices for both projects, contains discussions  
13 of elk and other wildlife that is present at the sites, the probable impacts of the  
14 projects, and offers mitigation in the form of wildlife corridors and open space to  
15 lessen the impacts. It also acknowledges that certain detrimental impacts as a result  
16 of development are inevitable. In addition, the FEIS addresses and discusses impacts  
17 to habitat fragmentation resulting from road crossings in wildlife corridors and offers  
18 mitigation measures to minimize them. See FEIS at 4-79 through 84.

19           16. The width of the wildlife corridors will be between 300 and 900 feet.  
20 The King County's network biologist's minimum recommended width for wildlife  
21 corridor is 150 feet. The width is wide enough for wildlife to traverse through the  
22 corridors even in places where natural barriers such as flooded wetlands are located.  
23 Tr. at 2410-16 and 2454.

24           17. Even though the FEIS may have left out certain species, it is clear that  
25 those that are threatened, endangered or sensitive were considered. As noted above,  
the FEIS also contains discussion on impacts on elks by the projects and proposed  
corridors and open space. Tr. at 2410-16.

          18. Contrary to Appellants' claims, evidence was presented to show that  
site investigations, records from DFW, PHS maps and knowledge acquired from  
similar sites in the region, were all utilized in preparing the EIS. Tr. at 178-180 and  
2407.

#### **Conclusions of Law Regarding Wildlife:**

          1. The FEIS, for both the Villages and Lawson Hills, contain a  
reasonably thorough discussion of probable significant adverse impacts on wildlife as  
a result of the proposed projects as required under SEPA's "rule of reason." Even  
though the FEIS may have left out certain species, it is clear that those that are

1 threatened, endangered or sensitive were considered. As noted in the findings of fact,  
2 the FEIS also contains discussion on impacts on elk by the projects and of proposed  
3 corridors and open space. Although Appellants would have preferred these  
4 discussions to be more extensive, SEPA does not require every conceivable impact or  
5 alternative to be considered. *Klickitat County Citizens Against Imported Waste v.*  
6 *Klickitat County*, 122 Wn.2d 619, 860 P.2d 390 (1993).

7  
8 2. As noted in the findings of fact, wildlife inhabiting the sites was  
9 cataloged, and impacts on them and proposed mitigation measures were disclosed and  
10 discussed sufficiently in the FEIS to aid the decision maker. The projects' impacts on  
11 species not present on the sites may be considered "remote" and "speculative," and  
12 therefore the FEIS was not required to address them in order to be adequate. *Klickitat*  
13 *County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860  
14 P.2d 390 (1993).

15  
16 3. Appellants failed to prove that the FEIS was inadequately prepared.  
17 Contrary to Appellants' claims, evidence was presented to show that site  
18 investigations, records from DFW, PHS maps and knowledge acquired from similar  
19 sites in the region, were all utilized in preparing the EIS, which is consistent with  
20 requirements of "rule of reason" for preparing an EIS.

21  
22 4. The width of the wildlife corridors is adequate because it is at least  
23 double the minimum recommended by the King County's network biologist, and  
24 provides sufficient space for wildlife to travel around spots where natural barriers  
25 such as wetlands are present. The FEIS contains a reasonably thorough discussion of  
wildlife corridors, including their design and impacts, to assist the City Council in the  
decision making process, and therefore is adequate under the "rule of reason."

5. Appellants failed to prove that impact on wildlife as a result of the  
projects was not reasonably disclosed, discussed, and substantiated by the FEIS. The  
FEIS recognizes that there will be an inevitable loss of wildlife habitat as the result of  
development of the Master Plan and the FEIS recommends mitigation measures  
which address the creation/preservation of open space and contiguous wildlife  
corridors. The discussion, disclosure, and documentation of wildlife impacts in the  
FEIS are reasonable and adequate. The FEIS is therefore adequate on wildlife  
impacts.

#### G. Responses to DEIS Comments

##### Findings of Fact:

1. In his closing brief, Mr. Bricklin asserts that the TV FEIS did not  
adequately respond to comments made on the DEIS. *See Bricklin Post-Hearing Brief*,  
p. 61-66. In this discussion, Mr. Bricklin summarizes numerous letters, including

1 some addressing issues that were not included in the Appeal Statements of the SEPA  
2 appellants, most notably sewer.

3 2. The adequacy of FEIS response to DEIS comments were not included  
4 in any of the SEPA appellant appeal statements.

5 3. There is nothing in the record to suggest that the City failed to address  
6 DEIS comment letters that raised significant adverse environmental impacts that were  
7 not adequately addressed in the EIS. One notable exception is the Maple Valley DEIS  
8 comment letter, p. 248-251, Appendix R, TV FEIS. Maple Valley did raise the issue  
9 of using the PRSC model for local traffic. The adequacy of the PRSC was  
10 highlighted as one of the deficiencies of the EIS in the Examiner's analysis of traffic,  
11 supra.

12 **Conclusions of Law:**

13 1. BDMC 18.08.210(G) provides that "no new substantive appeal issues  
14 may be raised or submitted after the close of the time period for filing of the original  
15 appeal." Consequently, the failure to respond to DEIS comments on its own is not  
16 within the scope of the appeals of this decision.

17 2. Although the inadequacy of TV FEIS response is not sufficient on its  
18 own to qualify for review, it can be a factor if related to an appeal issue that has been  
19 timely presented. Procedural errors occurring during the EIS process are reviewed  
20 under the rule of reason. Where such errors are not consequential, they must be  
21 dismissed as harmless. *Klickitat County Citizens Against Imported Waste v. Klickitat  
22 County*, 122 Wn.2d 619, 637 (1993). An inadequate TV FEIS response could be  
23 consequential if it reveals a failure to address a significant environmental impact that  
24 is within the scope of a properly filed appeal. A permitting agency can find itself in a  
25 much more difficult position to argue a reasonably thorough discussion if it is given  
notice of a significant impact through a DEIS comment and still fails to address it.  
During the course of this appeal the SEPA Appellants have raised the adequacy of TV  
FEIS responses related to issues that they have properly presented, such as  
transportation and Lake Sawyer water quality. See Bricklin Post-Hearing Brief, p.  
61-62. Except for the Maple Valley comment identified in Finding of Fact No. 3,  
nothing in the record establishes that the DEIS comments on properly presented  
issues were inadequately addressed in the EIS.

3. The failure of the City to use a more localized model after hearing  
from Maple Valley on this issue certainly detracts from the reasonableness of its  
discussion, but not enough to render it inadequate. Maple Valley did, in fact, use a  
local model for internal traffic. Further, its transportation engineer was highly  
qualified, worked for the City instead of the applicant and had good reason to use the  
PSRC model, i.e. its accuracy in regard to regional travel.

1 **H. Missing Technical Appendices**

2 **Findings of Fact:**

3 1. In his post-hearing brief, Mr. Bricklin asserts that technical appendices  
4 were missing and not made available to the public. During the hearing it was readily  
5 apparent that appendices were still missing, most notably diagrams in the TV FEIS  
6 Appendix B Associated Earth Sciences technical report. In his post-hearing brief Mr.  
7 Bricklin asserts that "Triad" reports were also missing, but he did not identify in  
8 which appendix that report should have been located so the Examiner was unable to  
9 verify that fact.

10 **Conclusion of Law:**

11 1. Under the Rule of Reason the missing appendices would be a problem  
12 if their absence deprived the EIS of a reasonably thorough discussion of significant  
13 adverse environmental impacts. There is nothing in the record to suggest that the  
14 missing appendices materially affected the adequacy of the EIS.

15 **I. Joint Review and Cumulative Impacts**

16 **Findings of Fact:**

17 1. In their appeal statements Clifford, Gauthier and Wheeler assert that  
18 the Villages and Lawson Hills MPDs should have been reviewed together. They also  
19 assert that the impacts of other projects in the area should have been considered.

20 2. The Villages EIS and the Lawson Hills EIS contain a significant  
21 amount of cumulative impact review regarding joint impacts. Many of the impacts  
22 are assessed jointly from both projects, such as traffic, stormwater, air quality, water,  
23 sewer and schools. See TV FEIS Appendices; TV FEIS Chapter 5.

24 3. In its post-hearing brief the Applicant asserts that the Villages and the  
25 Lawson Hills MPD projects are independent from each other – that one could be built  
without the other. See Applicant Closing Brief, p. 7-10. There is no evidence to the  
contrary in the record. The Examiner finds that the MPDs can be built independently  
of each other.

Although the projects can be built independently of each other, their  
joint development is reasonably foreseeable and is not remote or speculative. The  
MPDs are under simultaneous permit review and have the same development time  
frame, completion by 2025. The public hearings for each project are almost  
indistinguishable. The Applicant has also taken advantage of the efficiencies of joint  
mitigation by basing mitigation upon joint impacts upon capital facilities such as

1 schools and roads. Impacts upon the water quality of Lake Sawyer are also assessed  
2 jointly from both projects<sup>10</sup>.

3 **Conclusions of Law:**

4 1. WAC 197-11-060(3)(a) and -060(3)(b)(i) provide that development  
5 projects must be reviewed together under SEPA when they are "related to each other  
6 closely enough to be, in effect, a single course of action," which means the projects  
7 either (i) "cannot or will not proceed" unless the other projects "are implemented  
8 simultaneously with them" or (ii) the projects are "interdependent parts of a larger  
9 proposal that depend on the larger proposal as their justification or for their  
10 implementation." Since the MPDs can be built independently of each other, they can  
11 be subject to separate environmental review. Although joint mitigation is involved,  
12 this mitigation can be "paired down" should only one project proceed to completion.

13 2. An EIS must address cumulative impacts. WAC 197-11-060(4)(d)-(e).  
14 The scope of SEPA review includes "cumulative harm that results from its [the  
15 project's] contribution to existing adverse conditions or uses in the affected area."  
16 *Narrowsview Preservation Assn. v. City of Tacoma*, 84 Wn.2d 416, 423 (1974).  
17 Cumulative impacts apparently include the impacts of the proposal along with the  
18 impacts of other actual or potential projects. Settle, *The Washington State  
19 Environmental Policy Act: A Legal and Policy Analysis*, Section 14.01(2)(a).  
20 Additional projects do not require review in an EIS for cumulative impacts if they are  
21 either substantially independent from the proposed action or are not necessary to meet  
22 the project's purpose and need. *Gebbers v. Okanagan County Public Utility District  
23 No. 1*, 144 Wn. App. 371, 380 (2008). The National Environmental Policy Act,  
24 which can be used to help interpret SEPA issues, define a "cumulative impact" as  
25 "the impact from the environment which results from the incremental impact of the  
action when added to past, present and reasonably foreseeable future actions." *Id.*

3. The EIS must address cumulative impacts since the projects are  
reasonably foreseeable and take advantage of joint mitigation and environmental  
analysis. Cumulative analysis for the MPDs should be limited to areas of  
"cumulative harm" as identified in the *Narrowsview* decision, *infra*. As noted in  
Finding of Fact No. 2, the FEIS do address a wide range of cumulative impacts.  
There is nothing in the record to suggest that any area of cumulative harm is missing  
from this analysis. The Examiner concludes that the EIS adequately addresses  
cumulative impacts between the two MPDs.

<sup>10</sup> The Applicant is not being "punished" for being proactive enough to consider joint impacts and mitigation. For the most part, the joint analysis and mitigation prepared by the Applicant is in the Applicant's interest. Both the Applicant and the public benefit from the cost savings involved in this joint review. The Applicant's self interest in joint mitigation and analysis substantiates the interdependence of the projects and the need for cumulative review.

1 4. Cumulative review of noise impacts is addressed in the noise section  
2 of this decision. The record does not establish any degree of dependence necessary  
3 for cumulative review of impacts of any other projects.

4 **J. Reliance Upon Technical Appendices**

5 **Findings of Fact:**

6 1. The SEPA Appellants have raised the issue of over-reliance upon  
7 technical appendices on several occasions. *See, e.g.* Bricklin Post-Hearing Brief, pp.  
8 6-8. This issue was not specifically raised in any of the SEPA appeal statements, but  
9 is sufficiently linked to the adequacy of issues that were raised in the SEPA appeal  
10 statements, such as traffic and Lake Sawyer water quality.

11 2. The TV FEIS overall does a fairly good job in summarizing significant  
12 impacts in the main text of the document. For example, on traffic the TV FEIS  
13 identifies all intersections that will fail to meet LOS under the different EIS  
14 alternatives. LOS is a commonly used measure of transportation performance for  
15 City and County decision makers and is used in the City's comprehensive plan to  
16 measure adequacy of transportation facilities. The TV FEIS section on noise  
17 identifies the maximum noise levels that will be reached through construction and  
18 build-out. The sections on water and sewer identify the demand that will be created  
19 by the MPDs and capital improvements needed to meet this demand. The section on  
20 stormwater identifies the regional facilities that will be needed for stormwater  
21 treatment and detention. The SEPA appellants have shown that the EIS does fail to  
22 disclose significant impacts in a couple of areas. As discussed for Lake Sawyer  
23 impacts, the most egregious lack of disclosure in the EIS concerns the potential  
24 impacts on Lake Sawyer water quality. The noise assessment doesn't identify the  
25 duration of noise impacts, which should be a key consideration in assessing the  
reasonableness of any noise mitigation. Overall, however, the EIS discloses the most  
significant and vital information regarding environmental impacts and alternatives.

**Conclusions of Law:**

1. WAC 197-11-425(1) requires that an EIS shall be readable and allow  
the reader to understand the most significant and vital information concerning the  
proposed action, alternatives and impacts "without turning to other documents."  
WAC 197-11-425(5) provides that if the lead agency determines that additional  
descriptive material or supporting documentation may be useful, it may place this  
"background" information in appendices or separate documents. Given the interplay  
of WAC 197-11-425(1) and WAC 197-11-425(5), the Examiner concludes that  
"vital" information regarding impacts and alternatives must be placed in the body of  
an EIS and not in its appendices. As determined in Finding of Fact No. 2, overall the  
EIS meets this standard.

1 **K. King County Comprehensive Plan**

2 **Findings of Fact:**

3 1. The Clifford Appeal Statement at page 8 asserts that the MPDs fail to  
4 comply with the King County Comprehensive Plan and the Growth Management Act  
5 ("GMA"). The Wheeler Appeal statement, in an assessment of wildlife impacts at p.  
6 16, asserts that the project will exceed the growth targets in the "comprehensive plan"  
7 (whether the King County or Black Diamond comprehensive plan is not specified).

8 2. Testimony was provided during the hearing that the project would  
9 exceed King County growth targets. There was no evidence presented that any  
10 inconsistencies with King County Comprehensive Plan Policies or GMA revealed  
11 significant adverse environmental impacts.

12 **Conclusion of Law:**

13 1. In the "Order on Motions to Dismiss", Ex. 300, p. 2-3, the Examiner  
14 ruled that compliance with the King County Comprehensive Plan and the Growth  
15 Management Act could be considered in the EIS appeals to the extent that these  
16 inconsistencies revealed significant adverse environmental impacts. Since no such  
17 evidence was presented, the inconsistencies are not germane to the SEPA appeals.

18 **L. Wetlands**

19 **Findings of Fact:**

20 1. Page 11 of the Harp Appeal statement expresses concern about project  
21 impacts to wetlands. The Appeal Statement appears to be specifically concerned with  
22 the impacts of the Village Connector Road crossing Core Wetlands.

23 2. No evidence was presented on the issue of impacts to Core Wetlands  
24 or that the City's Sensitive Areas Ordinance is inadequate to protect these wetlands.

25 3. Chapter 4, Plants and Animals of the TV FEIS identifies the general  
impacts of MPD development on wetlands, including the amount of wetlands and  
wetland buffers that will be encroached by development. Stormwater impacts to  
wetlands are also identified.

**Conclusion of Law:**

1. The TV FEIS discussion on wetland impacts meets the rule of reason.  
It contains a reasonably thorough discussion of wetland impacts, identifying the  
overall encroachment to wetlands and their buffers and potential impacts from

1 stormwater. There is no evidence that the City's Sensitive Areas Ordinance will not  
adequately protect these wetlands.

2 **M. Landslide Hazard**

3 **Findings of Fact:**

4 1. Page 14 of the Clifford Appeal asserts that the EIS fails to adequately  
5 address landslide hazards.

6 2. There was no evidence presented on landslide hazards other than  
7 photographs of landslides.

8 3. There was no evidence presented on whether the City of Black  
Diamond's Sensitive Areas Ordinance is inadequate to address landslide hazards.

9 4. The TV FEIS identifies landslide hazard areas and provides an in-  
10 depth assessment of mitigation. See TV Appendix D, AESI Technical Report, p. 3-  
11 54, 4-2, 4-3, 4-11, 4-18, 4-21, 4-28-29, and 6-13 and 6-14. There was no evidence  
presented to show this analysis was inadequate.

12 **Conclusion of Law:**

13 1. Under the Rule of Reason, the TV FEIS provides a reasonably  
14 thorough discussion of development impacts, mitigation and alternatives regarding  
landslide hazards.

15 **N. Mine Hazard**

16 **Findings of Fact:**

17 1. Pages 13-14 of the Clifford Appeal, p. 16 of the Wheeler Appeal  
18 Statement and p. 6 of the Gauthier Appeal assert that the EIS fails to adequately  
19 address mine hazards. It should be noted that the Clifford Appeal is primarily  
concerned with the dumping of toxic waste at mine sites.

20 2. There was no evidence presented on mine hazards by the SEPA  
21 Appellants or any evidence in the record to suggest that the EIS was inadequate on its  
22 analysis of mine hazards, including toxic waste issues at mine sites. Several people  
23 testified about mine hazard issues during the MPD portion of the hearing, but there  
was no evaluation provided of the adequacy of the EIS on this issue.

24 3. There was no evidence presented on whether the City of Black  
25 Diamond's Sensitive Areas Ordinance is inadequate to address mine hazards.

1 4. The TV FEIS identifies mine hazard areas and concludes that only low  
2 hazard mines are located within the Villages MPD. TV TV FEIS 4-8, 4-14, 4-15 and  
3 Exhibit 4-6.

4 **Conclusion of Law:**

5 1. Under the Rule of Reason, the TV FEIS provides a reasonably  
6 thorough discussion of development impacts, mitigation and alternatives regarding  
7 mine hazards.

8 **O. Health Services**

9 **Findings of Fact:**

10 1. Appellant Chris Clifford has raised concerns in his appeal that Black  
11 Diamond has been identified by King County Public Hospital District #1 as an  
12 "underserved" area for health care. Clifford Appeal, p. 13. Specifically, Mr. Clifford  
13 has alleged that the FEIS documents fail to indicate where or how emergency and  
14 regular medical needs would be met for the over 8,000 new potential residents.  
15 Clifford Appeal, p. 13.

16 2. The Lawson Hills FEIS and the Villages FEIS locate medical facilities  
17 on the map in Exhibit 3-39.

18 3. The Lawson Hills FEIS and the Villages FEIS indicate at page 3-89  
19 that existing medical facilities serving Black Diamond are three hospital/medical care  
20 facilities operate near the City of Black Diamond, including Enumclaw Community  
21 Hospital in Enumclaw, Valley Medical Center in Renton, and Auburn General  
22 Hospital in Auburn. Advanced Life Support services are provided by King County  
23 Medic and are funded through a separate county-wide tax assessment. In addition,  
24 emergency medical care is provided by Mountain View Fire and Rescue (also known  
25 as King County Fire District No. 44).

4. The FEISs do provide an analysis of how the proposed MPDs will  
affect the LOS for fire protection and emergency medical services and also provide  
that new development and increased population will enlarge the service area for  
providers, possibly requiring updated facilities as well as increases in staff and  
infrastructure to provide services. Lawson Hills FEIS and the Villages FEIS, pp. 3-89  
-3-91.

5. There was no additional testimony or evidence presented on health  
services other than the assertion in the Clifford Appeal that the FEIS was inadequate  
with respect to health services.

**Conclusions of Law:**

1 1. There was no testimony or evidence presented on whether the health  
2 services analysis in the FEIS was inadequate other than the bare assertion in the  
3 Clifford Appeal.

4 2. The FEISs adequately discuss existing medical facilities and the  
5 impacts of the MPD development on the availability of medical facilities, stating that  
6 additional fire fighters or volunteer EMTs will be required and that updated facilities  
7 as well as increased staff and infrastructure may be required for other medical  
8 facilities. Lawson Hills FEIS and the Villages FEIS, p. 3-90 - 3-91.

9 **P. Historic and Cultural Resources**

10 **Findings of Fact:**

11 1. Page 12 of the Clifford Appeal Statement asserts impacts to historic and cultural  
12 resources, specifically a collapsed mine site that still contains the remains of some  
13 miners and the potential for some Native American archaeological sites.

14 2. The SEPA Appellants did not pursue these claims during the hearing beyond  
15 traffic impacts to historic downtown areas, dealt with elsewhere in this decision.  
16 There is no evidence in the record to establish that the development project would  
17 create any significant adverse impacts in relation to cultural and historic resources.

18 **VII. CONCLUSION**

19 The Villages EIS is adequate. The City and the Applicant hired the best experts they  
20 could find and put a substantial investment into the analysis that comprises the EIS.  
21 It shows. The fact that the SEPA Appellants found so many problems with the EIS  
22 has more to do with Appellants' skill and diligence than the short-comings of the EIS.  
23 No document could survive unscathed the multi-pronged attack levied by the SEPA  
24 Appellants. The monumental work of the SEPA Appellants was not wasted in the  
25 least. Their efforts will result in substantial improvements to the MPDs by exposing  
areas that need further attention and mitigation. The SEPA Appellants have done  
much to better their community through these appeals. They and everyone else who  
participated in these appeals are to be congratulated for work well done.

DATED this 15<sup>th</sup> Day of April, 2010.

  
Pfiil Olbrechts  
City of Black Diamond Hearing Examiner

**APPENDIX E**  
**EXAMINER'S EIS ADEQUACY DETERMINATION**  
**LAWSON HILLS**

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

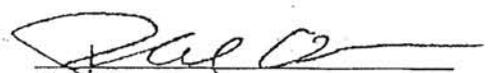
IN RE: MASTER PLANNED  
DEVELOPMENT APPLICATION  
FOR LAWSON HILLS, PLN09-  
0016

SEPA APPEAL NOS. PLN09-0039,  
PLN09-0042, PLN 09-0043

**HEARING EXAMINER  
DECISION - ERRATA**

The greenhouse gas section of the Lawson Hills FEIS adequacy decision erroneously refers to the Villages FEIS. The references in the attached pages have been changed to the Lawson Hills FEIS: Please replace the Lawson Hills pages with the corresponding pages that are attached.

DATED this 18<sup>th</sup> Day of May, 2010.

  
Phil Olbrechts  
City of Black Diamond Hearing Examiner

1 the record to show that impacts upon parks and open space have been inadequately  
2 addressed.

3 **P. Greenhouse Gases**

4 **Findings of Fact:**

5 1. Page 13 of the Wheeler Statement of Appeal raises the issue of EIS  
6 adequacy on greenhouse gases.

7 2. Vehicle emissions are a significant source of greenhouse gases. LH  
8 FEIS Appendix Q, "Air Quality", p. 1. The EIS estimates the volume of vehicle  
9 emissions by using the average number of vehicle miles per day in Washington State  
10 per person. LH FEIS, Appendix Q, "SEPA GHG Emissions Worksheet", p. 10. The  
11 SEPA Appellants argue that this state-wide average grossly understates the average  
12 mileage of MPD residents because the MPDs are far from employment and  
13 commercial centers. Bricklin Post Hearing Brief, p. 58-60. However, as noted by the  
14 Applicant, use of the state wide average is required by King County for assessment of  
15 green house gases in King County unincorporated areas. Applicant Closing Brief, p.  
16 77-78. It is also not necessarily intuitive that average daily trips for Black Diamond  
17 residents would be significantly higher than the state-wide average. Due to the long  
18 distance from commercial and employment centers, Black Diamond residents are  
19 probably more likely to carpool, take transit, telecommute, otherwise work from  
20 home or not work at all. The statewide average also includes all the other rural areas  
21 of the state, including Eastern Washington, where distances to commercial and  
22 employment centers exceed those of Black Diamond. The Appellants have presented  
23 no evidence of what average daily trips Black Diamond residents would take. Given  
24 the substantial weight to be given to the SEPA responsible official and the burden of  
25 proof on the Appellants, the record does not support the assertion that the state-wide  
vehicle mileage used in the greenhouse gas estimates is significantly less than the  
average mileage of future Black Diamond residents.

3. In cross-examination of Steve Pilcher, the SEPA Appellants also  
asserted that the greenhouse gas analysis was not consistent with the peer review  
requirements of Parametrix. Tr., p. 3342-3344. Specifically Mr. Bricklin referenced  
a Parametrix statement that no alternative land use scenario was analyzed in the air  
quality analysis. The LH FEIS now does examine air quality impacts under the  
different FEIS alternatives. See LH FEIS, p. 4-93 - 4-95, alternative 3. The concerns  
of Parametrix in this regard have been adequately addressed.

4. The SEPA appellants identify several mitigation measures they  
suggest should be required to reduce greenhouse emissions. See, Wheeler Prehearing  
Ex. 19. Many of these recommended measures are already identified in the LH FEIS,  
both in the text of the LH FEIS and the technical appendices. See LH TV FEIS p. 6-  
14; Appendix Q, "Air Quality", p. 12-13. The project design already incorporates

1 several elements that will help reduce greenhouse gases, such as an emphasis upon  
2 mixed use; bicycle and pedestrian trails; low impact development and Built Green  
3 and LEED certified/Energy Star homes. Appendix Q, "Air Quality", p. 12. As noted  
4 in the LH FEIS technical discussion on greenhouse impacts, there is no standard for  
5 greenhouse emissions associated with development projects and the extent to which a  
6 single project affects climate change is unknown. Given this context, the mitigation  
7 outlined in the LH FEIS and technical appendices for green house gases is reasonable  
8 and adequate.

9  
10  
11 **Conclusions of Law:**

12  
13 1. The LH FEIS contains a reasonably thorough discussion of greenhouse  
14 gases, alternatives and mitigation. As noted in the Findings of Fact, the record does  
15 not contain any evidence that the probable significant adverse impacts of the  
16 Village's greenhouse gas emissions have not been adequately addressed, that  
17 alternatives have not been adequately assessed or that reasonable mitigation measures  
18 have not been proposed.

19  
20  
21 **VII. CONCLUSION**

22 The Lawson Hills EIS is adequate. The City and the Applicant hired the best experts  
23 they could find and put a substantial investment into the analysis that comprises the  
24 EIS. It shows. The fact that the SEPA Appellants found so many problems with the  
25 EIS has more to do with Appellants' skill and diligence than the short-comings of the  
EIS. No document could survive unscathed the multi-pronged attack levied by the  
SEPA Appellants. The monumental work of the SEPA Appellants was not wasted in  
the least. Their efforts will result in substantial improvements to the MPDs by  
exposing areas that need further attention and mitigation. The SEPA Appellants have  
done much to better their community through these appeals. They and everyone else  
who participated in these appeals are to be congratulated for work well done.

DATED this 4th day of May, 2010.



Phil Qibrechts  
City of Black Diamond Hearing Examiner

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

IN RE: MASTER PLANNED  
DEVELOPMENT APPLICATION  
FOR LAWSON HILLS, PLN09-  
0016

SEPA APPEAL NOS. PLN09-0039,  
PLN09-0042, PLN 09-0043

**REVISED HEARING EXAMINER  
DECISION**

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I. EXECUTIVE SUMMARY

The Lawson Hills Final Environmental Impact Statement (LH FEIS) is adequate. An EIS is adequate if it contains a reasonably thorough discussion of probable significant adverse environmental impacts. The LH FEIS satisfies this standard. To be sure, the LH FEIS could be improved. The appellants of the LH FEIS ("SEPA<sup>1</sup> Appellants") have identified several shortcomings in the LH FEIS. Many of these shortcomings will be addressed through enhanced mitigation of the Master Plan Development

<sup>1</sup> "SEPA" stands for the Washington State Environmental Policy Act, Chapter 43.21C RCW. SEPA requires the LH FEIS that is the basis of the EIS appeals subject to this decision.

1 permit ("MPD"), including mitigation regarding noise, traffic and Green Valley  
2 Road. Overall, however, the LH FEIS provides a more than adequate analysis of  
3 environmental impacts.

4 The writers of the FEIS<sup>2</sup> were faced with a monumental challenge. They had to  
5 address all of the impacts of the largest development ever proposed in King County in  
6 a manner that did not overwhelm and confuse the reader with an overload of  
7 information and complex technical analysis. The writers met the challenge by  
8 preparing a fairly easy-to-read document that is backed by hundreds of pages of  
9 technical reports and data. For the vast majority of impacts, the FEIS successfully  
10 alerts the reader to the most significant and vital information on environmental  
11 impacts.

12 The SEPA Appellants established a few instances where the FEIS failed to provide  
13 this vital information. This vital information was either not disclosed in the main text  
14 of the FEIS, or the text and appendices both failed to identify and/or adequately  
15 assess vital information on probable significant adverse environmental impacts.  
16 However, the adequacy standard does not require perfection. It requires  
17 reasonableness. This fairly broad standard allows the Examiner to assess the  
18 significance of shortcoming in the context of the entire scope of the FEIS and the  
19 benefits of requiring the FEIS or portions of it to be redone. Under this  
20 reasonableness analysis, all of the issues raised by the SEPA Appellants were  
21 relatively minor ("unfortunate but not fatal" under the case law) or there was little  
22 benefit found in additional FEIS review.

23 The most difficult issue by far in the FEIS was the adequacy of the Lake Sawyer  
24 water quality analysis. Development in the Lake Sawyer watershed has the potential  
25 to exact devastating consequences upon Lake Sawyer. Phosphorous from the  
stormwater runoff of development can result in blue-green algae blooms, which in  
turn can result in the release of toxins, closure of beaches, aesthetic blight through  
production of a green surface scum and harm to endangered fish. Due to past water  
quality issues, the US Environmental Protection Agency has designated Lake Sawyer  
an impaired water body under the Clean Water Act. This has triggered years of study  
and modeling with the input of a wide array of stakeholders, including Lake Sawyer  
residents, state agencies and representatives of the City of Black Diamond ("City").  
One of the many documents to come out of these efforts was the Lake Sawyer  
Management Plan ("LSMP").

Much of the debate during the SEPA appeals concerned the adequacy of the LSMP  
phosphorous mitigation. The Applicant based its FEIS Lake Sawyer water quality  
analysis upon the LSMP. The LSMP includes years of data collection on Lake

<sup>2</sup> Reference to the "FEIS" as opposed to the Villages FEIS or Lawson Hills FEIS encompasses both the  
Villages and Lawson Hills FEIS.

1 Sawyer water quality, a detailed assessment of phosphorous generation from future  
2 development and a comprehensive list of mitigation measures. However, the SEPA  
3 Appellants successfully established that the LSMP makes no assurance that its  
4 mitigation measures will prevent the adverse impacts of phosphorous contamination,  
5 despite the erroneous belief of the Applicant's consultant that it would. The SEPA  
6 Appellants also established that under the modeling used in the LSMP to predict  
7 future phosphorous levels, there was a reasonable chance that the Lawson Hills and  
8 Villages MPD proposals alone could "tip" Lake Sawyer into producing the blue-  
9 green algae blooms and all associated adverse impacts. The SEPA Appellants call the  
10 phosphorous levels at which the algae begins to wreak havoc the "tipping point."

11 If the LSMP was the final word on the issue, the City would be tasked with drafting a  
12 new FEIS. However, the LSMP was released in 2000 and based upon data from  
13 1995. In 2009 the Washington State Department of Ecology ("DOE") released a  
14 Water Quality Implementation Plan ("Implementation Plan"), designed to implement  
15 measures to protect Lake Sawyer water quality. In that document DOE concluded  
16 that if specified mitigation measures were followed, new development would not  
17 jeopardize Lake Sawyer water quality. DOE employed a standard that prohibits  
18 phosphorous levels from exceeding a 5% risk of reaching the tipping point. The  
19 Applicant provided unrefuted testimony that the MPDs do incorporate the standards  
20 required by DOE to meet the 5% risk standard. The Implementation Plan also reveals  
21 that Lake Sawyer water quality has improved dramatically since 1995, the base year  
22 for LSMP data. Lake Sawyer is no longer anywhere near the tipping point and it  
23 appears unlikely that the MPD proposals would exceed the tipping point, given that  
24 the Villages and Lawson Hills MPDs<sup>3</sup> only take up 10% of the land area and 4% of  
25 the developable area of the Lake Sawyer watershed.

16 The Implementation Plan provides no analysis or modeling to show how DOE  
17 determined that its recommended conditions for new development would preserve  
18 Lake Sawyer water quality. The modeling in the LSMP was left unchanged in the  
19 Implementation Plan. There is certainly a gap of information in the record that could  
20 be of use in assessing the phosphorous impacts of the project. However, the purpose  
21 of the LSMP and Implementation Plan is to provide a watershed-wide uniform  
22 standard to address phosphorous impacts. Any additional analysis required of the  
23 Applicant would necessarily entail new modeling based on full build-out in order to  
24 determine the Applicant's proportionate allocation of phosphorous loading to Lake  
25 Sawyer. If the Applicant's analysis finds that build-out will not preserve water  
quality as concluded by DOE, the Applicant would be subject to a proportionate  
allocation that differs from those used by the government agencies and developers  
relying upon the conclusions of the Implementation Plan. Subjecting the Applicant to

<sup>3</sup> The Lawson Hills and Villages MPDs will frequently be referred to as "the MPDs"  
in this decision.

1 this disparate treatment ultimately does little to preserve water quality and would be  
2 an unreasonable requirement given the watershed-wide standard set by DOE.

3 Although it would not be reasonable and be of limited benefit to have the Applicant  
4 redo the LSMP, the SEPA Appellants have raised valid questions about the utility of  
5 the LSMP and the gap between the modeling results of the LSMP and DOE's  
6 conclusions that development can proceed in the Lake Sawyer watershed without  
7 jeopardizing water quality. Information outside the record of this proceeding may or  
8 may not be readily available to these questions. The MPD conditions of approval will  
9 encourage the City Council to investigate these issues and to promote a reevaluation  
10 of the LSMP and Implementation Plan if necessary to protect Lake Sawyer water  
11 quality.

12 Despite the adequacy of the FEIS Lake Sawyer mitigation and analysis, there was a  
13 serious shortcoming in the identification of potential impacts in the text of EIS. The  
14 FEIS text mentions that Lake Sawyer has phosphorous problems, but it does not  
15 identify the consequences of those problems, i.e., blue-green algae blooms, toxins,  
16 beach closures etc. Absent this paragraph the Examiner has to conclude that the FEIS  
17 is still adequate given the overall thoroughness of the document and the analysis of  
18 Lake Sawyer that is included. The reference to phosphorous problems in the text and  
19 technical assessment in the appendices would at least put the reader on notice that  
20 water quality is an issue for Lake Sawyer. The extensive discussion of phosphorous  
21 impacts in the FEIS appeals provided the public a detailed accounting of phosphorous  
22 impacts and this decision provides that information to the Council.

23 Another deficiency unique to the LH FEIS was the failure to identify development  
24 that is proposed within severe mining hazard areas. The LH FEIS contains a highly  
25 informative discussion on mine hazards. This discussion identifies that the  
Applicant's proposal involves development in a severe mine hazard area. No  
development in the severe mining area will be necessary for any of the other FEIS  
alternatives. The discussion on mine hazards does not identify what the Applicant  
proposes to build within these severe mine areas or explain why that development is  
necessary. The City's Sensitive Areas Ordinance will ultimately provide adequate  
protections for development in these severe hazard areas, but more information on  
this subject would be of obvious use to the decision maker.

As with any large development project, traffic is a major issue with the MPDs. Most  
of the issues raised by the SEPA Appellants highlight reasonable differences of  
professional opinion. The traffic expert hired by the City, John Perlic, was highly  
credible and qualified to take charge of the City's traffic analysis. Despite Mr.  
Perlic's expertise, there are three areas in the traffic analysis that did not hold up  
particularly well. The first was the use of a regional traffic model to project local  
traffic impacts. Maple Valley raised this issue, asserting that its local traffic model  
was more accurate than the Puget Sound Regional Council ("PSRC model") used by  
Black Diamond. Maple Valley and Black Diamond both had good reasons for the use

1 of their respective models. Ultimately, the Examiner must provide substantial weight  
2 to the determination of the SEPA Responsible Official that the EIS is adequate, and  
3 this burden of proof requires ruling in favor of Black Diamond's traffic engineer.  
4 However, there are definite advantages to using a more localized traffic model and  
5 the Examiner will address this in the conditions of approval recommended for the  
6 MPD.

7 The second area of concern was Mr. Perlic's use of a 0.97 "peak hour factor"  
8 ("PHF"). This factor is used to measure variability during peak hour traffic and  
9 ultimately influences the amount of traffic projected for a project. The SEPA  
10 Appellants established that the PHF used by Mr. Perlic was at the outer boundaries of  
11 accepted professional judgment. The PHF was inflated and served to underestimate  
12 traffic impacts within intersections. Even so, the SEPA Appellant's traffic expert  
13 admitted that in some cases a PHF of 0.97 would be appropriate, but that would be  
14 extremely rare. Use of a lower PHF would probably have been more accurate, but its  
15 use does fall within the outer limits of professional judgment. The PHF used by Mr.  
16 Perlic does not affect the overall adequacy of the EIS, but sufficient evidence has  
17 been provided to require the use of a more mainstream factor as a condition of MPD  
18 approval.

19 The third traffic issue that needs greater attention is the traffic impacts to Green  
20 Valley Road. The Road has Heritage Status under the King County Historic  
21 Preservation Program. Testimony from several citizens makes it clear that this road is  
22 a historic, aesthetic and recreational resource. The road is frequently used by  
23 bicyclists, horses and farm equipment. The MPDs will add 300-400% more traffic to  
24 this community resource. As a condition of MPD approval, further analysis should  
25 be undertaken to find ways to discourage MPD traffic from using Green Valley Road,  
such as the use of traffic calming devices like medians and speed bumps. The factors  
that merit special treatment of Green Valley Road are subjective and it is within the  
parameters of a "reasonable discussion" that the FEIS failed to single out Green  
Valley Road for additional analysis.

Another traffic issue that probably does not rise to the level of an EIS deficiency but  
is still worth addressing is SEPA Appellant Judith Carrier's concerns regarding Plass  
Road. Ms. Carrier believes that traffic congestion on SR 169 would lead some people  
to bypass a portion of SR 169 by using Plass Road. This road is undeveloped and  
does not have the capacity to handle large volumes of traffic. The City's traffic  
expert, John Perlic, testified that it is unlikely that persons would choose to use Plass  
Road due to its low speed limit (20 mph versus 45 mph on SR 169) and because it is  
undeveloped. This may be the case but there is little doubt that traffic will increase  
on Plass Road if there is any congestion on SR 169. The Applicant has offered to  
support a vacation of Plass Road if the adjoining property owners and the City and  
King County do not object. The MPD will be conditioned to require the Applicant to  
pursue a street vacation and/or to work with the City Council in creating a cul de sac  
on Plass Road.

1 The FEIS Fact Sheet also failed to identify that the project would necessitate a  
2 hydraulic permit ("HPA") to address impacts to fish-bearing streams. This omission  
3 was a clear violation of SEPA procedural rules. The Washington State Department of  
4 Fish and Wildlife ("WDFW") did not comment on the FEIS until after the close of  
5 the FEIS comment period, when the SEPA Appellants notified them of the project.  
6 HPAs are administered and issued by WDFW. WDFW may well have failed to  
7 provide timely comments because it did not see that its jurisdiction would be invoked  
8 under the HPA process. However, the comments that WDFW did finally provide  
9 failed to reveal anything of substance that pertained to the nonproject level of the  
10 FEIS. WDFW merely stated that HPA and other permits would be required for those  
11 portions of the project that affect fish-bearing streams and wetlands. Nothing in the  
12 WDFW comments or anything else in the record suggests that more timely comments  
13 from WDFW would have resulted in a need to consider any significant design  
14 changes to the MPD proposals. The omission ultimately does not affect the overall  
15 adequacy of the FEIS.

16 Many of the SEPA Appellants and persons who testified on the MPD proposals raised  
17 concern over the poor audio recording on the public hearing held on the Draft EIS.  
18 There were approximately 300 gaps in the audio recording of the hearing. No  
19 evidence was presented to show that any of this missing information would have  
20 made a difference in the FEIS analysis. The Examiner's review is limited to  
21 determining whether the EIS is adequate. The gaps in the Draft EIS audio recording  
22 are only relevant to the adequacy standard if they relate to the adequacy of FEIS  
23 analysis. Had someone testified that they made some comments on significant  
24 impacts during an audio gap and the substance of these comments had never been  
25 considered by the FEIS drafters, this could have made a difference. In the same vein,  
there were portions of the technical appendices that were missing in versions of the  
Draft EIS distributed for public comment. Since there was no evidence presented that  
these missing documents affected the adequacy of the FEIS, the missing documents  
also do not affect FEIS adequacy.

The paragraphs above represent the sum total of all deficiencies that the Examiner  
found in the LH FEIS. Taken together, they do not justify a finding of inadequacy.  
Given the broad range of impacts that were thoroughly discussed in the LH FEIS, the  
deficiencies identified above are relatively minor in comparison. Overall, the LH  
FEIS provides a reasonably thorough discussion of environmental impacts.

Although the SEPA Appellants successfully identified the above LH FEIS  
deficiencies identified above, there were several instances where their concerns did  
not reveal any FEIS deficiency. The most significant of these issues was schools.  
The FEIS do not provide any detailed analysis on school impacts. The FEIS assume  
that schools will be located within the MPD project areas, even though the most  
recent information suggests that it is fairly likely some of the schools will be located  
outside of the project area. The SEPA rules clearly provide that only a general

1 discussion of mitigation measures such as schools is required for an EIS. Within this  
2 general discussion a priority should be placed upon cumulative impacts, i.e., impacts  
3 that build upon the impacts generated by the MPD proposals. Many of the school  
4 impacts the SEPA Appellants raise, such as impacts on wells outside the MPD, are  
5 not cumulative and can be addressed in the environmental review of a specific school  
6 proposal without detracting from the effectiveness of the FEIS in its discussion of  
7 overall impacts. The traffic and other cumulative impacts were addressed in the  
8 FEIS. It is unclear, but possible, that some of this traffic analysis was premised upon  
9 an erroneous understanding of the location of the schools. Given that the location of  
10 the schools has been a moving target and their final location and number is still not  
11 certain, the Applicant's general assessment of school impacts is reasonable and meets  
12 EIS requirements of adequacy.

13 The SEPA Appellants raised several other EIS issues in addition to those identified  
14 above. Most of those remaining issues the SEPA Appellants did not pursue beyond  
15 mentioning them in their appeal statements. Insufficient evidence was presented to  
16 support most of those issues or, as a matter of law, those issues were not germane to  
17 an EIS adequacy appeal. All of those remaining issues are addressed in more detail  
18 below or in the Order on Dismissal, Email Ex. 300.

## 19 II. TESTIMONY

20 A comprehensive summary of all testimony will be provided with the MPD  
21 permitting decisions. As required by SEPA consolidation rules, all testimony in The  
22 Lawson Hills hearing, including testimony related to the MPD as opposed to SEPA  
23 issues, can be considered for the decision on SEPA adequacy.

## 24 III. EXHIBITS

25 There were several hundred exhibits admitted into evidence. The Exhibit lists are  
attached and summarized as follows:

- 26 A. Index of "H" Documents: These exhibits were admitted during the hearings.
- 27 B. Black Diamond MPD Hearing Exhibits: These documents, primarily  
28 composed of written comments from citizens, were submitted during the hearing and  
29 admitted at the end of the hearing process.
- 30 C. Index of Prehearing Documents: These documents were identified in pre-  
31 hearing exhibit lists submitted by the SEPA Appellants.
- 32 D. Black Diamond Emails for the Villages-Lawson Hills MPDs: These were  
33 emails that the SEPA Appellants and Examiner exchanged on SEPA appeal issues.

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#### IV. PROCEDURAL ISSUES

A. Findings of Fact:

1. Issuance of FEIS: The City of Black Diamond ("City") issued the FEIS on December 11, 2009.

2. Appeals. The SEPA Appellants filed three appeals on the LH EIS on December 28, 2009. The Appellants are as follows:

- a. Chris Clifford, along with several co-appellants, Ex. CBD-13.
- b. Melanie Gauthier, Ex. CBD-12.
- c. Cynthia and William Wheeler, Ex. CBD-11.

The Exhibits identified above (CBD-11, 12 and 13) will be referenced as the "Appeal Statements." The parties to the appeals identified above will be referenced as the "SEPA Appellants."

3. Applicant. The Applicant is BD Lawson Partners.

4. Proposal Description: BD Lawson Partners is requesting approval of a Master Planned Development (MPD) pursuant to Black Diamond Municipal Code 18.98, for the Lawson Hills MPD. Proposed uses include low, medium and high density residential; retail, commercial, office; light industrial; educational, recreational and open space. The requested entitlement is for 1,250 dwelling units and 390,000 square feet of retail, offices and light industrial on 371 acres. The request also involves the rezoning of portions of the property from the current R4 Single Family Residential and MDR8 Medium Density Residential zones to MPD.

The Lawson Hills project consists of two subareas, the Main Property and the North Triangle. The "Main Property" is located between the SR 169/Roberts Road intersection to the west and extends to King County to the east. The "North Triangle" is located on the west side of SR 169, approximately one mile north of the SR 169/Roberts Drive intersection.

The details of the Lawson Hills MPD are outlined in the MPD application, dated 5/11/09. Subsequent to the issuance of the FEIS, the Applicant revised its Lawson Hills application on 12/31/09. The assessment of EIS adequacy in this appeal decision only relates to the proposal as detailed in the 5/11/09 application. The Examiner also finds that the 5/11/09 application sufficiently describes the project for environmental review.

5. Hearing. The hearing on the Lawson Hills MPD exceeded 50 hours in length. The hearing was continued day to day, starting on March 6, 2010. The verbal testimony concluded on March 22, 2010. The record was left open for written

1 comment from the City, Applicant and Maple Valley on the adequacy of the traffic  
2 modeling used in the FEIS and the different modeling advocated by Maple Valley.  
3 Final written comments on the traffic issue were due from the City on April 12, 2010.  
4 The record was also left open indefinitely to allow the SEPA Appellants an  
5 opportunity to review and voice any objections to exhibits that had not been entered  
6 into the record. The same documents were made available at City Hall for any other  
7 interested citizens. The Examiner asked the hearing audience if there were any  
8 objections to addressing the admission of exhibits in this fashion and no objections  
9 were made. After the close of the verbal portion of the hearing the deadline for  
10 objections to exhibits was set for 4/13/10. No objections were filed by the SEPA  
11 Appellants.

12 6. Not Enough Time: The greatest procedural concern for project  
13 opponents was the timeframe. Many citizens, the SEPA Appellants in particular, felt  
14 that there was not enough time to consider the FEIS or MPD applications. The MPD  
15 hearings were scheduled to begin on March 6, 2010. The FEIS for the projects were  
16 issued on December 11, 2009. The SEPA appellants were given almost three months  
17 to prepare their appeals. The draft EIS were issued on September 1, 2009, giving the  
18 SEPA Appellants advance notice of the major issues they would be confronting.  
19 Although this may appear to be a lot of time, the Council should recognize that the  
20 FEIS contained hundreds of pages of technical analysis and the SEPA Appellants are  
21 for the most part lay persons with no technical or legal expertise to even have a  
22 remote understanding of how to begin their appeals. The SEPA Appellants were  
23 fortunate enough to have hired probably the best legal representation available for  
24 their type of issues. This attorney was skilled enough to mount a comprehensive  
25 attack with what probably amounted to limited resources. His strategy included using  
the threat or actual use of the Examiner's subpoena authority to compel attendance of  
government expert witnesses. Overall it appears that the SEPA Appellants were able  
to address all of the significant issues related to the FEIS. However, there is no  
question that all parties and the Examiner himself were under intense pressure to meet  
the decision deadlines imposed by local code and state law.

19 **B. Conclusions of Law:**

20 1. Not Enough Time. State and local permit processing deadlines  
21 mandated the March 6, 2010 deadline. Before the hearings commenced, the City was  
22 legally required to issue a final decision on the SEPA appeals (from the Examiner) by  
23 March 28, 2010, and a final decision on the MPD applications (from the City  
24 Council) by the end of April 2010. The Applicant had the authority to waive these  
25 deadlines (or at least absolve the City of liability), but declined to do so at the request  
of the Examiner before the hearings commenced. *See Email Ex. 156* (Examiner to  
applicant: "If the applicant provides a written waiver to objection over extending  
review periods, I will continue the hearing dates. The applicant is strongly  
encouraged to waive."); *Email Ex. 159* (Applicant concurring with City that hearing  
dates should not be rescheduled).

1 Permit processing deadlines are to be taken very seriously. They can serve as a  
2 source of significant liability for the City. See *Westmark v. Burien* 140 Wn. App. 540  
3 (2007). In the Burien case, the trial court awarded a \$10.7 million dollar judgment  
4 against the City for taking too long to make a permitting decision on a 175-unit  
5 apartment building. The delay in that case was three-and-a-half years, which is  
6 probably not the type of additional time that the SEPA appellants had in mind.  
7 However, the MPDs are obviously several magnitudes greater in scale than a 175-unit  
8 apartment building. A delay of even a few months for a project this size could  
9 conceivably result in significantly more liability than a delay in years for a relatively  
10 small apartment building.

11 The strict deadlines that applied to the master plan applications originated in state law  
12 and were incorporated into the Black Diamond Municipal Code. RCW  
13 36.70B.080(1) generally requires decision makers to issue a final permit decision  
14 within 120 days of the filing of a complete application. BDMC 18.08.100(C)(2)  
15 incorporates this state mandate by requiring staff to set processing deadlines for MPD  
16 applications that do not exceed 120 days. The master plan applications for this case  
17 were deemed complete in late December. BDMC 18.08.220 provides that decisions  
18 on EIS appeals must be issued within 90 days from the date an appeal is filed, which  
19 is March 28, 2010, for the subject appeals.

20 At the time that the Applicant vested its permit applications, there was no exception  
21 to these deadlines. This was unfortunate because RCW 36.70B.080(1) allows local  
22 jurisdictions to provide for longer processing deadlines for EIS appeals and permit  
23 applications that involve special circumstances. Given that the subject applications  
24 comprise the largest development project in King County, the Council would have  
25 been well justified in adopting extended permit processing deadlines<sup>4</sup> for master plan  
26 applications.

27 The Council is no doubt aware that it did adopt an ordinance allowing for extended  
28 deadlines. There are two reasons the Examiner was unable to take advantage of this  
29 ordinance to postpone the March 6, 2010 hearing date. The first reason is that there is  
30 substantial legal uncertainty that the Examiner could apply the ordinance to permits  
31 that have already vested. Under Washington's vested rights doctrine, cities cannot  
32 change the permitting criteria once the applicant has filed a complete permit  
33 application. See, e.g., *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d  
34 242 (2008)<sup>5</sup>. In lay language, the permit is "grandfathered in" once the applicant has

35 <sup>4</sup> RCW 36.70B.80(1) can be interpreted as allowing the Council to make project specific deadline  
36 extensions without any code amendment, even after a permit had vested. In any event, the Council did  
37 not adopt any findings allowing for an extended MPD review period prior to the MPD hearing dates.

<sup>5</sup> The Bonney Lake case is the most recent case on vested rights and there the court specifically  
38 declined to extend the vested rights doctrine to site plan review. However, the courts have extended

1 submitted all the required information. The courts have not directly addressed  
2 whether the vested rights doctrine applies to procedural requirements such as  
3 permitting deadlines. However, the only law journal article addressing the issue  
4 concludes that the courts have at least indirectly concluded that vesting does apply to  
5 procedural requirements. See, *Wynn*, Seattle University Law Review, V. 24, p. 851  
6 with the procedural vesting discussion at pages 879-882. The City Council adopted  
7 Ordinance 10-935, which extended the due date for SEPA appeal decisions, on  
8 February 18, 2010, well after the two MPD applications had vested. Given the legal  
9 uncertainty of the applicability of the ordinance to the MPD applications, the  
10 Examiner could not take the risk of applying it given the huge liability involved if the  
11 gamble proved wrong.

12 The second reason the Examiner did not apply Ordinance 10-935 to extend the  
13 March 6, 2010 deadline is because the Black Diamond City Attorney's Office advised  
14 that the Council did not adopt the ordinance with the intent of extending the March 6,  
15 2010 hearing date. When the SEPA appellants notified the Examiner about  
16 Ordinance 10-935, the Examiner advised the Applicant that they were "strongly  
17 encouraged" to waive the decision deadline and agree to an extended hearing date.  
18 The Applicant and the City Attorney's Office both objected to an extended hearing  
19 date. The City Attorney's Office sent an email to the Examiner providing as follows:

20 *Black Diamond opposes any continuance of the hearings, now  
21 scheduled to begin on March 6. While we recognize that Mr. Bricklin  
22 was brought into this matter only recently (as were we), the hearing  
23 dates had been set with the input of his clients, as well as all other  
24 parties. In reliance on that schedule, the City has secured facilities  
25 and audio equipment for the hearings, and public notice has been  
provided. The public notice includes approximately 1,850 mailed  
notices, advertisement in three separate newspapers, posting of notice  
boards, and posting at City facilities and on the City's website. All  
parties have also (or should have) confirmed the availability of  
witnesses for the hearings as scheduled.*

*In addition, after speaking earlier this morning with the Mayor and  
City management, I can advise that the intent of the ordinance adopted  
by the City Council last night is not to confer upon the Examiner the  
ability to extend the existing 90 day limitation set forth in BDMC  
18.08.220.B to hear any appeal. Rather, and as originally requested  
of the City Council by appellants Proctor and Wheeler (the original  
citizen-sponsors of this ordinance), the intent of the ordinance is to  
provide the examiner with additional time to render his decision, upon*

the vested rights doctrine to a wide range of other permits including conditional use permits, grading permits, septic tank permits, and shoreline permits.

1 entry of the necessary findings. That intent is clearly identified in the  
2 Council Agenda Bill attached to Mr. Bricklin's e-mail.

3 The ordinance attached to Mr. Bricklin's e-mail will not become  
4 effective, pursuant to state law, until February 28. If necessary, the  
5 Mayor is prepared to call a special meeting of the City Council next  
6 week in order to amend this ordinance to expressly reflect this  
7 clarification...

8 2. Separate Hearings: The SEPA Appellants argued that the Lawson  
9 Hills and Villages MPD applications should have been consolidated into one hearing.  
10 BDMC 18.08.130 and RC 36.70B.120 allow for the consolidation of multiple permit  
11 applications for single projects. However, these provisions do not authorize the  
12 consolidation of permit applications from different projects. Further, RCW  
13 36.70B.120 only authorizes consolidation of permit applications if requested by the  
14 applicant. In this case the Applicant objected to consolidation of its permit  
15 applications. The City has no authority to require consolidation over the objection of  
16 the Applicant.

17 3. Consolidation of SEPA Appeals with MPD Applications: Although  
18 the City does not have the authority to require the consolidation of the Villages and  
19 Lawson Hills MPD applications, it is required to consolidate the Lawson Hills EIS  
20 appeal into the hearing on the Lawson Hills MPD application. WAC 197-11-  
21 680(3)(a)(v) provides that the EIS appeal must be consolidated with the MPD hearing  
22 in a single simultaneous hearing before one officer.

23 4. Segregation of SEPA Testimony from MPD Testimony: Although the  
24 Examiner must consolidate the LH FEIS hearing with the Lawson Hills MPD  
25 hearing, this does not deprive the Examiner of the authority to segregate EIS  
26 testimony from MPD testimony. The Examiner also has the authority (which was  
27 exercised in this hearing) to limit EIS testimony to the SEPA Appellants. Black  
28 Diamond, like most if not all other cities and counties, imposes strict requirements for  
29 the filing of administrative appeals – time limits are enforced, filing fees are required  
30 and the appeals must identify appeal issues. None of these requirements would have  
31 much significance if people can circumvent them by showing up at a hearing and  
32 testifying on an appeal filed by someone else.

33 5. All Evidence Available for Decision: As previously mentioned, WAC  
34 197-11-680(3)(a)(v) requires a single "simultaneous" hearing when an EIS appeal is  
35 consolidated with an MPD hearing. In construing legislation (and regulations) no  
36 word should be treated as surplusage. Every word must be given meaning.  
37 "Simultaneous" must mean something different than "single." The only additional  
38 meaning that "simultaneous" can be interpreted to add to the "single" hearing  
39 requirement is that all of the evidence in the hearing must be "simultaneously"  
40 available for any of the land use decisions subject to the hearing. This is consistent

1 with the Regulatory Reform Act, Chapter 36.70B RCW definition of a hearing, where  
2 the focus in the definition of a hearing is the evidence submitted in the hearing. RCW  
3 36.70B.020(3) defines an "open record hearing" as a hearing conducted by a single  
4 hearing body that "creates the local government's record through testimony and  
5 submission of evidence and information."

6 The combination of the "simultaneous" hearing requirement with the filing  
7 requirements for SEPA appeals has created some confusion amongst the public. The  
8 ground rules are actually not that complicated. Only EIS Appellants may testify on  
9 EIS appeal issues, but the entire record is available to the Examiner to review EIS  
10 adequacy and compliance with the MPD criteria. Consequently, even though Maple  
11 Valley was excluded from the EIS appeal, the Examiner may use its testimony on  
12 transportation-related MPD criteria relating to transportation issues to review the  
13 transportation adequacy issues raised by the SEPA Appellants. Similarly, the  
14 evidence presented during the SEPA appeals can be used to craft conditions for MPD  
15 approval to the extent that the SEPA testimony is relevant to MPD approval criteria.

16 Some may question why testimony had to be segregated if the simultaneous hearing  
17 requirement mixes all the evidence anyway. A quick review of the transcripts should  
18 reveal a ready answer. EIS Appeal proceedings are highly legalistic, with an  
19 emphasis upon expert witnesses, cross-examination, evidentiary objections and  
20 lawyers. Unlike the MPD portion of the hearing in which the Applicant has the  
21 burden of proof, the SEPA Appellants have the burden of proof in a SEPA Appeal.  
22 Under procedural due process, this burden of proof gives the SEPA Appellants the  
23 right to have the first and final word on their appeal issues. Segregation of the  
24 hearing facilitates the accommodation of that right. By contrast, MPD hearings are  
25 not dominated by lawyers or evidentiary objections. The emphasis is upon making it  
easy for people to express their opinion, without intimidating them by threats of cross  
examination and objections. Segregation of an EIS appeal from the testimony on the  
underlying permit application is a common strategy employed by hearing examiners  
to address the procedural differences between a permit decision and a SEPA appeal.  
The MPD hearings serve as a good example of why that segregation is necessary.

6. Jurisdiction/Authority/Review Process: The jurisdiction of the  
Hearing Examiner to hear the appeals on EIS adequacy was subject to extensive  
discussion in the Examiner's Second Revised Prehearing Order, Email Ex. 165. As  
determined in the Order, the Examiner has jurisdiction to hear the EIS Appeals. The  
Examiner's decision is final, appealable to superior court.

7. Consideration of Revisions to MPD after FEIS Issuance: Any  
substantial revisions to the MPD application after issuance of the FEIS require  
additional environmental review to precede or accompany the staff recommendation  
on the application to the Examiner and City Council.

1 WAC 197-11-055(3)(a) provides that a final FEIS or threshold determination shall  
2 normally precede or accompany a final staff recommendation in a quasi-judicial  
3 proceeding. WAC 197-11-600(3)(b) provides that a new threshold determination or  
4 supplemental EIS shall be required for any substantial changes to a proposal that are  
5 likely to have significant adverse environmental impacts. Consequently, any of the  
6 12/31/09 revisions that would trigger additional environmental review cannot be  
7 considered by the Examiner or City Council, since the additional environmental  
8 review did not accompany the staff report on the Lawson Hills MPD.

9 The SEPA Responsible Official is responsible for determining whether the 12/31/09  
10 revisions require additional environmental review. The SEPA Responsible Official  
11 has subjected the 12/31/09 revisions to the MPD staff report, suggesting that he did  
12 not find a need for additional environmental review.<sup>6</sup> The decision of the SEPA  
13 Responsible Official to not require additional environmental review is not subject to  
14 administrative appeal. See WAC 197-11-680(3)(a)(iii). Consequently, it is not  
15 within the Examiner's authority to consider the issue. The City proceeds at its own  
16 risk in considering the 12/31/09 revisions without further environmental review.  
17 Since the issue is not subject to administrative appeal, the absence of environmental  
18 review can be brought up for the first time during judicial review.

#### 19 V. Standard of Review/Overall Adequacy

##### 20 A. Standard of Review:

21 The standard of review for EIS adequacy is the "rule of reason," defined as "a  
22 reasonably thorough discussion of significant aspects of the probable environmental  
23 consequences." *Klickitat County Citizens Against Imported Waste v. Klickitat  
24 County*, 122 Wn.2d 619, 633 (1994). Under the broad rubric of a "reasonable"  
25 analysis, the courts have highlighted what is meant by the rule of reason as follows:

1. The rule of reason is "in large part a broad, flexible cost-effectiveness  
standard." *Id.* "...the EIS need include only information sufficiently beneficial to the  
decision making process to justify the cost of its inclusion." *Id.* at 641.

2. Under the rule of reason, "an EIS need not list every remote,  
speculative, or possible effect or alternative." *Id.* at 631.

3. "Impacts or alternatives which have insufficient causal relationship,  
likelihood, or reliability to influence decision makers are "remote" or "speculative"  
and may be excluded from an EIS." *Id.*

<sup>6</sup> For future reference, the SEPA Responsible Official could have issued a SEPA addendum on the  
revisions, making it clear that he found no additional environmental review necessary.

1 4. Challenges may not “flyspeck” an EIS; omissions in analysis may be  
2 “unfortunate, but not fatal.” *Mentor v. Kitsap County*, 22 Wn. App. 285, 290 (1978).

3 5. The “comprehensive review envisioned by SEPA is to be detailed and  
4 does not invite a lackadaisical approach.” *Leschi Improvement Council v.*  
5 *Washington State Highway Commission*, 84 Wn.2d 271, 280 (1978).

6 6. SEPA requires agencies to take a “hard look” at environmental factors.  
7 *PUD No. 1 of Clark County v. PCHB*, 137 Wn. App. 150, 158 (2007).

8 **B. Programmatic Review v. Project Review:**

9 The parties appear to agree that the MPD review is a nonproject as opposed to project  
10 action. The Examiner also agrees that MPD review qualifies as nonproject action  
11 because it involves “regulations that contain standards controlling use or modification  
12 of the environment” as opposed to “a construction or management activity located in  
13 a defined geographic area.” See WAC 197-11-704(2)(a) and (b). An agency has  
14 more flexibility in preparing an EIS on a nonproject action “because there is normally  
15 less detailed information available on their environmental impacts and on any  
16 subsequent project proposals.” WAC 197-11-442. The SEPA Appellants have  
17 pointed out that the MPD does have some characteristics of a project action due to the  
18 specificity of improvements proposed and, in a broader sense, because the review is  
19 treated as a quasi-judicial proceeding. This is quite true, but hybrid actions are  
20 covered in the nonproject regulations that specify that the level of detail must be  
21 appropriate “to the scope of the nonproject proposal and to the level of planning for  
22 the proposal.” *Id.* Given these requirements, the level of detail is expected to be  
23 comparatively high for project specific impacts.

24 **C. Burden of Proof**

25 The hearing examiner must give “substantial weight” to the Responsible Official’s  
determination that the EIS is legally adequate. RCW 43.21C.090; BDMC  
19.04.250(E). BDMC 18.08.220(D) provides further that the decision of the  
responsible official shall only be overturned if it is clearly erroneous. BDMC  
18.08.220(D) also provides that the appellant shall carry the burden of proof in the  
appeal and that the burden of proof shall be met by a preponderance of the evidence  
in order for the appellant to prevail.

**D. Overall Adequacy.**

The adequacy of each issue raised by the SEPA Appellants is discussed in detail  
below. However, the reasonableness standard is also broad enough to encompass an  
assessment of deficiencies in light of the overall thoroughness of an EIS. The  
Executive Summary provides an overview of all of the significant EIS deficiencies  
within the context of the overall thoroughness of the EIS. The number of deficiencies

1 is fairly minor within the context of the extensive review of environmental impacts in  
2 the EIS. The deficiencies can be remedied by further analysis and mitigation under  
3 the MPD conditions of approval without depriving the decision maker of significant  
4 information to assist in the decision making process. Given these circumstances, it  
5 would certainly not be cost effective, as referenced to require the entire review  
6 process to commence anew to address problems that can be resolved under MPD  
7 conditions of approval. Overall, the FEIS is adequate.

## 8 VI. EIS APPEAL ISSUES

### 9 A. Lake Sawyer Water Quality

10 Due to the complex nature of Lake Sawyer water quality, this topic will be presented  
11 in narrative format. Section headers should be considered findings and conclusions  
12 in addition to all of the findings and conclusions made in the text as well.

13 The SEPA Appellants have described Lake Sawyer water quality as at a "tipping  
14 point" between ecological health and devastation. Lake Sawyer also serves as a  
15 tipping point on the adequacy of both the FEIS. Determining the adequacy of the  
16 Lake Sawyer water quality analysis was by far the most difficult decision to make on  
17 the FEIS appeals. The SEPA Appellants presented a compelling case that the MPDs  
18 could indeed tip the quality of Lake Sawyer into a condition where blue-green algae  
19 would bloom and create health hazards, beach closures, aesthetic blight and harm  
20 endangered fish. However, DOE has identified conditions that, if followed by new  
21 development, would meet TMDL. TMDL is a limit on phosphorous loading and  
22 concentration to Lake Sawyer that if followed, creates a 5% or less chance of  
23 surpassing the tipping point. The DOE conclusions are based upon a series of  
24 scientific studies that assess Lake Sawyer water quality. These studies are based  
25 upon years of data, collaborative efforts from a broad array of stakeholders and  
extensive modeling and assessment of impacts. The MPD proposals are consistent  
with the conditions DOE has imposed for TMDL compliance. The Applicant has  
adopted the recommended mitigation of these studies to mitigate its water quality  
impacts. The studies used and prepared by DOE serve as a standard of water  
protection for the entire Lake Sawyer watershed. Any additional information  
required of the Applicant, short of subjecting it to a different standard than that  
prepared by DOE, would not provide any useful information.

#### 1. Lake Sawyer is a Significant Water Body

Lake Sawyer is the fourth largest lake in King County, covering 280 acres. Ex. NR-TV-11, p. ES-1. Its watershed encompasses 8,300 acres. Ex. H-9, p. vii. Over 200 people live upon its shorelines. The lake is used extensively for recreational purposes such as sailing, water skiing, scuba diving, swimming, picnicking, wildlife observation and aesthetic enjoyment. Ex. NR-TV-11, p. ES-1. Public access is provided by two city parks, one on the northwest side of the lake and another on the

1 southern end of the lake. The lake provides habitat for three federally listed species:  
2 steelhead, Coho and Chinook salmon. Ex. CBD-2-5 at 4-71, 4-73.

3 **2. Phosphorous Poses a Significant Threat to Lake Sawyer Water  
4 Quality**

5 The role that phosphorous plays in the water quality of a lake was well summarized in  
6 the Implementation Plan, which provides at p. 6 as follows:

7 *Phosphorus is a basic element found in nature, and is also a primary  
8 nutrient that all living organisms need to survive. Lakes typically build  
9 up phosphorus levels as they age, and ultimately fill in with vegetation  
10 and sediment, a process that usually takes thousands of years. This  
11 process is called eutrophication. Increased amounts of phosphorus  
12 due to human activity can accelerate eutrophication and be  
13 detrimental to a lake's water quality and its beneficial uses. Higher  
14 levels of phosphorus from sediment, fertilizers, waste, and other  
15 sources can cause excessive plant and algae growth, which in turn  
16 may have unfavorable impacts to water clarity, aquatic habitat, fish  
17 survival, swimming, boating, and aesthetic enjoyment (Murphy et al.  
18 2002). Human activities, such as home building, road construction,  
19 and deforestation, can drastically speed up a lake's aging process and  
20 adversely affect lake uses.*

21 *In lakes of the Puget Sound Lowlands, phosphorus is often the nutrient  
22 in least supply, meaning that biological productivity is often limited by  
23 the amount of available phosphorus (Abella, 2009). Thus, for lakes  
24 such as Lake Sawyer, phosphorus is usually the main nutrient that  
25 drives the eutrophication process. Though other nutrients, such as  
potassium and nitrogen, can affect surface water quality, the amount  
of phosphorus being transported through various sources and  
pathways, such as human and animal waste, fertilizers, and  
stormwater in the watershed, often limits the amount of algal growth  
and aquatic plants (Minnesota Department of Agriculture, 2004).  
Nutrient levels generally determine a lake's level of biological activity  
or trophic state.*

*Lakes with low levels of biological activity are classified as  
oligotrophic. Those with moderate biological activity are mesotrophic.  
When lakes get older, or when they are polluted with excessive levels  
of nutrients and have high biological activity, they are considered  
eutrophic. Lakes with lower levels of biological activity have better  
water clarity and are more desirable for swimming and boating  
activities.*

1 When a lake reaches a eutrophic state the consequences are serious. Blue-green algae  
2 bloom creating toxics that are lethal to aquatic life, birds and shore animals, including  
3 cats and dogs. The blue-green algae form a scum over lake surfaces, causing beach  
4 closures. Tr. at 555. The toxins are also under study as a cause for liver ailments in  
humans. *Id.* A eutrophic state also harms coldwater fish. Coldwater fish need to  
stay in the lower, colder layers of a lake. A eutrophic state deprives the lower waters  
of necessary oxygen and leaves it in the warmer upper layers. Tr. at 72-73.

5 Lake Sawyer has an unfortunate history of problems associated with elevated  
6 phosphorous levels. In the 1970s, evidence of failing septic systems in the Lake  
7 Sawyer watershed resulted in a decline in water quality in Lake Sawyer and the rivers  
8 that feed into it. To correct this problem the City of Black Diamond constructed a  
9 sewage treatment plant in 1981. A unique feature of the treatment plant was that its  
10 treated effluent was discharged into a natural wetland, which ultimately discharged  
11 into Lake Sawyer. Implementation Plan, p. 1. The treated effluent caused a  
12 significant degradation of Lake Sawyer water quality. As phosphorous levels went  
13 up, algae blooms occurred. A green scum covered the lake, rendering the lake  
14 virtually unusable for all recreational and other public activities. Tr. at 3647-3648.  
15 Due to the water quality problems caused by the treated sewer water, the Department  
16 of Ecology required the diversion of the effluent from the natural wetland to a  
secondary treatment plant in Renton via a King County sewer line. Implementation  
Plan, p. 1. This diversion was completed in 1992. *Id.* Despite the diversion, Lake  
Sawyer water quality took several years to recover, finally reaching what DOE  
considered to be acceptable (consistent with TMDL as discussed below) levels in  
1998. Implementation Plan, p. 11-12. Lake Sawyer had phosphorous concentrations  
of 12 to 23 micrograms/L from 1990 to 1998. From 1999 to 2007 the phosphorous  
levels have been in the 8 to 16 microgram/L range. *Id.*

17 As a result of Lake Sawyer's water quality problems, DOE listed Lake Sawyer as an  
18 "impaired water body" pursuant to the requirements of the Clean Water Act. The  
19 Clean Water Act requires a total maximum daily load (TMDL) to be developed for  
20 impaired water bodies. The TMDL is subject to approval by the US Environmental  
21 Protection Agency. The TMDL sets a limit to the amount of phosphorous that is  
22 allowed into a water body. Implementation Plan, p. 3. EPA approved a phosphorous  
loading capacity TMDL for Lake Sawyer at 715 kilograms of phosphorous per year.  
Wheeler Ex. 20, p. 1. This means that all external sources of phosphorous may not  
exceed a total of 715 kilograms per year. This corresponds to an in-lake  
concentration of 16 micrograms/L. Implementation Plan, p. 5.

23 **3. The Lake Sawyer Management Plan and 2009 Lake Sawyer Water**  
24 **Quality Implementation Plan Provide a Highly Credible and**  
25 **Thorough Review of Phosphorous Impacts and Control for**  
**Development in the Entire Lake Sawyer Watershed; the**  
**Management Plan does not Conclude or Warrant that its**  
**Recommended Mitigation will Satisfy TMDL.**

1 In 2000 King County prepared the Lake Sawyer Management Plan ("LSMP"). Ex.  
2 NR-TV-11. It is considered a supporting document of the Lake Sawyer TMDL  
3 Implementation Plan, p. 1. The purpose of the LSMP was to complete a Phase I  
4 study initiated in 1989-90. LSMP, p. 1-5. The primary purpose of the Phase I Study  
5 is to assess the impact of the water treatment plant diversion on water quality, update  
6 the lake's nutrient and water budgets, and to evaluate and recommend restoration  
7 alternatives that will maintain and protect Lake Sawyer's water quality and beneficial  
8 uses. *Id.* The LSMP was based upon years of data collection and employed the input  
9 of several stakeholders representing public and private organizations. It included a  
10 detailed projection of phosphorous levels at full build-out of the Lake Sawyer  
11 watershed, with and without recommended mitigation<sup>7</sup>.

12 The LSMP makes no assurance that its recommended mitigation will achieve TMDL  
13 and the Examiner does not find that the recommendations were made for that  
14 purpose. The LSMP lists several lake management goals at Table 6-1 and the LSMP  
15 expressly states that "these goals were used in the analysis of management strategy  
16 alternatives to develop the plan [LSMP] recommendations." The management goals  
17 include maintaining the mesotrophic status of the lake but none mention meeting  
18 TMDL. The LSMP identifies several mitigation measures directed at the Lake  
19 Sawyer watershed to control phosphorous loading. LSMP, Chapter 6. If these  
20 measures fail to reach or maintain lake management goals, the LSMP identifies  
21 "contingency in-lake measures" to improve water quality. LSMP at 6-22. These  
22 measures consist of buffered alum treatment (treating the lake with alum) and  
23 hypolimnetic aeration and circulation (pumping oxygen into the lake through a piping  
24 system). Notably, the LSMP was not even confident that the watershed and in-lake  
25 measures combined would meet the general water quality goals: "Prior to  
implementation, the City of Black Diamond, King County and Ecology will want to  
confirm that some combination of in-lake and watershed controls will be able to  
achieve water quality goals." Wheeler Ex. 20(e), Appendix I of LSMP, p. 7. Table  
6-3 of Appendix I shows a lake phosphorous concentration of 31 micrograms/L for  
build out with "watershed controls" and 37 micrograms/L for build out with "internal  
load control." It is unclear, but likely, that these categories of mitigation measures  
encompass all the mitigation measures recommended in the LSMP. The resulting  
concentrations are significantly above the 16 microgram/L TMDL limit.

21 In 2009 DOE released the Lake Sawyer Total Phosphorous Maximum Daily Load  
22 Water Quality Implementation Plan, Ex. 9 ("Implementation Plan"). It is considered  
23 the follow up document to the Lake Sawyer Total Phosphorous TMDL. Ex. H-9, p.  
24 2. It provides a framework for corrective actions to address sources of phosphorous  
25 pollution in Lake Sawyer and the surrounding watershed. Unlike the LSMP, it did

<sup>7</sup> This document will use "restoration" -- the term used in the LSMP -- interchangeably with  
"mitigation." Technically the "restoration" measures include "mitigation" of future development, such  
as the MPDs.

1 not include any modeling of future lake conditions. Like the LSMP, the  
2 Implementation Plan was based upon the input of several stakeholders participating in  
3 the Lake Sawyer Steering Committee, consisting of representatives of DOE, King  
4 County, City of Black Diamond, King County Conservation District, Washington  
5 Department of Fish and Wildlife, the Muckleshoot Indian Tribe, and local watershed  
6 residents.

7 The corrective actions identified in the Implementation Plan largely mirrored the  
8 mitigation recommended in the LSMP, with the important distinction that the  
9 Implementation Plan also contemplated the City's adoption of the 2005 Stormwater  
10 Management Manual for Western Washington. The Implementation Plan concluded  
11 that with the adoption of the 2005 DOE Manual and a monitoring program for the  
12 implementation projects that the City of Black Diamond would meet TMDL.

13 Based upon the above and the plans themselves, the Examiner finds that the LSMP  
14 and the Implementation Plan build upon years of research and hundreds of pages of  
15 scientific analysis. The plans are the result of significant collaboration of all major  
16 stakeholders. The conclusions on TMDL compliance are made by the Department of  
17 Ecology, whose primary mission and expertise is the protection of environmental  
18 resources, such as Lake Sawyer.

19 **4. The Villages and Lawson Hills FEIS fail to adequately disclose  
20 potential phosphorous impacts to Lake Sawyer**

21 As previously determined, Lake Sawyer is a significant environmental and  
22 recreational resource for the Black Diamond community. The impacts of  
23 phosphorous on this resource have also been an on-going significant concern for the  
24 Black Diamond community. Black Diamond constructed a sewage treatment plant in  
25 1981 due to the water quality impacts of failing septic systems on Rock Creek,  
Grinder Creek and Lake Sawyer. Lake Sawyer water quality once again became an  
issue when water quality problems forced the City to divert treated effluent from a  
wetland feeding into Lake Sawyer to a sewer line connecting to King County  
treatment facilities in Renton in 1992. Implementation Plan, p. 1. As discussed in  
both the LSMP and the Implementation Plan, volunteers in the area over the last  
several years have participated in lake monitoring programs and are active in  
assessing and recommending implementation projects. City of Black Diamond staff  
and the Black Diamond City Council have been active in assessing and implementing  
phosphorous control measures.

Despite the thoroughness of the scientific analysis conducted in the LSMP and the  
Implementation Plan, it is clear from those documents that there is still a great deal of  
uncertainty in predicting phosphorous loading. The LSMP acknowledges this  
uncertainty by recommending contingency measures should recommended mitigation  
fail to protect water quality. The modeling in the LSMP falls far short of predicting  
the current phosphorous concentrations in Lake Sawyer; the baseline in the model is

1 84% above the 715 kg/yr TMDL while the most recent data in 2007 shows that Lake  
2 Sawyer could be as much as 50% below the lake concentration TMDL. *See* Wheeler,  
3 Ex. 20; Implementation Plan, p. 12. The 1992 diversion of effluent highlights the  
4 shortcomings of predicting phosphorous loading; the initial drainage of the effluent  
5 into a natural wetland, termed an "innovative project" was based upon the erroneous  
6 conclusion that the natural wetland would prevent phosphorous contamination of  
7 Lake Sawyer. Implementation Plan, p. 1. The TMDL itself only presents a risk of  
8 eutrophic status. It is set at a 5% risk of eutrophication. *See* LSMP, Appendix F,  
9 2/11/93 Wong Memo.

10 WAC 197-11-080(3) requires environmental review to provide a worst-case scenario  
11 and likelihood of occurrence when acting in the face of uncertainty, to the extent the  
12 information can be reasonably developed. Given the uncertainty in the potential  
13 eutrophication of Lake Sawyer, the Villages and Lawson Hills EISs should identify  
14 the impacts of eutrophication to notify the decision maker of what could happen, even  
15 if the risk of that occurring is within the level of risk adopted by the TMDL  
16 conclusions in the Implementation Plan.

17 Neither the Villages EIS or the Lawson Hills EIS adequately identifies the impacts  
18 associated with reaching eutrophic status, e.g., the health hazards, beach closures,  
19 harm to endangered fish and aesthetic blight discussed in I(B) of this document are  
20 not identified. The Villages contains a fairly good description of the history of  
21 phosphorous problems associated with Lake Sawyer, but there is no recitation of  
22 specific impacts. Inexplicably, the Lawson Hills EIS does not even include the  
23 background information. It just mentions in one sentence that Lake Sawyer "...has a  
24 303(d) listing for phosphorous, based upon past water quality problems" and in  
25 another sentence that "Lake Sawyer is susceptible to eutrophication." LH EIS, p.  
4.36 and 5-11. The appendices to both EISs also fail to identify specific impacts.  
These omissions are difficult to justify given that 65% of the Village and 100% of  
Lawson Hills drains into Lake Sawyer.

Given the prominence that Lake Sawyer water quality plays in the Black Diamond  
community, the significance of phosphorous impacts and the uncertainty in the  
science backing Implementation Plan, it was unreasonable for the EIS to fail to warn  
of the specific problems that could arise from phosphorous contamination of Lake  
Sawyer. Given the large amount of development involved in the MPD proposals, the  
information on specific impacts could spur decision makers into advocating for  
updated modeling the LSMP or a greater commitment to implementing the regional  
mitigation measures identified in the Implementation Plan. Given the overall scope  
and context of the EIS, the failure to include these specific impacts cannot by itself  
justify a finding of inadequacy for the entire document, especially given that the  
reference to eutrophication in both documents does provide inquiry notice to persons  
concerned about water quality.

1                   5.    The Villages and MPD projects are within the phosphorous  
2                   loading assumptions employed by the LSMP.

3    The Applicant has not chosen to conduct its own analysis of how much phosphorous  
4    the MPDs will discharge to Lake Sawyer. Instead, it relies upon the phosphorous  
5    loading estimates of the LSMP. Through extensive analysis and testimony, the  
6    Applicant has established that the MPD projects are consistent with the assumptions  
7    used by the LSMP in predicting phosphorous loading. In point of fact, the  
8    preponderance of evidence in the record establishes that the LSMP significantly  
9    overstates the amount of phosphorous generated by the proposed development.

10   The record of this proceeding conclusively establishes there are three factors that  
11   result in an overstatement of phosphorous loading in the LSMP model. The first  
12   factor is that the LSMP overstates the amount of the MPD development area that  
13   drains to Lake Sawyer. The Applicant's geotechnical consultants performed 110 test  
14   borings to determine the location of impermeable surfaces and the resultant  
15   subsurface flows of stormwater. Tr. 2641. Through this geotechnical analysis the  
16   Applicant determined that 30% of the Villages MPD does not drain into Lake Sawyer  
17   as assumed in the LSMP. Tr. at 2032-2033.

18   The second factor is that the LSMP overstates the amount of the development in the  
19   MPD project area. As shown in Exhibit H-8 and as testified by Al Fure, the LSMP  
20   overstates development of the MPDs by 25%. Tr. at 2007.

21   The third factor is the baseline used for the phosphorous concentration of the lake.  
22   The LSMP model was based upon in-lake phosphorous concentrations from March  
23   1994 through April 1995. See Wheeler Ex. 20(e), Appendix C, Figure E6. The  
24   concentrations during this base period ranged from 20 to 60 micrograms/L,  
25   significantly higher than the TMDL concentration of 16 microgram/L. As shown at  
26   p. 12 of the Implementation Plan, the 2007 phosphorous concentration was 8 or 9  
27   micrograms/L. *Id.* The "typical year" baseline used in the LSMP model was 84%<sup>8</sup>  
28   over TMDL. Wheeler Ex. 20. The significant disparity in current phosphorous  
29   concentrations and those used in the baseline of the LSMP model is probably due to  
30   the five year recovery period of the lake from the treatment plant diversion in 1992.  
31   *Id.* Table 6-7 of the LSMP, which provided the projections on future phosphorous  
32   loading, noted that "it is assumed that internal loading will not change in the future."

33   A fourth factor may be the City's adoption of the 2005 DOE Stormwater Manual.  
34   The LSMP was based upon the application of the 1992 stormwater manual and the  
35   MPDs will use the 2005 manual. Tr. at 558. As noted in the testimony of Sally  
36   Abella, a SEPA Appellant witness, the 2005 manual provides "better by far"

37   

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38   <sup>8</sup> The LSMP phosphorous loading baseline was based on kg/L, so the Examiner was only able to  
39   provide a % over TMDL as opposed to a conversion to micrograms/L.

1 phosphorous safeguards than the 1992 manual. Tr. at 564. However, the benefits of  
2 the 2005 Manual may already be integrated into the LSMP model. One of the  
3 recommended stormwater controls in the LSMP is the adoption of the 1998 King  
4 County Surface Water Design Manual. LSMP, p. 6-6 to 6-7. In the alternative the  
5 LSMP recommends adoption of the "Lake Protection Standard," a component of the  
6 King County Surface Water Design Manual. In recommending these standards, the  
7 LSMP focuses upon the fact that they have a phosphorous treatment reduction goal of  
8 50%, which is the same standard required under the 2005 DOE Manual. If the 2005  
9 DOE Manual does not provide any level of phosphorous protection better than the  
10 1998 King County Manual, the City's adoption of the 2005 DOE Manual is simply an  
11 adoption of one of the LSMP mitigation measures and its actions fall squarely within  
12 the LSMP modeling. However, if the 2005 DOE Manual provides better protection  
13 than the 1998 King County Manual, as is probably the case, then the LSMP model  
14 can be said to overstate phosphorous levels of future build out.

15 There is no evidence in the record that identifies any factors that would result in an  
16 underestimation of phosphorous loading in the LSMP. Sally Abella testified that the  
17 LSMP was outdated, but from that factor Ms. Abella could only conclude an updated  
18 LSMP could "go either way" in changing the outcome of phosphorous loading  
19 predictions. Tr. at 558. Ms. Abella testified that the LSMP is based upon data and  
20 development regulations from 1995. *Id.* She noted that development projections in  
21 the LSMP may not be accurate, due to possible changes in Black Diamond  
22 comprehensive plan policies and development regulations and Black Diamond  
23 annexations that occurred subsequent to 1995. *Id.* The Applicant addressed Ms.  
24 Abella's concerns about projected MPD development in the preparation of Ex. H-8  
25 and the testimony of Al Fure, who as noted previously concluded that the LSMP  
actually overestimates development within the MPD project areas.

In short, the record identifies three factors and potentially one more factor that  
markedly skew the LSMP assumptions to overstate MPD phosphorous loading. No  
factor was offered into the record to that understates phosphorous loading. The  
evidence in the record conclusively establishes that the LSMP overstates the amount  
of phosphorous loading from the MPDs. Consequently, the MPDs are well within the  
LSMP assumptions for phosphorous loading.

#### 6. The Villages and Lawson Hills MPDs Adequately Mitigate Phosphorous Impacts to Lake Sawyer

The Washington State Department of Ecology has concluded that mitigation  
measures recommended in the LSMP will satisfy the TMDL for Lake Sawyer. The  
SEPA Appellants do not dispute the data or methodology used in the LSMP to assess  
the effectiveness of mitigation. They point out that the data and methodology shows  
that the MPD projects will load phosphorous in excess of TMDL and that this  
phosphorous loading will approach (but not exceed on its own) the eutrophication

1 point for Lake Sawyer. This information is insufficient to refute the conclusions of  
2 DOE.

3 The conclusions of DOE are expressed in the Implementation Plan. DOE published  
4 the Implementation Plan in 2009. The Implementation Plan implements the LSMP  
5 by providing a framework for corrective actions to address ongoing and future  
6 sources of phosphorous pollution in Lake Sawyer and the surrounding watershed.  
7 Implementation Plan, p. v. DOE concludes at p. 31-32 of the Implementation Plan  
8 that the City will establish compliance with the TMDL under the following  
9 conditions: compliance with the Western Washington Phase II Municipal Stormwater  
10 Permit, compliance with the 2005 Ecology Western Washington Stormwater Manual  
11 and the continuation of a water quality monitoring program in coordination with  
12 implementation projects. Dr. Kindig testified that, as designed, the MPD projects  
13 meet the DOE conditions for consistency with the TMDL. Dr. Kindig's testimony on  
14 this point was unrefuted. Robert Zisette, the Appellant's water quality expert, agreed  
15 that the mitigation implementation measures identified in the Implementation Plan are  
16 incorporated into the MPD proposals. Zisette testimony, 3/19/10. The Examiner  
17 finds that the Master Plan proposals meet the conditions for DOE's finding of TMDL  
18 compliance.

19 The SEPA Appellants assert that compliance with the mitigation measures outlined in  
20 the LSMP (and presumably the Implementation Plan) are not sufficient to comply  
21 with the Lake Sawyer TMDL or to prevent Lake Sawyer from reaching eutrophic  
22 status. As to TMDL compliance, Mr. Zisette did an interpolation of the modeling  
23 used to predict phosphorous loading for total build-out to determine that the  
24 phosphorous loading attributable to the MPD proposals, with LSMP stormwater  
25 controls, would generate an additional 353 kg/yr above the 715 TMDL limit. See  
Wheeler Prehearing Ex. 20. In making this calculation Mr. Zisette roughly used the  
same MPD area calculated by the Applicant as draining into Lake Sawyer, employing  
the area outlined in Exhibit H-7. Had Mr. Zisette used the higher developable area  
assigned by the LSMP model to the MPD proposals, his phosphorous loading results  
would have been higher.

Mr. Zisette's TMDL calculations did not reveal any new information that was not  
readily apparent to DOE when it found TMDL compliance in the Implementation  
Plan. It is important to note that beyond adjusting downward for development area,  
Mr. Zisette's calculations did not alter any of the assumptions used in the LSMP  
model. The LSMP model predicted a total phosphorous load of 2,255 kg/yr at build-  
out, which is 1,540 kg/yr above TMDL. Mr. Zisette's calculation merely showed that  
the MPD's proportionate share of this excess phosphorous is 353 kg/yr. All of this  
information is easily predictable from the LSMP. The baseline "typical year" in the  
LSMP model was already 627 kg/yr above TMDL. Given this context and the  
presumed assumption in the LSMP model that all nonpoint source development  
contributes phosphorous, any new development would increase the phosphorous load  
to somewhere between the baseline and the 2,255 kg/yr build out amount.

1 Mr. Zisette's calculations touch upon the most difficult issue of the Lake Sawyer EIS  
2 appeal issues: how could DOE conclude that the Lake Sawyer 715 kg/yr TMDL  
3 would be reached when the LSMP model predicted 2,255 kg/yr at full build-out? The  
4 LSMP and the Implementation Plan do not provide any explanation. As noted by the  
5 SEPA appellants, the mitigation measures in the LSMP do not get you there; Table 6-  
6 7 of the LSMP reveals that all mitigation measures combined attain an annual  
7 phosphorous loading of 1,793 kg/yr, still well above the 715 kg/yr. These mitigation  
8 measures include public improvements that cost eight to twelve million dollars to  
9 implement. See LSMP, p. 6-24 and 6-26. Nothing in the record suggests that these  
10 improvements have occurred and, in fact, the Implementation Plan states generally  
11 that most mitigation measures have not been funded. Implementation Plan, p. 12.

8 Balanced against the gap between the LSMP build-out phosphorous loading  
9 projections and the TMDL is the fact that this gap was apparent in the LSMP and  
10 DOE still found TMDL compliance. DOE has the expertise and authority to oversee  
11 TMDL on behalf of the EPA. There is nothing in the record to suggest that DOE  
12 would have any self-interest or political reason to find TMDL compliance when that  
13 was not the case. The Applicant raised the issue of DOE approval prior to the  
14 Appellants' rebuttal and nothing was offered by the Appellants to explain why DOE  
15 would reach such a conclusion if there was no reasonable basis for it. It is  
16 noteworthy that DOE placed emphasis upon compliance with the City's NPDES  
17 permit and the 2005 Stormwater Manual for compliance with TMDL. The 2005  
18 Stormwater Manual was not used in the LSMP and, as testified by the Appellant's  
19 expert, the 2005 Manual is significantly more effective in controlling phosphorous  
20 than the 1992 Manual that was used in the LSMP. Tr. at 564. The Implementation  
21 Plan also noted at p. 12 that the TMDL target of 16 micrograms/L has been met since  
22 1998, down to 8 or 9 micrograms/L in 2007. This is a substantial improvement over  
23 the "typical year" baseline used in the LSMP model, which was 84%<sup>9</sup> over TMDL.  
24 Also, as identified in Mr. Zisette's analysis, Wheeler Pre-hearing Exhibit 20, these  
25 recently low figures are probably the result of a five-year recovery period from the  
diversion of sewage treatment plant effluent. Consequently, the low numbers are  
probably not a temporary state of the lake (setting aside the impacts of future  
development). Given the objectivity and expertise of DOE, the use of the 2005 DOE  
stormwater manual, the significant improvement in Lake Sawyer water quality that  
was not factored into the LSMP modeling, and the substantial weight that the  
Examiner must provide to the determination of the SEPA responsible official, the  
Examiner finds that the DOE's conclusions on TMDL compliance provide reasonable  
assurance on the adequacy of the mitigation measures incorporated into the MPD  
proposals.

<sup>9</sup> The LSMP phosphorous loading baseline was based on kg/L, so the Examiner was only able to provide a % over TMDL as opposed to a conversion to micrograms/L.

1 In addition to stating that the MPD projects will exceed TMDL, the SEPA Appellants  
2 also assert that the proposals may cause Lake Sawyer to exceed 24 micrograms/L, the  
3 "scientific dividing line between a mesotrophic and eutrophic lake." Bricklin post-  
4 hearing brief, p. 16. The SEPA Appellants found this dividing line in Table 4-10 of  
5 the LSMP, which provides that under the "Carlson's Trophic State Index" lakes reach  
6 eutrophic status at 24 micrograms/L. The meaning of this "dividing line" is not  
7 explained in the LSMP. The TMDL is set at a point where there is a 5% chance of  
8 reaching eutrophic status. See LSMP, Appendix F, 2/11/93 Wong Memo. The  
9 eutrophic risk associated with 24 micrograms/L is not identified in the LSMP,  
10 although one has to conclude it is significantly more than the TMDL, which at 16  
11 micrograms/L has a 50% less phosphorous concentration. The SEPA Appellants then  
12 point to Table 6-3 of Appendix I to the LSMP, which provides that the current  
13 condition of Lake Sawyer is at 23 micrograms/L and that build-out of the watershed,  
14 with watershed controls, will reach 31 micrograms/L.

9 Table 4-10, if reflective of current conditions, does show that Lake Sawyer is at the  
10 "tipping point," just one microgram/L from eutropic status. If Lake Sawyer is indeed  
11 this close to eutrophic status, there is a reasonable chance that the MPD proposals  
12 could tip the balance into eutrophic status. Under this scenario, additional EIS  
13 analysis study would be merited. However, Table 4-10 does not reflect current  
14 conditions. As discussed previously, the Implementation Plan shows the current state  
15 of the lake at 8 or 9 micrograms/L and these levels are anticipated to be stable, absent  
16 further development. The lake concentration has been under 16 micrograms/L since  
17 1998. There is nothing to suggest in the record that the MPD proposals, alone, will  
18 push the phosphorous concentration beyond the 24 micrograms/L given the current  
19 conditions of Lake Sawyer. Mr. Zisette testified that as little as a 5% increase could  
20 push Lake Sawyer into eutrophic status, but he did not explain the basis of this  
21 conclusion or identify whether he had taken into consideration the current state of the  
22 lake as identified in the Implementation Plan. Tr. at 3640. All of Mr. Zisette's  
23 calculations (e.g., Wheeler Ex. 20) had been based upon the "current" status of the  
24 lake as identified in the LSMP, which was set at 23 micrograms/L.

19 In reaching these conclusions it is not lost on the Examiner that the Applicant must  
20 discredit data in the LSMP at the same time that it relies upon it as its EIS analysis. A  
21 final and important inquiry on the LSMP is whether, given the apparent shortcomings  
22 of the LSMP, the Applicant should have updated and/or refined the LSMP for its  
23 analysis. Under the broad adequacy standard of a "reasonable" discussion of  
24 environmental impacts, it is pertinent to evaluate the utility of any additional  
25 information. As shall be discussed, any additional information that could be  
26 reasonably required of the Applicant would not yield any useful information. The  
27 Applicant could only provide a useful analysis if it essentially rewrote the LSMP,  
28 which is not a reasonable requirement.

25 On the utility of additional information, Mr. Zisette testified that the Applicant failed  
to determine how much phosphorous the MPDs would add to Lake Sawyer. He noted

1 that the Applicant could have easily made this determination since it had data on both  
2 projected stormwater volumes and phosphorous concentrations. The Applicant did  
3 not rebut this testimony and the Examiner finds that the phosphorous loading would  
4 not have been unreasonably difficult to compute. However, this additional  
5 information would not have provided anything of significant use to the decision  
6 maker. As ably demonstrated by Mr. Zisette, there is no question that under the  
7 modeling of the LSMP that the MPD phosphorous loading would exceed TMDL, no  
matter what amount of phosphorous was generated by the projects. Similarly, these  
computations would not be of much use in an assessment of the EIS alternatives.  
Any reduction in phosphorous loading, unless it is to zero, would exceed TMDL.  
TMDL would be exceeded in both the 24% development reduction in Alternative 3  
and the more than 50% reduction in Alternative 4.

8 Of course, with more work<sup>10</sup> the Applicant could recalibrate the LSMP model to  
9 include current lake conditions, the Applicant's adjustments to the drainage basins  
10 and the benefits of the 2005 stormwater manuals. In short, the Applicant would  
11 prepare its own LSMP. The resulting information could indicate how close the MPDs  
12 will bring Lake Sawyer to TMDL and what the Applicant's proportionate share of  
13 phosphorous loading would have to be in order to keep full build-out below TMDL.  
14 The price of this additional information is to hold the Applicant to a different standard  
15 than the watershed standards developed in the LSMP and the Implementation Plan.  
16 Along these lines, any proportionate share analysis would be meaningless unless  
17 other development and regional watershed implementation measures are held to the  
18 same standard. The only watershed standard is the LSMP and Implementation Plan.  
19 Further, any conclusion that the MPDs would fail to meet TMDL would be directly  
20 contrary to the findings of DOE, made in 2009, that the MPDs would satisfy TMDL.  
21 Given these factors, the reliance of the Applicant upon the LSMP, instead of its own  
22 calculations, provides a reasonably thorough discussion of stormwater impacts to  
23 Lake Sawyer as required for an adequate EIS.

18 **7. Dr. Kindig's Conclusions on Stormwater Phosphorous  
19 Concentrations and Treatment Efficiencies are Adequate.**

20 The SEPA Appellants presented a considerable amount of argument and testimony  
21 challenging the assumptions made by the Applicant in concluding that its proposed  
22 stormwater facilities would reduce phosphorous in stormwater by 50%. They also

22 <sup>10</sup> In its closing brief the Applicant asserts that requiring it to prepare its own management plan would  
23 be unreasonable given that the MPDs only take up a fraction of future build-out. There was no  
24 testimony on this issue so the Examiner has insufficient information to draw any conclusions.  
25 Certainly, it would be unreasonable to require the Applicant to take hundreds of test borings  
throughout the watershed to reevaluate the contours of the drainage basins. However, it does appear  
that useful and more accurate information could be derived by relatively simple refinements to the  
LSMP modeling, by measures such as using current lake conditions for a baseline.

1 challenge the phosphorous concentrations assumed by Dr. Kindig for untreated  
2 stormwater.

3 As to the untreated stormwater, Dr. Kindig used data from only one development  
4 project when data is readily available from numerous other projects in a national data  
5 base. *See* Bricklin Closing Brief, p. 26-27. Dr. Kindig testified that he preferred to  
6 rely upon the one project utilized in his study because it is local and takes into  
7 account the unique weather of the Pacific Northwest, which results in phosphorous  
8 concentrations that differ from other regions in the country. However, as noted by  
9 the SEPA Appellants, the data in the national data base can be tailored to only reflect  
10 projects in the Pacific Northwest. *Id.*

11 As to treatment efficiencies, the Dr. Zisette testified that Dr. Kindig did not take into  
12 account stormwater that bypasses stormwater ponds during storm events. Mr. Zisette  
13 also testified that studies finding a 50% treatment rate are based upon much higher  
14 phosphorous influent concentrations than those that will occur in the MPDs.  
15 Treatment efficiencies go down with lower influent concentrations. Finally Mr.  
16 Zisette testified that the 50% rate is based upon peak performance of new facilities  
17 and that this rate will go down for a facility with time. *Id.* at p. 27-29. Dr. Kindig  
18 responded that the overflow is a relatively rare occurrence accounting for only 5% of  
19 stormwater. The Applicant also asserts that the influent concentrations are higher  
20 than those assumed by Mr. Zisette, because Mr. Zisette allegedly did not take into  
21 account that influent into the facilities came from multiple sources, such as roads,  
22 where phosphorous concentrations are high. The record is unclear as to whether Mr.  
23 Zisette took this into consideration or not. The MPDs also include a monitoring plan  
24 to ensure that they are designed to meet the 50% treatment requirements of the 2005  
25 DOE Stormwater Manual. If not already proposed, the MPD should be conditioned  
to require an improvement to the stormwater facilities if monitoring reveals less than  
50% removal. It is also noteworthy that the DOE Stormwater Manual requires 50%  
treatment, at least creating an implication that DOE considers this level of treatment  
achievable.

19 The disagreements between Dr. Kindig and Mr. Zisette fall squarely within  
20 differences in professional judgment. Both experts are highly qualified and both have  
21 a side to advocate – Mr. Zisette was hired to find problems with the stormwater/water  
22 quality analysis and Dr. Kindig was hired by and works for the Applicant. The SEPA  
23 responsible official has determined that the stormwater analysis is adequate and the  
24 Examiner must give substantial weigh to this determination. Consequently, the  
25 Examiner finds the analysis, discussion and mitigation measures adequate. Dr.  
Kindig's use of one data source for influent concentrations when additional data is  
readily available is a little troubling. The Examiner may recommend as an MPD  
condition of approval that a broader range of data be employed in designing  
stormwater facilities.

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**B. Transportation**

**Findings of Fact:**

1. Several witnesses testified regarding transportation impacts. Witnesses for the SEPA Appellants included:

a. Mr. Ramin Pazooki, Local Agency and Development Services Manager, Washington State Department of Transportation,

b. Mr. Matthew Nolan, Traffic Engineer, King County Department of Transportation,

c. Dr. Natarajan Janarthanan, Transportation Planning Engineer, the consulting firm Fehr and Peers, and

d. Mr. Ross Tilghman, Principle, the consulting firm Tilghman Transportation Planning.

Witnesses for the City included John Perlic, Transportation Division Manager, the consulting firm Parametrix, and Steve Pilcher, SEPA Responsible Official, City of Black Diamond.

Each of these witnesses is well-qualified and highly credible.

2. In addition to the expert testimony, several SEPA Appellants and lay witnesses also testified regarding transportation issues during the EIS portion of the hearing. These included SEPA Appellant Judith Carrier and local residents Robert Taeschner, Susan Ball and Lori Seaman.

3. During the Master Planned Development public hearings, information relevant to the transportation portion of the EIS was introduced. Information with bearing on the EIS decision criteria is considered herein.

4. The City hired the third party consulting firm Parametrix to produce the environmental impact statement review of transportation impacts.

5. Parametrix employed an unusually extensive scoping process to gather input from the stakeholders and design the methodology, size and parameters of the study area. King County, Washington Department of Transportation, and SEPA responsible officials and transportation professionals from neighboring jurisdictions were invited to participate. Representatives from Maple Valley, Covington, Auburn and Washington Department of Transportation participated. Participants provided input and concurred with the size of the study area, scope of the review, intersections

1 to be studied, and the broad methodology and assumptions of the analysis including  
2 trip generation, distribution and assignment. At these scoping meetings, Parametrix  
3 supplied preliminary data on trip distribution and project traffic Tr. pages 1,487-  
4 1,493.

5 6. Significant transportation related issues raised during the SEPA EIS  
6 hearing and MPD hearings included:

- 7 a. The choice of transportation demand model used;
- 8 b. Methodological assumptions including the background traffic  
9 projections, the analysis of queue lengths from intersections and cycle timing, the  
10 choice of projected peak hour factor, the internal trip capture rate, the analysis of  
11 mode split and others;
- 12 c. Impacts to roads within the City of Black Diamond including  
13 Railroad Avenue;
- 14 d. Safety issues and impacts to area rural roads;
- 15 e. The level of detail and type of information presented in the  
16 EIS;
- 17 f. The determination of appropriate impacts and mitigation  
18 measures; and
- 19 g. The timing of mitigation and the assignment of financial  
20 responsibility for those impacts.

21 7. In preparing the transportation analysis, Parametrix used two models –  
22 the Puget Sound Regional Council demand model and a modified version of the City  
23 of Black Diamond's transportation model. The City of Maple Valley's representative  
24 Mr. Natarajan Janarthanan testified that because the PSRC model is regional in  
25 nature, the use of the PSRC regional model was inappropriate for the purposes of  
determining local impacts and mitigation due to the lack of local validation and the  
coarse structure of the model with regard to the size of transportation analysis zones.  
Exhibit 15, Janarthanan First Declaration, pages 10-13 and Exhibit 67, Janarthanan  
Second Declaration pages 1-2. Dr. Janarthanan noted the PSRC model was created to  
identify systems level impacts at freeways and major arterial networks and is more  
fully developed in some parts of the region than others. He stated the unmodified  
PSRC model does not contain a level of detail sufficient to be appropriate for  
measuring the local development impact of analysis for these projects. He further  
noted the PSRC model is not validated for use in this region. Exhibit 15, Janarthanan  
First Declaration, page 11. Mr. Perlic agreed Parametrix had not re-validated the  
model for use in this area Tr. at 1,582.

1 Dr. Janarthanan suggested the appropriate model to use would be the City of Maple  
2 Valley's model because it has been validated recently and contains fine grained  
3 information for the communities of Black Diamond, Covington, Kent, Maple Valley  
4 and Auburn. Exhibit 15, Janarthanan First Declaration pages 17, and 23-25. Mr.  
5 Perlic testified the City of Maple Valley model, being a local model, would not be  
6 sufficient to determine regional impacts. Mr. Perlic also noted the City of Maple  
7 Valley model would be inaccurate for trips going south to Enumclaw because of the  
8 gross assumptions about the external zones. Perlic Declaration page 16. Janarthanan  
9 testified that the PSRC and Black Diamond models together are not capable of  
10 accurately estimating the impact on Maple Valley. Exhibit 15, Janarthanan First  
11 Declaration page 17. Dr. Janarthanan also testified he would rather see the analysis  
12 use one single model to analyze all the impacts within the study area Tr. at 1,438.  
13 The PRSC model is superior for determining regional impacts and does provide high  
14 level impacts analysis data. The Maple Valley model provides a better picture of the  
15 very localized impacts of the projects.

16 8. In analyzing increases in traffic volume, Parametrix assumed a 1.5%  
17 growth rate in background traffic over the next 15 years, based on 5-10 years of  
18 traffic counts and predictions from the PSRC model. Tr. 1,494. Dr. Janarthanan  
19 testified that due to the expected length of build-out of the project and the variability  
20 of growth over a long time frame, they would have used land use models to estimate  
21 future growth rather than recent growth trends. Exhibit 15, Janarthanan First  
22 Declaration pages 9. Dr. Janarthanan testified that in the case when the future  
23 analysis year is more than five to six years beyond the current year, one should not  
24 simply use a historical annual growth rate to estimate the background growth. It  
25 would be advisable to use a travel demand model. Exhibit 15, Janarthanan First  
Declaration page 8. Dr. Janarthanan agreed that the model used by Parametrix would  
provide a conservative analysis with respect to total future traffic by overstating the  
need for future infrastructure improvements. However, by estimating a higher  
number of total trips, this method would also reduce the pro-rata contribution from  
the developments and would influence both the calculation of impacts and necessary  
mitigation measures with respect to the development. The calculation advocated by  
Dr. Janarthanan would result in higher contribution by the Applicant toward  
mitigation projects in Maple Valley Exhibit 15, Janarthanan First Declaration pages  
23-25.

26 9. The FEIS did not include a detailed analysis of potential queue lengths  
27 resulting from increased traffic. Mr. Tilghman testified that long queues at  
28 intersections posed a safety hazard from motorists coming upon an unexpected back-  
29 up due to queues and that queues from adjacent intersections overlapping might cause  
30 gridlock. Tr. at 594-600. Mr. Pazooki testified that WSDOT provided a standard  
31 request as part of the DEIS a queue analysis and an analysis of volume over capacity  
32 at individual intersection legs as part of an EIS. Tr. at 1,444-1,445. Mr. Perlic  
33 testified that queue analyses are more appropriately done at the project level, because  
34 the determination of whether there is a significant adverse impact analysis will occur

1 in conjunction with construction, rather than trying to guess what will happen 15  
2 years from now. A queue analyses at the project level will allow consideration of  
3 signal timing, actual volumes, intersection design, and will more accurately predict  
4 what the specific mitigation needs would be, such as whether a left turn lane is  
needed to be added, and the necessary length of that left turn lane. Tr. at 1,472-1,512.  
Mr. Pazooki stated WSDOT felt this information was needed now rather than later in  
the MPD process. Tr. at 1,447.

5 10. The FEIS did not address individual turning-movement failures at the  
6 various "legs" of each intersection. The FEIS concluded that all proposed  
7 alternatives would result in increased traffic volumes and delays, some resulting in  
8 failing levels of service. The Transportation Technical Report analyzed individual  
9 turning movements, but the FEIS itself only addressed failing intersections.  
10 Appellants assert that while concurrency regulations only require analysis of delay  
11 averages for the entire intersection, a full analysis should have been done addressing  
12 legs of each intersection to determine impacts of individual turning movements. Tr.  
at 1,443. Both Mr. Perlic and Mr. Tilghman testified that it is standard practice to  
analyze the entire intersection because mitigation is tied to failure of the whole  
intersection. Tr. at 1,030 and 1,527. Mr. Pazooki testified that WSDOT requested  
information about individual legs of intersections and that that information was a  
standard EIS item for inclusion. Tr. at 1,444-1,447.

13 11. The peak hour factor measures the variability of traffic flow within  
14 that particular hour. The peak hour factor is the total hour's volume divided by the  
15 peak 15-minute volume times four. The more aberrant any given 15-minute period is,  
16 the smaller that ratio becomes, indicating a greater intensity of traffic due to delays.  
17 The lower the peak hour factor, the lower the level of service rating. In urban and  
18 near-urban situations, peak-hour ratios are frequently about 0.85 to 0.94. A factor  
19 approaching 1.0 indicates either wide open traffic conditions with no delays and an  
20 absolutely uniform flow, or severe congestion where cars are unable to move. As  
21 volumes increase, the factor will have an ever greater influence and may result in a  
22 lowering of level of service rating. When transportation impacts are analyzed as part  
of an FEIS, an increased peak hour factor is applied to reflect build-out or increased  
traffic over a particular horizon period. According to Mr. Perlic's Declaration, a peak  
hour factor default value of 0.92 is reasonable when there are greater than 1,000  
vehicles expected to enter an intersection while a more conservative peak hour factor  
below 0.90 is likely to occur when entering volumes are lower than 1,000 vehicles.  
Perlic Declaration, Attachment C, page 49, and paragraph 3.

23 12. At dispute is the proper increased peak hour factor to apply.  
24 Parametrix applied a peak hour factor of 0.97, on the premise that 85% of the 39  
25 intersections addressed in the FEIS had peak hour factors of 0.92 or more, and an  
adjustment of 0.05 would be warranted to reflect the reality of additional congestion  
and volumes in traffic projected to occur in a 15- to 20-year period. Tr. pages 1,529-  
1,524. The Appellants argue that a peak hour factor of 0.97 is too high, and

1 artificially improves conditions, resulting in fewer failing intersections. Tr. pages  
2 584-587. The Highway Capacity Manual, on which the level of service procedures  
3 are based, recommends a fault value of 0.92. Perlic Declaration, Attachment C, page  
4 49. A recent National Cooperative Highway Research Program report that looked at  
5 a variety of analysis factors and determined that the 0.92 peak-hour factor is a  
6 reasonable assumption to make. Perlic Declaration, Attachment D, page 14. While  
7 Mr. Tilghman would not rule out ever using a peak hour factor of 0.97, he said it was  
8 extremely rare. Tr. 585-587.

9 13. The internal trip capture rate is a measure of the number of trips that  
10 would be generated by the project and stay within the project rather than access the  
11 roadway system. An example of this would be a resident who travels to work at an  
12 office site within the project. Mr. Perlic testified Parametrix had used the Institute of  
13 Traffic Engineers manual to determine internal capture. Perlic Declaration,  
14 Attachment C, page 7. He testified and Mr. Nolan of King County Tr. page 520-523,  
15 agreed this is the standard method for determining trip generation. In the City's  
16 comments to the DEIS, Maple Valley expressed concern that the internal trip capture  
17 rate would be too low and understate impacts from the project. Matt Nolan from  
18 King County testified the County was concerned the rate was overly optimistic and  
19 requested the analysis include studies of trip capture rates from recent, local master  
20 planned developments including Snoqualmie Ridge, Redmond Ridge, Issaquah  
21 Highlands and others. Tr. page 520-523.

22 14. The FEIS did not identify safety concerns as a probable significant  
23 adverse impact. Mr. Nolan testified King County was concerned about safety on the  
24 rural roads including Southeast Green Valley Road. Tr. 389. Mr. Nolan identified  
25 concerns including safety issues and issues related to the physical geometry of the  
roads, problems with site distances, and curves in the roads. Tr. 427. Mr. Nolan  
further testified that he was not aware of any piece of the Draft Environmental Impact  
Statement or the Final Environmental Impact Statement that specifically addresses  
potential safety issues related to the increased volumes on the rural unincorporated  
King County roads. Tr. 428.

Ms. Carrier introduced the Department of Transportation accident history detail  
report, showing reported collisions that occurred on Southeast Green Valley Road  
from Auburn/Black Diamond Road to State Route 169, January 1, 2001 through  
October 31, 2009 Exhibit IJ. Mr. Clifford introduced an updated version of the  
report, which includes details of all reported accidents in that area from 2001 through  
2009. Exhibit H22. The Department of Transportation accident history detail report  
included a period during 2008, during which traffic volumes increased substantially  
due to a detour resulting from a bridge closure. Ms. Carrier also raises additionally  
concerns regarding the failure of the FEIS to analyze an additional eastern outlet to  
SR-169 from the Villages. She stated that many of the proposed projects are not  
going to be funded, and that there will be no highway capacity improvements for a  
very long time on SR 169. Without these projects, the existing roads will simply not

1 be safe enough for increased travel, nor will they be able to maintain the necessary  
2 levels of service regarding traffic. Tr. pages 199 & 205.

3 Mr. Perlic testified that he would have expected the number of accidents to increase  
4 as traffic volumes increase in conjunction with the project. In spite of the increased  
5 traffic during that period, the number of accidents did not increase from the average  
6 for this nine-year reported period. Tr. pages 1,541-1,543.

7 Mr. Perlic stated that in his traffic analysis, he found no high incident intersections;  
8 the accidents in the study area were random and not tied to any particular hazards on  
9 the roads. Mr. Perlic noted while some of the safety impacts are mitigated by the  
10 improvements called for in the FEIS, the randomness of the accidents makes it  
11 difficult to predict and impose more specific mitigation that would decrease the risk.  
12 He further testified there is no known way to analyze safety impacts except to  
13 evaluate the particular configuration of a high-accident location. Tr. pages 1,541 -  
14 1,543.

15 15. The FEIS addressed levels of service and included a reasonable  
16 discussion of the impacts resulting from increased traffic volumes and decreased  
17 levels of service. The FEIS generally describes mitigation measures in general and in  
18 more extensive terms in the body and technical appendices. The Applicant has also  
19 proposed a monitoring plan and a mid-point review condition to analyze  
20 transportation impacts and ensure the mitigation measures are effective. The  
21 mitigation measures proposed by the FEIS did not discuss whether funding exists to  
22 implement the measures or whether such measures are feasible. Forty-six  
23 intersections were identified for review in the scoping process, an unprecedented  
24 number for a non-project FEIS. In accordance with standard practice and the City of  
25 Black Diamond code, entire intersections (rather than portions thereof) were studied  
at PM peak hours, to address the most congested time of day. When the levels of  
service become unacceptable, mitigation is identified to reduce delays and return to  
acceptable levels of service. Additional review and potential additional mitigation  
will be done in conjunction with specific projects. Appellants also argue that the  
FEIS analysis should have included a review of other times, such as morning  
commutes, in addition to the PM peak hour analysis. (Exhibit 211, Janarthanan Third  
Disclosure, page 10.) Mr. Perlic explained that it is customary to use the highest  
travel hour so mitigation is imposed for the worst-case traffic scenarios. Perlic  
Declaration, page 24. Dr. Janarthanan testified that a full disclosure of impacts would  
indicate failing intersections during the AM peak hour as well Exhibit 211,  
Janarthanan Third Disclosure, page 10.

The FEIS did not include an analysis or estimate of anticipated increases in travel  
times. The Appellants assert that the FEIS should have included a discussion of how  
the projects would impact travel times, arguing that such a discussion would be more  
meaningful to the decision-makers than LOS analyses. Tr. 594. Mr. Perlic testified

1 that travel time analyses are not typically provided in a programmatic FEIS.  
2 Tr. 2,467-2,468.

3 16. It is anticipated that traffic on the Green Valley Road will increase by  
4 as much as 300 - 400%. Tr. 476. Green Valley Road currently has very low traffic  
5 volumes, and the anticipated increase in traffic volumes resulting from the project  
6 will not exceed Green Valley Road's capacity. Testimony from Mr. Perlic indicated  
7 that intersections along Green Valley Road can handle the projected increase in  
8 traffic. Tr. 476-478. Green Valley Road has been designated under King County's  
9 Historic Heritage Corridor. It is a historical, aesthetic and recreational resource of the  
10 City. The anticipated increases in traffic on Green Valley Road will most likely  
11 impact the rural nature of the road. Tr. 388-389. SEPA's required environmental  
12 review must include aesthetics, recreation and historic preservation. See WAC 197-  
13 11-448(2)(b)(iv)-(vi). Testimony was also presented that bicyclists and pedestrians  
14 may also face safety hazards, especially on Green Valley Road. Tr. 466, 611. The  
15 FEIS does not address these impacts.

16 Green Valley Road also is a major concern of Ms. Carrier. She states that it has  
17 limited or no roadway shoulders, has trees and fences in very near proximity to the  
18 roadway, and very curvilinear alignment. Additionally, Green Valley Road has a  
19 high number of large animals that regularly cross the road, and increased traffic on  
20 the road creates a higher likelihood of accidents and also threatens the general  
21 livelihood of the animals in regards to safety and habitat. There is also a high volume  
22 of bicyclists on the road, as well as hikers, joggers, tubers, swimmers, outdoor  
23 groups, and fishermen using the shoulder, and only one-tenth of a mile of legal  
24 passing zone. Tr. 209-212. In addition to safety concerns on Green Valley Road, Ms.  
25 Carrier is also concerned about its historic and aesthetic qualities. It is a designated  
Heritage Corridor and goes back to 1884. There are also many historical homes and  
sites, as well as an agricultural district and farmland, which King County has  
designated as a significant area in need of protection. The farm areas have their own  
safety issues regarding farm equipment crossing the road. Additional traffic on the  
road will require mitigation factors that would disrupt the nature of the historic and  
agricultural areas to an irreversible degree. Tr. 213-215.

26 17. The City's Comprehensive Plan designates Railroad Avenue as a  
27 collector road, with a level designation of C, and whose purpose is to collect and  
28 distribute traffic between local roads and arterial system. Mr. Perlic testified that  
29 Railroad Avenue has sufficient capacity to handle projected increases in traffic. Tr.  
30 1,535-1,536. Railroad Avenue is part of the City's Old Town historic district overlay.  
31 The Comprehensive Plan policies state that the historical character "should be  
32 retained and enhanced, and this area should become the focus of tourist and  
33 specialized retail activities." (Black Diamond Comprehensive Plan, *Commercial and*  
34 *Mixed Use Development Policies* Old Town Mixed Use.) The Comprehensive Plan's  
35 objectives and policies look to "Maintain those historical qualities in the environment  
that bring value to the community." (Black Diamond Comprehensive Plan, 5.6.8.

1 Historic Preservation Objective, Policies and Concept Historic Preservation Objective  
2 and Policies, Objective LU-7). The Appellants are concerned that increased traffic  
3 will destroy the historical character of Railroad Avenue. Tr. 1,015-1,016. However,  
4 Mr. Perlic named several other roads in the area, such as the main roads through  
5 North Bend and Snoqualmie, with historical characteristics similar to Railroad  
6 Avenue that have been able to retain their rural character in spite of development and  
7 increases in traffic. Mr. Tilghman testified the specific section of Railroad Avenue is  
8 being reconfigured to have head-in parking and that under the City's design standards  
9 the volume for a collector assumes there is no parking lane. These are two very  
10 different scenarios here. Tr. 1,015. Mr. Tilghman also noted that despite the road's  
11 designation, it functions like a local access street due to the head-in parking and is  
12 therefore not functionally capable of safely handling the proposed project traffic. Tr.  
13 1,015-1,016.

14 18. Judith Carrier, one of the SEPA Appellants, has raised concerns that  
15 the FEIS did not adequately address and disclose the environmental impacts arising  
16 from the potential for increased traffic along Plass Road/257th Ave. SE. Tr. 201-222;  
17 2269-2276. Plass Road can serve as a bypass to traffic on SR 169 through a  
18 connection between SR 169 and Green Valley Road. John Perlic testified that there is  
19 no mention of Plass Road within the EIS. Tr. 2543. Mr. Perlic stated that it is  
20 possible that some small portion of traffic may reroute onto Plass Road in order to  
21 avoid increased traffic on surrounding roads, but that no studies have been done to  
22 look into the matter. Vol. VIII pgs. 2545-2546. Mr. Perlic states that he does not  
23 believe a reroute is likely due to the current state of Plass Road, which is just gravel  
24 in parts, has potholes, and can be travelled at only 20 miles per hour; whereas SR169  
25 is in much better condition, and although it may be more congested, the posted speed  
is 50 miles per hour. Tr. 2702 & 2707. Mr. Perlic points out that even if a small  
number of drivers do choose to use Plass Road as an alternative that will not result in  
a probable significant adverse impact. Tr. 2702. Finally, Mr. Perlic stated that a  
further reason Plass Road is not a feasible alternative route is due its absence from the  
Comprehensive Plan list for road improvements, which results in the road remaining  
in its current condition. Tr. 2737. On behalf of the Applicant, Nancy Rogers states  
that the Applicant has no intention of using Plass Road and would agree to vacate a  
portion of the road to assure no use if there is support from Plass Road residents, the  
City of Black Diamond and King County Applicant's Rebuttal to Additional Public  
Testimony, pg. 7; Applicants' Closing Brief in Support of EIS Adequacy, pg. 35.

19. The FEIS did not go into great detail with regards to Alternatives 3  
and 4; it merely noted the percentage increase posed by each alternative.

20. Jeff Dixon, Principle Planner, City of Auburn, testified that the  
analysis does not adequately depict mode split and does not characterize the impacts  
of development on the Auburn Regional Transit Station's parking garage or overflow  
parking onto adjacent city streets Exhibit 16.

1 **Conclusions of Law:**

2 1. Although many facets of the transportation analysis could have been  
3 better, the choices made by Parametrix are all within the parameters of reasonably  
4 justified professional judgment, especially given the substantial weight that must be  
5 given to the SEPA Responsible Official's determination that the analysis is adequate.  
6 The FEIS contains a reasonably thorough discussion of significant adverse  
7 transportation impacts of the proposed project at the programmatic level of analysis.  
8 However, the use of a regional model to project local traffic impacts, the divergence  
9 in the effect of modeling assumptions, along with concern related to the effect of the  
10 choice of models on potential impacts and mitigation will lead the Hearing Examiner  
11 to recommend additional mitigation measures in the MPD.

12 2. While the FEIS did not identify safety concerns as a probable  
13 significant adverse impact, the Appellants did not present evidence that these issues  
14 could be beneficially addressed at this programmatic level of review. It is reasonable  
15 to conclude that decision-makers would recognize that vehicle accidents will increase  
16 proportionately with increased traffic volumes.

17 3. It was not necessary that the FEIS discuss the anticipated increases in  
18 travel times resulting from increased traffic. The FEIS addressed levels of service  
19 and contained a reasonable discussion of the impacts resulting from increased traffic  
20 volumes and decreased levels of service. The LOS analysis is the more customary  
21 manner to address traffic issues. The Growth Management Act requires an LOS  
22 analysis to gauge the performance of local transportation systems. RCW  
23 36.70A.070(6)(a)(iii)(B). City and County elected officials deal with level of service  
24 on a regular basis in their review of planning documents required by the Growth  
25 Management Act and their review of land use applications. Mitigation is based on  
level of service; thus, a discussion of LOS is more meaningful than increased travel  
times. It is reasonable to conclude that decision-makers are familiar with LOS  
analysis; additional analysis of anticipated increases in travel time was not necessary.  
This information was sufficient to inform the City of the environmental impacts  
associated with making a reasoned decision regarding MPD approval and allow its  
officials to make reasoned decision.

26 4. Use of the PM peak hour analysis was sufficient to establish necessary  
mitigation for traffic increases. While Appellants would have the FEIS address other  
times, including AM peak hours, as Mr. Perlic testified it is customary to use the  
highest travel hour so mitigation is imposed for the worst-case traffic scenarios. The  
FEIS is not intended to be a compendium of every conceivable effect or alternative.  
The information presented was sufficient to enable the decision-makers to understand  
the effects of the traffic. Moreover, Appellants have not met their burden of showing  
evidence of an impact not addressed.

1           5.     Analysis of whole intersection failure was sufficient to establish  
2 necessary mitigation. The City's LOS standard for intersections applies to the whole  
3 intersection, and Mr. Perlic and Mr. Tilghman both testified that it is standard practice  
4 to analyze the entire intersection because mitigation is tied to failure of whole  
5 intersection. While Appellants would have the FEIS also examine the various legs of  
6 each intersection, such detail is inappropriate for the FEIS itself; this analysis is  
7 included in the Transportation Technical Report. Analysis of the LOS at intersections  
8 contained a reasonably thorough discussion of significant aspects of probable  
9 environmental consequences

10           6.     Green Valley Road contains aesthetic, recreational and historic  
11 elements that are not addressed in the FEIS. While Green Valley Road's  
12 designation under King County's Historic Heritage Corridor program has no  
13 regulatory significance, an environmental review under SEPA must include  
14 aesthetics, recreation and historic preservation. See WAC 197-11-448(2)(b)(iv)-(vi).  
15 King County's designation supports the conclusion that Green Valley Road is an  
16 aesthetic, recreational and historic resource. However, it is recognized that this is  
17 ultimately a subjective determination. As Mr. Perlic testified, analyzing impacts to  
18 "rural character" would be speculative and subjective. Consequently, it would not be  
19 reasonable to find the EIS inadequate on impacts that cannot be objectively assessed  
20 and could be subject to reasonable differences of interpretation. However, the  
21 Examiner will recommend added mitigation in MPD to control traffic on Green  
22 Valley Road, potentially including features such as traffic calming devices and  
23 bicycle lanes.

24           7.     Railroad Avenue is characterized in the City's Comprehensive Plan as  
25 a collector arterial. The Appellants raised issues regarding the ability of Railroad  
Avenue to safely carry the additional traffic due to the projects given its existing  
physical function as a head-in parking local access street. The Appellants suggested  
this road is misclassified giving the impression it can handle more traffic than it can.  
While there is concern regarding the safety, capacity and historical aspects of  
Railroad Avenue that are designated for preservation by the City's Comprehensive  
Plan, testimony indicated that the historic nature could be retained in spite of  
increased traffic impacts. Moreover, analyzing impacts to "rural character" would be  
speculative and subjective. The EIS is not responsible for potential errors in the  
City's roadway classification system. As labeled, Railroad Avenue is a collector  
arterial, a designation that suggests the road is able to carry a greater traffic capacity  
than is proposed from the projects. Appellants have not met their burden of showing  
evidence of an impact that could be addressed in the FEIS.

          8.     Although Mr. Perlic testified that it is unlikely that there will be much  
traffic generated on Plass Road by the MPD projects, it is very possible this could  
occur if congestion becomes a problem on SR 169. As noted in the Standard of  
Review section of this decision, an EIS is not required to address every conceivable  
impact of a project. The off-chance that SR 169 will become congested enough to

1 motivate drivers to use Plass Road to by-pass traffic probably falls under the "every  
2 conceivable" category and does not affect the adequacy of the EIS. However, Ms.  
3 Carrier and the Applicant have proposed some reasonable solutions to this problem in  
4 case Ms. Carrier's fears do materialize. For this reason, the Examiner will  
5 recommend some MPD conditions along the lines recommended by the Applicant  
6 and Ms. Carrier.

7  
8 9. While the FEIS gave short shrift to Alternatives 3 and 4, merely noting  
9 the percentage increase posed by each alternative, failure to go into more detail is not  
10 fatal to the validity of the FEIS. The SEPA Responsible Official made a  
11 determination that the FEIS adequate. The FEIS provided sufficient information to  
12 enable the decision-makers to making a reasoned choice among alternatives. The  
13 issues that Appellants claim should have been addressed in more detail with regard to  
14 each alternative, such as safety, hours of commute analyzed, character and travel  
15 times, are discussed elsewhere herein and were not necessary for the validity of the  
16 FEIS.

17  
18 10. It was not necessary that the FEIS address the feasibility of  
19 implementing mitigation measures. SEPA requires the FEIS to discuss reasonable  
20 mitigation measures that would significantly mitigate impacts and indicate what the  
21 intended environmental benefits of mitigation measures are for significant impacts.  
22 WAC 197-11-440. The FEIS *may* discuss the economic practicability of mitigation  
23 measures *if* there is concern about whether a mitigation measure is capable of being  
24 accomplished. *Id.* It *need not* analyze mitigation measures in detail unless they  
25 involve substantial changes to the proposal causing significant adverse impacts, and  
those measures will not be subsequently analyzed under SEPA. *Id.* In this case, the  
measures will be subsequently analyzed, and it would be premature to attempt to  
analyze the feasibility of implementation of mitigation measures at this juncture.  
Such an analysis is of limited use given the multitude of other factors that could derail  
the project. Cost-sharing arrangements may be addressed by development  
agreements entered into between the developer and City.

These issues are more appropriately addressed later as part of the review of the  
specific project pieces when the City has the permitting authority to condition the  
project on implementation of mitigation measures. If level of service impacts  
mandate mitigation, any development can only proceed if mitigation is actually  
implemented. While SEPA does not require the FEIS to discuss mitigation measures  
in detail in all instances, mitigation but must be reasonable and capable of being  
accomplished. If mitigation is determined to be unfeasible at the time the project will  
be built, then GMA concurrency will prevent the development from proceeding.  
Consequently, any feasibility analysis at this point would only speculate on whether  
the development will proceed to completion if approved.

11. It was not necessary for the FEIS to analyze queue lengths. Review of  
queue lengths is more appropriately done at the project level, rather than the

1 programmatic stage. Such analysis should be done when looking at specific  
2 improvements in the construction phase, so that determinations of significant adverse  
3 impacts can occur in conjunction with construction, rather than trying to guess what  
4 will happen 15 years from now. The FEIS contained a reasonably thorough  
5 discussion to inform the City of the environmental impacts of traffic while  
6 recognizing that more detailed information on environmental impacts will be  
7 available with subsequent project proposals. However, the Hearing Examiner will  
8 recommend additional conditions for this topic as part of the MPD.

9  
10 12. Application of the 0.97 peak hour factor does not make the FEIS  
11 inadequate. While there was testimony that a 0.92 peak hour factor is the accepted  
12 standard, applying that factor to an intersection already at 0.92 or higher would be  
13 appropriate. The City should have done an individual analysis of each intersection  
14 under consideration and applied a factor appropriate to that intersection. However,  
15 the analysis is still adequate since the 0.97 peak hour factor does not fall beyond the  
16 range of professional judgment and substantial deference must be given to the SEPA  
17 Responsible Official's determination that FEIS is adequate. Although the 0.97 PHF  
18 falls within the realm of adequacy, it was clearly not the most accurate assumption  
19 that could have been employed. The Hearing Examiner will recommend more  
20 accurate PHF use for the MPD conditions of approval.

21  
22 13. Parametrix's use of a 1.5% growth rate in background traffic based on  
23 recent growth trends was within the bounds of professional judgment. The  
24 background rate of growth is subject to change, and a straight line projection based on  
25 historical trends may under- or overstate total background traffic and therefore affect  
the calculated share of pro-rata project impacts. A high background growth is  
conservative with respect to total impacts in that it will increase apparent impacts and  
required mitigation. A higher rate is not conservative with respect to the project's  
pro-rata contribution to those impacts because higher background traffic figures  
would reduce the project's perceived pro-rata contribution to the impact and reduce  
the project's share of mitigation proportionately to the increase in background traffic  
assumptions. Although the Applicant's projections may not be the most accurate  
methodology, they are reasonable, within the bounds of professional judgment and  
suffice under the substantial weight standard. Appellants did not meet their burden of  
showing the calculation was erroneous or why the SEPA responsible official's  
judgment should be overruled. However, the Hearing Examiner will recommend  
additional conditions for this topic as part of the MPD.

14. As is evident from the findings above, the EIS traffic analysis is  
adequate but in several instances there are more accurate methodologies and  
assumptions available to ensure more complete mitigation. The Examiner will  
recommend conditions on the MPD that incorporate the better methodologies and  
assumptions.

1 **C. Faulty Audio Recording of DEIS Hearing**

2 **Findings of Fact:**

3 1. Page 3 of the Gauthier Appeal Statement, p. 5 of the Clifford Appeal  
4 Statement, p. 2 of the Wheeler Appeal Statement, and p. 2 of the Harp Appeal  
5 Statement all express concern over the poor audio recording of the hearing on the  
6 Draft EIS for both MPD projects.

7 2. A transcription of the audio recording identifies over 300 "inaudible"  
8 gaps in the recording. See Transcript attached to Harp Appeal Statement. The  
9 testimony from at least one individual is completely missing from the recording.

10 **Conclusions of Law:**

11 1. There is no legal requirement for the recording of a hearing on a Draft  
12 EIS.

13 2. Procedural errors occurring during the EIS process are reviewed under  
14 the rule of reason. Where such errors are not consequential, they must be dismissed  
15 as harmless. *Klickitat County Citizens Against Imported Waste v. Klickitat County*,  
16 122 Wn.2d 619, 637 (1993).

17 3. As noted in the Examiner's Order on Motions to Dismiss, Email Ex.  
18 300, p. 10-11, the gaps in the recording are relevant to a determination of adequacy if  
19 they reveal that significant impacts presented by the citizens were not considered in  
20 the FEIS. No evidence was presented that this occurred. The record fails to establish  
21 that the audio recording had any relevance to the adequacy of the FEIS.

22 **D. Schools**

23 **Findings of Fact:**

24 1. Page 12 of the Clifford Appeal Statement asserts that the FEIS  
25 inadequately addresses school impacts, including the impacts caused by the  
construction of new schools to serve the project.

2. Mr. Clifford has raised concerns that because of the schools' location  
outside of the UGA, certain impacts related to school construction were not  
accounted for in the FEIS. Namely, the FEIS did not account for the increase in  
traffic in rural King County and for the effects related to an increase in impervious  
surfaces on nearby wells and septic systems. Tr. at 13.

3. Mike Nelson, the Superintendent of the Enumclaw School District,  
testified that in August 2006, the Enumclaw School District began negotiations with

1 the City of Black Diamond and Yarrow Bay Development to develop a three-party  
2 Comprehensive School Mitigation Agreement. Tr. at 850-51.

3 4. According to the testimony of Mr. Nelson, the parties to the  
4 Comprehensive School Mitigation Agreement "firmed up" the location of the  
5 elementary and middle schools identified in Finding of Fact No. 1 in April 2009 and  
6 the location of the high school in late August or early September 2009. Tr. at 878-79.  
7 These sites were not made known to the public before October 8, 2009, and Mr.  
8 Nelson gave a PowerPoint presentation at a public meeting on October 26, 2009,  
9 describing the details of the Agreement. Tr. at 852.

10 5. Additional public meetings were held on November 5, 2009, and  
11 November 12, 2009, at which time, a map of the location of the schools was  
12 distributed to the public. The map distributed at these public meetings depicted four  
13 schools, one elementary, two middle, and one high school to be located outside of the  
14 UGA and Black Diamond City limits. Tr. at 853-54. A middle school and  
15 elementary school will be located south of the Villages development, directly north of  
16 SE Green Valley Road. In the testimony, this site was described as the "twin school  
17 site." Another middle school has been proposed to be located to the west of the  
18 Villages, and a high school has been proposed to be located north of the Villages near  
19 Lake Sawyer. Ex. GB-15.

20 6. The Comprehensive School Mitigation Agreement has not yet been  
21 signed by the respective parties and remains in draft form. Tr. at 527.

22 7. The "Summary of the Comprehensive School Mitigation Agreement,"  
23 contained in Appendix K of the FEIS, provides that Yarrow Bay shall convey  
24 property for school sites upon the occurrence of three events: (1) The District must  
25 secure construction financing; (2) Yarrow Bay must receive final plat approval for  
various stages of the development; and (3) Mr. Paul Reitenbach of the King County  
Department of Development and Environmental Services testified that the District  
would have to obtain a conditional use permit to locate the school in rural King  
County. See Tr. at 518. As Mr. Nelson stated, the schools will be owned and  
operated by the Enumclaw School District. Tr. at 889.

8. The Comprehensive School Mitigation Agreement contains provisions  
to locate the schools within the UGA and the City of Black Diamond in the event that  
King County denies conditional use permits for rural schools. Tr. at 890.

9. With respect to possible impacts on wells and septic systems, Mr. Gil  
Bortelson, a water chemist and a SEPA Appellant of this action (on Mr. Clifford's  
appeal team), testified that building the twin school sites south of the Villages along  
Green Valley Road would create a "high risk" of drying out approximately ten  
shallow wells serving neighboring residents in rural King County. Tr. at 137. In  
addition, Mr. Bortelson indicated that increased runoff from the school sites would

1 drain to the west, potentially flooding septic systems located in that area. Tr. at 144.  
2 Mr. Bortleson also expressed concern over the transport of sediments to Green River  
3 from the school sites. Mr. Bortleson has a Ph.D. in water chemistry. He has worked  
4 in the Water Resources Division of the US Geological Survey for 30 years, where he  
5 has developed extensive experience in analyzing impacts to lakes, estuaries, streams  
6 and groundwater.

7  
8 10. Mr. Bortleson did not review any site plan for the proposed school  
9 construction prior to giving his testimony and assumed that the entire twin school site,  
10 70 acres of land, would be paved or graded, creating 70 acres of new impervious  
11 surface. Tr. at 148.

12  
13 11. Mr. Bortleson was not able to give any testimony with respect to the  
14 quantity of water that currently infiltrates to the wells that would not infiltrate to the  
15 wells after the project. Tr. at 153. He also was not able to answer any question  
16 regarding the amount of surface water infiltration needed to sustain the operation of  
17 the at-risk wells. Tr. at 154.

18  
19 12. With respect to the potential traffic impacts created by locating schools  
20 outside of the UGA, Mr. John Perlic, a Parametrix employee who drafted the  
21 transportation sections of the FEIS, testified for the City of Black Diamond that the  
22 schools were considered to be located within the project sites for the traffic analysis.  
23 Tr. at 1580, 2540. On March 11 during cross-examination, Mr. Perlic stated that he  
24 did not have specific site locations for schools when he conducted his trip generation  
25 analysis: "We didn't have specific site locations, but we knew generally within upper  
Lawson versus lower Lawson or which part of the Villages but not specific sites." Tr.  
at 1579. On cross-examination on March 16, however, Mr. Perlic stated that he did  
have particular school locations in mind, at least for the high school, though he could  
not recall exactly where the location was. Tr. at 2535. Appendix B to the FEIS also  
does not indicate exactly where the schools were assumed to be located for purposes  
of traffic analysis. Mr. Perlic did indicate, however, that the high school was located  
in the main Villages property for purposes of the traffic study. Tr. at 2535.

13  
14 13. Mr. Perlic testified that locating the high school outside of the project  
15 site would not significantly change the traffic analysis if the same access road were to  
16 be used. Tr. at 2540-41. Mr. Perlic also stated that the location of the high school  
17 would generally only affect the AM Peak Hours analysis, which was conducted on a  
18 limited basis. AM Peak Hours analysis was conducted at only 6 intersections within  
19 the project area because traffic is heaviest during the PM Peak Hours. Tr. at 2541-42.

20  
21 14. Appendix B of the FEIS regarding transportation appears to only  
22 examine AM Peak calculations for a total of four schools: one elementary school  
23 with 800 students in Lawson Hills, one elementary school in the Villages with 1,500  
24 students, one middle school in the Villages with 550 students, and one high school in  
25 the Villages with 1,200 students. *See, e.g.*, TV FEIS Table 10 Appendix B; LH FEIS

1 Table 6 Appendix B. However, Susan Graham, also employed by Parametrix,  
2 indicated that at the time the DEIS and FEIS were drafted, it was known that the  
3 projects, if completed, would create the demand for a total of seven schools. Tr. at  
4 907. Ms. Graham also indicated that for purposes of the DEIS FEIS, Parametrix  
5 identified the need for seven school facilities, but did not address where those schools  
6 would be located. Tr. at 936.

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**Conclusions of Law:**

1. WAC 197-11-660(2) provides: "EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures: (a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and (b) Will not be analyzed in a subsequent environmental document prior to their implementation." (Emphasis added.) The new schools serve as mitigation by satisfying the demand for school facilities created by the MPDs. The testimony of Mr. Reitenbach clearly indicates that, in order for the schools to be built outside of the UGA, conditional use permits must be obtained from King County. Tr. at 518. A "subsequent environmental document," namely an environmental checklist or EIS, will be required under SEPA as part of the future process of obtaining such a permit. Accordingly, the environmental impacts of school construction in specific locations did not need to be analyzed in detail in the EIS.

2. WAC 197-11-660(2) only exempts the City from conducting a detailed analysis of the environmental impacts of schools. It still requires a general discussion. The FEIS comply with this requirement by identifying the level of service (LOS) standards for school facilities in the Enumclaw School District, calculating student generation caused by the development, identifying possible school mitigation fees to ensure that the availability of school facilities will not lag behind the demand for those facilities, and deferring to the City's MPD regulations (BDMC 18.98.080.A.14), which allow school impacts to be mitigated at the time of MPD approval by the City Council through a separate agreement. FEIS, pp. 3-80 through 3-85. Because the City's regulations allow such a procedure, the discussion of school impacts meets the standard of WAC 197-11-660(2), requiring a general discussion of environmental impacts of mitigation measures.

3. The Appellants argue that the failure to disclose and discuss the location of schools outside of the UGA equates to a failure to address the cumulative environmental impacts of the project. The SEPA Rules require that an EIS must analyze "cumulative impacts." WAC 197-11-060(4)(e); WAC 197-11-792(2)(c)(iii). A focus upon cumulative impacts early in the review process assures the most efficient design and use of infrastructure. A discussion of cumulative impacts is an appropriate part of the "general" discussion required for mitigation under WAC 197-11-660(2). While there is no definition of a "cumulative impact" in the SEPA Rules,

1 “cumulative impacts seem to be the combined effects of the proposal along with those  
2 of other actual or potential proposals.” Richard L. Settle, *The Washington State*  
3 *Environmental Policy Act: A Legal and Policy Analysis* § 14.01[1][c][iii] (21st ed.  
4 2009). Additional projects do not require review in an EIS for cumulative impacts if  
5 they are either substantially independent from the proposed action or are not  
6 necessary to meet the project's purpose and need. *Gebbers v. Okanogan County PUD*  
7 *No. 1*, 144 Wn. App. 371, 380, 183 P.3d 324 (2008).

8 Although the schools are clearly dependent upon the MPDs in the sense that they  
9 would probably not be built within the near future without them, they do have  
10 independent characteristics to the extent that environmental impacts do not build  
11 upon those of the MPD projects. An assessment of independence in this manner is  
12 consistent with the Settle conclusion that cumulative impacts are the “combined  
13 effects of the proposal” with other proposals. A focus upon impacts that build upon  
14 each other is also consistent with the goals of environmental review from a practical  
15 standpoint, since no benefits are lost by segmenting environmental review of impacts  
16 that are independent from each other.

17 a. The FEIS address the cumulative traffic impacts of the schools.  
18 According to Mr. Perlic's testimony, he assumed that all schools would be located  
19 within the project sites and inside the UGA for purposes of his traffic analysis, though  
20 the testimony is inconclusive with regard to whether Mr. Perlic conducted the traffic  
21 analysis with a particular site in mind, and if he did, where that site was located. Tr.  
22 at 1580, 2540. Nevertheless, Mr. Perlic calculated the trips that would be generated  
23 by school traffic and considered this when he evaluated the AM peak numbers at six  
24 different intersections within the project site. Tr. at 2535. The Appellants have not  
25 demonstrated that this analysis was deficient. Thus, if the schools are located within  
the UGA boundary, the FEIS adequately evaluated the cumulative traffic impacts that  
will be caused by school construction.

18 b. Even assuming that the schools will be located outside of the  
19 UGA boundary, which according to the testimony is not by any means certain, the  
20 Appellants have failed to sustain their burden of proving that the Applicants'  
21 discussion of cumulative impacts was inadequate. The record is devoid of evidence  
22 suggesting that aspects of the current MPD construction and planned road  
23 improvements will be rendered inadequate or that a waste of resources will occur if  
24 the planned infrastructure improvements are constructed without consideration of  
25 school impacts. Mr. Perlic stated that only AM peak traffic calculations could change  
if different access roads are used, specifically to access the high school. Tr. at 2541-  
42. However, appellants did not provide evidence suggesting which, if any, of Mr.  
Perlic's calculations would be rendered inadequate and how that may affect the  
proposed MPD construction and the associated planned road and intersection  
improvements.

1 c. The traffic impacts on rural King County are cumulative. As  
2 discussed in the traffic section of this decision, traffic generated by the MPDs will  
3 increase traffic on Green Valley Road by 300-400%. It was further found that these  
4 anticipated increases in traffic (presumably not including school traffic) will not  
5 exceed the capacity of the road, so no road improvements are anticipated as a result of  
6 the MPDs. It would have been useful to know if the additional traffic generated by  
7 the proposed schools would exceed the capacity of Green Valley Road and trigger  
8 improvements. However, the burden is on the SEPA Appellants to provide some  
9 evidence that traffic generated from the proposed schools could exceed capacity.  
10 Since no such evidence was provided, the Examiner must conclude that traffic added  
11 by the schools would not create a significant cumulative impact.

12 d. The impacts identified by Gil Bortelson, the Appellants' water  
13 chemist, are not cumulative because they are independent of the MPD development.  
14 The only impacts Mr. Bortelson identified are to wells and septic systems outside of  
15 the MPD site. These impacts can be effectively evaluated when a specific proposal  
16 for school construction is submitted for permit review.

17 4. The general discussion of impacts of mitigation measures required by  
18 WAC 197-11-660(2) is also qualified by the limitation that this discussion does not  
19 need to include impacts that are remote and speculative. WAC 197-11-060(4)(a);  
20 WAC 197-11-782.

21 a. The impacts of school construction are too remote and  
22 speculative to warrant detailed environmental review in the MPD EIS. First,  
23 testimony is conflicting with respect to whether the location of the schools outside of  
24 the UGA has actually been conclusively determined and when school construction  
25 will occur. The Comprehensive School Mitigation Agreement is still in draft form,  
and in fact provides for measures to locate the schools within the development site if  
King County denies the necessary conditional use permits. Tr. at 527, 890.  
Furthermore, it is unknown whether the population growth will warrant the school  
construction at issue, when final plat approval will be granted for multiple stages of  
development for Lawson Hills and the Villages, and whether the necessary funding  
will be secured. See "Summary of the Comprehensive School Mitigation  
Agreement," contained in Appendix K of the FEIS. As Mr. Nelson testified, these  
schools will not be owned and operated by Yarrow Bay. Tr. at 889. Thus, despite the  
fact that Mr. Nelson testified the school sites were "firmed up" by April and late  
August/early September of 2009, there are many conditions that have yet to occur  
before the schools will be built, which may take years.

26 b. The impacts identified by Mr. Bortelson were also speculative.  
27 Though Mr. Bortelson identified a "high risk" that surrounding wells would dry out  
28 as a result of the twin-site school construction, he was unable to identify the level of  
29 water necessary to sustain the wells and had assumed 100% impervious surface  
30 without any knowledge on the general design of schools. Tr. at 148, 154.

1           5.     With respect to sediment impacts to Green River testified by Mr.  
2 Bortleson, the record is unclear as to whether the sediment would create significant  
3 impact or that it would add to any other sediment generated by the MPDs. Given the  
4 substantial weight that must be given to the SEPA Responsible Official, the Examiner  
cannot find that sediment impacts would be cumulative or significant to qualify for  
the general discussion required of mitigation measures.

5 **E.     Wildlife**

6 **Findings of Fact:**

7           1.     Page 14 of the Clifford Appeal Statement, p. 15 of the Wheeler Appeal  
8 Statement and p. 11 of the Harp Appeal Statement all express concern over  
development impacts upon wildlife.

9           2.     Appellant Clifford has raised concerns that the FEIS were prepared  
10 without the benefit of site investigations and that they are superficial and erroneous.  
11 Tr. at 13-14.

12           3.     Appellants Wheeler, et. al., raised concerns that the FEIS fail to  
13 disclose elk herd impacts and do not provide adequate analysis on the effectiveness of  
proposed wildlife corridors. See Wheeler Post-Hearing Brief at 54.

14           4.     Appellants Wheeler offered the testimony of Bruce Richards, a Dept.  
15 of Fish and Wildlife (DFW) employee, as their expert on wildlife. Tr. at 46.

16           5.     Having assisted in preparing other EISs on wildlife in nearby regions  
17 and having a degree in biology, Appellant Clifford offered his own testimony as an  
expert on wildlife. Tr. at 164.

18           6.     Applicant offered the testimony of Jason Knight, a wildlife biologist  
19 with Wetland Resources, as its expert on wildlife. Tr. at 2406.

20           7.     According to the testimony of DFW employee Richards, there are elk  
21 groups at both the Villages and Lawson Hills sites. Being residential elk groups, they  
22 do not migrate in and out of this region. Mr. Richards thought that the FEIS were  
23 well written, professionally done and contained a lot of information, but he also  
24 thought it did not speak to what was going to happen as a result of the projects. He  
25 felt that the FEIS lacked effort in translating loss of habitat to impact on wildlife. He  
was adamant that any development, regardless of size, permanently impacts wildlife.  
Mr. Richards also opined that there was no way to mitigate those impacts. He did not  
feel that protecting a portion of the land that already serves as habitat was mitigation.  
He added that the corridors proposed already serves as elk habitat. He noted that elk  
are listed by the state as game species. He also noted that with habitat's landscape

1 changes, there is always the possibility that protected species, like a bald eagle, will  
2 take up residence. He felt that the EIS were deficient because they do not mention  
3 which species will survive and which will be lost despite mitigation and open spaces.  
4 He opined that elk would disburse into different areas as a result of development. He  
5 noted that band tailed pigeons migrate past the area in late summer, but neither they  
6 nor bald eagles nest at the subject sites. He also noted that there is the possibility of  
7 elk tearing down fences, invading yards and causing property damage. He added that  
8 bears do not move as a result of development and will be a problem to deal with, as  
9 will mountain lions. Finally, he noted that the EIS correctly addressed the impact of  
10 development on wildlife, which was that detrimental impact will occur. Tr. at 46-68.

11 8. According to the testimony of Mr. Clifford, band tailed pigeons do  
12 nest in the area if one looks closely during mating season. He noted that there are a  
13 lot more species on the subject sites than those considered in the EIS. He opined that  
14 no survey was conducted for the EIS and the species listed were based on habitat  
15 wildlife profile prepared by other organizations like the DFW. He was adamant that  
16 thorough site survey should be required for an EIS. He concluded that the EIS is  
17 superficial and does not address each site specifically. Tr. at 164-191.

18 9. According to testimony of Knight, about thirty days of site  
19 investigations were conducted in 2005, 2007 and 2008 for the EIS. He noted that the  
20 FEIS text contains a summary of species and that the FEIS appendix contains a  
21 detailed list of all species. He also noted that band tailed pigeons need mineral  
22 springs at their breeding site, which are not found at the subject sites. He added that  
23 no endangered or threatened species were found at the sites, which is also consistent  
24 with the findings by the DFW. He opined that development may benefit elk  
25 population because elk feed on landscape that is more likely to be present as a result  
of development. He also thought the contiguous corridors would provide adequate  
passage for wildlife. He noted that the corridors were sufficiently wide and met state  
guidelines. According to him, the EIS describes the impact of development on elk,  
discusses the impact of development on wildlife and proposes mitigation in the form  
of contiguous wildlife habitat corridors, road design, landscaping and open space.  
Finally, he added that the wildlife section of the EIS was prepared and based on  
findings from site investigations, records from DFW, PHS maps and knowledge  
acquired from similar sites in the region. Tr. at 2406-66.

10. In order to determine the types of wildlife and habitat present on the  
sites, a resource study was conducted, which involved multiple site investigations  
throughout several different months and years, in addition to research of records and  
documents from DFW and other agencies. Tr. at 178-180 and 2407.

11. Though a detailed catalog of species was prepared for the FEIS, the  
sites were not found to be habitat for any threatened, endangered or sensitive species  
of wildlife. Tr. at 60-61 and 2410-11.

1 12. The Davidson family put together a detailed journal spanning several  
2 years (since 2001) of their observations of wildlife around their home, see Exhibit H-  
3 6. Some of the wildlife they observed is not identified by the Applicant's consultant.  
4 However, the Davidson observations do not establish that any threatened, endangered  
5 or sensitive wildlife species nests or resides in the project area.

6 13. Appellants failed to prove that any threatened, endangered, or sensitive  
7 wildlife species are present at the sites. While the band tailed pigeons may be found  
8 during their migration, evidence presented support the findings that they do not  
9 inhabit or nest at the sites. Tr. at 60-61 and 2410-11.

10 14. The FEIS contains discussions of elk and other wildlife that is present  
11 at the sites, the probable impacts of the projects, and offers mitigation (primarily  
12 through the Sensitive Areas Ordinance) in the form of wildlife corridors and wetland  
13 and river buffers to lessen the impacts. It also acknowledges that certain detrimental  
14 impacts as a result of development are inevitable. See FEIS at 4-69 through 79.

15 15. The width of the wildlife corridors will be between 300 and 900 feet.  
16 The King County's network biologist's minimum recommended width for wildlife  
17 corridor is 150 feet. The width is wide enough for wildlife to traverse through the  
18 corridors even in places where natural barriers such as flooded wetlands are located.  
19 Tr. at 2410-16 and 2454.

20 16. Even though the FEIS may have left out certain species, it is clear that  
21 those that are threatened, endangered or sensitive were considered. As noted above,  
22 the FEIS also contains discussion on impacts on elks by the projects and proposed  
23 corridors and open space. Tr. at 2410-16.

24 17. Contrary to Appellants' claims, extensive site visits were conducted  
25 for the FEIS. The Applicant also utilized records from DFW, PHS maps and  
knowledge acquired from similar sites in the region. Tr. at 178-180 and 2407.

#### 26 Conclusions of Law Regarding Wildlife:

27 1. The FEIS, for both the Villages and Lawson Hills, contain a  
28 reasonably thorough discussion of probable significant adverse impacts on wildlife as  
29 a result of the proposed projects as required under SEPA's "rule of reason." Even  
30 though the FEIS may have left out certain species, it is clear that those that are  
31 threatened, endangered or sensitive were considered. As noted in the findings of fact,  
32 the FEIS also contains discussion on impacts on elk by the projects and of proposed  
33 corridors and open space. Although Appellants would have preferred these  
34 discussions to be more extensive, SEPA does not require every conceivable impact or  
35 alternative to be considered. *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860 P.2d 390 (1993).

1 2. As noted in the findings of fact, wildlife inhabiting the sites was  
2 cataloged, and impacts on them and proposed mitigation measures were disclosed and  
3 discussed sufficiently in the FEIS to aid the decision maker. The projects' impacts on  
4 species not present on the sites may be considered "remote" and "speculative," and  
5 therefore the FEIS was not required to address them in order to be adequate. *Klickitat  
6 County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860  
7 P.2d 390 (1993).

8 3. Appellants failed to prove that the FEIS was inadequately prepared.  
9 The Applicant established that site investigations, records from DFW, PHS maps and  
10 knowledge acquired from similar sites in the region, were all utilized in preparing the  
11 EIS, which is consistent with requirements of "rule of reason" for preparing an EIS.

12 4. The width of the wildlife corridors is adequate because it is at least  
13 double the minimum recommended by the King County's network biologist and  
14 provides sufficient space for wildlife to travel around spots where natural barriers  
15 such as wetlands are present. The FEIS contains a reasonably thorough discussion of  
16 wildlife corridors, including their design and impacts, to assist the City Council in the  
17 decision making process and therefore is adequate under the "rule of reason."

18 5. Appellants failed to prove that impact on wildlife as a result of the  
19 projects was not reasonably disclosed, discussed, and substantiated by the FEIS. The  
20 FEIS recognizes that there will be an inevitable loss of wildlife habitat as the result of  
21 development of the Master Plan and the FEIS recommends mitigation measures  
22 which address the creation/preservation of open space and contiguous wildlife  
23 corridors. The discussion, disclosure, and documentation of wildlife impacts in the  
24 FEIS are reasonable and adequate. The FEIS is therefore adequate on wildlife  
25 impacts.

#### 17 F. Responses to DEIS Comments

##### 18 Findings of Fact:

19 1. In his closing brief, Mr. Bricklin asserts that the FEIS did not  
20 adequately respond to comments made on the DEIS. *See Bricklin Post-Hearing Brief*,  
21 p. 61-66. In this discussion, Mr. Bricklin summarizes numerous letters, including  
22 some addressing issues that were not included in the Appeal Statements of the SEPA  
23 appellants, most notably sewer.

24 2. The adequacy of FEIS response to DEIS comments were not included  
25 in any of the SEPA appellant appeal statements.

3. There is nothing in the record to suggest that the City failed to address  
DEIS comment letters that raised significant adverse environmental impacts that were  
not adequately addressed in the FEIS. One notable exception is the Maple Valley

1 DEIS comment letter, p. 248-251, Appendix R, FEIS. Maple Valley did raise the  
2 issue of using the PRSC model for local traffic. The adequacy of the PRSC model  
3 was highlighted as one of the deficiencies of the FEIS in the Examiner's analysis of  
4 traffic, supra.

5 **Conclusions of Law:**

6 1. BDMC 18.08.210(G) provides that "no new substantive appeal issues  
7 may be raised or submitted after the close of the time period for filing of the original  
8 appeal." Consequently, the failure to respond to DEIS comments on its own is not  
9 within the scope of the appeals of this decision.

10 2. Although the inadequacy of FEIS response is not sufficient on its own  
11 to qualify for review, it can be a factor if related to an appeal issue that has been  
12 timely presented. Procedural errors occurring during the FEIS process are reviewed  
13 under the rule of reason. Where such errors are not consequential, they must be  
14 dismissed as harmless. *Klickitat County Citizens Against Imported Waste v. Klickitat*  
15 *County*, 122 Wn.2d 619, 637 (1993). An inadequate FEIS response could be  
16 consequential if it reveals a failure to address a significant environmental impact that  
17 is within the scope of a properly filed appeal. A permitting agency can find itself in a  
18 much more difficult position to argue a reasonably thorough discussion if it is given  
19 notice of a significant impact through a DEIS comment and still fails to address it.  
20 During the course of this appeal the SEPA Appellants have raised the adequacy of  
21 FEIS responses related to issues that they have properly appealed, such as  
22 transportation and Lake Sawyer water quality. See Bricklin Post-Hearing Brief, p.  
23 61-62. Except for the Maple Valley comment identified in Finding of Fact No. 3,  
24 nothing in the record establishes that the DEIS comments on properly appealed issues  
25 were inadequately addressed in the EIS.

3. The failure of the City to use a more localized model after hearing  
from Maple Valley on this issue certainly detracts from the reasonableness of its  
discussion, but not enough to render it inadequate. Black Diamond did, in fact, use a  
local model for internal traffic. Further, its transportation engineer was highly  
qualified, worked for the City instead of the applicant and had good reason to use the  
PSRC model, i.e., its accuracy in regard to regional travel.

**G. Missing Technical Appendices**

**Findings of Fact:**

1. In his post-hearing brief, Mr. Bricklin asserts that technical appendices  
were missing and not made available to the public. During the hearing it was readily  
apparent that appendices were still missing, most notably diagrams in the LH FEIS  
Appendix D Associated Earth Sciences technical report. In his post-hearing brief Mr.  
Bricklin asserts that "Triad" reports were also missing, but he did not identify in

1 which appendix that report should have been located so the Examiner was unable to  
2 verify that fact.

3 **Conclusion of Law:**

4 1. Under the Rule of Reason the missing appendices would be a problem  
5 if their absence deprived the EIS of a reasonably thorough discussion of significant  
6 adverse environmental impacts. There is nothing in the record to suggest that the  
7 missing appendices materially affected the analysis of the EIS.

8 **H. Joint Review and Cumulative Impacts**

9 **Findings of Fact:**

10 1. In their appeal statements Clifford, Gauthier and Wheeler assert that  
11 the Villages and Lawson Hills MPDs should have been reviewed together. They also  
12 assert that the impacts of other projects in the area should have been considered.

13 2. The Villages EIS and the Lawson Hills EIS contain a significant  
14 amount of cumulative impact review regarding joint impacts. Many of the impacts  
15 are assessed jointly from both projects, such as traffic, stormwater, air quality, water,  
16 sewer and schools. See FEIS Appendices; LH FEIS Chapter 5.

17 3. In its post-hearing brief the Applicant asserts that the Villages and the  
18 Lawson Hills MPD projects are independent from each other – that one could be built  
19 without the other. See Applicant Closing Brief, p. 7-10. There is no evidence to the  
20 contrary in the record. The Examiner finds that the MPDs can be built independently  
21 of each other.

22 4. Although the projects can be built independently of each other, their  
23 joint development is reasonably foreseeable and is not remote or speculative. The  
24 MPDs are under simultaneous permit review and have the same development time  
25 frame, completion by 2025. The public hearings for each project are almost  
indistinguishable. The Applicant has also taken advantage of the efficiencies of joint  
mitigation by basing mitigation upon joint impacts upon capital facilities such as  
schools and roads. Impacts upon the water quality of Lake Sawyer are also assessed  
jointly from both projects<sup>11</sup>.

**Conclusions of Law:**

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<sup>11</sup> The Applicant is not being "punished" for being proactive enough to consider joint impacts and mitigation. For the most part, the joint analysis and mitigation prepared by the Applicant is in the Applicant's interest. Both the Applicant and the public benefit from the cost savings involved in this joint review. The Applicant's self interest in joint mitigation and analysis substantiates the interdependence of the projects and the need for cumulative review.

1 1. WAC 197-11-060(3)(a) and -060(3)(b)(i) provide that development  
2 projects must be reviewed together under SEPA when they are "related to each other  
3 closely enough to be, in effect, a single course of action," which means the projects  
4 either (i) "cannot or will not proceed" unless the other projects "are implemented  
5 simultaneously with them" or (ii) the projects are "interdependent parts of a larger  
6 proposal that depend on the larger proposal as their justification or for their  
7 implementation." Since the MPDs can be built independently of each other, they can  
8 be subject to separate environmental review. Although joint mitigation is involved,  
9 this mitigation can be "paired down" should only one project proceed to completion.

6 2. An EIS must address cumulative impacts. WAC 197-11-060(4)(d)-(e).  
7 The scope of SEPA review includes "cumulative harm that results from its [the  
8 project's] contribution to existing adverse conditions or uses in the affected area."  
9 *Narrowsview Preservation Assn. v. City of Tacoma*, 84 Wn.2d 416, 423 (1974).  
10 Cumulative impacts apparently include the impacts of the proposal along with the  
11 impacts of other actual or potential projects. Settle, *The Washington State  
12 Environmental Policy Act: A Legal and Policy Analysis*, Section 14.01(2)(a).  
13 Additional projects do not require review in an EIS for cumulative impacts if they are  
14 either substantially independent from the proposed action or are not necessary to meet  
15 the project's purpose and need. *Gebbers v. Okanogan County Public Utility District  
16 No. 1*, 144 Wn. App. 371, 380 (2008). The National Environmental Policy Act,  
17 which can be used to help interpret SEPA issues, define a "cumulative impact" as  
18 "the impact from the environment which results from the incremental impact of the  
19 action when added to past, present and reasonably foreseeable future actions." *Id.*

15 3. The EIS must address cumulative impacts since the projects are  
16 reasonably foreseeable and take advantage of joint mitigation and environmental  
17 analysis. Cumulative analysis for the MPDs should be limited to areas of  
18 "cumulative harm" as identified in the *Narrowsview* decision, *infra*. As noted in  
19 Finding of Fact No. 2, the FEIS do address a wide range of cumulative impacts.  
20 There is nothing in the record to suggest that any area of cumulative harm is missing  
21 from this analysis. The Examiner concludes that the EIS adequately addresses  
22 cumulative impacts between the two MPDs.

20 4. The record does not establish any degree of dependence necessary for  
21 cumulative review of impacts.

## 22 I. Reliance Upon Technical Appendices

### 23 Findings of Fact:

24 1. The SEPA Appellants have raised the issue of over-reliance upon  
25 technical appendices on several occasions. *See, e.g.*, Bricklin Post-Hearing Brief, pp.  
6-8. This issue was not specifically raised in any of the SEPA appeal statements, but

1 is sufficiently linked to the adequacy of issues that were raised in the SEPA appeal  
2 statements, such as traffic and Lake Sawyer water quality.

3 2. The FEIS overall do a fairly good job in summarizing significant  
4 impacts in the main text of the document. For example, on traffic the FEIS identify  
5 all intersections that will fail to meet LOS under the different EIS alternatives. LOS  
6 is a commonly used measure of transportation performance for City and County  
7 decision makers and is used in the City's comprehensive plan to measure adequacy of  
8 transportation facilities. The FEIS sections on noise identify the maximum noise  
9 levels that will be reached through construction and build-out. The sections on water  
10 and sewer identify the demand that will be created by the MPDs and capital  
11 improvements needed to meet this demand. The section on stormwater identifies the  
12 regional facilities that will be needed for stormwater treatment and detention. The  
13 SEPA appellants have shown that the EIS does fail to disclose significant impacts in a  
14 couple of areas. As discussed for Lake Sawyer impacts, the most egregious lack of  
15 disclosure in the EIS concerns the potential impacts on Lake Sawyer water quality.  
16 The noise assessment doesn't identify the duration of noise impacts, which should be  
17 a key consideration in assessing the reasonableness of any noise mitigation. Overall,  
18 however, the FEIS disclose the most significant and vital information regarding  
19 environmental impacts and alternatives.

#### 12 **Conclusions of Law:**

13 1. WAC 197-11-425(1) requires that an EIS shall be readable and allow  
14 the reader to understand the most significant and vital information concerning the  
15 proposed action, alternatives and impacts "without turning to other documents."  
16 WAC 197-11-425(5) provides that if the lead agency determines that additional  
17 descriptive material or supporting documentation may be useful, it may place this  
18 "background" information in appendices or separate documents. Given the interplay  
19 of WAC 197-11-425(1) and WAC 197-11-425(5), the Examiner concludes that  
20 "vital" information regarding impacts and alternatives must be placed in the body of  
21 an EIS and not in its appendices. As determined in Finding of Fact No. 2, overall the  
22 EIS meets this standard.

#### 20 **J. King County Comprehensive Plan**

##### 21 **Findings of Fact:**

22 1. The Clifford Appeal Statement at page 8 asserts that the MPDs fail to  
23 comply with the King County Comprehensive Plan and the Growth Management Act  
24 ("GMA"). The Wheeler Appeal statement, in an assessment of wildlife impacts at p.  
25 16, asserts that the project will exceed the growth targets in the "comprehensive plan"  
(whether the King County or Black Diamond comprehensive plan is not specified).

2. Testimony was provided during the hearing that the project would  
exceed King County growth targets. There was no evidence presented that any

1 inconsistencies with King County Comprehensive Plan Policies or GMA revealed  
2 significant adverse environmental impacts.

3 **Conclusion of Law:**

4 1. In the "Order on Motions to Dismiss," Ex. 300, p. 2-3, the Examiner  
5 ruled that compliance with the King County Comprehensive Plan and the Growth  
6 Management Act could be considered in the EIS appeals to the extent that these  
7 inconsistencies revealed significant adverse environmental impacts. Since no such  
8 evidence was presented, the inconsistencies are not germane to the SEPA appeals.

9 **K. Landslide Hazard**

10 **Findings of Fact:**

11 1. Page 14 of the Clifford Appeal asserts that the EIS fails to adequately  
12 address landslide hazards for both MPDs.

13 2. There was no evidence presented on landslide hazards other than  
14 photographs of landslides. Most, if not all, of these photographs depict landslides in  
15 or near the Villages MPD.

16 3. There was no evidence presented on whether the City of Black  
17 Diamond's Sensitive Areas Ordinance is inadequate to address landslide hazards.

18 4. The LH FEIS identifies landslide hazard areas and notes that relatively  
19 small areas that are hazard areas are located in open spaces. See LH FEIS p. 4-11 to  
20 4-12. The LH FEIS also references the Sensitive Areas Ordinance and its mitigation  
21 requirements. *Id.* Appendix D to the LH FEIS references a detailed landslide  
22 analysis in a "2008 Golder Memo," but the memo itself does not appear to be  
23 included in the appendix<sup>12</sup>. See LH FEIS, Appendix D, 2/6/09 Icicle Creek Memo, p.  
24 4, 5 and 9. There was no evidence presented to show this analysis was inadequate,  
25 even with the absent 2008 Golder Memo.

**Conclusion of Law:**

1. Under the Rule of Reason, the LH FEIS provides a reasonably  
thorough discussion of development impacts, mitigation and alternatives regarding  
landslide hazards.

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<sup>12</sup> The on-line appendix did not include the 2008 Golder memo and the disc supplied to the Examiner  
also did not contain the memo, although several documents in appendix D were damaged and could  
not be accessed from the disc.

1 L. Mine Hazard

2 Findings of Fact:

3 1. Pages 13-14 of the Clifford Appeal, p. 16, of the Wheeler Appeal  
4 Statement and p. 6 of the Gauthier Appeal assert that the EIS fails to adequately  
5 address mine hazards. It should be noted that the Clifford Appeal is primarily  
6 concerned with the dumping of toxic waste at mine sites.

7 2. There was no evidence presented on mine hazards by the SEPA  
8 Appellants or any evidence in the record to suggest that the EIS was inadequate on its  
9 analysis of mine hazards, including toxic waste issues at mine sites. Several people  
10 testified about mine hazard issues during the MPD portion of the hearing, but there  
11 was no evaluation provided of the adequacy of the EIS on this issue.

12 3. There was no evidence presented on whether the City of Black  
13 Diamond's Sensitive Areas Ordinance is inadequate to address mine hazards.

14 4. The LH FEIS identifies mine hazard areas. LH FEIS 4-14 through 4-  
15 17. The Lawson Hills project area includes low, moderate and severe mine hazard  
16 areas. The Applicant proposes development in all three categories of mine hazard  
17 areas, including severe. Mine hazards were subject to a detailed geotechnical study  
18 issued on June 2005 by Golder Associates, which was updated by a supplemental  
19 technical report in 2009 prepared by Icicle Creek Engineers. See LH FEIS, Appendix  
20 D. These studies generally identify the location of mine hazard areas and  
21 recommended mitigation to safely construct within them. *Id.*

22 5. The LH FEIS states that the Applicant proposes development within  
23 severe mine hazard areas but does not identify what this development will include.  
24 LH FEIS 4-17. However, recommended mitigation limits development to roads and  
25 utilities. LH FEIS 6-13. The LH FEIS also states that the majority of severe mine  
hazard areas will be located within open space. LH FEIS 4-17. The LH FEIS  
identifies that of the four FEIS alternatives, only the Applicant's proposal  
(Alternative 2) would involve development in a severe mine hazard area. *Id.*

6. The LH FEIS identifies the hazards of constructing within mine  
hazards, i.e., sinkholes and sags. LH FEIS 4-15.

7. The LH FEIS identifies that further assessment of mine hazards is  
"very expensive," risky (drilling can apparently destabilize mines), and is to a certain  
extent speculative.

1 **Conclusion of Law:**

2 1. Chapter 19.10 of the City's Sensitive Areas Ordinance ("SAO")  
3 requires comprehensive assessment and mitigation of mine hazards for development.  
4 At the time of development permit review, the SAO will ensure that mine hazard  
5 risks are adequately assessed and mitigated. Since the majority of the severe mining  
6 hazard areas will be located in open space areas, the deferral of more in-depth  
7 analysis to the development stage of review will not deprive the decision-makers of  
8 information necessary for a reasoned choice amongst alternatives at this stage of  
9 review. It is reasonable to defer further assessment given the high costs of mine  
10 hazard assessment; the somewhat speculative nature of the assessment, and the fact  
11 that the FEIS provides a "worst case" assessment by discussing the consequences of  
12 building within mine hazard areas. *See, also*, WAC 197-11-080(3).

13 2. The LH FEIS should have identified what development is proposed  
14 within severe mine hazard areas in its discussion of mine hazards. This information  
15 could have been of significant use in assessing the EIS alternatives as well as  
16 determining whether project modifications were in order to avoid development within  
17 severe mine hazard areas.

18 3. The failure to provide more detail on development plans within severe  
19 mining hazard areas does not render the LH FEIS inadequate. The SAO will  
20 ultimately provide adequate protection against mine hazards. The development  
21 proposed within the high mining hazard will be apparently (due to the recommended  
22 mitigation) limited to road and utilities, which is a preferred use in the SAO. *See*,  
23 BDMC 19.10.430 (D)(2)(b)(ii).

24 **M. Health Services**

25 **Findings of Fact:**

1. Appellant Chris Clifford has raised concerns in his appeal that Black  
Diamond has been identified by King County Public Hospital District #1 as an  
"underserved" area for health care. Clifford Appeal, p. 13. Specifically, Mr. Clifford  
has alleged that the FEIS documents fail to indicate where or how emergency and  
regular medical needs would be met for the over 8,000 new potential residents.  
Clifford Appeal, p. 13.

2. The FEIS locate medical facilities on the map in Exhibit 3-39.

3. The FEIS indicate at page 3-89 that existing medical facilities serving  
Black Diamond are three hospital/medical care facilities operate near the City of  
Black Diamond, including Enumclaw Community Hospital in Enumclaw, Valley  
Medical Center in Renton, and Auburn General Hospital in Auburn. Advanced Life  
Support services are provided by King County Medic and are funded through a

1 separate county-wide tax assessment. In addition, emergency medical care is  
2 provided by Mountain View Fire and Rescue (also known as King County Fire  
District No. 44).

3 4. The FEIS do provide an analysis of how the proposed MPDs will  
4 affect the LOS for fire protection and emergency medical services and also provide  
5 that new development and increased population will enlarge the service area for  
6 providers, possibly requiring updated facilities as well as increases in staff and  
7 infrastructure to provide services. FEIS, pp. 3-89 - 3-91.

8 5. There was no additional testimony or evidence presented on health  
9 services other than the assertion in the Clifford Appeal that the FEIS was inadequate  
10 with respect to health services.

#### 11 **Conclusions of Law:**

12 1. The FEISs adequately discuss existing medical facilities and the  
13 impacts of the MPD development on the availability of medical facilities, stating that  
14 additional fire fighters or volunteer EMTs will be required and that updated facilities  
15 as well as increased staff and infrastructure may be required for other medical  
16 facilities. Lawson Hills FEIS and the Villages FEIS, p. 3-90 - 3-91.

#### 17 **N. Historic and Cultural Resources**

##### 18 **Findings of Fact:**

19 1. Page 12 of the Clifford Appeal Statement asserts impacts to historic  
20 and cultural resources, specifically a collapsed mine site that still contains the remains  
21 of some miners and the potential for some Native American archaeological sites.

22 2. The SEPA Appellants did not pursue these claims during the hearing  
23 beyond traffic impacts to historic downtown areas, dealt with elsewhere in this  
24 decision. There is no evidence in the record to establish that the development project  
25 would create any significant adverse impacts in relation to cultural and historic  
resources.

#### 26 **O. Open Space and Recreation**

27 Page 85 of the Applicant's Post Hearing Brief asserts that the Wheeler Appeal  
28 Statement addresses parks and recreation, focusing upon development plans for the  
29 Lake Sawyer Park. The Examiner finds no mention of these impacts in the Wheeler  
30 Appeal Statement or in any other appeal statement. Consequently this issue is outside  
31 the scope of the SEPA appeals. The Wheeler Appeal Statement does broadly  
32 reference open space preservation in the webpage quote at page 9 of the statement.  
33 However, even if this were sufficient to raise an appeal issue, there is no evidence in

1 the record to show that impacts upon parks and open space have been inadequately  
2 addressed.

3 **P. Greenhouse Gases**

4 **Findings of Fact:**

5 1. Page 13 of the Wheeler Statement of Appeal raises the issue of EIS  
6 adequacy on greenhouse gases.

7 2. Vehicle emissions are a significant source of greenhouse gases. TV  
8 FEIS Appendix Q, "Air Quality", p. 10. The EIS estimates the volume of vehicle  
9 emissions by using the average number of vehicle miles per day in Washington State  
10 per person. TV FEIS, Appendix Q, "SEPA GHG Emissions Worksheet", p. 10. The  
11 SEPA Appellants argue that this state-wide average grossly understates the average  
12 mileage of MPD residents because the MPDs are far from employment and  
13 commercial centers. Bricklin Post Hearing Brief, p. 58-60. However, as noted by  
14 the Applicant, use of the state wide average is required by King County for  
15 assessment of green house gases in King County unincorporated areas. Applicant  
16 Closing Brief, p. 77-78. It is also not necessarily intuitive that average daily trips for  
17 Black Diamond residents would be significantly higher than the state-wide average.  
18 Due to the long distance from commercial and employment centers, Black Diamond  
19 residents are probably more likely to carpool, take transit, telecommute, otherwise  
20 work from home or not work at all. The statewide average also includes all the other  
21 rural areas of the state, including Eastern Washington, where distances to commercial  
22 and employment centers exceed those of Black Diamond. The Appellants have  
23 presented no evidence of what average daily trips Black Diamond residents would  
24 take. Given the substantial weight to be given to the SEPA responsible official and  
25 the burden of proof on the Appellants, the record does not support the assertion that  
the state-wide vehicle mileage used in the greenhouse gas estimates is significantly  
less than the average mileage of future Black Diamond residents.

3 3. In cross-examination of Steve Pilcher, the SEPA Appellants also  
4 asserted that the greenhouse gas analysis was not consistent with the peer review  
5 requirements of Parametrix. Tr., p. 3342-3344. Specifically Mr. Bricklin referenced  
6 a Parametrix statement that no alternative land use scenario was analyzed in the air  
7 quality analysis. The TV FEIS now does examine air quality impacts under an  
8 alternative land use scenario. See TV FEIS, p. 4-93 - 4-95, alternative 3. The  
9 concerns of Parametrix in this regard have been adequately addressed.

10 4. The SEPA appellants identify several mitigation measures they  
11 suggest should be required to reduce greenhouse emissions. See, Wheeler Prehearing  
12 Ex. 19. Many of these recommended measures are already identified in the TV FEIS,  
13 both in the text of the TV FEIS and the technical appendices. See LH TV FEIS p. 6-  
14 12; TV FEIS p. 6-14; Appendix Q, "Air Quality", p. 14-15. The project design

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already incorporates several elements that will help reduce greenhouse gases, such as an emphasis upon mixed use; bicycle and pedestrian trails; low impact development and Built Green and LEED certified/Energy Star homes. Appendix Q, "Air Quality", p. 14. As noted in the TV FEIS technical discussion on greenhouse impacts, there is no standard for greenhouse emissions associated with development projects and the extent to which a single project affects climate change is unknown. Given this context, the mitigation outlined in the TV FEIS and technical appendices for green house gases is reasonable and adequate.

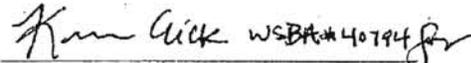
**Conclusions of Law:**

1. The TV FEIS contains a reasonably thorough discussion of greenhouse gases, alternatives and mitigation. As noted in the Findings of Fact, the record does not contain any evidence that the probable significant adverse impacts of the Village's greenhouse gas emissions have not been adequately addressed, that alternatives have not been adequately assessed or that reasonable mitigation measures have not been proposed.

**VII. CONCLUSION**

The Lawson Hills EIS is adequate. The City and the Applicant hired the best experts they could find and put a substantial investment into the analysis that comprises the EIS. It shows. The fact that the SEPA Appellants found so many problems with the EIS has more to do with Appellants' skill and diligence than the short-comings of the EIS. No document could survive unscathed the multi-pronged attack levied by the SEPA Appellants. The monumental work of the SEPA Appellants was not wasted in the least. Their efforts will result in substantial improvements to the MPDs by exposing areas that need further attention and mitigation. The SEPA Appellants have done much to better their community through these appeals. They and everyone else who participated in these appeals are to be congratulated for work well done.

DATED this 4th day of May, 2010.

  
Phil Olbrechts  
City of Black Diamond Hearing Examiner