

69418-9

69418-9

NO. 69418-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TOWARD RESPONSIBLE DEVELOPMENT,

Appellant,

vs.

CITY OF BLACK DIAMOND, et al.,

Respondents.

BRIEF OF RESPONDENT
CITY OF BLACK DIAMOND

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FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2013 MAR 13 PM 4:28

ORIGINAL

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I. INTRODUCTION

This case involves TRD’s long-standing opposition to two master planned developments (“MPDs”) on land that our Supreme Court long ago recognized was “destined for development.”¹ The MPDs, while admittedly large, implement several decades of deliberate legislative policy choices made by the Black Diamond City Council under the authority of the Growth Management Act (“GMA”). At its core, TRD’s opposition constitutes only a continuing and impermissible collateral attack upon the City Council’s many years of thoughtful, and unchallenged, planning policy decisions.

It is well-settled under Washington law – and reaffirmed by a decision of this Court in an earlier phase of this case – that the GMA provides broad discretion to a city council to plan for growth. Once those policy decisions have been made and embodied in a city’s GMA-required comprehensive plan and implementing “development regulations” (including the zoning code), and once the opportunity for challenging the comprehensive plan and development regulations to the Growth Management Hearings Board (“GMHB” or “Growth Board”) has passed, neither the comprehensive plan nor the development regulations may be

¹ *King County v. Boundary Review Board*, 122 Wn.2d 648, 665, 860 P.2d 1024 (1994).

challenged in subsequent proceedings.² As a necessary corollary to this line of authority, the content of unchallenged comprehensive plan and development regulation provisions may not be collaterally attacked during subsequent proceedings involving the processing of project permit applications filed pursuant to those unchallenged comprehensive plan and development regulations. Instead, “[f]undamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review.” RCW 36.70B.030(1).

Given the prohibition against collateral attack, Black Diamond’s unchallenged comprehensive plan provisions and related development regulations are “determinative” of the types of land use, density of residential development, and the availability and adequacy of public facilities. RCW 36.70B.030(2). This statutory prohibition against collateral attack during project permit review is unequivocal. RCW 36.70B.030(3).

Despite this statutory framework, TRD and its members relentlessly attack these MPDs virtually exclusively on the grounds that the projects are “too big” for Black Diamond. Under the GMA, however,

² *BD Lawson Partners, LP et al. v. Central Puget Sound Growth Management Hearings Board*, 165 Wn. App. 677, 269 P.3d 300 (Div. I 2011); *rev. denied*, 173 Wn.2d 1036, 277 P.3d 669 (2012).

project size and density was legislatively decided, and unchallenged, many years ago. TRD's argument completely overlooks the fact that the Black Diamond comprehensive plan and related MPD development regulations expressly contemplate and plan for development of the size and density approved here. TRD's arguments likewise disregard the plain fact that the prior decision of this Court made clear that the MPD approvals constitute permits ("MPD Permits") that are not now open to collateral attack.

TRD's complaint that the MPDs are "too big" is likewise fatal to its SEPA challenge to the adequacy of the Environmental Impact Statements ("EISes") issued for the MPDs. TRD correctly acknowledges that the EISes need only contain a "reasonably thorough" discussion of impacts, but then incorrectly "flyspecks" by impermissibly focusing only on isolated sections of the EISes in an effort to prove legal inadequacy.

After a lengthy and detailed review by the City's Hearing Examiner, the City Council unanimously adopted the MPD Permits. The City Council's earlier and unchallenged planning decisions constituted the GMA-required foundation for the issuance of the MPD Permits, and may not now be collaterally attacked. The City Council's interpretation of its own comprehensive plan and zoning code is entitled to judicial deference,³ as are the determinations by the City's SEPA responsible official and the

³ *Phoenix Development, Inc. v. Woodinville*, 171 Wn.2d 820, 256 P.3d 1150 (2011).

City's Hearing Examiner upholding the EISes. RCW 43.21C.090.

This Court should deny TRD's land use petition, affirm the two EISes, affirm the City Council's approval of the two MPD Permits adopted in Ordinance Nos. 10-946 and 947, and award the City its costs and attorneys' fees under RCW 4.84.370.

II. RE-STATEMENT OF ISSUES

This case presents only two legal issues:

A. After according the required "substantial weight" to the City's determination that the EISes were adequate, did the trial court correctly affirm the City's decision by applying the "rule of reason" standard of review? *Yes.*

B. After according the required deference to the City Council's interpretation of its own comprehensive plan and development regulations, did the trial court correctly affirm the City Council's decision to issue the MPD Permits after finding that the MPD Permits complied with the applicable provisions of the comprehensive plan and development regulations? *Yes.*

III. RE-STATEMENT OF THE CASE

A. Black Diamond's Underlying Land Use Policy Choices.

Before turning to the specifics of the MPD Permits and TRD's challenge, the history of the Black Diamond City Council's underlying

legislative land use policy planning choices is necessary in order to place TRD's claims in the proper context, and to demonstrate the manner in which TRD's claims constitute an impermissible collateral attack.

1. Black Diamond Urban Growth Area Agreement.

The policy decision at the heart of this case is a 1996 multi-party agreement involving an exchange of open space for property development rights known as the "Black Diamond Urban Growth Area Agreement" ("BDUGAA"). The BDUGAA was modeled after King County's then-existing "Four to One" program, which the Growth Board had previously upheld.⁴

Brokered in part by the Cascade Land Conservancy, the BDUGAA lays out an agreement among King County, the City, Plum Creek Timber, and Palmer Coking Coal that expressly permitted annexation - and subsequent urban development - of a large portion of the former timber farm properties that now comprise the MPDs. In exchange, Plum Creek Timber and Palmer Coking Coal agreed to convey and conserve large swaths of open space. The BDUGAA set an "exchange rate" for the transaction, by requiring urban density at a minimum of four units per acre while preserving open space at a ratio of four acres of open space for every one acre of

⁴ *Vashon-Maury, et al. v. King County, et al.*, 1995 WL 903209, Consolidated Case No. 95-3-0008, Final Decision and Order (October 23, 1995) at 29.

property to be developed.⁵

As the City Council found in the MPD Permits here, the BDUGAA resulted in outright conveyance to King County and the City of large swaths of property to be preserved as open space when areas of unincorporated King County were annexed into the City.⁶ The mechanism and timing of the conveyances required by the BDUGAA were further spelled out in the 2005 Black Diamond Area Open Space Preservation Agreement (“BDAOSPA”). *Id.* The substantial amount of land permanently preserved by the BDUGAA is also ecologically valuable.⁷ In total, the BDUGAA and BDAOSPA provided for over 2,500 acres of open space within and adjacent to the City. Comprehensive Plan at 5-9 (relevant portions of the Plan are attached at Appendix A).

2. Adoption of GMA Comprehensive Plan.

The City adopted its first GMA-required comprehensive plan in 1996, the same year it approved the BDUGAA. The 1996 plan specifically

⁵ AR 3296 (BDUGAA at 5, ¶ 3.5) (total acreage of open space areas “to be no less than four times the combined acres” in the development and annexation areas).

⁶ AR 27184 (Ord. 10-946 at Finding 18.B); AR 27356 (Ord. 10-947 at Finding 18.B) (describing BDUGAA requirements for conveyance of specified acreages to King County and City at time of various annexations).

⁷ This included: (a) the City’s acquisition and preservation of the 150-acre Lake Sawyer park, Hidden Creek and the 50-acre “in-city” forest land; (b) two areas south of Jones Lake; (c) the open space buffer along Ravensdale Creek that connects Lake Sawyer Park all the way to Ravensdale Lake; (d) several large areas now in King County’s open space program related to the Green River and the Green River Gorge; and (e) the Ravensdale Ridge forest preservation area. AR 29188-90 (August 11, 2010 Transcript at 302-304). Councilmember Goodwin described Ravensdale Creek as “one of the very important lifebloods . . . of this whole watershed . . .” *Id.*

included a designation for MPDs. Appendix B (Ordinance No. 599). In June 2009, the City repealed its 1996 plan, and adopted a new and updated comprehensive plan (“2009 Plan” or “Plan”) that more specifically outlined the City’s vision for expected new growth and development. A “key component” of the vision reflected in the 2009 Plan was the MPD. Plan at 1-11.

The Land Use Map adopted in the 2009 Plan 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.” The Plan called for urban MPD development, at a minimum density of four units per gross acre.⁸

The centrality of MPDs to the Plan’s vision – the Plan refers to the MPDs as “new, large-scale development” – is apparent from the terms of the Plan itself. As the 2009 Plan explains, Black Diamond was “one of the earliest and largest towns and employment centers outside Seattle . . .” Plan at 1-3. In the twenty years following the discovery of the first coal vein in 1880, the City grew to an estimated 3,500 people, close to its 2008 estimated

⁸ Id. at Plan at Figure 5-1 (Future Land Use Map); at 5-13 (MPD “densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre . . .”).

population of 4,155.⁹ Much of this development occurred in the historic townsite, and in an area known as “Morganville.”

As coal mining in the area faded, however, the City’s population growth stalled. And, “[a]s 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.” Plan at 1-3. As a result, “[c]urrently, the City does not have a central commercial core.” Plan at 5-6.

But, the Plan concluded, “[i]n 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.” Plan at 2-6. Meanwhile, the Plan observed, Black Diamond’s neighbors, Covington and Maple Valley, have been steadily adding both jobs and residents, and the commercial development in Maple Valley had precluded development of a commercial center in Black Diamond. Plan at 1-1, 2-6.

In response, the 2009 Plan adopted “A New Direction,” which involved concentrating “new large-scale development” onto the large,

⁹ Plan at 1-3 (“City’s present day location was established in 1880 . . .”); at 1-4 (“At the turn of the century [1900], the City’s population was estimated at 3,500 people”); at 5-29 (City’s 2008 population is 4,155). TRD implies that the City grew slowly, claiming that it took it “nearly 100 years to grow to its current size.” TRD Brief at 81. Yet, most of Black Diamond’s early growth occurred within 20 years – just five years longer than the 15-year development window approved in the MPD Permits.

existing open parcels owned by Yarrow Bay and others, while preserving the open space gained through the BDUGAA and supplemented by protection of designated environmentally critical areas such as wetlands, streams and steep slopes. Plan at 5-4, 5-7– 5-8, and 5-10. The result would be “numerous ‘villages,’” so named not because they were small, but because they were comprised of compact, concentrated development, surrounded and separated by open space features. Plan at 5-7.¹⁰ Retention of open space (namely, the 2,500-plus acres of open space provided by the BDUGAA and BDAOSPA) “forms the skeletal framework for the village” Plan at 5-8 – 5-9; *see also* 5-24, 5-27, and 5-28 (Fig. 5-2).

Meanwhile, the Plan forecast that growth would be concentrated at urban densities using innovative land use techniques. Of particular importance were MPDs - like those at issue in this case – which were “another key component that the City is using to implement its vision for the future.” Plan at 1-11. The Plan applied an MPD overlay “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.” Plan at 5-13. The MPD overlay identifies “those

¹⁰ *See also* Plan at 5-4 (“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.*”) (emphasis added).

areas in which development proposals are expected to use the MPD zoning process to guide their future development.” Plan at 1-12. These were large parcels – over 80 acres in size. Plan at 5-14. MPD “[d]ensities are intended to be urban in nature (minimum of 4 dwelling units per gross acre)¹¹ and will be established as part of the MPD approval process; some MPD sites may also be designated as TDR [transferable development right] receiving areas.” *Id.* In addition, inclusion of commercial and/or light industrial development in an MPD would also result in “provision of employment, improvement of the City’s fiscal performance, provision of adequate facilities, and other public benefits . . .” Plan at 5-14.

The 2009 Plan does not utilize MPDs to preserve the status quo. Rather, the Plan’s “New Direction” specifically aimed to bring substantial new growth to the City, and expressly projected at least a quadrupling of the City’s population, from 4,120 to 16,980, by the year 2025.¹² This population was forecast to comprise a total of 6,302 households, which would again more than quadruple the existing total of 1,578 households. *Id.*; see also at 5-30 (Table 5-2). The Plan expressly acknowledged the role of MPDs in

¹¹ The Plan’s “per gross acre” metric measures the total density of a site by including both the developable and non-developable areas (i.e., roads and critical areas). Its effect is to concentrate growth, because density on developable areas within a site must be higher than 4 units per acre -- sometimes significantly higher -- to offset the loss of units from wetlands, roads, and other undevelopable portions.

¹² Plan at 5-29 (Table 5-1). The Plan recognized that actual growth could be somewhat, or even significantly, higher than that amount. Plan at 3-5, 3-8.

facilitating substantial growth:

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.

Plan at 5-30 (emphasis added). The Plan assumed that MPD development would occur “during the upcoming 10 to 15 years . . .”¹³

In accommodating this new population growth, the Plan also called for replicating the *pattern* of existing development. As discussed in the Plan at 5-5, the Morganville and historic townsite areas “are composed of small lots in traditional grid patterns, developed at a predominant density of about 6 dwelling units per acre.” Plan at 5-4.¹⁴ The Plan’s call for MPDs at a density of 4 units per gross acre, with compact and dense “villages” separated by the open space provided by the BDUGAA, was accordingly drawn from the City’s existing development patterns.

Matching the anticipated growth in residential development, the Plan also contemplates a more than six-fold increase in jobs, from 427 to 2,952. *Id.* at 5-31. Because of new opportunities presented by “the availability of large parcels for potential commercial and industrial use” the Plan’s

¹³ Plan at 3-6; *see also* at 3-8 (“supply of land is anticipated to be built-out within the lifetime of this comprehensive plan’s planning horizon (2008-2025) . . .”).

¹⁴ The City’s Lake Sawyer area, home to a number of TRD members, was more recently annexed to the City, and has “[l]ot sizes that range from less than 0.5 acre to more than 2 acres in size, with the average lot size close to 0.5 acre,” which “reflects a more suburban development pattern.” Plan at 5-5.

employment targets were not based on past trends or countywide forecasts, but rather reflected “the City’s desire to create a higher jobs/housing balance . . . to recognize its strategic location and the potential provided by large, developable parcels of land.” *Id.*

The 2009 Comprehensive Plan was never appealed or challenged.

3. MPD Development Regulations.

In 2005, consistent with direction in the BDUGAA, the City adopted MPD regulations that were codified at Black Diamond Municipal Code (“BDMC”) Chapter 18.98. *See also* Plan at 1-11. In June 2009, the City Council amended the MPD development regulations in order to make them consistent with the adopted Plan as required by the GMA. The MPD development regulations create an “MPD Permit” and accompanying review process for large-scale development projects.¹⁵ The MPD development regulations specify the applicable MPD Permit requirements, such as permitted uses and densities, parks, trails and open space, stormwater, traffic, parking, water and sewer, sensitive areas and similar matters.¹⁶

As required by the GMA, the MPD development regulations are consistent with the 2009 Plan, especially the Plan’s fundamental land use

¹⁵ BDMC 18.98.010(B); .030(A).

¹⁶ *See, e.g.*, BDMC 18.98.120 (specifying permitted uses and densities); BDMC 18.98.140 - .195 (setting specific standards for open space, on-site recreation and trails, sensitive areas, TDRs, streets, stormwater management, water and sewer facilities, and vesting).

assumptions. For example, to facilitate the projected quadrupling of population and households anticipated in the Plan, the MPD regulations tie an MPD's base density – the number of units per acre - to the base density set forth in the Plan (*i.e.*, four units per gross acre), while allowing density up to 12, 18 or even 30 units per acre under certain specified circumstances. BDMC 18.98.120(E) and (F). Like the Plan, which anticipated development of the MPDs over a 10 - 15 year period,¹⁷ the MPD regulations provided that “MPD permit approval *vests the applicant for fifteen years,*” which the City Council could extend for up to five additional years under certain conditions. BDMC 18.98.195(A), (E) (emphasis added).

Commercial development within an MPD was an important part of underlying Plan policies, and required flexibility in location. Accordingly, an MPD's commercial areas were *not* required to be contiguous with MPD residential areas. BDMC 18.98.030(A)(4), and (C).

Open space is to be provided pursuant to the BDUGAA or other applicable agreement or, in the absence of such an agreement, by retaining 50% of a project site as open space. BDMC 18.98.080(A)(7), and .140(F) and (G). To facilitate compliance with this requirement, MPD regulations required use of innovative techniques such as TDRs as contemplated in the

¹⁷ Plan at 3-6.

Plan,¹⁸ along with the application of separately-adopted, MPD-specific design guidelines to ensure compatibility of the new large-scale MPD development with existing development in the City.¹⁹ In order to protect the City's existing natural characteristics, the MPD regulations also called for protection of environmentally sensitive areas, with roads and other development features located to "minimize impacts on wildlife habitat and migration corridors."²⁰ The MPD regulations specified an environmental review process,²¹ and required that the significant, adverse environmental impacts of an MPD be "appropriately mitigated."²²

The 2009 MDP development regulations were never challenged.

B. Yarrow Bay's MPD Projects.

In 2009, even prior to formal adoption of the Plan and MPD regulations, Yarrow Bay submitted applications for two MPD Permit projects: "The Villages" and "Lawson Hills." AR 13577 (Villages MPD Permit Notice of Application).

The Villages MPD project included 1,196 acres, proposed to be developed with a maximum of 4,800 low, medium and high density dwelling units, and a maximum of 775,000 square feet of retail, offices,

¹⁸ BDMC 18.98.160.

¹⁹ BDMC 18.98.110.

²⁰ BDMC 18.98.155.

²¹ BDMC 18.98.070.

²² BDMC 18.98.080(A)(2).

commercial and light industrial development, schools, and recreation and open space. AR 27160 (Ordinance No. 10-946, Finding of Fact No. 2). Significantly, 505 acres, or 42% of The Villages project site, was proposed to be open space. *Id.*

The significantly smaller Lawson Hills MPD is comprised of a maximum of 1,250 low, medium and high density dwelling units, on 371 acres.²³ Lawson Hills also includes a maximum of 390,000 square feet of retail, offices, commercial and light industrial development, schools, and recreation and open space. *Id.* In Lawson Hills, the open space comprises 152.8 acres, or approximately 41% of the Lawson Hills project area. *Id.*

As contemplated by the Plan and MPD regulations, the two MPDs are urban in size and density. If fully developed, the Villages will have an average density of 4.01 units per gross acre and 8.71 units per net acre, and Lawson Hills will have an average density of 3.36 units per gross acre and 3.90 units per net acre.²⁴

Each MPD consists of two subareas, a “Main” property with residential and mixed uses, and a “north” or “triangle” parcel predominantly reserved for commercial uses. *Id.* The Villages and

²³ AR 13303 (Lawson Hills staff report); AR 27332-33 (Ord. 10-947 at Finding of Fact No. 2).

²⁴ AR 27161 (Ord. 10-946, Finding No. 4); AR 27333 (Ord. 10-947 at Finding of Fact No. 4).

Lawson Hills MPD project areas are shown on the Land Use Plan maps, Figure 3-1 (dated July 8, 2010) accompanying each MPD application. *Id.*; AR 27509 (Villages) and 27508 (Lawson Hills).

C. The Environmental Review Process.

Concurrent with the MPD Permit submittals, the City initially prepared a draft EIS, and then a final EIS, under the State Environmental Policy Act (“SEPA”).²⁵ Initially, the City had agreed that the Draft Environmental Impact Statements (“DEISes”) could be prepared by Yarrow Bay’s consultants for City review and approval. When differences of opinion later arose between the City and Yarrow Bay’s consultants,²⁶ the City retained Susan Graham and Parametrix to prepare the EISes.²⁷ Ms. Graham had worked at Parametrix for 15 years, and had supervised the preparation of ten EISes in Washington and Idaho.²⁸

Parametrix “peer reviewed” the work performed by Yarrow Bay’s consultants,²⁹ and determined that the draft work required additional analysis or clarification in three key areas: traffic, stormwater, and fiscal analysis. AR 785, 798 (Graham testimony). The City directed Parametrix to use the previously-completed background work completed where

²⁵ AR 15584-15838 (Villages DEIS); AR 15839-16093 (Lawson Hills DEIS).

²⁶ AR 2080-81 (testimony of City SEPA Responsible Official Steve Pilcher).

²⁷ AR 2081 (Pilcher testimony).

²⁸ AR 781 (Graham testimony).

²⁹ AR 2082 (Pilcher testimony); AR 784-85 (Graham testimony).

possible. AR 2082 (Pilcher testimony). For some subjects, then, Parametrix recommended only clarification or additional analysis. For other subjects, specifically including traffic impacts and mitigation, Parametrix prepared an entirely new analysis.³⁰

When completed, each EIS totaled approximately 254 pages, plus approximately 2,000 additional pages of detailed technical appendices covering various substantive subject matters (e.g., traffic, stormwater, noise, fiscal analysis, etc.). The total environmental analyses comprise approximately 4,500 pages.³¹

A central feature of the two EISes is their “programmatic,” or “phased” aspects. That is, they were prepared in recognition of the fact that the MPD Permits were only the first of many required permit approvals necessary to begin actual construction. In addition to the MPD Permits, the other required permits included without limitation subdivision approvals, infrastructure engineering approvals, building permits, and site clearing and grading permits.

³⁰ *Id.* Traffic impact analysis by Parametrix’s John Perlic and his staff replaced the original traffic analysis, and Parametrix’s work was then included in whole within the FEIS itself, at pages 3-13 – 3-24 and Appendix B (the Transportation Technical Report (aka “TTR”). AR 785 (Graham testimony); AR 1222-27 (Perlic testimony); AR 20649-60 (FEIS) and AR 16252-575 (App. B to EIS (TTR)).

³¹ AR 20584-20859 (Villages FEIS); AR 16094-18037 (The Villages FEIS Appendices); AR 20860-21135 (Lawson Hills FEIS); AR 21136-23734 (Lawson Hills FEIS Appendices).

Multiple opportunities exist for additional and more detailed environmental analysis at each of these other permit stages. As Ms. Graham explained, subsequent permit actions and decisions would provide the opportunity “to identify if additional impacts are in fact generated during that process.”³² Notwithstanding the extensive environmental analysis included in the FEISes, additional review of certain other potential impacts was deferred until later stages of development and construction when more, and more specific, information regarding environmental impacts would be available. Particular topics for which detailed analysis was deferred included traffic “queue” lengths at specific intersections, mitigation project design, and the potential for an alternate, on-site stormwater pond location.³³

When the two FEISes were complete, they were reviewed and approved by Parametrix’s Susan Graham, who concluded that they were not only adequate but exceeded the level of detail necessary at this stage. AR 787 (3/09/2010 Graham testimony). The FEISes were then also

³² AR 797-98; *see also* AR 807 (Graham cross-examination testimony).

³³ AR 1225-26 (Perlic testimony regarding individual intersection leg analysis); AR 1235-36 (Perlic testimony regarding queue length analysis); AR 2084-85 (Pilcher testimony); AR 2475, 2479-80 (Pilcher testimony).

reviewed by the City's SEPA Responsible Official, Steve Pilcher.³⁴ He testified that he was familiar with the "rule of reason" standard of review applicable to an EIS. He testified that an EIS need only "take a reasonable approach [on] what are [the project's] likely impacts and what is a reasonable level of analysis of those impacts . . . given the nature of the project." AR 2078-79. Mr. Pilcher testified that he had determined that the FEISes for the Villages and Lawson Hills MPDs met this standard, provided the required analysis, and identified mitigation that may be needed to address the impacts discussed in the EISes. Mr. Pilcher relied upon the expertise of the various EIS authors, including Parametrix's traffic engineer John Perlic, to make this determination. AR 2379 (Pilcher testimony). Mr. Pilcher understandably concluded that the EISes were adequate.³⁵

D. The MPD Permit Review Process and FEIS Appeal.

Following completion of the FEISes, the two MPDs were scheduled for a public hearing. Under the City's MPD regulations, an

³⁴ TRD speculates that Mr. Pilcher was "ill-qualified" to oversee the EIS process, and implies bias because he "knew his salary was being paid by Yarrow Bay." TRD Brief at 9. TRD's insults are meritless. Mr. Pilcher had a combined total of more than 15 years' experience as a planning director and in positions where he served as the lead staff member responsible for preparing SEPA documentation for approval by the SEPA Responsible Official. AR 2076 (Pilcher testimony). Mr. Pilcher had overseen the preparation of EISes for two large projects, a hospital master plan expansion in Puyallup, and a three-phase large residential subdivision in Auburn, as well the EIS for the Morgan Kame Mine Terrace expansion in Black Diamond. AR 2077.

³⁵ AR 2080; AR 2082; AR 2085; AR 2088 (3/17/2010 Pilcher testimony).

MPD Permit is considered in an open record hearing by the Hearing Examiner, who then issues recommended findings of fact and conclusions of law to the City Council for final decision. BDMC 18.98.060(A)(5). The City Council may accept, reject, remand, or modify the Examiner's recommendation. BDMC 18.98.060(A)(6).

At the same time, the FEISes were appealed to the Hearing Examiner. The FEIS appeal hearings were consolidated with the public hearing on the MPD permits, and the Hearing Examiner included the evidence given during the SEPA appeals within the record of the MPD Permit applications.³⁶ The Hearing Examiner conducted the consolidated MPD public hearing and SEPA appeal hearing over two full weeks, from March 6 to March 22, 2010.³⁷

The Hearing Examiner provided substantial opportunity to TRD and other participants. Each speaker was allowed to testify verbally for ten minutes³⁸ (or more if the speaker was the recipient of time "ceded" by another speaker), and to submit unlimited written comments. The

³⁶ AR 8-9, 29: lines 13-17; AR 13670 (consolidated public hearing notice).

³⁷ Even before the public hearing, the MPD Permit applications were the subject of a code-required, extensive public process, as detailed in Ordinances 10-946 and 10-947 approving the MPD Permits. AR 27155-57 (Ord. 10-946); AR 27327-29 (Ord. 10-947); see also AR 962-63 (Pilcher staff report presentation).

³⁸ AR 949. The Examiner acknowledged that the ten-minute limit was "actually a pretty long time," and "a lot longer than most people would impose." *Id.* As a result, some TRD members spoke for nearly 30 minutes each. *See, e.g.*, AR 2184 (Proctor testimony).

Examiner indicated that he would “push the envelope on relevancy *just because these are citizen appeals.*” AR 37 (emphasis added). He also provided instructions how to “get around” evidentiary limitations resulting from the failure of some project opponents to have appealed the FEISes. AR 950-51.

An overriding theme woven into the testimony of project opponents was their dislike for the size and urban character of the MPDs, including their impact on the City’s perceived “rural” nature:

The rural characteristics of Black Diamond will be lost forever as a result of Yarrow Bay’s proposed developments.

* * *

The proposed developments contain over 6,000 dwelling units, for approximately 18,000 additional people, which is more than the population of Covington and *over four times the existing Black Diamond population.*

We are on a precipice of a slippery slope towards complete urbanization.

* * *

Yarrow Bay needs to be stopped now before the rural atmosphere of Black Diamond . . . is lost forever.

AR 1324: 2-19; AR 1326: 3-5 (emphases added).³⁹

By the close of the hearing, the Hearing Examiner had heard hours

³⁹ A representative sampling of similar testimony is set forth in Appendix C.

of testimony over many days, and admitted 442 exhibits totaling thousands of pages. AR 27190-237 (Ord. 10-947, Att. 1 to Exhibit A).

E. The Hearing Examiner Rejected the SEPA Appeals and Recommended Approval of the MPD Permits With Conditions.

The Hearing Examiner issued two separate rulings related to each MPD: binding, judicially-appealable decisions on the adequacy of the FEISes,⁴⁰ and recommendations to the City Council to approve the MPD Permits with conditions.⁴¹

1. FEIS Appeal Decisions.

The Hearing Examiner's 64-page FEIS Decisions conclude that each FEIS "provides a more than adequate analysis of environmental impacts." AR 24580 (The Villages FEIS Decision).⁴² The Examiner's reasoning is neatly encapsulated in the first several paragraphs of his 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 [The Villages] FEIS satisfies this standard. . . . Overall, however, the EIS provides a more than adequate analysis of environmental impacts.*

*

*

*

⁴⁰ AR 24579 (Villages FEIS Decision) and AR 24651 (Lawson Hills FEIS Decision).

⁴¹ AR 24770 (Villages MPD Recommendation); AR 24992 (Lawson Hills MPD Recommendation).

⁴² The FEIS for Lawson Hills likewise concludes that the Lawson Hills FEIS also provides a "more than adequate analysis of environmental impacts." AR 24653.

The SEPA Appellants established a few instances where the TV FEIS failed to provide this vital information. . . .
However, the adequacy standard does not require perfection. It requires reasonableness. . . . Under this reasonableness analysis, 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 24580-81 (The Villages FEIS Decision) (emphases added).

The Hearing Examiner continued:

[T]he reasonableness standard is also broad enough to encompass an assessment of deficiencies in light of the overall thoroughness of the scope of an EIS. *The number of deficiencies is fairly minor within the context of the extensive review of environmental impacts in the EIS.* The deficiencies can be remedied by further analysis and mitigation under the MPD conditions of approval without depriving the decision maker of significant information to assist in the decision making process. . . . *Overall, the FEIS is adequate.*

AR 24595 (Villages FEIS Decision) (emphasis added).

2. MPD Permit Recommendations.

In thorough and comprehensive decisions, the Hearing Examiner recommended approval to the City Council of both The Villages and Lawson Hills MPD Permits.⁴³ The Villages MPD Recommendation totaled 217 pages, with 160 conditions,⁴⁴ while the Lawson Hills

⁴³ AR 24770 (Villages MPD Recommendation); AR 24992 (Lawson Hills MPD Recommendation).

⁴⁴ AR 24770-988; AR 24962-988 (Villages Recommended Conditions).

Recommendation, which was limited to Lawson Hills-specific issues and conditions, weighed in at 74 pages, with 162 conditions.⁴⁵

In his rulings, the Examiner directly addressed the contention that the MPDs should be denied or reduced in size due to a concern for their impact on a rural quality of life:

[R]esidents are validly concerned that the project could transform the character of the community For the most part, however, the die has already been cast on this issue. The state 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. . . . Due to the legislative actions above, the Council is not in a position to deny the MPD applications solely because of their densities.

* * * *

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.

AR 24892-94 (Villages MPD Recommendation at 120-21, 122) (emphases added).

F. City Council MPD Approvals.

1. City Council Closed Record Hearing.

The Examiner's MPD Permit recommendations were forwarded to

⁴⁵ AR 24992-25065; AR 27465-93 (Lawson Hills Recommended Conditions).

the City Council for consideration during a closed record hearing, conducted as a quasi-judicial proceeding under the Appearance of Fairness doctrine.⁴⁶ Like the Hearing Examiner, the City Council also afforded extensive opportunities to TRD and others to participate, allowing each person who had testified before the Examiner or who had submitted written comments ten minutes to address the City Council, or up to 50 minutes with “ceded” time from others, and the additional ability to submit up to 50 more pages of written argument. AR 27540; AR 27577; AR 27585-87.

Project opponents remained dissatisfied. At least one argued that the City Council’s deliberations involved “politics.”⁴⁷ Others attempted to disrupt the early portions of the quasi-judicial proceedings by shouting interjections without being recognized by the Mayor.⁴⁸ Another challenged the Council’s ability to set reasonable limitations upon oral or written participation, claiming a “right” to “redundancy.”⁴⁹ Still others disagreed with one Councilmember’s decision to recuse himself under the Appearance of Fairness Doctrine, and shouted from the audience, “Let’s get up and walk out,” and “this is bulls**t,” until they were instructed by a

⁴⁶ BDMC 18.98.060(A)(6); Ch. 42.36 RCW.

⁴⁷ AR 28171 (“[T]his is a political process, no matter what words are used to describe it. It isn’t quasi anything. It is politics.”).

⁴⁸ RCW 35A.12.100 (Mayor to preside over all council meetings).

⁴⁹ “When you talked about redundancy, it stabbed in the heart . . . *Your redundancy is our right.*” AR 27688 (emphasis added).

City staff member to “leave peacefully.” AR 27780: 1-4.

Not surprisingly, given that context, many project opponents repeated to the City Council only their previously-expressed concern that the MPDs would destroy the City’s perceived “rural” nature. One speaker demanded that the Council reduce the density to allow only 1,900 homes.⁵⁰ Others objected because the MPDs would include apartments, and because new MPD residents would be the majority in town, and would have political control over mayor and council elections.⁵¹

To be sure, though, some project opponents sensibly did address specific elements of the environment, explained in detail the reasons they believed the MPDs would or could have adverse environmental impacts, and proposed specific conditions that they urged the City Council to incorporate into its decisions on the MPD permits.⁵² The City Council carefully considered those comments.

⁵⁰ AR 27699: 9-13; *see also* AR 28161 (06/22/2010) (“You need to make them [Yarrow Bay] change their density back to 1900 homes.”); *see also* AR 27988; AR 28134: 11-12; AR 28136: 6-7; AR 27975. 1,900 homes is the minimum (not maximum) growth target for which the City must plan under RCW 36.70A.040(4) and .110(2) and the King County Countywide Planning Policies.

⁵¹ AR 27965-66; AR 28142 (Apartments are “Another element that sends chills up my spine . . .”); AR 27962 (MPD residents will be “over 80 percent of the population”).

⁵² *See, e.g.*, AR 28445-52 (07/06/2010, suggesting stormwater monitoring and mitigation conditions); AR 28423 (7/06/2010, suggesting traffic monitoring conditions); AR 27982-83, 27993-94 (06/28/2010, suggesting traffic monitoring and mitigation conditions); AR 28165-66 (6/29/2010, requesting condition requiring stormwater best management practices and technical committee monitoring).

2. City Council Deliberations and Decision.

The City Council thoroughly considered the record, and the oral and written arguments it received. The City Council's deliberations continued over a total of eight days, between August 9, 2010 and September 20, 2010. AR 28890; AR 29750-52. Councilmembers made individual presentations, asked clarifying technical questions of staff, and questioned each other.⁵³ The Council explored options for remand, approval and denial.⁵⁴

The City Council also painstakingly reviewed each of the approximately 160 conditions recommended by the Hearing Examiner. The Council's review resulted in wholesale revision of more than thirty conditions regarding traffic and transportation. The City Council's new conditions included the addition of new traffic mitigation provisions, which included requirements for additional traffic modeling and monitoring, and the imposition of additional traffic mitigation as identified by the newly imposed modeling and monitoring condition. AR 29280-86. The new monitoring requirement was triggered by the issuance of building permits for the first 850 dwelling units, whether or not fully constructed. AR 29335-41; AR 29402-23.

⁵³ AR 29188-213 (Councilmember Goodwin on open space); AR 29264-66 (Councilmember Saas on density); AR 29258-59; AR 29259-64.

⁵⁴ AR 29263; AR 29273-75; AR 29307-29321.

The City Council's new conditions imposed a traffic monitoring standard more rigorous than Yarrow Bay's proposed "midpoint review" trigger after 3,000 dwelling units, and even more rigorous than King County's proposed trigger after construction of 1,000 - 2,000 dwelling units. The City Council also adopted as conditions certain specific requests made by speakers during closing arguments.⁵⁵

In addition to traffic impacts, the City Council further wrote several new and detailed conditions related to stormwater, again as specifically requested by a speaker.⁵⁶

After completing its careful review, the City Council voted unanimously to approve both MPD Permits. AR 29639-40. Contrary to TRD's suggestion (TRD Brief at 11), the Council did not approve Yarrow Bay's applications wholesale, but instead approved *only* specified portions of the application, and only as specifically conditioned through the Council's painstakingly-edited conditions. AR 27158 (Ord. 10-946 at Section 3); AR 27297 (Ord. 10-946 at Condition 1); AR 27320-21 (Ord. 10-946 at Condition 128). In explaining to the public its rationale behind the unanimous votes, one councilmember put it this way:

⁵⁵ AR 28423 (suggesting traffic monitoring conditions); AR 27982-83, AR 27993-94 (suggesting traffic monitoring and mitigation conditions).

⁵⁶ AR 29423-25; 29618-21. Other Council conditions addressed noise impacts, and the timing and specificity of future fiscal analyses to be prepared on a phase-by-phase basis as the MPD projects proceed. AR 29278-80 (fiscal); AR 27309-11 (noise conditions).

And it would be a pretty easy vote for me to do the popular thing, which would be to vote no. But that's not where I am.

* * *

And as much as I think a case can be made for denial, it's not strong enough. And ultimately we have to make a decision based upon the code and the legal framework that we have got to deal with. That's the constraints that we have.

So, after wrestling with as much as I possibly can, and working as hard as I possibly can in terms of conditions, I feel compelled to vote for approval.

AR 29636-37 (emphasis added). Each of the other councilmembers expressed similar sentiments. AR 29637-39. The Council unanimously directed the City Attorney to prepare ordinances reflecting its decisions (AR 29639-40), and then unanimously adopted Ordinances 10-946 and 10-947, respectively approving The Villages and Lawson Hills MPD Permits. AR 29750-52.

G. TRD's Land Use Petition.

TRD and its individual members filed a land use petition in Superior Court. CP 1-28. Because the case included federal claims under 42 U.S.C. § 1983, the City removed the case to federal district court. CP 29-40. Judge Robart declined to exercise supplemental jurisdiction over the state law (LUPA) claims, and remanded them to superior court, where the case was reinstated and assigned to the Hon. Cheryl Carey. CP 78-88.

Meanwhile, TRD had also filed a petition for review to the Growth Board, asserting that the MPD Permits were not actually permits, but were instead a “subarea plan.” The Growth Board agreed, and ruled that the City had not complied with the GMA because the City had not held a hearing before its Planning Commission. Yarrow Bay appealed, and this Court accepted direct review and reversed, ruling that the MPD Permits were, in fact, “permits,” and that TRD could not collaterally attack the City’s 2009 Comprehensive Plan or MPD development regulations by appealing the MPD Permits. *BD Lawson Partners*, 165 Wn. App. at 686, 690. The Supreme Court denied review. *Id.*, 173 Wn.2d 1036.

The parties returned to superior court and federal court, where TRD’s LUPA petition had been stayed by agreed orders. U.S. District Court Judge James L. Robart dismissed the federal claims without objection by TRD. CP 104-105 (Concl. 4). In Superior Court, TRD’s brief abandoned 10 other claims, which were then dismissed by the Hon. Patrick Oishi. CP 98-99; CP 104 (Concl. 3).

Following oral argument on TRD’s remaining claims, Judge Oishi entered his Findings of Fact, Conclusions of Law and Order Denying Land Use Petition. CP 101-108. TRD’s appeal to this Court followed. CP 109.

IV. ARGUMENT

A. Standard of Review, Burden of Proof, and Deference.

1. Standard of Review.

A Land Use Petition is evaluated under the six criteria set forth in RCW 36.70C.130. TRD argues that the first four criteria, set forth in RCW 36.70C.130(1)(a) – (d), are implicated here.⁵⁷

Two of these standards have been judicially clarified. Challenges under subsection (c), regarding the existence of substantial supporting evidence in light of the entire record, present factual questions. This Court must uphold the Hearing Examiner’s findings of fact in his FEIS Decision, and the City Council’s findings of fact in Ordinance Nos. 10-946 and 947, “if there is ‘substantial evidence’ to support the factual finding, which is ‘evidence that would persuade a fair-minded person of the truth of the statement asserted.’”⁵⁸

⁵⁷ TRD Brief at 13. TRD’s Brief, however, addresses only subsections (b) – (d). TRD has accordingly abandoned any challenge brought under RCW 36.70C.130(1)(a), and this brief will not address it further. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992) (lack of argument in opening brief waives claimed error).

⁵⁸ *Federal Way v. Town & Country Real Estate LLC*, 161 Wn. App. 17, 37, 252 P.3d 382 (Div. II 2011), quoting *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (Div. II 2006); see also *City of Des Moines v. PSRC*, 98 Wn. App. 23,37, 988 P.2d 27 (Div. I 1999) (“We commend the Examiner on his thorough analysis of this issue and defer to his finding that the Port’s “no growth” presumption was a reasonable forecast.”); *King County v. Central Growth Management Hearings Board*, 91 Wn. App. 1, 32 n. 81, 951 P.2d 1151 (Div. I 1998), *rev’d on other grounds* 138 Wn.2d 161 (1999) (accepting Hearing Examiner’s findings that challenged alternative represented appropriate midpoint alternative).

Here, the Court should fully uphold both the Council's and Examiner's findings of fact, because TRD failed to assign error to any of them. Unchallenged findings of fact are verities on appeal and review is limited to determining whether such findings support legal conclusions.⁵⁹ Although the Court has discretion under RAP 1.2 to overlook technical non-compliance, a "failure to challenge findings of fact is not a 'technical flaw.'" *Ross*, 141 Wn. 2d at 311. In any event, a waiver under RAP 1.2 is appropriate only "[w]here the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief."⁶⁰ Here, TRD did not assign error to any findings of fact, instead claiming that they are "clearly disclosed" in its discussion of the issues. TRD Brief at 5. In its brief, however, TRD did not set forth the text of any challenged findings of fact. The findings of fact of both the City Council and the Hearing Examiner are accordingly treated as verities on appeal.

⁵⁹ See e.g., *State v. Ross*, 141 Wn.2d 304, 309-11, 4 P.3d 130 (2000); *State v. Neeley*, 113 Wn. App. 100, 105, 52 P.3d 539 (Div. III 2002); *Fuller v. Employment Security Dept. of State of Washington*, 52 Wn. App. 603, 605, 762 P. 2d 367 (Div. II 1988); *In re Welfare of Bennett*, 24 Wn. App. 398, 400, 600 P.2d 1308 (Div. III 1979).

⁶⁰ *Daughtry v. Jet Aeration, Co.*, 91 Wn.2d 704, 709-10, 592 P.2d 631 (1979) (overlooking failure to assign error where no uncertainty existed as to which finding was being challenged and challenged finding was set forth in text of appellate brief); *Green River Community College Dist. No. 10 v. Higher Education Personnel Board*, 107 Wn.2d 427, 431, 730 P.2d 653 (1986) (addressing merits of appeal despite failure to assign errors where nature of challenge was "clear" and appellant set forth challenged findings in appellate brief).

The second review criterion under LUPA that has been judicially clarified involves a challenge brought under RCW 36.70C.130(1)(d), regarding a clearly erroneous application of the law to the facts. This challenge may succeed only if “the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.” *Phoenix Development, Inc. v. Woodinville*, 171 Wn.2d 820, 829, 256 P.3d 1150 (2011).

2. Burden of Proof.

LUPA expressly places the burden on the petitioner.⁶¹ The burden here rests squarely on TRD to demonstrate that the City’s Council’s decisions are incorrect under the criteria set forth in RCW 36.70C.130(1)(a)-(d). In certain places, TRD’s Brief incorrectly places the burden on Yarrow Bay. TRD Brief at 90-95. TRD alone bears the burden here. RCW 36.70C.130(1).

3. Deference to City Council.

The Court of Appeals has acknowledged that RCW 36.70C.130(1) “reflects a clear legislative intention that this court give substantial

⁶¹ RCW 36.70C.130(1) (“The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met”); see also *Pinecrest Homeowners Ass’n v. Cloninger & Assocs.*, 151 Wn.2d 279, 288, 87 P.3d 1176 (2004) (same).

deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation.”⁶² This occurs in several ways.

First, in determining whether the Council’s decisions are supported by substantial factual evidence (RCW 36.70C.130(1)(c), this Court must “review the evidence and any inferences in a light most favorable to the party that prevailed in the highest forum exercising fact-finding authority . . .”⁶³ The Court is not to weigh the evidence or substitute its judgment.⁶⁴

Second, in reviewing questions of law, this Court must “allow for such deference as is due the construction of a law by a local jurisdiction with expertise.” RCW 36.70C.130(1)(b). As the Washington Supreme Court recently made clear in *Phoenix Development*, courts must grant deference to the City Council’s construction of the MPD development regulations codified in BDMC Ch. 18.98, as well as to the City Council’s construction of its own Comprehensive Plan. *Phoenix Dev.*, 171 Wn.2d at 830-31.

⁶² *Medina v. T-Mobile USA*, 123 Wn. App. 19, 24, 95 P.3d 377 (Div. I 2004), citing *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180, 61 P.3d 332 (2002), review denied, sub nom. *Citizens for a Responsible Rural Area Dev. v. King County*, 149 Wn.2d 1013 (2003).

⁶³ *Lanze G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 415, 225 P.3d 408 (Div. III 2010), rev. denied, 169 Wn.2d 1014 (2010), citing *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001); *Willapa Grays Harbor Oyster Growers Ass’n v. Moby Dick Corp.*, 115 Wn. App. 417, 429, 62 P.3d 912 (Div. II 2003).

⁶⁴ *Phoenix Dev.*, 171 Wn.2d at 832; at 831-32, holding that city and prevailing citizens’ group were entitled to evidentiary review in their favor).

In *Phoenix Development*, the Supreme Court held that “principles of deference apply to a local government’s site-specific land use decisions where the GMA considerations play a role in its ultimate decision,” deferred to the City Council’s determination of what constituted “demonstrated need” under its own code, and held that “the City properly interpreted its own ordinance to require a showing that a rezone is needed to achieve larger policy objectives.” *Id.* at 830-31.

The Court likewise specifically deferred to the City Council’s “construction of what is consistent with the City’s comprehensive plan . . .” *Id.* at 838.

4. Deference to Hearing Examiner.

Under both SEPA and LUPA, this Court must also grant deference to the Hearing Examiner’s decision. First, SEPA requires that the Hearing Examiner’s decision affirming FEIS adequacy be accorded “substantial

weight.”⁶⁵ And, under SEPA, it is the Hearing Examiner’s decision (rather than the SEPA Responsible Official’s) that is under review.⁶⁶

The same is true under LUPA. The Examiner’s FEIS decision is the decision under review, because it is a final determination by the City officer with the highest level of authority to make the FEIS adequacy determination.⁶⁷ Deference is required under LUPA.⁶⁸ If the Court reviews EIS adequacy under LUPA’s “clearly erroneous” criterion, a challenge may succeed only if “the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.” *Phoenix Dev.*, 171 Wn.2d at 829. Likewise, if the Court reviews EIS adequacy *de novo* under the “erroneous interpretation of law” criterion, the Court must first accord “such deference as is due the construction of a law by a local jurisdiction with expertise.” RCW 36.70C.130(1)(b). The Black Diamond Hearing Examiner clearly has expertise in reviewing

⁶⁵ RCW 43.21C.090 (“In any action involving an attack on a determination by a governmental agency relative to . . . the adequacy of a ‘detailed statement’, the decision of the governmental agency shall be accorded substantial weight.”). *See also*, *City of Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 35, 988 P.2d 27 (Div. I 1999); *Kiewit Construction Group v. Clark County*, 83 Wn. App. 133, 138, 920 P.2d 1207 (Div. II 1996).

⁶⁶ *See Kiewit Construction Group*, 83 Wn. App. at 137-39 (upholding County Council’s determination that EIS was inadequate rather than responsible official’s adequacy determination); *see also* *City of Des Moines v. PSRC*, 98 Wn. App. at 37 (deferring to Hearing Examiner’s decision upholding Port’s SEPA responsible official determination of EIS adequacy).

⁶⁷ RCW 36.70C.020(2) (defining “land use decision”); CP 46-47 (land use petition identifying Examiner FEIS decision as decision under review).

⁶⁸ *See*, n. 62.

environmental impact statements. Thus, regardless of the form of review, deference to the Examiner is required.

The Examiner, in turn, was required to defer to the decision of SEPA Responsible Official, Steve Pilcher. RCW 43.21C.090; BDMC 19.04.250(E). The Examiner correctly did so. AR 24595; AR 24666.

TRD attempts to attack this required deference on several fronts. First, TRD argues that “an *agency decision* is entitled to deference ‘only if it reflects a plausible construction of the language of the statute . . .’” TRD Brief at 21 (emphasis added). TRD misstates the applicable authority. TRD cites to *Alpine Lakes Prot. Soc. v. DNR*, 102 Wn. App. 1, 15, 979 P.2d 929 (Div. I 1999), but that decision actually holds that “[r]eviewing courts . . . give substantial weight and deference to an *agency’s interpretation of the statutes and regulations it administers*, and the *agency’s interpretation* should be upheld if it reflects a plausible construction of the language of the statute . . .” *Alpine Lakes Prot. Soc.*, 102 Wn. App. at 13 (emphases added). Thus, an agency’s deference is limited only when the agency mistakenly construes *a statute*. Nothing in *Alpine Lakes* undermines the deference required by RCW 43.21C.090 to an agency’s *FEIS adequacy determination*.

Working from this incorrect premise, TRD then attacks the required deference by arguing that Mr. Pilcher was not sufficiently

experienced to deserve deference. TRD Brief at 21. As noted above (note 34), TRD's personal attack on Mr. Pilcher is misplaced and unsupported by substantial evidence. Mr. Pilcher is well-qualified and experienced as a SEPA Responsible Official, as is the Hearing Examiner.

B. This Court Should Affirm the Hearing Examiner's Conclusion That the FEISes Were Legally Adequate.

1. Standard of Review.

An EIS is reviewed under the "rule of reason" standard.⁶⁹ "The rule of reason is "in large part a broad, flexible cost-effectiveness standard'. . ." *Klickitat Citizens*, 122 Wn.2d at 633. The "rule of reason" does not require perfection, or the review of every hypothetical environmental impact. Rather, it requires only "a reasonably thorough discussion of the significant aspects of the probable environmental consequences . . ." The EIS' purpose is to facilitate the decision making process; it need not list every remote, speculative, or possible effect or alternative." *Id.* (internal cite omitted). It "need not evaluate every scenario or conduct a 'worst case' analysis."⁷⁰

As summarized by Professor Settle:

⁶⁹ *Klickitat Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390 (1993); *Concerned Taxpayers v. State*, 90 Wn. App. 225, 951 P.2d 812 (Div. II 1998); *Citizens Alliance to Protect Our Wetlands (CAPOW) v. City of Auburn*, 126 Wn.2d 356, 894 P.2d 1300 (1995).

⁷⁰ *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 442 n. 9, 105 P.3d 94 (Div. II 2005), citing *Solid Waste Alternative Proponents (SWAP) v. Okanogan County*, 66 Wn. App. 439, 447-448, 832 P.2d 503 (Div. III 1992).

An 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 . . .

Klickitat Citizens, 122 Wn.2d at 641.⁷¹

TRD’s brief fails to explicitly address the “rule of reason” standard, but did concede its applicability to the Examiner below. AR 6281 (listing TRD Brief as Ex. 142). Here, TRD goes no further than to cite to *Klickitat Citizens*, and acknowledge that an EIS need only be “reasonably thorough” to survive scrutiny. TRD Brief at 17-18. The “rule of reason” is fatal to TRD’s argument that, among 4,500 pages of environmental review, one isolated flaw in one part of an EIS constitutes legal inadequacy.

This Court must also determine how to apply the “rule of reason” standard: *de novo* or under the “clearly erroneous” standard. One line of appellate precedent holds that EIS adequacy is a legal question, subject to *de novo* review. *See, e.g., Klickitat Citizens*, 122 Wn.2d at 633. Another line of precedent, however, holds that SEPA determinations reviewed pursuant to LUPA are reviewed under the clearly erroneous standard,

⁷¹ Quoting R. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, § 14(a)(i), at 157 (4th ed. 1993).

pursuant to RCW 36.70C.130(1)(d).⁷² In Black Diamond’s view, because a determination of EIS adequacy involves application of the law – the “rule of reason” – the clearly erroneous standard should apply.⁷³

2. Other Important SEPA Principles Apply to a Review of EIS Adequacy.

Other important SEPA principles, some of which are related to the “rule of reason,” apply to judicial review of EIS adequacy. These principles are discussed in more detail below, and include:

- An EIS may not be used to attack previous programmatic policy decisions. *Glasser v. Seattle*, 139 Wn. App. 728, 738, 162 P.3d 1134 (Div. I 2007).
- The discussion of alternatives in an EIS need not be exhaustive; an EIS need only present sufficient information for a reasoned choice among competing alternatives. *Solid Waste Alternative Proponents (“SWAP”) v. Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 503 (Div. III 1992).
- Even vital information need not be included in an EIS if the cost to obtain it is exorbitant or it is otherwise not cost-effective to analyze it. *SWAP*, 66 Wn. App. at 446 (evaluation of two alternatives sufficient where County could not afford to analyze four alternatives); *see also* Settle at § 14.01[1] at 14-7, 14-20.

⁷² See, e.g., *Wenatchee Sportsmen Ass’n. v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000) (“Where the question before a court is whether the law was correctly applied to the facts, RCW 36.70C.130(1)(d) applies . . .”); *Thornton Creek Legal Defense Fund v. Seattle*, 113 Wn. App. 34, 57, 52 P.3d 522 (Div. I 2002) (“[D]ecision whether or not to require a SEIS involves an application of law to facts . . . subject to the ‘clearly erroneous’ standard of review.”), *citing* RCW 36.70C.130(1)(d) and *Wenatchee Sportsmen*.

⁷³ See RCW 36.70C.130(1)(d) (requiring petitioner to demonstrate that “[t]he land use decision is a clearly erroneous application of the law to the facts”); *cf. Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir.1998) (review under the rule of reason and for abuse of discretion “are essentially the same”).

- “A FEIS does not require inclusion of specific remedies of each environmental impact.” *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 312, 197 P.3d 1153 (2008).
- The cost and effectiveness of potential mitigation measures is not required to be evaluated in an EIS. *SWAP*, 66 Wn. App. at 447.
- “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.” *Klickitat Citizens*, 122 Wn.2d at 637-38, *citing Mentor v. Kitsap County*, 22 Wn. App. 285, 290–91, 588 P.2d 1226 (Div. II 1978).
- Information omitted from an FEIS may be “unfortunate, but not fatal.” *Mentor*, 22 Wn. App. at 291.

3. The Hearing Examiner Correctly Treated the FEISes As Non-Project Analyses.

The Hearing Examiner concluded that The Villages and Lawson Hills FEISes were “nonproject” rather than “project” EISes. Under nonproject EISes, the City had greater flexibility “because there is normally less detailed information available on their environmental impacts and on any subsequent specific proposals.” AR 24594 (Villages FEIS Decision at 16) (*quoting* WAC 197-11-442). The Examiner was correct, despite TRD’s arguments to the contrary.

First, even TRD’s own transportation expert witnesses acknowledge that these are programmatic, or nonproject, EISes – not

project-level EISes.⁷⁴ Second, the definitions set forth in the SEPA Rules make clear that the FEISes as “nonproject.” Under WAC 197-11-704(2)(a), a “project” action for SEPA purposes is “a decision on a specific project . . . limited to agency decisions to . . . any activity *that will directly modify the environment . . .*” (emphasis added). In contrast, under WAC 197-11-704(2)(b), a “nonproject action” includes legislative action, as well as project-related actions including the “adoption of any policy, *plan, or program that will govern the development of a series of connected actions . . .*” (emphasis added). By definition then, “project” actions for SEPA purposes are limited to those projects that directly modify the environment by moving dirt,⁷⁵ while nonproject actions include everything else, specifically including a “program that will govern development of a series of connected actions” like the MPD Permits at issue here. *Id.*; see also R. Settle, *SEPA: A Legal and Policy Analysis* § 14.01[3] at 14-62.5.

The Examiner correctly noted that the MPD Permits have characteristics of both project and nonproject actions, concluding “‘hybrid’ actions are covered by the nonproject SEPA regulations that specify that the level of detail must be appropriate to ‘the scope of the

⁷⁴ AR 1125; AR 858; AR 475-76; AR 1167. Their testimony is excerpted at Appendix D.

⁷⁵ One exception to this general rule, not applicable here, is that decisions to purchase, sell, transfer or exchange natural resources also qualify as “project” actions. WAC 197-11-704(2)(a).

nonproject proposal and to the level of planning for the proposal.” AR 4594 (FEIS Decision at 16). The Examiner’s conclusion is consistent with TRD’s position below, where its counsel argued that “the nature of this [MPD Permit] decision, it seems to me, is a little bit – it’s neither fish nor fowl. *It’s a little bit of both.*” AR 19 (emphasis added).

TRD’s Brief incorrectly argues that the MPD Permits should be treated as “project actions” under SEPA, claiming that this Court had determined in the earlier, related appeal that the MPD Permits are “project permit approvals.” TRD Brief at 33. In its earlier decision, however, this Court did not consider the characterization of the MPD Permits for purposes of SEPA. Rather, the issue there involved the GMA, and whether the MPD Permits constituted comprehensive plan or development regulation amendments appealable to the Growth Board, or “project permits” appealable to superior court under LUPA. *BD Lawson Partners*, 165 Wn. App. at 685-86. Equally fundamentally, state law includes separate and distinct definitions for “project action” and “project permit.”⁷⁶

TRD’s Reply can be expected to urge this Court to harmonize the

⁷⁶ Compare, WAC 197-11-704(2)(a) (“project action” limited to permits that involve “activity that will directly modify the environment”), and RCW 36.70B.020(4) (“project permit” includes types of permits – e.g., planned unit developments and site-specific rezones – that do not directly modify the environment).

definition of “project action” in WAC 197-11-704(2)(a) with the definition of “project permit” under RCW 36.70B.020(4). The Court should decline. Initially, the two authorities are not ambiguous – nothing exists to harmonize, because they define separate and plainly distinguishable nouns. Even if some ambiguity did exist, however, a term of a statute and a different term of an agency rule included in WAC 197-11 cannot be read *in pari materia*.⁷⁷

The Examiner accordingly correctly concluded that the FEISes were “programmatic” because they analyzed “nonproject” actions, and could permissibly contain less detail than a project action EIS. While TRD complains about discrete issues included in the FEISes and ruled to be adequate by the Examiner,⁷⁸ those complaints could only have merit (if at all) in the context of a more specific, project action EIS.

4. The Examiner Correctly Treated the FEISes As Part of Phased Environmental Review.

The Hearing Examiner also properly considered the FEISes as part of permissible “phased” environmental review, which understandably allows for the deferral of certain detailed environmental analyses until the time of actual construction. AR 24594, AR 25623 (Concl. 11). The

⁷⁷ *Town & County Real Estate, LLC*, 161 Wn. App. at 47-48 (WAC 197-11 not to be read *in pari materia* with RCW 82.02.020).

⁷⁸ TRD Brief at 33, citing AR 24618 (travel time); AR 24620 (safety concerns and traffic model assumptions); AR 24623 (queue length).

SEPA Rules expressly provide for phasing.⁷⁹ “The purpose of phasing review is to enable agencies and the public to focus on issues ripe for decision and to exclude from consideration issues that are not yet ready.”⁸⁰ Phased review is appropriate under the rules when either “[t]he sequence is from a nonproject document to a document of narrower scope such as a site specific analysis,” or “[t]he 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).” WAC § 197-11-060(5)(c)(ii).

“Washington courts have approved phased review of environmental impacts in certain situations. For example, [the Supreme Court] has approved a ‘bare bones’ EIS that identified the potential impacts of an application for a rezone to allow for construction of residential units.” *OPAL*, 128 Wn.2d at 880, citing *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 208-11, 634 P.2d 853 (1981). In *Cathcart*, the Court considered a proposal strikingly similar to the MPDs in this case. The proposal involved a rezone and master plan for two parcels, one of 500 acres and the other of

⁷⁹ WAC 197-11-406 (“EISs may be ‘phased’ in appropriate situations . . .”); WAC 197-11-060(5) (“Environmental review may be phased.”).

⁸⁰ *Organization to Protect Agricultural Lands (OPAL) v. Adams County*, 128 Wn.2d 869, 879, 913 P.2d 793 (1996).

1,300 acres, on which developers sought to build 6,000 dwelling units to ultimately accommodate 19,000 people. *Cathcart*, 96 Wn.2d at 203. The Court held that the project was particularly appropriate for phased environmental review, because:

[A]t this time it is extremely difficult to assess its full impact. Given the magnitude of the project, the length of time over which it will evolve, and the multiplicity of variables, staged EIS review appears to be an unavoidable necessity.

Id. at 210. The Court agreed that “when the developers seek sector, division of development, and plat approvals, a more detailed EIS can be required.” *Id.* at 209. Accordingly, the Court concluded that “the initial EIS is sufficient.” *Id.* at 211.

Cathcart remains the law. Citing it approvingly, the Court in *OPAL* upheld a county council’s determination of EIS adequacy for an Unclassified Use Permit (“UUP”) authorizing the use of a site for a regional landfill, even though the EIS contained only a preliminary analysis of the geology and hydrology of the site. *OPAL*, 128 Wn.2d at 879-81. Noting that “[a]n early-stage EIS is particularly appropriate when decisionmakers will have an opportunity to demand greater detail at a later project stage,” the *OPAL* Court held that phased review was appropriate because “[g]reater detail on the specific design of the landfill can be required at the next phase of the permitting process, when Waste

Management must apply for construction and operation permits.” *Id.* at 881. Other, more recent cases sensibly reach the same conclusion.⁸¹

Here, the EISes are substantially more detailed than the “bare bones” EIS affirmed in *Cathcart*, and comprehensively analyze every element of the environment. AR 20587-88 (Villages FEIS table of contents). As Parametrix’s John Perlic testified, these EISes greatly exceed the level of detail typically included in a nonproject EIS. AR 1228 (Perlic testimony). As both Mr. Perlic and Susan Graham (the EIS project manager) testified, numerous future opportunities exist for additional environmental review at the time of actual construction permits (e.g., subdivision approvals, infrastructure engineering and construction permits, building permits). AR 797-98; AR 807.

Under the approved phasing here, the deferred environmental review applies to aspects of construction that can only be adequately analyzed after additional detail is known. These aspects include construction traffic impacts, traffic queue lengths at specified *but not yet constructed* intersections, and the potential for an alternate, on-site stormwater pond location.⁸² The Examiner’s conclusion that the FEISes

⁸¹ *Thornton Creek Legal Defense Fund*, 113 Wn. App. at 53 (adoption of 1992 EIS plus an addendum for General Development Plan (GDP) stage was adequate, and no SEIS was required, “where additional environmental review of Northgate Mall would occur when specific development in accordance with GDP was proposed.”)

⁸² AR 1219, AR 1226, and AR 1297 (Perlic testimony); AR 2084-85, AR 2475, and AR 2479-80 (Pilcher testimony).

are properly considered as part of phased review is wholly supported by common sense, and by the plain terms of the SEPA Rules and the state Supreme Court' decisions in *Cathcart* and *OPAL*.

TRD's arguments against phased review have no merit. TRD first argues that the size of the MPDs alone precludes phased environmental review.⁸³ This argument is simply a restatement of TRD's improper collateral attack against the size and density of the MPDs. The flaw in TRD's argument is further laid bare by TRD's own rhetorical question concerning construction traffic impacts: "Even if . . . some of the mitigation measures could await review of construction permits . . . will the impacts associated with these projects – even with mitigation – *be too large to justify projects of this size?*"⁸⁴ Even if TRD had included evidence in this record of construction traffic impacts, that evidence would be immaterial to TRD's size and density arguments. The issues of size and density were long-ago decided by the City Council's approval of the unchallenged GMA-required Comp Plan and development regulations.

TRD's second argument against phased environmental review is similarly off-target. While the MPD Permits do vest certain rights in

⁸³ TRD claims "the overriding issue presented by these MPD applications involves the size and style of these projects" and that there is "no excuse for not analyzing now the larger issues generated by the size and style of the development and the extent to which they could be avoided with a smaller development." TRD Brief at 36-37.

⁸⁴ TRD Brief at 67 (emphasis added).

Yarrow Bay, they do not exempt Yarrow Bay from otherwise applicable future environmental review. TRD Brief at 36-37 (MPD Permits “ostensibly locked in Yarrow Bay’s right to build . . . The City Council cannot change those fundamental decisions with future decisions.”)

TRD overstates its case. Under BDMC 18. 98.195, an MPD Permit merely “vests the applicant for fifteen years to all conditions of approval and to the development regulations in effect on the date of approval.” Nothing in this code provision exempts Yarrow Bay from future environmental review, nor could a city code provision do so.

The City did not use SEPA planned action review as authorized by WAC 197-11-164, and TRD does not argue otherwise. If the City had used planned action review, TRD might have a point - planned action review *does* foreclose most future environmental review. Here, though, future MPD Permit decisions remain subject to additional environmental review, and the City may impose additional mitigation through a Mitigated Determination of Nonsignificance (“MDNS”) under WAC 197-11-350 or the exercise of its substantive SEPA authority under RCW 43.21C.060.

5. The Hearing Examiner Correctly Applied the “Rule of Reason” to Determine That the EISes Were Adequate When Taken as a Whole.

As the Examiner explained in great detail, application of the “rule

of reason” led to his conclusion that the EISes were legally adequate:

[T]he adequacy standard does not require perfection. It requires reasonableness. This fairly broad standard allows the Examiner to assess the significance of shortcoming in the context of the entire scope of the EIS and the benefits of requiring the EIS or portions of it to be redone. Under this reasonableness analysis, 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 [The Villages] FEIS review.

AR 24580-81 (The Villages FEIS Decision) (emphases added). As the Examiner noted, the “rule of reason” is applied to the EISes as a whole, and not to discrete sections or subsections:

[T]he reasonableness standard is also broad enough to encompass an assessment of deficiencies in light of the overall thoroughness of the scope of an EIS. The number of deficiencies is fairly minor within the context of the extensive review of environmental impacts in the EIS.

AR 24595 (Villages FEIS Decision) (emphasis added). The Examiner’s analysis was correct.

TRD does not challenge the substance of the Examiner’s conclusion that “overall, the FEIS provides a reasonably thorough discussion of environmental impacts.” TRD’s failure is not surprising, given the reasonableness of the Examiner’s conclusion and the substantial weight this Court must give it under RCW 43.21C.090. TRD challenges instead the Examiner’s mere use of the “overall average” approach, which TRD labels “unprecedented” and “an egregious error of law.” TRD Brief

at 28-29.

According to TRD, it has “not been able to find a single case among the hundreds (or probably thousands) of EIS adequacy cases” in which this approach was used. TRD Brief at 27.

This approach is used favorably in many EIS adequacy cases, including at least one cited in TRD’s Brief. TRD cites to one in a long line of federal cases⁸⁵ holding that a reviewing court “must take a holistic look” at an EIS, and determine “on the whole” whether it is adequate. TRD Brief at 17, *citing National Audubon Society v. Dept. of Navy*, 422 F.3d 174 (4th Cir. 2005). As the Fourth Circuit recently explained, its decision in *Nat’l Audubon* stands for the proposition that:

[W]e “may not ‘flyspeck’ [the] agency’s environmental analysis, looking for any deficiency, no matter how minor.” [*Nat’l Audubon*] at 186. Instead, we “must *take a holistic view* of what the agency has done to assess environmental impact” and “*examine all of the various components of [the] agency’s environmental analysis ... to determine, on the whole, whether the agency has conducted the required ‘hard look.’*”

Webster v. U.S. Dept. of Agriculture, 685 F.3d 411, 421-22 (4th Cir. 2012) (holding SEIS adequate as a whole despite claims of missing information and incomplete mitigation measures) (emphasis added). Other federal

⁸⁵ TRD acknowledges that federal court decisions construing the National Environmental Policy Act (“NEPA”) are useful and applicable in construing related provisions of SEPA. TRD Brief at 23, n.8.

appellate courts, particularly the Ninth Circuit, likewise and understandably also hold that courts must “review an EIS as a whole.”⁸⁶

Under that authority, it is hardly surprising that federal courts have expressly upheld the adequacy of FEISes despite identified flaws in certain parts of its analysis. For example, in *Laguna Greenbelt, Inc. v. U.S. Dept. of Transp.*, 42 F.3d 517, 526 n. 9, 527 (9th Cir. 1994), the Court found no error despite claimed weaknesses in the EIS analysis of growth-inducing aspects of tollroad construction expansion, including the failure to disclose that 1.7 acres of “ecological reserve” would be taken for tollroad right-of-way. The Court noted that members of the public clearly had sufficient information regarding the tollroad’s impact on the reserve to submit comments, and the FHA in turn was informed before it made its final decision. *Id.* And, “this litigation itself has offered further opportunities for public involvement in the education of agency decision-makers, curing defects that might have existed in the EIS.” The non-disclosure of the impacts of the tollroad on the ecological reserve did not render the FIES inadequate. *Id.*

⁸⁶ *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”); *WildWest Institute v. Bull*, 547 F.3d 1162, 1172 (9th Cir. 2008) (same); see also *N. Slope Borough v. Andrus*, 642 F.2d 589, 601 (D.C.Cir.1980) (EIS is “an integrated document” that “must be weighed in its entirety”).

The same result is seen in *Sierra Club v. U. S. Dept. of Transp.*, 310 F.Supp.2d 1168 (D. Nev. 2004). There, the district court held that an EIS was adequate overall, notwithstanding debate about whether the EIS properly analyzed all potential “induced travel” impacts of a proposed highway expansion. *Id.* at 1187. The Court held that the increment of unanalyzed induced travel impacts was the subject of scientific debate, and current models varied in their ability to quantify those impacts. “[E]ven if the FEIS’s discussion of induced travel impacts was not reasonably thorough, *the Court finds the scope of that failure insufficient to render the entire FEIS inadequate.*” *Id.* at 1188 (emphasis added). In other words, the Court affirmed exactly what the Hearing Examiner did here.

Washington courts also follow this approach, and apply the “rule of reason” standard to an EIS taken *as a whole*, and not to any one particular part. In *Cathcart*, for example, the EIS for a master plan development of 6,000 homes did not analyze the issues of induced residential and commercial growth outside the development, aggravated erosion problems, overburdened roads, overcrowded schools, inadequate sewage systems, or the costs of providing public services to the development. *Cathcart*, 96 Wn.2d at 209. The Court noted that it was “mostly correct” that the EIS did not analyze those impacts, but nonetheless found that the EIS, taken as a whole, was adequate:

At this point, an exhaustive EIS is impracticable in light of the difficulty of determining in the abstract, for a period of 25 years, such things as the rate at which the project will develop, the particular location of the housing units, the growth of the tax base which will support the needed public services, the evolution of transportation technologies, and the evolving socio-economic interests of the prospective population.

Id. at 210. Clearly, important information was missing, but the Court determined that the EIS as a whole was adequate. *Id.* at 211.

Likewise, in *OPAL*, the EIS challengers argued that analysis of potential groundwater impacts was deficient, in part because the EIS lacked detailed analysis of the potential geohydrological impacts of a new regional landfill. *OPAL*, 128 Wn.2d at 879. The EIS was accompanied by only a preliminary, draft analysis, which did not include characterization of the groundwater flow path between the base of the landfill and the uppermost monitorable groundwater unit, or a design of an effective groundwater monitoring system to identify leaks. *Id.* Even the County agreed that further study would be required before an operating permit could be issued. *Id.* Nevertheless, the Court concluded that the EIS was adequate, because the EIS “need only evaluate the proposed site’s general suitability for a landfill,” and because “[g]reater detail on the specific design of the landfill can be required at the next phase . . .” *Id.* at 880-81. Clearly, detailed information concerning potential groundwater impacts

was “vital” but the Court again found the EIS as a whole to be adequate.⁸⁷

TRD can be expected to argue on reply, as it did below, that the information admittedly omitted from the EISes in the cases discussed above was not expressly labeled “significant” or “vital.” The presence or absence of a label is irrelevant. The dispositive factor is that the reviewing courts judged EIS adequacy by viewing the EIS “as a whole,” despite missing analysis of undeniably important potential impacts. As described above, important information was missing from the FEISes in *Cathcart*, *OPAL*, *Laguna Greenbelt*, and *Sierra Club* (even though not labeled as “vital” or similarly), but the courts nonetheless upheld the adequacy of the affected FEISes.

The plain truth is that important information however labeled may be omitted from an EIS for a variety of reasons: the EIS is for a nonproject action and therefore certain detailed information is not required or even yet available; environmental review is phased, and more detailed information will be provided later; the cost of providing the analysis is exorbitant; additional information will provide no useful benefit; the

⁸⁷ See also *Mentor v. Kitsap County*, 22 Wn. App. at 289-90 (EIS upheld despite the challengers’ contention that it omitted detailed information concerning the impacts of bulkhead construction for a beachfront hotel. Additional environmental review could be performed during subsequent project phases, and the omission of *required* analysis of the localized land use plan parameters was “unfortunate but not fatal.” *Id.* at 290-91. Weighing the absence of the required information against the totality of the EIS, the Court concluded, “We do not find that this problem, by itself, requires us to hold the statement inadequate.” *Id.* at 291).

analysis demanded is speculative or the claimed impact is neither significant nor probable. Here, wherever the Examiner found that the certain, otherwise-required information was not included in the FEIS, he found and concluded that that information was not required based on his determinations of the above-listed exceptions.

The Examiner's findings of fact, to which TRD does not assign error, all derive from the "rule of reason," as illustrated by the bulleted points below. These unchallenged findings rebut the deficiencies claimed by TRD to exist in the FEISes:

Information Not Beneficial⁸⁸

- AR 24596 (requiring information beyond DOE's 2009 Lake Sawyer Implementation "would not provide any useful information");
- AR 24606-07, esp. n.9 (reasonableness standard requires analysis of utility of providing additional information; not useful to require Yarrow Bay to provide additional information unless it rewrote the Lake Sawyer Management Plan, which would be unreasonable); AR 24601 (same; failure to discuss specific impacts of phosphorous contamination, but viewed in the context of overall scope and content of EIS, absence of those specific impacts did not justify finding of inadequacy);
- AR 24621 (corridor travel time estimates unnecessary, because intersection level-of-service measure was standard in traffic engineering, was standard required by City, and decisionmakers were accustomed to it; therefore information was sufficient to enable reasoned decision);

⁸⁸ *Klickitat Citizens*, 122 Wn.2d at 641 ("EIS need include only *information sufficiently beneficial to the decision making process . . .*") (emphasis added).

- AR 24621 (analysis of a.m. peak hour unnecessary because p.m. peak hour stated worst case scenario and was standard practice);
- AR 24621 (analysis of whole intersection rather than individual “leg” was standard practice, enabled identification of mitigation and was therefore a reasonably thorough discussion of impacts);

Speculative Analysis / Impacts⁸⁹

- AR 24617, AR 24620 (no known way to evaluate traffic safety impacts; information regarding traffic safety impacts not susceptible to analysis at MPD level [as opposed to later construction permit level], and was therefore speculative);
- AR 24621-22 (analysis of impacts to Green Valley Road’s and Railroad Avenue’s “rural” or historic “character” would be speculative and therefore unreasonable);

Deference Required To SEPA Responsible Official Adequacy Determination⁹⁰

- AR 24608 (differences in Kindig and Zisette testimony fall within differences of professional judgment; Examiner required to give substantial weight to Responsible Official and therefore determines FEIS is adequate);

Phased Environmental Review⁹¹

- AR 24623-24 (analysis of mitigation measures, queue lengths, and construction traffic better accomplished prior to future, implementing construction projects); and

⁸⁹ *Klickitat Citizens*, 122 Wn.2d at 633 (EIS need not list every speculative effect or alternative).

⁹⁰ RCW 43.21C.090; *City of Des Moines v. PSRC*, 98 Wn. App. at 35.

⁹¹ WAC 197-11-060(5); *Cathcart*, 96 Wn.2d at 209-11.

Programmatic Environmental Review⁹²

- AR 24620 (EIS contains reasonably thorough discussion of significant, adverse transportation impacts of the proposed project at the programmatic level of analysis).

The Hearing Examiner's findings were correct, especially considering the substantial weight to be accorded to his determinations. RCW 43.21C.090; *City of Des Moines v. PSRC*, 98 Wn. App at 37.

In the face of all of this, TRD offers citations to only three Washington cases. TRD Brief at 27-28. None stand for the proposition, urged by TRD, that an EIS is inadequate if - irrespective of the context and quality of the entire EIS - claimed "vital" information is missing on any single aspect of the analysis. TRD cites to *Kiewit Construction, supra*, 83 Wn. App. 133. In *Kiewit*, the Court first noted that substantial weight must be given to the local government's EIS determination. *Id.* at 138. The Court then easily distinguished appellate decisions upholding determinations of EIS adequacy - in the case before it, the government agency *itself* had determined that the EIS was *inadequate*. *Id.* at 141. The *Kiewit* decision merely acknowledges the substantial weight to be accorded to the government's own SEPA decision. *Id.* Nothing in *Kiewit* stands for the proposition that a local agency must determine an EIS to be

⁹² WAC 197-11-442; 197-11-704(2)(b) (agency has more flexibility in preparing EIS on nonproject action because there is normally less detailed information available on their environmental impacts . . .”).

inadequate when only a few pieces of information are missing.

Likewise, *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994), offers no support to TRD. *Weyerhaeuser* turned on whether a landfill to be built for the County by a private contractor was a “public” or “private” project, which would determine whether or not the EIS was required to analyze off-site alternatives. *Weyerhaeuser*, 124 Wn.2d at 38-39. The Court held that the project was “public,” which would require analysis of off-site alternatives, and that the complete lack of required off-site alternatives analysis accordingly rendered the EIS inadequate. *Id.* at 42.

TRD’s citation to *Barrie v. Kitsap County*, 93 Wn.2d 843, 854, 613 P.2d 1148 (1980), is also misplaced. The decision in *Barrie* turned on the exact same issue as *Weyerhaeuser*: whether the shopping mall proposal was a “private” or “public” project. *Barrie*, 93 Wn.2d at 856. Nothing in *Weyerhaeuser* or *Barrie* supports the proposition that an EIS must be found inadequate simply because one or two pieces of analysis are missing from an otherwise extensive and thorough EIS. Rather, *Weyerhaeuser* and *Barrie* stand for the proposition that an EIS is invalid only when the *required* alternatives analysis section – the portion that TRD labels “the heart of an EIS”⁹³ – is *missing in its entirety*. That is clearly not the case

⁹³ TRD Brief at 25.

here.

TRD also cites to federal court decisions. Those cases are not applicable, and some have been overruled or superseded. For example, TRD cites *Lands Council v. Powell*, 395 F.3d 1019, 1037 (9th Cir. 2004) and *Oregon Nat. Res. Council v. Brong*, 492 F.3d 1120 (9th Cir. 2007). TRD Brief at 28, n.8. In those cases, EISes on a watershed restoration project and a timber salvage project were respectively ruled inadequate because they failed to include a detailed, cumulative impacts analysis of the proposed project in light of that project's interaction with the effects of past, current, and reasonably foreseeable future projects. *Powell*, 395 F.3d at 1028; *Oregon Nat. Res. Council v. Brong*, 492 F.3d at 1132-33. In both of those cases, the requirement for a detailed "past, present and future" analysis was based on the Ninth Circuit's reading of 40 CFR § 1508.7.

The Ninth Circuit, however, subsequently rejected its own approach in *League of Wilderness Defenders–Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 549 F.3d 1211, 1217–18 (9th Cir. 2008); *see also League of Wilderness Defenders – Blue Mountains Biodiversity Project v. Allen*, 615 F.3d 1122, 1136 (9th Cir. 2010).

TRD also cites *Olympic Forest Coal'n v. U.S. For. Serv.*, 556 F. Supp. 2d 1198, 1205 (W.D. Wa. 2008). This case, however, concerns an environmental assessment ("EA") documenting a decision not to prepare

an EIS, where the EA was based on a previously invalidated administrative decision. The case does not address EIS adequacy in any way. Similarly, *Metcalf v. Delay*, 214 F.3d 1135 (9th Cir. 2000), concerns the timing of an agency's preparation of an EA. It does not address substantive EIS adequacy. Finally, *Mountaineers v. U.S. For. Serv.*, 445 F. Supp. 2d 1235 (W.D. Wa. 2006), overturns an agency's decision not to prepare an EIS (rather than EIS adequacy), for failing to consider the cumulative impacts of increased off-road vehicle use resulting from a proposal.

Most of these cases cited by TRD do not even address EIS adequacy, and none of them supports TRD's contention that an EIS missing some small piece or pieces of information is legally inadequate.

Well-established appellate precedent from both Washington courts and the federal courts fully supports the Examiner's application of the "rule of reason" to find the MPD EISes to be legally adequate. The Examiner's decision is entitled to substantial weight. RCW 43.21C.090.

6. The Hearing Examiner Correctly Found That Compliance With the Western Washington Stormwater Management Manual Will Result in Compliance With the Total Maximum Daily Load (TMDL) for Phosphorus in Lake Sawyer, Thereby Avoiding Significant, Adverse Impacts to Lake Sawyer Water Quality.

The Court should affirm the Examiner's finding that the MPDs as

designed will not result in significant, adverse water quality impacts to Lake Sawyer. In particular, the MPDs satisfy the Department of Ecology's standards for Total Maximum Daily Load ("TMDL") for phosphorus in Lake Sawyer. AR 24603; AR 24605. Again, TRD does not challenge or assign error to the Examiner's findings of fact on this issue, and they are accordingly taken as true on appeal.

TRD argues that the Examiner erred by "excusing" EIS deficiencies in analyzing water quality impacts because the MPDs adequately mitigate phosphorous impacts to Lake Sawyer. TRD Brief at 29-30. TRD's charge is wrong, both factually and legally. First, while TRD accurately quotes a section heading from AR 24603, the Hearing Examiner did not say that EIS deficiencies were "excused" because of mitigation. Instead, the Examiner found that *unrefuted* expert testimony established that the MPDs as designed would satisfy the phosphorous TMDL.⁹⁴ The essence of this uncontested Examiner finding is that the

⁹⁴ AR 24603 ("Dr. Kindig testified that, as designed, the MPD projects meet the DOE conditions for consistency with the TMDL." Dr. Kindig's testimony "was unrefuted," and TRD's Zisette "agreed."). TRD argues at a later point in its Brief (pp. 56-67) that the MPD projects would violate the TMDL, but the Examiner found the opposite. AR 24603 (DOE found that compliance with Stormwater Management Manual will result in TMDL compliance; Kindig testified that MPD projects incorporate Stormwater Manual compliance and thus TMDL consistency; Zisette agreed). The Examiner's findings at AR 24606 cited by TRD assume phosphorous loading consistent with the outdated 2000 Lake Management Plan assumptions – the Examiner found that the 2000 Plan *overstates* the current amount of phosphorous in the Lake and does not take into account the regulations imposed by the Stormwater Management Manual. AR 24582, 24601-05.

MPDs will *not* have a significant adverse phosphorous impact on Lake Sawyer. Given this, there was no point to requiring a more detailed phosphorous load analysis in the EIS. Rather, the Examiner sensibly found that any such analysis “would not yield any useful information” (AR 24606), because an EIS need include only “information sufficiently beneficial to the decision making process to justify the cost of its inclusion.” *Klickitat Citizens*, 122 Wn.2d at 641.

Second, even if the Examiner had done as TRD claims – that is, concluded that after-the-fact mitigation would “excuse” the need to perform additional impact analysis – that would be perfectly consistent with SEPA. Indeed, the concept of eliminating environmental analysis based on sufficient mitigation of impacts is actually *built into* SEPA. *See, e.g.,* WAC 197-11-350(1)-(2). As contemplated by SEPA itself, an applicant may clarify features of its proposal to include mitigation of significant, adverse environmental impacts. If the mitigation eliminates the impacts, no EIS is necessary. If impacts will exist even with mitigation, an EIS must be prepared. WAC 197-11-350(2). This practice is “eminently sensible,” because the “pertinent question is whether environmental factors were adequately considered before a final decision

was made”⁹⁵ – not whether an applicant can be made to perform needless analysis of impacts that will be mitigated in all events. Federal cases likewise reach the same result, and expressly authorize consideration of mitigation to determine the adequacy of an EIS.⁹⁶

7. The Hearing Examiner Correctly Applied the Rule of Reason to Conclude That the EIS Responses to Comments Were Adequate.

TRD assails the EISes at length for a claimed failure to adequately respond to comments on the Draft EISes. TRD Brief at 38-45. Again, application of the “rule of reason” justifies the adequacy of the responses to the DEIS comments. *Klickitat Citizens*, 122 Wn.2d at 638, citing *Mentor*, 22 Wn. App. at 290–91 (“rule of reason” applies to claimed failure to respond to comments, and inconsequential errors are dismissed as harmless). In *Klickitat Citizens*, the Court found that:

⁹⁵ *Hayden v. Port Townsend*, 93 Wn.2d 870, 880-81, 613 P.2d 1164 (1980), *overruled on other grounds in Save A Neighborhood Environment v. Seattle*, 101 Wn.2d 280, 676 P.2d 1006 (1984); *see also Murden Cove Preserv. Assoc. v. Kitsap County*, 41 Wn. App. 515, 525, 704 P.2d 1242 (Div. II 1985) (imposition of mitigating conditions not sufficient to require an EIS).

⁹⁶ *Edwardsen v. U.S. Dept. of Int.*, 268 F.2d 781, 790 (9th Cir. 2001) (EIS for offshore oil drilling reasonably concluded that the cumulative effects of pipelines on caribou would be minor, based on EIS’ consideration of “mitigation measures” to elevate pipelines and construct permanent roads for caribou passage); *City of Sausalito v. O’Neill*, 368 F.3d 1186, 1212-13 (9th Cir. 2004) (FEIS reasonably concluded that Fort Baker rehabilitation plan would not have significant wildlife impacts, despite limited impact analysis, given FEIS’ consideration of mitigation measures); *Nat’l Parks & Conserv. Ass’n.*, *supra*, 222 F.3d 677 at 682 (EIS for airport runway extension was reasonably thorough because mitigation measures would be implemented whether or not increase in flights occur); *but cf. Northern Plains Resource Council, Inc. v. Solid Transport*, 668 F.3d 1067 (9th Cir. 2011).

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 1990 Plan Update EIS inadequate.

*Id.*⁹⁷ Federal courts have reached the same result.⁹⁸

As the Hearing Examiner correctly found, TRD and the other SEPA appellants never raised the adequacy of comment responses in their administrative SEPA appeals, and the "failure to respond" issue was "not within the scope of this appeals decision."⁹⁹ The issue is accordingly not properly before this Court.

Even if it were properly before the Court, any error in responding to comments was harmless. As the Examiner correctly held, errors are "harmless" when they are "not consequential," and "nothing in the record establishes that DEIS comments on properly presented issues were inadequately addressed in the FEIS." *Id.* at Finding No. 3; Concl. 2. TRD does not challenge this Finding. While the Examiner noted one possible exception regarding the City of Maple Valley's comments on the

⁹⁷ See also *Gebbers v. Okanogan County*, 144 Wn. App. 371, 388, 183 P.3d 324 (Div. III 2008) (FEIS "sufficiently" responded to public comments on preferred alternative).

⁹⁸ *Sierra Club v. U.S. Dept. of Transp.*, 310 F.Supp.2d at 1196-98 ("agency's awkward responses to the induced travel comments are not so faulty that the EIS must be reworked simply to respond to these comments.").

⁹⁹ AR 24635 (FEIS Decision at 57, Finding No. 2 and Concl. 1).

transportation modeling assumptions, the Examiner also concluded that this alone did not render the EIS inadequate. *Id.* This is true particularly because the Examiner also found that the City “had good reasons” for the use of its transportation model (AR 24584, FEIS Decision at 6), and that “the choices made by Parametrix are all *within the parameters of reasonably justified professional judgment*, especially given the substantial weight that must be given to the SEPA Responsible Official’s determination that the analysis is adequate.”¹⁰⁰ In light of this, any error in failing to respond adequately to Maple Valley’s comment on the DEIS was “not consequential” and harmless.

Also supporting the Examiner’s “harmless error” conclusion is the fact that all of the comments – including those from other agencies – were addressed in detail during the FEIS appeal hearing. *See, e.g.*, AR 24583 (“extensive discussion” of Lake Sawyer phosphorous loading during EIS appeals “provided the public a detailed accounting of the impacts, and this decision provides that information to the City Council”). The purpose of SEPA is to provide the public and the decisionmaker with information concerning the potential environmental impacts, to assist in making a decision on a proposal. *See, e.g.*, WAC 197-11-400; TRD Brief at 16 (discussing same). Thus, any technical deficiencies in written responses to

¹⁰⁰ AR 24620) FEIS Decision at 42, Concl.. 1 (emphasis added).

comments were harmless where the issues raised in the comments were fully litigated in the administrative hearing before the Examiner, and the record of that hearing and oral comments from the public and commenting agencies are presented in detail to the decisionmaker. *Laguna Greenbelt*, 42 F.3d at 527 (defects in EIS cured where public was informed enough to comment and litigation offered further opportunities for public involvement and education of agency decision-makers).

8. The EIS Adequately Analyzes Any Actual Potential Phosphorous Impacts to Lake Sawyer.

TRD next argues that the EISes fail to adequately analyze phosphorous impacts to Lake Sawyer. TRD Brief at 45-60. TRD claims that Lake Sawyer's water quality is "precarious"¹⁰¹ and "at a tipping point,"¹⁰² and that the Examiner found that the MPDs "would violate the TMDL standards in any event."¹⁰³ According to TRD, "phosphorous pollution of a highly used lake near the tipping point is more significant – and warrants a more thorough analysis . . ." *Id.* at 47. Because of this, TRD reasons, "it is essential to assess the total quantity of phosphorous that likely will reach the lake." TRD Brief at 50, 52.

¹⁰¹ TRD Brief at 45.

¹⁰² TRD Brief at 47.

¹⁰³ TRD Brief at 57.

TRD's argument merely repeats the facts that it offered to the Examiner. The Examiner found otherwise. TRD has not challenged the Examiner's findings, or even argued that they are unsupported by substantial evidence. TRD has accordingly failed to meet its burden under RCW 36.70C.130(1)(c).

More fundamentally, Lake Sawyer is *not* at a "tipping point." The Examiner found instead that the water quality of the lake improved substantially during the five-year period following diversion of sewage treatment plant flows away from the lake, and the current, stable condition amply demonstrates that the in-lake phosphorous concentration is significantly lower than the "tipping point" between desirable mesotrophic status and undesirable eutrophic status (8-9 mg/L now, compared to the "tipping point" standard of 24 mg/L). AR 24602; AR 24604-05. The Examiner found that TRD's contrary evidence was based on stale data drawn from baseline monitoring data in the outdated 2000 Lake Sawyer Management Plan showing pre-1998 phosphorous at 23 mg/L.¹⁰⁴ When presented with current, accurate data about water quality status (only 8-9 mg/L), the Examiner found, "There is nothing to suggest in the record that the MPD proposals, alone, will push the phosphorous concentration

¹⁰⁴ AR 24605 (TRD's data "does not reflect current conditions"); AR 24606 (TRD witness Zisette's calculations based on 2000 LSMP data of 23 mg/L).

beyond the 24 micrograms/L [tipping point] . . .” AR 24605.

TRD next claims that the Examiner found that the MPDs would violate the phosphorous TMDL. TRD Brief at 57. The Examiner actually made the *opposite* finding. “The *Master Plan proposals meet the conditions for DOE’s finding of TMDL compliance.*” AR 24603 (emphasis added). The Examiner squarely rejected TRD’s argument, ruling that “any conclusion that the MPDs would fail to meet TMDL would be directly contrary to the *findings of DOE, made in 2009, that the MPDs would satisfy TMDL.*” AR 24607 (emphasis added). The Examiner specifically noted that TRD had an opportunity to controvert DOE’s findings and did not do so. AR 24604.

The MPDs comply with the TMDL for phosphorous. Accordingly, there is no potentially significant, adverse water quality impact to analyze. As the Examiner noted, any such analysis “would not yield any useful information.” AR 24606.

With respect to the phosphorous analysis contained in the EISes, the Examiner noted that the EISes incorporated the outdated 2000 Lake Sawyer Management Plan (“LSMP”).¹⁰⁵ TRD’s stormwater expert, Rob Zisette, acknowledged that the LSMP was the “current model for lake

¹⁰⁵ The complete text of the LSMP is at AR 5385-532. LSMP Appendices are located (albeit out of order) at AR 4061-595.

response [to phosphorous] in Lake Sawyer.” AR 2606:11-15; *see also* AR 5489. The Examiner found (and TRD does not dispute), however, that “the preponderance of evidence in the record establishes that the LSMP significantly overstates the amount of phosphorous generated by the proposed [MPD] development,” for three reasons: (1) the LSMP overstates the amount of MPD land area that drains to Lake Sawyer; (2) the LSMP overstates the amount of physical MPD development that will occur; and (3) the LSMP uses an overly high baseline phosphorous concentration, rather than the current, much-improved in-lake concentration of 8-9 mg/L. AR 24601-02. As even TRD concedes, the EIS analyzed the LSMP’s overstated phosphorous assumptions, and then fully and candidly disclosed that the “increase in phosphorous and urban runoff may be several times greater,” and the “combined impact of phosphorous in runoff and phosphorous bound to sediments may contribute substantially to the risks of eutrophication of receiving water.” TRD Brief at 54, n. 14, *citing* EIS at Appendix M, Table 3-13; AR 20763 (Villages EIS); AR 21039 (Lawon Hills EIS).

Applying the “rule of reason” to the EIS as a whole,¹⁰⁶ coupled with the breadth of the information disclosed regarding phosphorous in

¹⁰⁶ *See, Save Lake Washington*, 641 F.2d at 1336 (1981); *Nat’l Parks & Conservation Ass’n*, 222 F.3d at 682; *WildWest*, 547 F.3d at 1172 (EIS viewed as a whole).

Lake Sawyer, the Examiner's conclusion that the EIS contained "a reasonably thorough discussion of stormwater impacts to Lake Sawyer" is easily affirmed. AR 24607.

The Examiner did note that the EIS did not disclose the potential practical impact of eutrophication. AR 24600.¹⁰⁷ For purposes of EIS adequacy, however, this omission was "unfortunate but not fatal," and the Examiner properly applied the "rule of reason" to correctly conclude that "the failure to include these specific impacts cannot by itself justify a finding of inadequacy for the entire document."¹⁰⁸

9. The FEISes Discussed and Disclosed Transportation Impacts in Far More Than Adequate Detail.

The issue of traffic impacts from the MPDs was the single most comprehensively analyzed, and hotly debated, issue in these proceedings. Traffic engineers were retained by TRD, Yarrow Bay, and the City to testify and produce written reports that are included in this record. King County and the City of Maple Valley presented additional traffic engineering testimony and written exhibits.¹⁰⁹ The Examiner carefully considered the large volume of traffic impact evidence in this record, and

¹⁰⁷ Even so however, the Examiner apparently overlooked the statement in The Villages EIS that "eutrophication can lead to massive algae blooms in lakes and fish kills." Moreover, given past experiences at the Lake, the possibility of algae blooms and their related impacts was common knowledge in Black Diamond. AR 20763.

¹⁰⁸ *Cathcart*, 96 Wn.2d at 209-210; *OPAL*, 128 Wn.2d at 879-81; *Laguna Greenbelt*, 42 F.3d at 526 n. 9, 527.

¹⁰⁹ *See, e.g.*, AR 24612 (Finding 1, listing witnesses); AR 24613-20.

correctly found that the EISes adequately analyzed those issues.

As the Examiner found, the EISes analyzed 46 intersections for traffic impacts, an unprecedented number for a nonproject EIS, and described mitigation measures in both the body of the EISes and in the more detailed technical appendices to the EISes. AR 24617-18 (Finding 15). The Examiner found that “the FEIS addressed [transportation] levels of service and included a reasonable discussion of the impacts resulting from increased traffic volumes and decreased levels of service,” and concluded that “the FEIS contains a reasonably thorough discussion of significant adverse transportation impacts of the proposed [MPD] project[s] . . .” Id.

TRD’s arguments about traffic amount to nothing more than impermissible “flyspecking,” and TRD again failed to assign error to the Examiner’s findings of fact. Each of TRD’s claims here was addressed and rejected in detail by the Examiner, with citations to far more than substantial evidence in the record. AR 24614-624 (Findings 7-21 and Concl. 1-15).

a. Safety Impacts.

TRD first argues that the EISes omitted analysis of safety impacts, resulting in “gross inadequacy of the EIS.” TRD Brief at 62-63. As undisputed evidence in the record indicates, however, vehicle-pedestrian

and vehicle-bicycle accidents are random in the subject traffic study area, safety impacts cannot be accurately analyzed unless they occur regularly at a high-incident location the configuration of which can be analyzed, and no known high-incident locations exist in the Black Diamond study area. AR 1249 and AR 2001-03; AR 24617 (Finding 14). Moreover, improvements called for by the FEISes will mitigate safety impacts. TRD offered no evidence¹¹⁰ that safety impacts could actually be analyzed at the MPD Permit stage. The FEISes did not include a “safety” analysis because any potential impacts would be speculative and insignificant, and because the programmatic nature of these FEISes did not require this analysis. AR 1250; AR 24620 (Concl. 2). While TRD repeats its complaint about the Examiner’s use of the “programmatic” label (TRD Brief at 63), its own experts agree that these EISes were correctly prepared as nonproject or programmatic analyses. AR 858; AR 475-76; AR 1125; AR 1167.

¹¹⁰ TRD sets up a “straw person” argument when it alleges that the EISes wrongly asserted that the MPDs “will not affect *pedestrians or cyclists* off-site.” TRD Brief at 62, n. 17 (emphasis added). The EISes simply do not say this. Instead, the page cited by TRD states that the MPD will not affect *the non-motorized system* external to the project site.” AR 20660 (emphasis added). This is an accurate statement, given that the MPD will not alter or eliminate existing areas for non-motorized travel outside of the MPD site, and it does not refer to pedestrians or cyclists.

b. Travel Time.

TRD next claims that the EISes should have analyzed “travel time,” rather than intersection levels of service (“LOS”). TRD Brief at 64-65. The Examiner found that intersection LOS analysis is the commonly accepted method for analyzing traffic impacts. AR 24621 (FEIS Decision at Concl. 3). The Examiner’s finding is supported by substantial evidence, including testimony by TRD’s own traffic expert, Ross Tilghman, and Maple Valley’s traffic expert, Natarajan Janarthanam.¹¹¹ On behalf of Black Diamond, John Perlic from Parametrix testified specifically that LOS analysis is the generally accepted methodology for use in environmental impact statements, and that corridor travel time analysis was not “commonly accepted,” “state of the practice,” or “standard” for use in analyzing traffic impacts from projects like the MPDs.¹¹² Mr. Perlic did acknowledge that travel time *might* be more meaningful to a lay person unfamiliar with LOS (AR 1841), but he did not testify that it *would* be meaningful, as TRD argues. TRD Brief at 64. Mr. Perlic also testified that most decisionmakers were familiar with LOS methodology, specifically including the Black Diamond City Council.¹¹³ The

¹¹¹ AR 586, AR 619-20, AR 849-50, and AR 878 (TRD’s Ross Tilghman); AR 1109 (Janarthanam).

¹¹² AR 1218, AR 1234-35, AR 1841, AR 1978-79, and AR 1982 (Perlic testimony).

¹¹³ The City Council’s adopted Comprehensive Plan addresses the widening of SR 169 based on LOS impacts. AR 2006.

Examiner's finding accurately summarizes, and is wholly supported by, this substantial evidence. AR 24618 (Finding 15).

c. Traffic LOS Disclosures Are Adequate.

TRD also asserts a handful of what it characterizes as "omissions regarding the true extent of LOS failures." TRD Brief at 72-74. Again, TRD's arguments are refuted by the Examiner's unchallenged findings, which are supported in part by the testimony of TRD's own experts. More than substantial evidence exists to support these findings, as demonstrated below:

1. Claim: The LOS analysis should have analyzed the "a.m. peak hour" in addition to the "p.m. peak" hour. TRD Brief at 72.

Response: The p.m. peak hour is the established standard for the measurement of significant adverse traffic impacts because it represents the worst case conditions.¹¹⁴ Moreover, the traffic appendices included in the EISes actually do include analysis of the a.m. peak hour at six locations where such analysis was deemed warranted.¹¹⁵ Use of the p.m. peak hour was reasonable and sufficient to justify EIS adequacy. AR 24621 (FEIS Decision, Concl. 4).

2. Claim: The LOS analysis should have addressed

¹¹⁴ AR 24618 (Finding 15); AR 1218 (Perlic); AR 1234-35 (Perlic); AR 586 (TRD's Tilghman).

¹¹⁵ AR 2035-37; *see also* Perlic Declaration (Ex. 479) at 24-26.

individual intersection legs, rather than the intersection as a whole. TRD Brief at 73-74.

Response: Assessment of the average LOS for the entire intersection LOS is “the standard,” rather than analysis only of one or more individual intersection “legs.” AR 24615 (Finding 10).¹¹⁶

3. Claim: Any intersection leg LOS failure is a “significant impact.” TRD Brief at 73-74.

Response: Claim is not supported by the testimony of John Perlic cited by TRD. Mr. Perlic testified that intersection (not individual intersection leg) LOS analysis and SEPA analysis were “one and the same.” Given that, a significant impact would be an impact to the entire intersection. AR 1234; *see also* AR 2019 (Perlic: SEPA and GMA requirements are “usually similar, meaning evaluation of overall intersection . . .”).

TRD does not assign error to the Examiner’s findings, does not claim that the Examiner’s findings are not supported by substantial evidence, and does not point to any evidence in the record or legal authority to the contrary. The Examiner’s decision to reject TRD’s preferred method of traffic impact analysis does not affect the legal

¹¹⁶ *See also* AR 1235 (Perlic); AR 619-20 (TRD’s Tilghman); AR 849-50 (Tilghman: level of service analysis of the full intersection “is the standard”); AR 878 (Tilghman).

adequacy of the EISes.

d. Alternatives Analysis.

TRD complains that the alternative analyses in the EISes do not contain a specific intersection LOS analysis matching the analysis for the MPD projects. TRD Brief at 68-69. The EISes do note that Alternatives 3 and 4 disclose the percentage of increased traffic posed by each alternative. The Examiner concluded that the “failure to go into more detail is not fatal to the validity of the FEIS.” AR 24620 (Finding 20); AR 24622 (Concl. 9). Again, TRD’s rhetorical argument to the contrary (“without a comparison . . . a reasoned decision was impossible”) is not supported by any citation to evidence in the record or other authority.

An EIS need include only “reasonable alternatives.” As directed by WAC 197-11-440(5)(b)(i), “The word ‘reasonable’ is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.”

One alternative (including the preferred MPD proposals) may be used as a benchmark, and the level of detail for each alternative may vary. WAC 197-11-440(5)(c)(v). Alternatives need not be discussed in detail; indeed, modification of the proposal to mitigate impacts can substitute for

any discussion of an alternative.¹¹⁷ Here, the EISes identified two specific, scaled down alternatives, and disclosed the percentage of traffic increases attributable to each. WAC 197-11-440.¹¹⁸

The fundamental flaw in TRD's argument here is grounded in TRD's continuing misunderstanding that the City Council could effectively "collaterally attack" its own adopted GMA-required Plan and MPD development regulations in order to substantially reduce the size and density of the MPDs. TRD Brief at 68. As the Council correctly recognized (AR 29636-37), however, the Council was bound to make its decision based on application of its adopted and unchallenged code provisions to the MPDs. Alternatives 3 and 4 provided the Council with comparative information sufficient to determine that the MPD traffic impacts could be appropriately mitigated. Nothing more was required.

e. Feasibility of Mitigation.

TRD next challenges the EISes by misapplying WAC 197-11-660(1)(c) and arguing "to be included in an EIS, mitigation must be both 'reasonable and capable of being accomplished.'" TRD Brief at 70. WAC 197-11-660(1)(c) does not apply to identification of mitigation

¹¹⁷ See, *CAPOW*, 126 Wn.2d at 368 (EIS including only preferred and no action alternative was adequate; significant modifications to racetrack proposal to reduce wetland impacts "complied fully with the requirement to consider on-site alternatives").

¹¹⁸ *Weyerhaeuser*, 124 Wn.2d at 42, is not the contrary. In that case, there was no discussion of offsite alternatives whatsoever. *Id.* ("Because the EIS completely fails to discuss any offsite alternatives, it is inadequate as a matter of law.").

measures in an EIS. That section applies instead to the imposition of mitigating conditions when a project is “conditioned or denied under SEPA to mitigate the environmental impact.” For such mitigation measures, an EIS need only “discuss reasonable mitigation measures that would significantly mitigate” identified impacts. WAC 197-11-440(6)(a). An EIS “*may* [but is not required to] discuss [mitigation measures’] technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished.” WAC 197-11-440(6)(c)(iv) (emphasis added); *see also SWAP v. Okanogan County*, 69 Wn.App. at 508 (EIS not required to discuss cost or effectiveness of mitigation measures). The Examiner’s conclusion should be affirmed. AR 24623 (Concl. 10). SEPA does not require the level of detail urged by TRD.

TRD also complains that the Examiner’s reference to concurrency could still let Yarrow Bay “off the hook,” because the concept of concurrency required by the GMA allows the City Council to revise the City’s LOS standards downward if mitigation cannot be provided. TRD Brief at 71. While perhaps true in the abstract, TRD overlooks the fact that the MPD Permits contain binding conditions requiring construction of projects currently on the City’s 2025 Transportation Improvement Plan, as well as additional traffic mitigation required by the subsequent traffic

impact modeling required by the City Council. AR 27298 and AR 27304 (Ord. 10-946, Conditions 10 and 17.f).

f. Construction Traffic Impacts.

TRD also claims that the EIS is inadequate because it did not include an analysis of construction impacts. TRD Brief at 65-68. The Examiner understandably concluded that construction impacts are better addressed at construction. AR 24624 (Concl. 14). This was reasonable – and obvious. Construction traffic impacts, if any, depend on the precise location of construction, the haul routes actually taken by dump trucks between the construction site and borrow/fill site, and the timing of actual construction (e.g., next year v. 15 years from now). TRD’s own witness, King County Traffic Engineer Matt Nolan, testified that solutions to construction traffic can typically be found. AR 499-500. Given this, the Examiner correctly concluded that “construction issues are not ripe for consideration” (AR 24624, Concl. 14), and were appropriately omitted pursuant to WAC 197-11-060(5).

10. The EISes Adequately Disclosed Construction Noise Impacts.

To the extent that the Court considers this issue,¹¹⁹ the EISes also adequately discuss and disclose construction noise impacts. Chapter 3 of the EISes discusses construction noise impacts from the MPDs. AR

¹¹⁹ Yarrow Bay has filed a motion to dismiss this claim for lack of standing.

20661-70. This includes detailed noise studies that estimate the noise levels at three different distances from the noise source, the expected effects on nearby uses, projected traffic noise outside of the MPD sites, and options for reducing noise disturbances. *Id.*; AR 24608 (Finding 2); AR 24610 (Finding 9); *see*, AR 20665 and AR 24611 (impacts specific to certain TRD members or supporters).

The Examiner was right to conclude that the EISes “reasonably disclose, discuss and substantiate the loudness of [MPD] construction noise” with estimates that “were sufficiently accurate.” AR 24610 (Concl. 1) and AR 24611 (Concl. 3). The information in the Villages EIS was “sufficient to notify the decisionmaker [City Council] that noise impacts could be severe on some property owners” AR 24612 (Concl. 6).

TRD does not dispute these conclusions. Because the Examiner concluded that the EISes should have included an assessment of the duration of construction noise impacts and mitigation (AR 24583), however, TRD complains that the Examiner should have found the EISes to be inadequate. TRD Brief at 75-76. TRD makes two supporting arguments.

TRD claims that the Examiner excused the lack of disclosure of noise duration on the fact that it would affect only three property owners, while TRD claims it would affect each and every person equally along

every haul route. TRD Brief at 75-76. TRD mischaracterizes the Examiner's conclusion. The Examiner actually concluded that mitigation and further analysis of noise impacts "can be handled under the MPD conditions of approval without having any substantial impact upon the noise analysis conducted in the EIS." The Examiner was right. As discussed above, an EIS adequacy determination may properly take into account mitigation imposed as part of project permit conditions.¹²⁰ Following the Examiner's suggestion, the City Council imposed detailed, noise mitigation and monitoring conditions, including a requirement for development of a separate haul route and a prohibition of hauling on certain existing streets in residential areas.¹²¹ Under these conditions, the EIS as a whole remains fully adequate.

TRD's second objection is that future noise monitoring is not a permissible cure to the claimed lack of required information in an EIS. TRD Brief at 77. TRD is wrong. TRD cites a Florida federal case involving an EA and the related decision *not* to prepare an EIS. *Id.* Here, detailed EISes, including noise analysis, *were* prepared. Washington law expressly allows consideration of future monitoring studies which will

¹²⁰ *Edwardsen*, 268 F.2d at 790; *City of Sausalito v. O'Neill*, 368 F.3d at 1212-13; *Nat'l Parks & Conserv. Ass'n. v. U.S. Dept. of Transp.*, 222 F.3d at 682.

¹²¹ AR 27310-11 (Ord. 10-946, Condition 44); AR 27478 (Ord. 10-947, Condition 44) (requiring haul route).

“confirm that the project will not have a significant adverse environmental effect.” *West 514, Inc. v. City of Spokane*, 53 Wn. App. 838, 848-48, 770 P.2d 1065 (Div. III 1989).

C. The MPD Permit Ordinances Should Be Affirmed Because They Comply With MPD Permit Criteria Set Forth in Chapter 18.98 of the BDMC.

TRD argues that the City Council’s decision approving the MPD Permits must be reversed, because Yarrow Bay did not carry its burden of demonstrating that the Permit criteria had been met. TRD Brief at 77-100. TRD is mistaken. Under LUPA, neither Yarrow Bay or the City has any burden. Rather, LUPA expressly places the burden on TRD to demonstrate its entitlement to relief. RCW 36.70C.130(1). TRD has utterly failed to meet its burden here.

1. The MPD Permits Are Consistent With Comprehensive Plan Policies, as Required by the Related Development Regulations.

Under the City’s adopted development regulations, MPD Permits need only be consistent with adopted Comprehensive Plan policies, and not with any and every phrase that TRD isolates (TRD Brief at 77-85). BDMC 18.98.080(A)(1). Comprehensive Plan “policies” are expressly labeled as such, and are separately set forth in discrete portions of the

Plan.¹²²

As TRD correctly observes, a comprehensive plan typically serves only as a “guide” or a blueprint and may not be used to make specific land use permit decisions. TRD Brief at 77-78; *see also Timberlake Christian Fellowship*, 114 Wn. App. at 183, *review denied, sub nom. Citizens for a Responsible Rural Area Dev. v. King County*, 149 Wn.2d 1013. An exception to this rule applies when zoning regulations by their terms require application of the comprehensive plan. In those cases, the plan may then be used to assist in making a specific land use decision.¹²³ Necessarily, a comprehensive plan may be applied to a specific land use decision only to the extent actually called for by the applicable development regulation.

TRD’s claim rests on the MPD regulations codified in BDMC 18.98, specifically 18.98.080(A)(1). TRD Brief at 78. As TRD accurately recites, “An MPD permit may not be approved unless it ‘complies with all applicable *adopted policies*.’” *Id.* (emphasis added). The MPD Permits do comply with the Plan’s adopted policies, and TRD’s Brief does not address any specific Plan policies. Rather, it points to isolated portions of

¹²² Within Chapter 5 (Land Use), adopted “policies” are identified at pages 5-32, 5-34 – 5-35, 5-37, 5-39 – 5-40, 5-43 – 5-44, 5-48 – 5-49, 5-52 – 5-53, and 5-54.

¹²³ *See, e.g., Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007); *Cingular Wireless LLC v. Thurston County*, 131 Wn. App. 756, 770 (Div. II 2006).

the Plan's general narrative, outside of the expressly denominated Plan policies. TRD Brief at 79-85. TRD's claims on this issue may be rejected on this basis alone.

2. The Court Must Defer to the City Council's Conclusion That the MPDs Comply With Applicable Comprehensive Plan Policies.

Even assuming that the Plan narrative applies more broadly and can be reasonably construed to be synonymous with a defined Plan "policy," the MPD Permit Ordinances contain the City Council's express determination that the MPD Permit applications are *consistent* with the Plan. AR 27256-59. In Concl. 27.A, the City Council explained at length its interpretation of the Plan and the manner in which the MPD Permits are consistent with the Plan. *Id.* The City Council further concluded that the MPD Permits are consistent with the community's vision for Black Diamond as set forth in the Plan, and specifically including the provisions relating to MPDs.¹²⁴ The Court should defer to the City Council's construction of its own Plan, and the Council's related determination that the MPD projects are consistent with the Plan.¹²⁵

¹²⁴ AR 27249 (Ord. 10-946, Ex. B at Concl. 16) ("Further, Page 5-13 of the Comprehensive Plan (Land Use element) discuss[es] the MPD Overlay plan designation. The Villages MPD is also consistent with that section of the Comprehensive Plan.").

¹²⁵ RCW 36.70C.130(1)(b); *Phoenix Dev.*, 171 Wn.2d at 838 ("We defer to the City's construction of what is consistent with its comprehensive plan and hold that the City's conclusion is not an erroneous interpretation of the law.").

TRD next claims that the City Council’s “findings”¹²⁶ “never meaningfully address the substance of these [Plan policy] issues.” TRD Brief at 86. As the Supreme Court noted in *Phoenix Dev.*, conclusions of law concerning Comp Plan consistency need not contain any particular level of detail. In that case, the city’s hearing examiner recommended approval of the development, concluding that it was “reasonably compliant with the Comprehensive Plan” after examining eight land use policies, two housing policies, three community design policies, one capital facilities policy, and four environmental policies.” *Phoenix Dev.*, 171 Wn.2d at 838. In contrast, the Woodinville City Council “did not cite *any* comprehensive plan policy in its final decision” rejecting the development. *Id.* (emphasis added). Nevertheless, the Court deferred to the City Council’s construction of its own comprehensive plan and upheld its decision. *Id.* The same result applies even more clearly here – the Black Diamond City Council did address the issue in detail, in two different, lengthy conclusions of law. AR 27249 and AR 27256-59 (Ord. 10-946 Ex. B, Concl. 16 and 27.A).

¹²⁶ TRD’s focus on “findings” is misplaced. Whether the MPDs are consistent with a legal standard, such as adopted Plan policies, is a conclusion of law, not a finding of fact. Findings of fact are made only “on matters which establish the *existence or nonexistence of determinative factual matters . . .*” *Weyerhaeuser v. Pierce County*, 124 Wn.2d 24, 35-36 (1994) (emphasis added).

TRD nitpicks that Conclusion 27.A “sidetracks into a discussion of density.” TRD Brief at 86. The City Council, however, discussed density in the context of its role in determining urban and rural character and in interpreting the specific Plan language at issue, in direct response to TRD’s arguments below. (Exhibit 161, at AR 14078). In Exhibit 161, TRD argued at length that Plan policies require new development to embody the historic, rural character of Black Diamond. *Id.* TRD argued that “the *Comprehensive Plan does not authorize urban character development* no matter how much open space is protected in the surrounding area.” AR 14083 (emphasis added). Rather than a “sidetrack” into density discussion, the City Council appropriately discussed and rejected TRD’s arguments directly. In Concl. 27, the City Council determined that the MPDs were consistent with applicable Plan policies relating to the required “small town” rather than “rural” character, and that the City’s “MPD regulations provide the specific examples of how this is to be accomplished . . .” AR 27258 (Ord. 10-946, Ex. B at Concl. 27.A.iv and v).¹²⁷

¹²⁷ Despite its written argument below as described in Ex. 161, TRD did concede at oral argument to the City Council that “[t]here’s not a question but that the development that occurs on this [MPD] property *is to be urban, as defined as four units per acre or more. And the commercial development should be urban commercial.*” AR 28460 (emphasis added). Given this concession by TRD, the City Council properly put the “rural character” arguments to rest in Concl. 27.

3. Even Assuming the Applicability of the Full Comprehensive Plan Text to MPD Permit Review as Urged by TRD, the MPD Permits Remain Consistent with the Plan and the Adopted Development Regulations.

Even assuming that this Court should delve into the specifics of TRD’s claims, the MPD Permits were properly approved, and should be affirmed.

a. The Comprehensive Plan Expressly Anticipates MPD Development Over the Next 10 - 15 Years.

TRD claims that the MPD Permit Ordinances are “not a continuation of ‘incremental development’ described in the Plan because it took Black Diamond “nearly 100 years to grow to its current size. Yarrow Bay proposed to quintuple that in just fifteen years.” TRD Brief at 81. TRD contradicts itself. In its arguments to the City Council, TRD argued that the Plan “*doesn’t say a word about how fast that development is to occur or in what sequence or in what stages . . . Those are . . . options that you have available to you . . .*” AR 28461 (emphasis added). TRD’s equivocation in this regard is likely caused by the plain language of the Plan itself, which expressly projects by 2025 at least a quadrupling of the City’s population, from 4,120 to 16,980.¹²⁸ “Much of the growth will occur as a result of Master Planned Developments (MPDs) . . .” Comp

¹²⁸ Comp Plan at 5-29 (Table 5-1). The Plan recognized that actual growth could be somewhat, or even significantly, higher than that amount. Comp Plan at 3-5, 3-8.

Plan at 3-1. This growth will occur “during the upcoming 10 to 15 years . . .”¹²⁹ This growth is consistent with Black Diamond’s history,¹³⁰ and the MPDs accurately represent incremental development because each MPD involves multiple phases of development over time. AR 24299-314 (Villages MPD Phasing Plan). “Incremental” means “in increments,” which is precisely the manner in which these MPDs will be developed.

b. The MPDs Are Consistent With Principles of Retaining the Natural Setting.

The MPD Permits are also consistent with Plan language referring to retention of the natural setting. TRD argues otherwise, claiming that clearing and grading necessary to build homes is inconsistent with this principle. TRD Brief at 79-80, 82. TRD points to drawings from Randall Arendt’s book, “Rural by Design,” as evidence of claimed “design flaws.” TRD Brief at 79, n. 19.

Initially, of course, no development of any kind can proceed without clearing and grading of the site to be developed, as is apparent from the cleared and graded character of the developed portions even of

¹²⁹ Comp Plan at 3-6 (emphasis added); *see also* at 3-8 (“supply of land is anticipated to be built-out *within the lifetime of this comprehensive plan’s planning horizon (2008-2025) . . .*”) (emphasis added).”

¹³⁰ In just twenty years following the discovery of the first coal vein in 1880, Black Diamond grew to an estimated 3,500 people, close to its 2008 estimated population of 4,155. Comp Plan at 5-29.

Mr. Arendt’s “creative development” example. *Id.*¹³¹ Further, these MPDs are nestled in and among the 2,500-plus acres of environmentally-valuable open space preserved and conveyed to the public as a result of the BDUGAA. AR 27184 and AR 27356 (Ord. 10-946 and 947 at Finding 18.B). As the Plan expressly notes, this open space provides the “skeletal framework” for the MPD “villages,” so named because they utilize compact form and urban development and are separated by swaths of open space. Plan at 5-8 – 5-9; *see also* 5-24, 5-27, and 5-28 (Fig. 5-2). In addition, open space for parks and critical areas is preserved within the MPD sites themselves. Thus, the MPDs embody – rather than contradict – the “creative development” illustrated in Mr. Arendt’s Figure 7-3. AR 14092.

TRD again mischaracterizes the Plan in its claims that the MPD Permits contradict Plan policies discouraging significant vegetation clearing and encouraging the retention of natural vegetations.

Policy CF-41 (Plan at 8-44) does not discourage vegetation clearing as part of the MPD projects; instead, it calls for applicants to

¹³¹ TRD rhetorically points to the “hills of Seattle and San Francisco” as support for its argument that development “does not require leveling of natural landforms.” TRD Brief at 80, n.20. The City notes that Seattle’s development history includes the “Denny Regrade,” which obliterated Denny Hill by sluicing it into Elliott Bay over a period of decades, and the “Montlake Cut,” which drained and lowered Lake Washington. *See Appendix E.* The MPDs do not utilize these invasive techniques, but instead preserve wetlands, creeks, and other significant features. As in the past, *some* grading is required.

“Design *storm drain lines* to . . . discourage significant vegetation clearing . . .” Policy CF-42 does not require the MPD projects to “retain natural vegetation”; instead, it states that “*development regulations* should encourage . . . retention of natural vegetation.” Comp Plan at 8-44 (emphasis added).

c. The MPDs are Consistent With Comp Plan References to “Character.”

TRD also claims that the MPDs are inconsistent with out-of-context Plan references to “rural community,” “traditional village community,” and “historic rural character.” TRD Brief at 81-84. The Plan provisions cited by TRD call only for the City to adopt *design guidelines* to preserve desired community character:

Plan at 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.]

Plan at 5-33: *Principals and guidelines* for community design and character *will guide development* to ensure it remains a traditional village community. [Emphasis added.]

Consistent with those cited Plan sections, the City Council did adopt MPD Framework Design Guidelines. BDMC Section 18.74.010. Other of the Plan provisions challenged by TRD are not even land use policies. For example, Plan Policy T-10 (at 7-49) regarding enhanced small town

character is to be implemented by to-be-adopted *road design* standards. Another cited policy MPDFSG 4 (“Care should be taken to reflect” various aspects of City history) is exhortatory only; it is implemented by the specific, articulated standards that follow it. AR 16101, Guidelines B.1-3. The City Council correctly concluded that “small town character” is implemented by specific MDP regulations and design guidelines, rather than by the isolated references to Plan narrative cited by TRD. AR 27258 (Concl. 27.A.iv and .v).

4. The MPD Permit Ordinances Properly Concluded That Significant Adverse Impacts Would Be Mitigated.

TRD argues that Yarrow Bay has not established that the MPDs will protect Lake Sawyer. TRD Brief at 86-89. This is a “straw person” argument. TRD is wrong about both the legal standard and the substantial evidence in the record supporting the City Council’s conclusion contrary to TRD’s argument.

First, there is no MPD Permit requirement to “protect Lake Sawyer.” Three MPD regulation provisions touch on Lake Sawyer.¹³² Of these, only one – BDMC 18.98.080(A)(2) – is actually listed as a criteria

¹³² BDMC 18.98.010(F) (purpose of MPD Permit process is to “identify significant environmental impacts, and ensure appropriate mitigation”); 18.98.020(B) (MPD Permit process provides public benefits, including protection of surface and groundwater quality through the use of innovative, low-impact and regional stormwater management technologies); and 18.98.080(A)(2) (MPD Permit may be granted if significant adverse environmental impacts are appropriately mitigated).

of MPD Permit approval. The City Council reviewed all three, however, and concluded they were met, based on detailed findings of fact.¹³³ TRD does not acknowledge or challenge any of these findings or conclusions, or even address the applicable code provisions.

Instead, TRD argues that Comp Plan Policy NE-6 required a *reduction* in phosphorous loading to Lake Sawyer, that the burden was on Yarrow Bay to demonstrate that the MPDs would not increase phosphorous, and Yarrow Bay did not meet its burden. TRD Brief at 87. TRD is wrong. Comp Plan policy NE-6 does not apply to MPD Permits or other development permits. Instead, it requires the City’s “special protection measures” (adopted pursuant to Policy NE-5 for areas susceptible to groundwater contamination) to “evaluate and include measures to reduce pollutant loads, including phosphorous discharged to Lake Sawyer.” Policy NE-6; Comp Plan at 4-25. The City has adopted those measures.¹³⁴

The remainder of TRD’s argument rehashes its FEIS argument, that Yarrow Bay was required to provide detailed information on the MPD’s phosphorous loading because the MPDs alone might “tip” Lake

¹³³ AR 27168-75 (Findings 7.A - .M); AR 27246 (Concl. 9); AR 27251-53 (Conc. 18); and AR 27260-62 (Concl. 28).

¹³⁴ See, e.g., BDMC 14.04.390(B)(1)(m) and (o) (illegal to discharge pesticides, fertilizers, soap or detergent into surface or ground waters).

Sawyer into producing blue-green algae. TRD Brief at 83. Strangely, TRD focuses on only a part of the Examiner's decision, rather than what the Council found. The portion of the Examiner's decision that TRD quotes says such "tipping" is possible only under the outdated Lake Sawyer Management Plan assumptions, which the Examiner found "significantly overstates the amount of phosphorous generated" by the MPDs, and exaggerated the Lake's current condition. AR 24601. The Examiner actually found that "*Lake Sawyer is no longer anywhere near the tipping point and it appears unlikely that the MPD proposals would exceed the tipping point . . .*" AR 24582 (emphasis added). The Council made similar, more detailed, findings. AR 27171 (Finding 7.I.ii). The Examiner and the City Council both found that DOE's 2009 Implementation Plan establishes that the MPDs will be subject to the DOE Stormwater Management Manual, which will ensure compliance with the Lake Sawyer phosphorous TMDL. AR 24603-05, AR 24607; AR 27173-75 (Finding 7.J). TRD has not assigned error to or otherwise challenged these findings, and it is TRD's burden to show a lack of substantial evidence to support them. RCW 36.70C.130(1)(c).

TRD also states that the Examiner proposed a monitoring condition, and complains (without evidentiary support) that "the damage will be done" by the time monitoring discloses a problem. TRD Brief at

89-90. TRD's claim ignores the express terms of the MPD Permit conditions actually imposed by the City Council, which go well beyond the Examiner's recommended monitoring. AR 27314-15 (Conditions 73, 76, 81, and 83).

5. The MPD Permits Appropriately Mitigate Potential Traffic Impacts.

The MPD Permits also appropriately mitigate potential traffic impacts. TRD disagrees, again re-hashing its FEIS arguments. Despite TRD's claim that the City Council needed more information, the City Council expressly found that the FEIS traffic impact analyses were reasonably thorough and sufficient to support issuance of the MPD Permits, rejected TRD's attacks on the FEIS traffic analyses as unsupported by evidence, and found that no additional information was needed. AR 27163-68 (Findings 5.I – 6). TRD neither acknowledges nor assigns error to these findings.

TRD also complains about what it calls "the Council's mid-point review" of traffic impacts, claiming it is "too little and too late." TRD Brief at 93-94. First, future traffic reviews are not at the "mid-point" (*i.e.*, after permits are issued for the first 3,000 of the total of 6,000 permitted homes) but rather after the issuance of building permits for only the first 850 homes. AR 27303 (Condition 17.a). The Council sensibly set this

review point in order to account for, and mitigate, actual traffic behavior, rather than the anticipated traffic behavior forecast in pre-development modeling.¹³⁵ AR 27304-05 (Condition 17.f).

6. The MPD Permits Adequately Address Construction Noise Impacts.

TRD acknowledges that the MPD Permits are conditioned on future construction noise analysis and mitigation. TRD Brief at 95. TRD admits that “there is not very much mitigation that can be provided,” thereby undercutting its own claim that additional analysis is needed. TRD also argues, without supporting evidence or authority, that noise impacts cannot be addressed as each future subdivision is permitted. TRD Brief at 96. This argument ignores the reality that construction noise (and its mitigation) depends largely on the location of the routes used by construction trucks, and their proximity to homes and businesses. Analysis and mitigation are best undertaken on a permit-by-permit basis, when the locations of truck haul routes and related borrow/fill sites can be identified. In these MPDs, some of the potential haul routes may be along streets that do not even exist yet. For example, the City Council conditioned the Lawson Hills MPD on Yarrow Bay’s construction of a haul route along the currently non-existent Lawson Hills Parkway, and

¹³⁵ AR 27299 (Condition 14 (model revisions should incorporate realized trip capture rates)).

prohibited construction hauling along certain named residential streets in order to protect those residents from noise impacts. AR 27478 (Condition 44).

7. The MPD Permits Comply With Job Creation Requirements.

TRD argues that the MPD Permits violate a Plan provision that requires creation of one job for each new household. TRD Brief at 96-98. TRD is wrong. Reviewing its own Plan in detail, the City Council determined that the requirement is actually 0.5 jobs per household. AR 27187-88 (Finding 22); AR 27270-72 (Concl. 47). The Council's determination of the meaning of this Comp Plan provision is supported by substantial evidence detailed in its finding and conclusion, and is entitled to deference under *Phoenix Dev.*, 171 Wn.2d at 831, 838.

TRD also complains that substantial evidence is lacking to prove that the City has adequate zoned capacity to produce the necessary number of jobs, but the job requirement requires the zoned capacity to be provided either within the MPD *or* the City as a whole. The unchallenged Comprehensive Plan itself states that the City has the capacity to produce almost double the number of jobs required. AR 27271 (Concl. 47.E, citing Finding 22.D); AR 27271 (Concl. 47.G, job requirement in BDMC 18.98.120(C) satisfied).

8. The MPD Permits Comply With the Walkable Schools Standard.

TRD's last argument is that the MPD Permits violate Plan provision establishing a "walkable schools" standard, which TRD contends is one-half mile. TRD Brief at 98. Again reviewing its own Plan in detail, the City Council concluded that the Plan contains no "walkable" standard. AR 27268. Rather, as the City Council noted, the Plan sets forth a goal that 80% of City residents have no more than a one-half mile walk to schools. Id. Given the aspirational nature and flexibility of this standard, the Council reasonably determined that requiring schools to be located within a half-mile walk of schools where reasonable and practical was sufficient. Id.; AR 27317 (Condition 98). The Council's reasonable interpretation of its own Plan is entitled to deference. *Phoenix Dev.*, 171 Wn.2d at 838.

D. The City Should Be Awarded Its Attorneys' Fees and Costs.

This Court should award the City its attorneys' fees pursuant to RCW 4.84.370, which mandates an award of attorneys' fees and costs to the substantially prevailing party on appeal before the court of appeals of a decision by a city to issue a development permit involving a site plan or similar land use approval or decision. Here, the City's decisions have been upheld before the Hearing Examiner, the City Council, and the

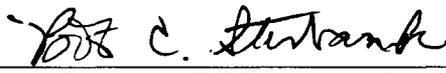
Superior Court. Under RCW 4.84.370(2), Black Diamond is the prevailing party and is entitled to its attorney fees and costs.

V. CONCLUSION

The Examiner properly applied the “rule of reason” to sustain the adequacy of nearly 4,500 pages of detailed environmental analyses included in the FEISes. The City Council fairly and appropriately interpreted its own unchallenged Comprehensive Plan provisions and related development regulations to approve the MPD Permits. These decisions are entitled to judicial deference, and should be affirmed in their entirety.

RESPECTFULLY SUBMITTED this 13th day of March, 2013.

KENYON DISEND, PLLC

By 
Bob C. Sterbank, WSBA No. 19514
Michael R. Kenyon, WSBA No. 15802
Attorneys for City of Black Diamond

DECLARATION OF SERVICE

I, Kathy Swoyer, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 13th day of March, 2013, I served a true copy of the foregoing *Respondent Brief of City of Black Diamond* on the following counsel of record using the method of service indicated below:

<p>Attorneys for Petitioners: David A. Bricklin Bricklin & Newman, LLP 1001 Fifth Avenue, Suite 3303 Seattle, WA 98154</p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: bricklin@bnd-law.com</p>
<p>Attorneys for BD Lawson Partners, LP and BD Village Partners, LP: Nancy Bainbridge Rogers Cairncross & Hempelmann, P.S. Law Offices 524 Second Avenue, Suite 500 Seattle, WA 98104-2323</p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: NRogers@Cairncross.com</p>
<p>Attorneys for Maple Valley: Jeffrey A. Taraday Lighthouse Law Group, PLLC 1100 Dexter Avenue N., Suite 100 Seattle, WA 98109</p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: jeff@lighthouselawgroup.com</p>

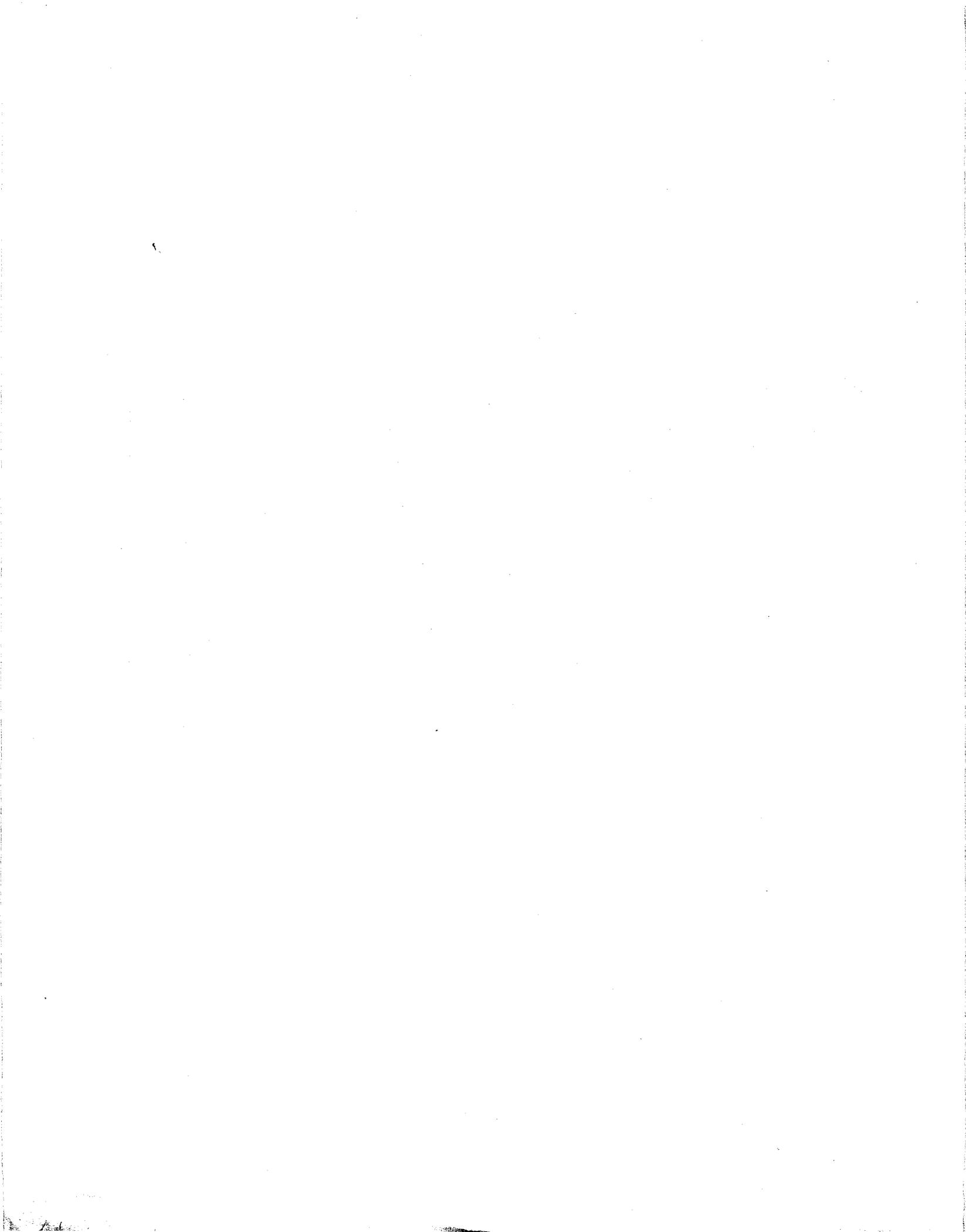
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 COURT OF APPEALS DIV I
 STATE OF WASHINGTON
 2013 MAR 13 PM 4: 29

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of March, 2013, at Issaquah, Washington.



Kathy Swoyer



APPENDIX A

City of Black Diamond Comprehensive Plan



June 2009

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.¹ 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

¹ 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.

- 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 trinity 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:

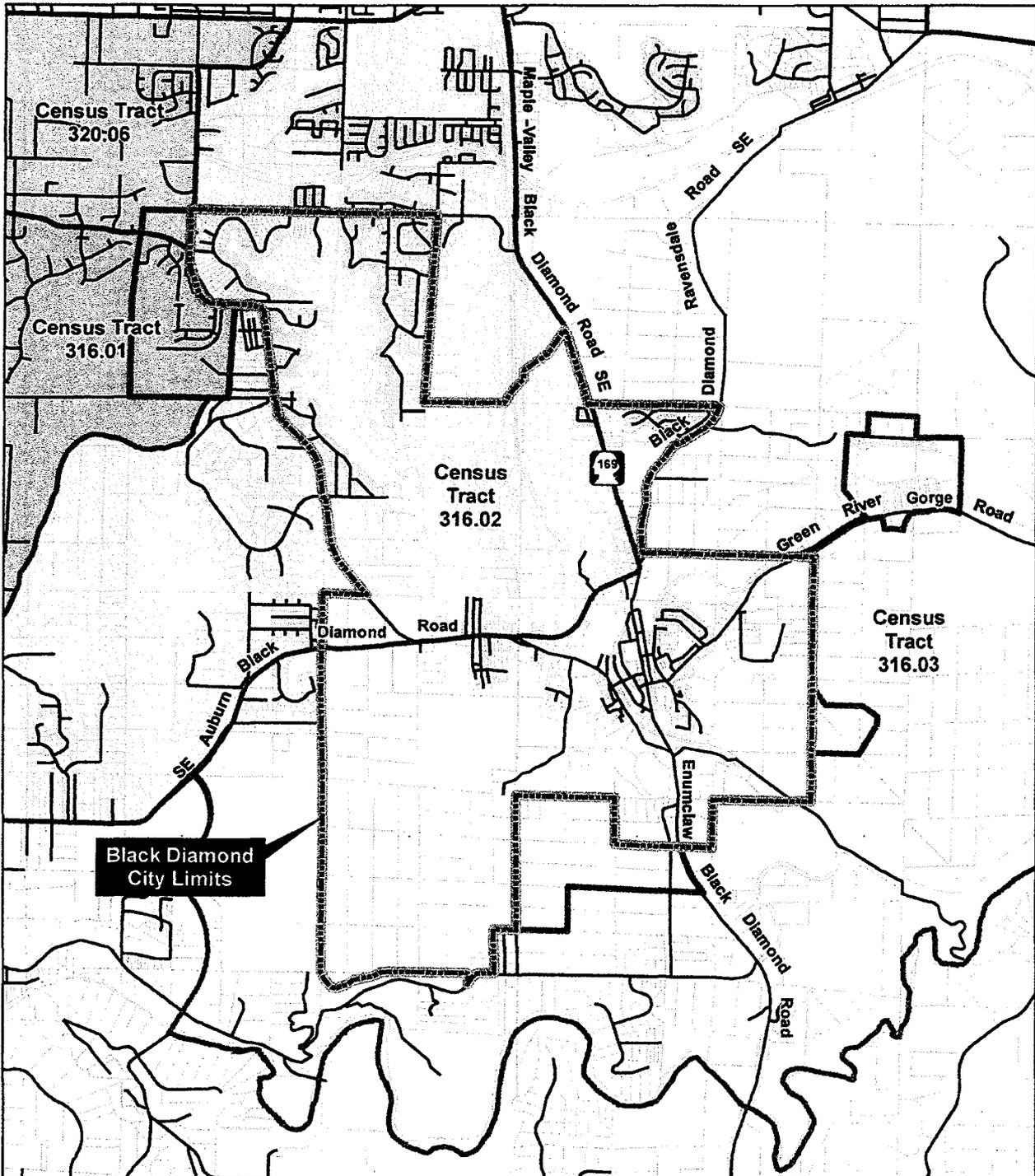
- Establish a public review process for MPD applications;
- Establish a comprehensive review process for development projects occurring on parcels or combined parcels greater than 80 acres in size;
- Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable 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

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

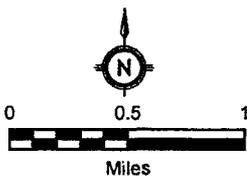


Figure 3-1. Census Tract Map
 Black Diamond Comprehensive Plan
 May 2009

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.² 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	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

² 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 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.³ 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.

³ 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.⁴

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.

⁴ 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.

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.

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.⁷ In December 2005, the City completed annexation of its West Annexation Areas totaling approximately 345 acres.⁸ 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

⁷ Washington State Office of Financial Management. Annexations Approved by OFM 1/1/1990 through 12/31/1999.

⁸ 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 ¹	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.

¹ 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.

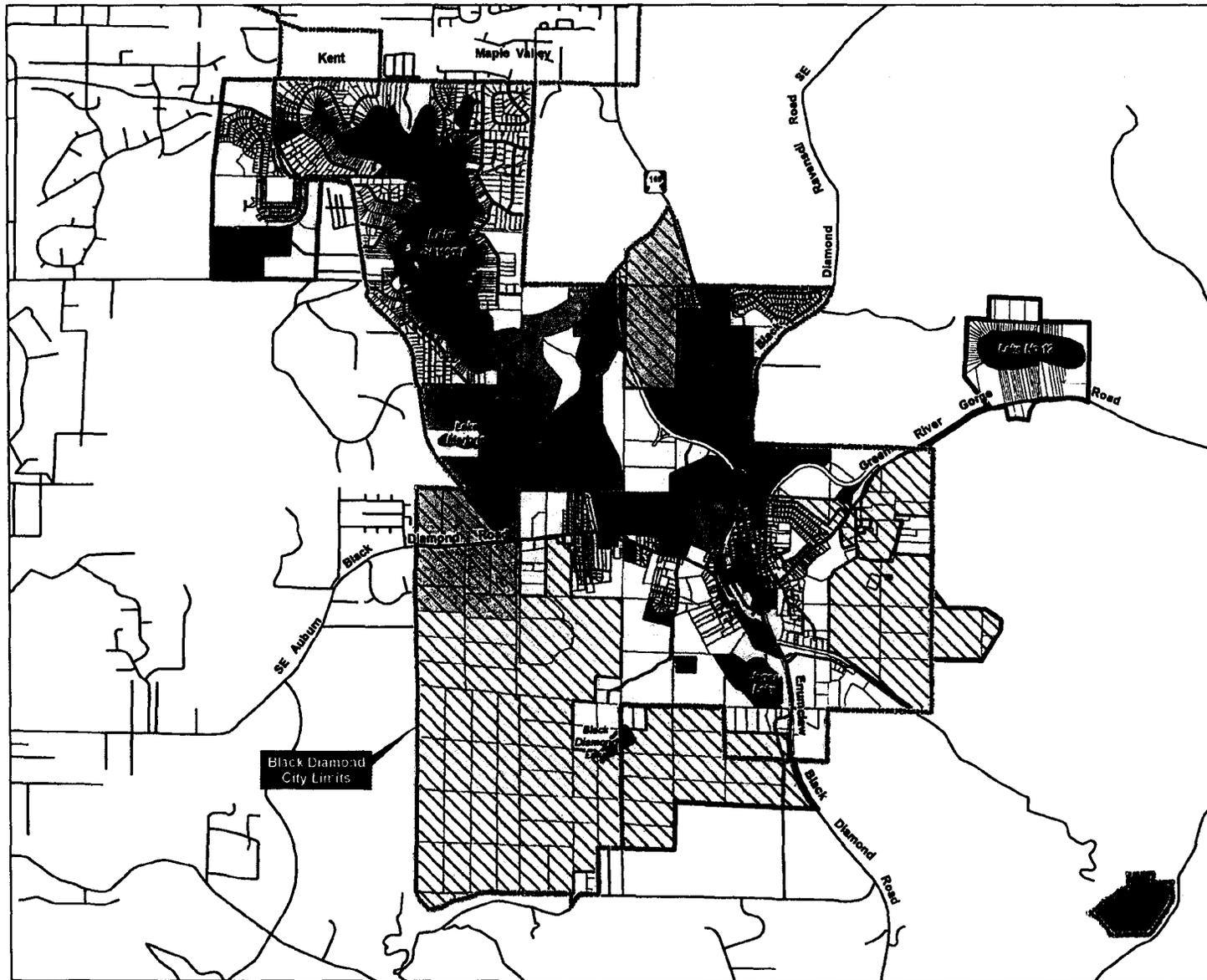


Figure 5-1

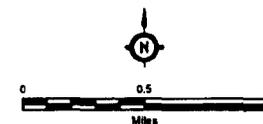
City of Black Diamond
Future Land Use Map

- 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: June 2008



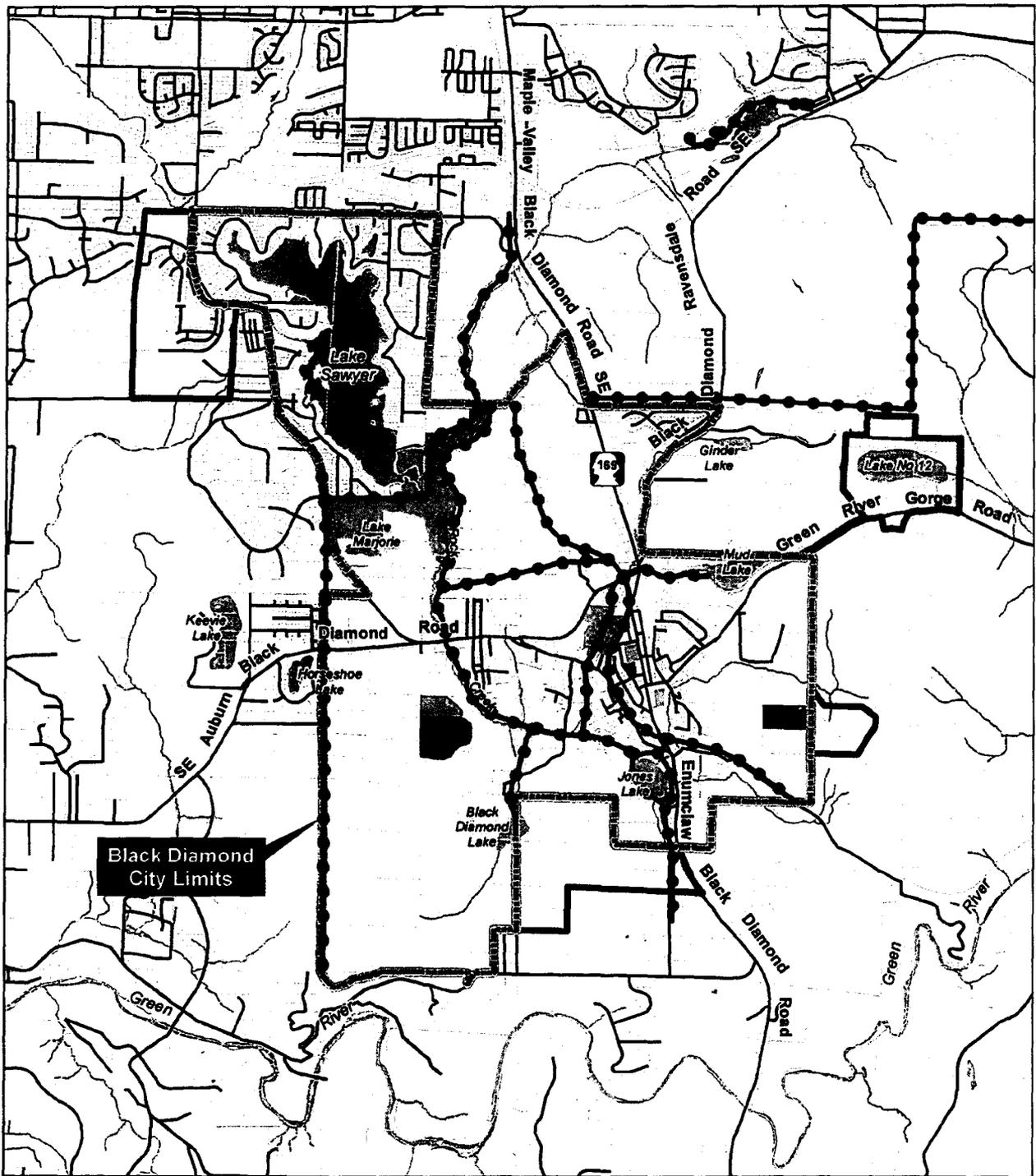
ICF Jones & Stokes
 AN ICF International Company

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

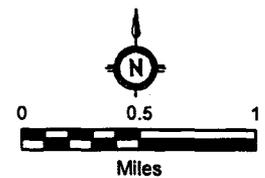


Figure 5-2. Parks and Open Space Map
 Black Diamond Comprehensive Plan
 May 2009

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

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 LU47-48: 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.

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:

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.¹

¹ Dal Santo, Dan, Black Diamond Utility Supervisor. Phone conversation, December 27, 2006.



APPENDIX B

ORDINANCE NO. 599

AN ORDINANCE OF THE CITY OF BLACK
DIAMOND, KING COUNTY, WASHINGTON,
ADOPTING THE 1996 CITY OF BLACK
DIAMOND COMPREHENSIVE PLAN.

WHEREAS, the Growth Management Act, as contained in Chapter 36.70A of the Revised Code of Washington, requires the City of Black Diamond to adopt a comprehensive plan; and

WHEREAS, all necessary meetings, hearings and notices having been provided to the public and the Council having determined that the plan as proposed will serve the best interest of the health, safety and welfare of the citizens of the City of Black Diamond;

Now, therefore, the City Council of the City of Black Diamond, King County, Washington do ordain as follows:

Section 1. The final 1996 City of Black Diamond Comprehensive Plan dated August 8, 1996 is hereby adopted as the Comprehensive Plan of the City of Black Diamond.

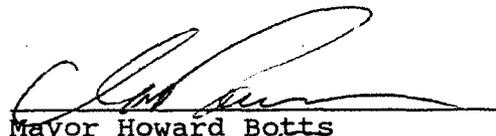
Section 2. Three copies of the August 8, 1996 final Comprehensive Plan shall be placed on permanent file at the City Hall to be maintained by the City Administrator.

Section 3. This ordinance shall be in full force and effect five days after its passage, approval, posting and publication as provided by law. A summary of this Ordinance may be published in lieu of publishing the ordinance in its entirety.

Section 4. If any provision of this ordinance, or ordinance modified by it is determined to be invalid or unenforceable for any

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Ordinance No.:
Draft No.:
Draft Date: August 8, 1996
Ordinance Requested by:
Page 1

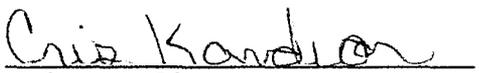
reason, the remaining provision of this ordinance and ordinances and/or resolutions modified by it shall remain in force and effect.



Mayor Howard Botts
INTRODUCED: 8-15-96
PASSED: 8-15-96
APPROVED: 8-15-96
PUBLISHED: 8-21-96

MAYOR DRAFT - DAVID PALES

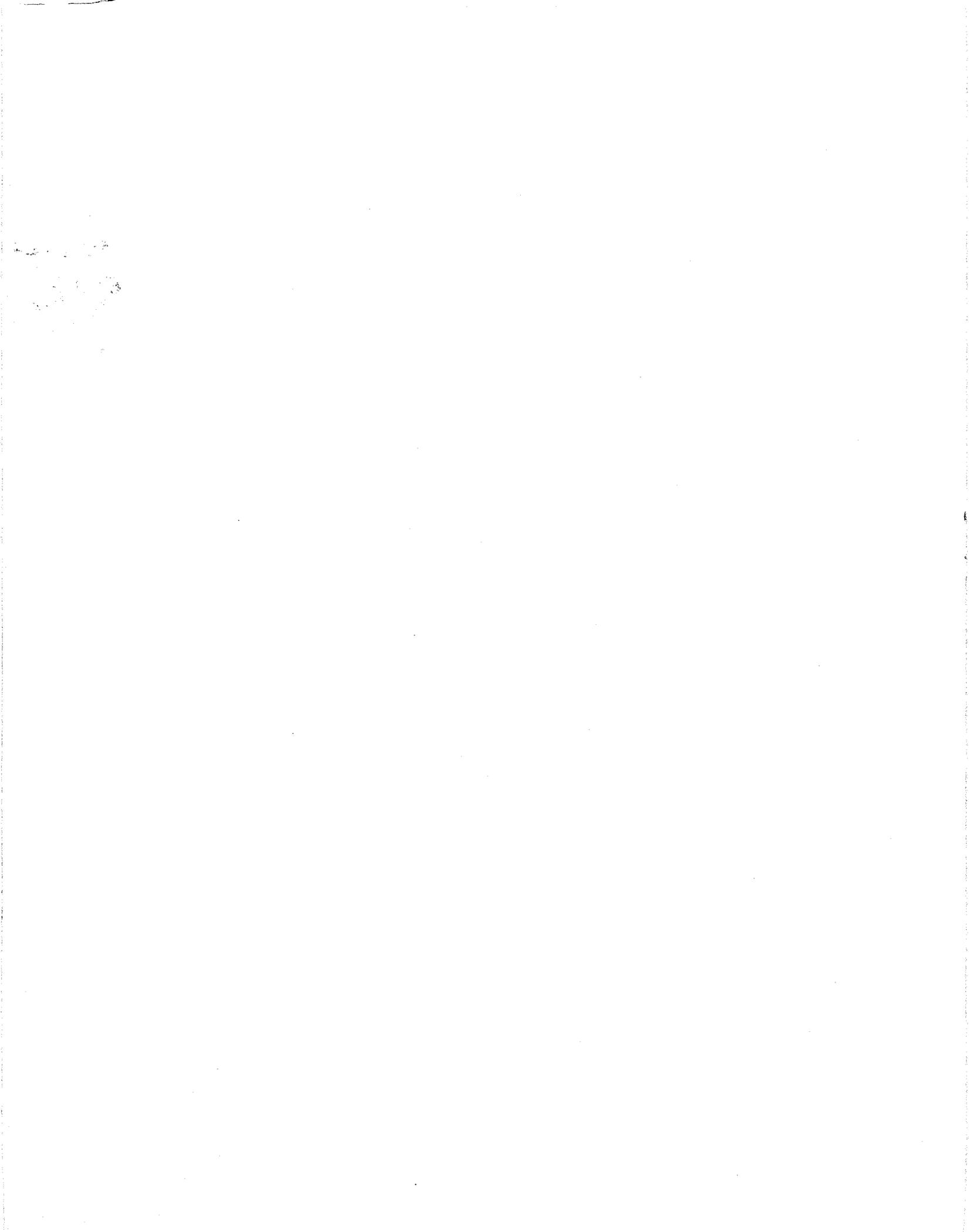
Attested:


Cris Kandior
City Clerk

APPROVED AS TO FORM:


Duncan C. Wilson
City Attorney
[1:BD\Ord\Comp-Pln.Ord]

Ordinance No.:
Draft No.:
Draft Date: August 8, 1996
Ordinance Requested by:
Page 2



APPENDIX C

APPENDIX C

MPD Hearing Examiner Hearing Testimony
Expressing Concerns About Size of MPDs

J. McElroy (AR 1333):

“[W]e all came out here for the same reason, that is to get away from the concentrated neighborhood living [I]f this proposed Villages development is approved in its current configuration, life as we know it will be forever obliterated and replaced with a mask of dense, tight compacted housing.”

J. McElroy (AR 1340):

“[W]e didn’t come out there and live on that property in rural King County to have schools right across the street from us.”

C. Clifford (AR 1371, 1374):

“[W]e are looking at a place where there are 4,000 people in this town. They want to bring in a total of over 20,000”

* * *

“You want to be rural by nature. They want a forest of French chalets and condos. They want to put multiple housing out there.”

P. Rimbos (AR 1703-04):

“[O]utsized MPDs are proposed in the wrong place We’re talking about adding four to five new cities to Black Diamond”

C. Proctor (AR 2182, AR 2185):

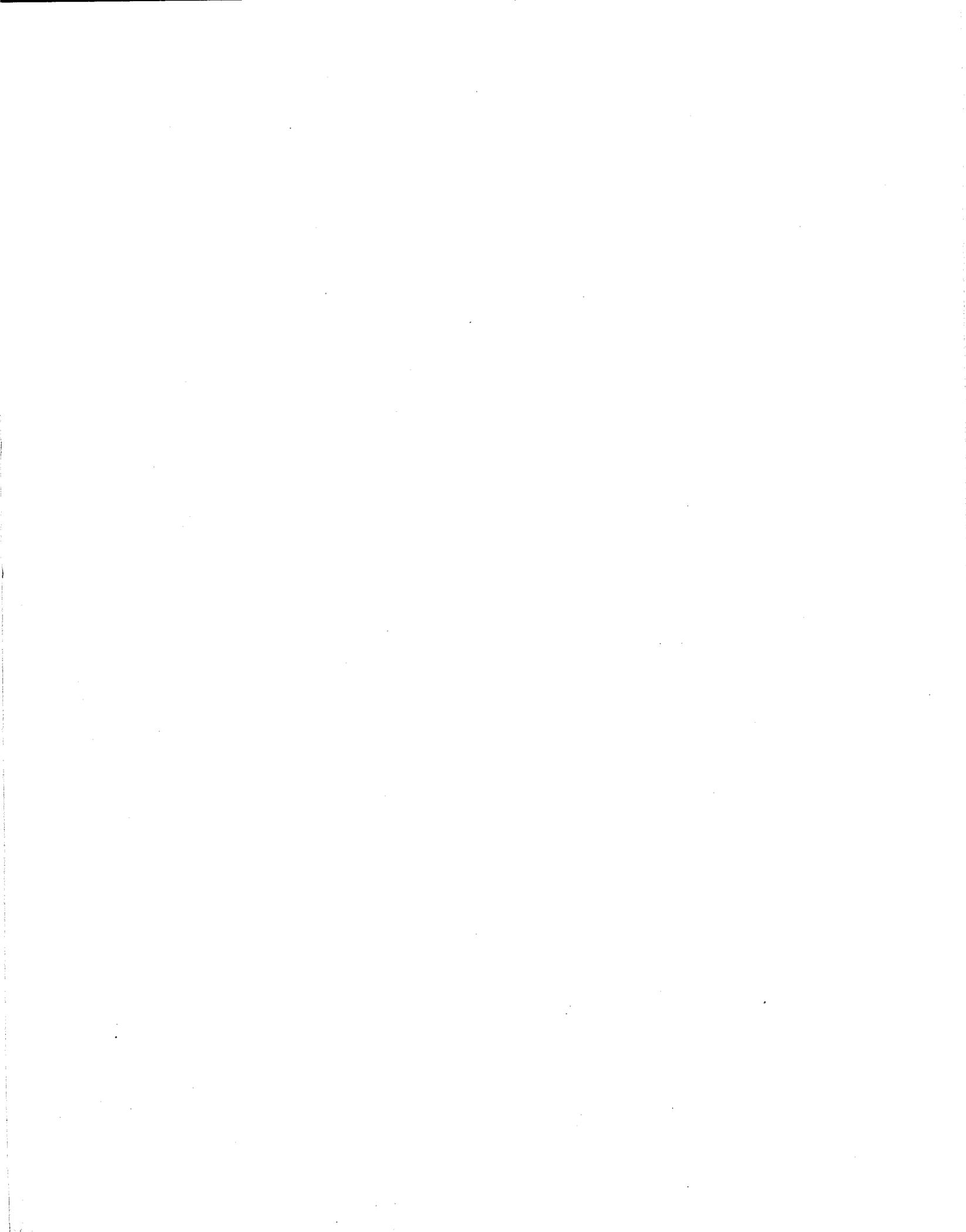
“We wanted what they showed us in the beginning, which is not 6,000 homes. It was much, much less.”

* * *

MPDs are “morally wrong, it’s wrong [for] this community at this scale.”

C. Wheeler (AR 2239):

“These MPDs cause me great concern because of their size and scope. . . . We were promised that the City would stay rural by design. Nothing about 45 units per acre says rural to me.”



APPENDIX D

APPENDIX D

TRD Expert Transportation Witness Testimony FEIS is “Programmatic” or “Nonproject” EIS

Natarajan Janarthan (AR 1125):

Q: You were aware this was a programmatic EIS; right?

A: Yes.

Ross Tilghman (AR 858):

Q: But you agree what we’re talking about here is a programmatic EIS, correct?

A: Yes.

King County’s Matthew Nolan (AR 475-76):

Q: [I]t’s really not a project-level EIS, is it?

A: It’s not a project-level EIS.

WSDOT’s Ramin Pazooki (AR 1167):

Q: [Y]ou understood this to be a programmatic EIS, right? . . .

A: Yes, yes.



APPENDIX E

APPENDIX E

**DOCUMENTATION OF DENNY REGRADE
AND MONTLAKE CUT**

http://en.wikipedia.org/wiki/Denny_Regrade,_Seattle

[http://en.wikipedia.org/wiki/Union_Bay_\(Seattle\)](http://en.wikipedia.org/wiki/Union_Bay_(Seattle))