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2
3 **BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER**
4

5 IN RE: MASTER PLANNED
6 DEVELOPMENT APPLICATION
7 FOR LAWSON HILLS, PLN09-
8 0016

**HEARING EXAMINER
RECOMMENDATION**

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21 **I. INTRODUCTION**

22 BD Lawson Partners (“Applicant”) requests approval of a master plan development
23 (“MPD”) consisting of 1,250 dwelling units and 390,000 square feet of retail, office
24 and light industrial on 1,196 acres. The Hearing Examiner recommends approval
subject to conditions, with the caveat that noncompliance with job creation
requirements be resolved.

25 To promote brevity, this recommendation incorporates text by reference from the
Villages MPD recommendation where possible. It is recommended that the Council
read the Villages recommendation prior to this recommendation.

1 As with the Villages MPD application, the only criterion that does not appear satisfied
2 concerns MPD 18.98.120(C), which requires that the MPD proposal meet
3 comprehensive plan employment objectives by build out "with reasonable certainty."
4 Unlike the Villages, Lawson Hills does meet the 0.5 job per household as interpreted
5 by staff. Lawson Hills is expected to generate 642 jobs, which is over half the number
6 of 1,250 households proposed. However, under the Examiner's interpretation that 1.0
7 jobs per household are required, Lawson Hills falls far short. As also discussed in the
8 Villages MPD recommendation, the validity of the job requirement is uncertain. It is
9 recommended that the City Council confer with the City Attorney on how to address
10 this difficult situation.

11 As with the Villages MPD application, the most significant conditions recommended
12 as a result of the hearings are requirements for a new traffic model; additional study
13 and mitigation of long term noise impacts; conformance to Enumclaw School District
14 acreage requirements for schools; a requirement that all schools be located within a
15 half mile of residential areas; and study and mitigation to protect the unique attributes
16 of Green Valley Road.

17 **II. TESTIMONY**

18 See testimony in the Villages MPD recommendation, incorporated by this reference
19 as if set forth in full.

20 **III. EXHIBITS**

21 See exhibits lists in the Lawson Hills FEIS decision, incorporated by this reference as
22 if set forth in full.

23 **IV. FINDINGS OF FACT**

24 **Procedural:**

25 1. Applicant/Application. The Applicant is BD Lawson Partners. The
application was submitted on May 11, 2009, Ex. CBD-1-1, and a revised application
was submitted on December 31, 2009, Ex. CBD-1-2.

2. Hearing. See FOF No. 2 of the Villages MPD decision, incorporated by this
decision as if set forth in full. The Lawson Hills hearing with few exceptions ran
concurrently with the Villages hearing. The Examiner usually incorporated the
Villages testimony by reference into the Lawson Hills hearing and vice-versa. Also,
as in the Villages hearing, the Lawson Hills hearing included three final
environmental impact statement ("FEIS") appeals.

3. Environmental Review. Three appeals were filed challenging the adequacy of
the Lawson Hills FEIS. The Hearing Examiner issued a decision on May 4, 2010

holding that the Lawson Hills FEIS is adequate. That decision is incorporated into this recommendation as if set forth in full.

Substantive:

4. Proposal Description. BD Lawson Partners is requesting approval of a Master Planned Development (MPD) pursuant to Black Diamond Municipal Code 18.98, for the Lawson Hills MPD. Proposed uses include low, medium and high density residential; retail, commercial, office; light industrial; educational, recreational and open space. The proposal is for 1,250 dwelling units and 390,000 square feet of retail, offices and light industrial on 371 acres.

The Lawson Hills project consists of two subareas, the Main Property and the North Triangle. The "Main Property" is located between the SR 169/Roberts Road intersection to the west and extends to King County to the east. The "North Triangle" is located on the west side of SR 169, approximately one mile north of the SR 169/Roberts Drive intersection.

The details of the Lawson Hills MPD are outlined in the MPD application, dated 5/11/09. Subsequent to the issuance of the FEIS, the Applicant revised its Lawson Hills application on 12/31/09. The assessment of EIS adequacy in this appeal decision only relates to the proposal as detailed in the 5/11/09 application. The Examiner also finds that the 5/11/09 application sufficiently describes the project for environmental review.

5. Project Impacts. Finding of Fact ("FOF") No. 5 of the Villages MPD recommendation is incorporated by this reference as if set forth in full. The last sentence of Finding of Fact No. 5(L) is replaced with the following: "Chapter 6 of the Lawson Hills MPD Application establishes that the MPD has been designed to avoid disrupting infiltration to wetlands."

V. CONCLUSIONS OF LAW

1. Authority of Examiner. BDMC 18.98.060(5) and (6) provide that the Hearing Examiner shall hold a hearing and make a recommendation on MPD applications to the City Council. As discussed in the LH FEIS, the hearing shall be consolidated with any appeals on EIS adequacy.

2. Entitlement. Conclusion of Law ("COL") No. 2 of the Villages MPD is incorporated by this reference as if set forth in full.

3. Review Criteria. COL No. 3 of the Villages MPD is incorporated by this reference as if set forth in full.

1 **BDMC 18.98.010(A): *Establish a public review process for MPD applications;***

2 4. COL No. 1¹ of the Villages MPD is incorporated by this reference as if set
3 forth in full.

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

6 5. The project comprises 371 acres and is therefore subject to the MPD review
7 process. The North Triangle, although approximately 50 acres in size, is considered
8 part of the overall MPD. The MPD code allows a commercial area to be
9 geographically separated from the residential component via Section 18.98.030(C).

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

13 6. The project proposes to preserve specific amounts of open space as detailed
14 on page 3-10 of the MPD application. They include a mix of passive and usable areas
15 comprised of sensitive areas such as wetlands and their associated buffers, trails,
16 parks, and utilities such as stormwater ponds. Figure 3-1 of the MPD application
17 shows a majority of the areas dedicated to open space as a coordinated network. The
18 vast majority of open space will be maintained as sensitive areas (primarily wetlands
19 and streams) and their required buffers.

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

23 7. Chapter 3 of the MPD application requests residential and commercial
24 development standards that allow for greater flexibility in building design and
25 development layout. In terms of residential development, this includes a variety of
housing types at varying densities; alley-loaded lots; clustered residential centered on
common greens; and live/work units. However, it is not clear to what degree the
Applicant intends to use these development forms, as the application indicates the
majority of single family lots will be "front loaded," which is a typical suburban
residential development pattern.

Live/work units are described on page 3-23 of the application materials, but their
potential location is not depicted on the Land Use Plan map contained in the
application. In researching other large master planned communities in the Puget

¹ This is the second COL No. 1 of the Villages MPD recommendation.

1 Sound (such as Issaquah Highlands), staff has found the viability of live/work units to
2 be limited. A proposed condition of approval is to require identification of specific
3 areas where these can be permitted be done as part of the Development Agreement or
4 through a future minor amendment to the MPD.

5 With the unavoidable exception of several road crossings, it appears that avoidance of
6 sensitive areas was a factor in the overall layout of this project. The land use
7 plan/constraints map overlay (CBD-1-11) shows the relationship between sensitive
8 areas and proposed development parcels. The application materials indicate that the
9 proposed Community Connector road and multiple parks are designed to enhance
10 views of Mt. Rainier.

11 Staff supports the concept of innovative design to meet the master planned
12 development purposes and objectives and expects to establish some of the street
13 design features in the Development Agreement and other infrastructure design
14 flexibility through the design deviation process already established within the Black
15 Diamond Engineering Design and Construction Standards.

16 **BDMC 18.98.010(E): *Allow flexibility in development standards and permitted***
17 ***uses;***

18 8. COL No. 5 of the Villages MPD is incorporated by this reference as if set
19 forth in full.

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

22 9. COL No. 6 of the Villages MPD is incorporated by this reference as if set
23 forth in full.

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

10. The project proposes a maximum of 1,250 units and 390,000 square feet of
office and commercial uses to be built out in three phases over a period of
approximately 15 years. (It should be noted that the application includes several uses
that are typically considered to be industrial uses under the definition of "office").
Chapter 9 of the MPD application indicates the initial development focus would be on
the North Triangle, followed later by the Main Property. Development of the Main
Property is proposed to begin at the center of the project site and move outward,
finishing up in the eastern area recently annexed into the City.

Chapter 3 of the MPD application contains design concepts that illustrate the
proposed character of development. Chapter 3 also describes a variety of housing
types anticipated to be built and proposes development standards that would apply

1 exclusively within the MPD. However, the level of detail of the MPD is basically
2 equivalent to a "subarea" plan, as the proposal does not include typical subdivision or
3 project layouts. The amount of flexibility requested in the proposed project and the
4 conceptual level (rather than project level) of detail makes it difficult to determine
5 what product type will be built where and when. In that regard, certainty about the
6 character of residential development is not greater than otherwise provided through
7 standard zone classifications.

8 Project specific design standards will ultimately be incorporated into the
9 Development Agreement that could help ensure consistency in built products over
10 time. These design guidelines must comply with the Master Planned Development
11 Framework Design Standards and Guidelines adopted in June 2009.

12 In order to provide greater certainty about the character of residential and commercial
13 development, staff is recommending that a target unit split (percentages of single
14 family and multifamily) and commercial use split (commercial, office and industrial)
15 be incorporated into the Development Agreement. Staff also recommends that all
16 commercial/office uses (other than home occupations) shall only occur on lands so
17 designated. (The proposed table of allowed uses indicates that limited commercial
18 could occur in areas designated for residential use).

19 **BDMC 18.98.010(H): *Provide environmentally sustainable development;***

20 11. The MPD application discusses possible implementation of low impact
21 development (LID) techniques, water conservation, clustering development and
22 preserving open space. Staff finds that, given the soils on the Main Property (as
23 described in Ch. 4 of the Lawson Hills FEIS), LID may have limited applicability.
24 However, LID is essential for improving water quality, reducing urban runoff and
25 preserving natural flow regimes. As a recommended condition of approval,
mechanisms shall be identified to integrate LID into the overall design of the MPD
for the benefit of these resources. The MPD should be required to comply with codes
aimed at environmental protection such as the Sensitive Areas Ordinance and
mitigation measures derived from the FEIS designed to prevent the project from
having an adverse impact on the environment.

The project includes a number of design features (trails and bike lanes) that will
facilitate non-motorized travel within the Main Property. However, since no
commercial or significant employment development is proposed in this area, it will be
necessary for individuals to make vehicle trips to meet most of their daily and weekly
needs.

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

12. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer, water and the project phasing plan. The Applicant has proposed several cost recovery mechanisms related to construction of improvements including local improvement districts, latecomer agreements and other financing mechanisms such as community facility districts (if authorized by proposed changes to State law). Ch. 9 of the MPD application describes these mechanisms and the timing of improvements in more detail. A traffic monitoring plan is mentioned on page 9-3. Staff is recommending that a proactive rather than reactionary transportation monitoring plan be established as part of the Development Agreement with a list of projects and trigger mechanisms acceptable to the City. This will ensure that needed traffic mitigation measures occur in conjunction with growth, rather than after a decline in level of service. With the proposed phasing plan of supporting regional infrastructure projects, along with various conditions contained herein, and with a satisfactory implementing Development Agreement, the Lawson Hills MPD can meet the requirement of providing services and facilities in an orderly, fiscally responsible manner.

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

13. The project has designated 35 acres for a maximum of 390,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. For clarification, the MPD application describes office uses as a broad category including such things as general office, business support services, light manufacturing, wholesaling and mini-storage. It is unknown what the ultimate mix of uses may be. The Fiscal Analysis prepared for the project (Chapter 12 of the application) appears to be predicated upon retail and office uses only, which appears to be the intended uses in the North Triangle. Appendix J of the FEIS contains analysis on the amount of retail/office square footage to be developed along with employment projections.

Several of the uses included in the proposed definition of "office" are usually categorized as light industrial (such as wholesaling, distillery, research and technology) and are therefore referred to as such in the staff report. Staff's recommendation is that a distinct land use category be created to recognize these potential uses or alternatively, that the category be renamed to properly indicate the range of potential uses. Alternatively, the potential of these uses could be eliminated from the proposal. A recommended condition of approval is to require that areas intended to have light industrial uses be identified on the Land Use Map that is made part of the Development Agreement.

The inclusion of commercial space will, of course, promote job creation. However, whether that job creation is sufficient to meet standards set by the City's comprehensive plan is debatable, as discussed in BDMC 18.98.120(C).

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

3 14. The commercial component of the MPD is proposed for the North Triangle
4 property, with the residential, school, and parks and trails components on the Main
5 Property. Given the separation and distance of the North Triangle from the Main
6 Property, it cannot be considered part of a "mixed use neighborhood." In that regard,
7 the Main Property is more akin to what is commonly known as a planned unit
8 development. However, the MPD code expressly allows a commercial area to be
9 geographically separated from the residential component via Section 18.98.030(C), so
10 the separation of the commercial area cannot be construed as inconsistent with the
11 purpose quoted above.

12 Chapter 3 of the MPD application describes a variety of housing types including
13 detached single family, duplex, triplex, quadplexes, townhouses, cottages, and
14 stacked flats. With the exception of stacked flats, which are described as a possible
15 housing type within the high-density category, all other types could be built within
16 areas designated for either low- or medium-density residential uses. However, the
17 application also indicates that other than approximately 320 units of multifamily
18 housing, the remaining homes will be "single family detached" (see Page 1-1). In
19 addition, even constructing at the low end of the high-density residential density
20 range for all parcels so designated will consume the 320 planned multifamily units. In
21 light of this, the potential unit mix is difficult to determine. The application includes
22 schematic drawings of potential housing types and lot configurations (see Chapter 3).
23 However, the distribution of these various modes of development is not defined. To
24 remedy this ambiguity, the Examiner has added a recommended condition of
25 approval that requires the Development Agreement to set specific targets for housing
types on a phase by phase basis.

A variety of parks and trails are proposed within the main portion of the project.
Other than an elementary school site, the land use plan does not identify other public
or civic uses. The predominant character of the Main Property will be that of a large,
yet unique, residential development.

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

24 15. COL No. 12 of the Villages MPD recommendation is incorporated by this
25 reference as if set forth in full.

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

16. In June 2009, the City adopted an updated comprehensive plan, zoning code, design guidelines and engineering design and construction standards. Earlier in the year (February 2009), new Sensitive Areas regulations were adopted. The Comprehensive Plan includes the City's vision statement on page 1-2, which envisions "moderate growth", clustered residential development, the retention of open space and developing a system of connecting trails/bikeways. The proposed project is generally consistent with the vision statement.

Page 5-13 of the Comprehensive Plan (Land Use element) discusses the MPD Overlay plan designation. The proposal is consistent with that section of the Comprehensive Plan.

As proposed, the Main Property contains only one access point, the proposed intersection of the new Lawson Parkway with existing Lawson Street, which does not comply with the City's Engineering Design & Construction Standards or the Comprehensive Plan transportation component, both of which anticipate a minimum of two points of access into an area of this size. The Applicant has stated that a secondary means of access is being pursued and will not be necessary until later phases of the project build out. However, approving a project of this size without that needed second access being defined is problematic. A secondary access will be required as a condition of approval and its location and any associated mitigation shall be integrated into the Development Agreement.

Comprehensive Plan Policy T-1 calls for connections to surrounding neighborhoods with roads and trails. The City's Engineering Design and Construction Standards section 3.2.02 D provides for no more than 300 homes on a single point of access before a second connection must be constructed. Based on the comprehensive plan and design standards, that portion of the Main Property southeast of Lawson Street should be required to provide at least two fully functional street access points to the existing City street system and stub out at least 3 roads to surrounding properties. As a condition of approval, staff is recommending that:

- No more than 150 residential units be permitted to the southeast of Lawson Street (development parcels L5-L26) until a second general purpose access route to this area is identified and approved;
- No more than 300 residential units be permitted in this area until such time as the identified second general purpose access route is constructed;
- As part of the permitting process for the second connection, a traffic and engineering study should be required to determine what the impact of the redistributed traffic will be and propose mitigation projects to maintain level of service standards;

- The existing streets that are impacted by the second new connection be upgraded as necessary to bring them up to a functional and structural standard.
- If a second access route is not approved within two years of the date of MPD approval, then MPD approval should expire.

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

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

17. This objective is satisfied. Chapter 1 of the MPD application discusses clearing and grading for the project. It is estimated that approximately 1 million cubic yards of soil could be exported and 665,000 cubic yards imported. If soil amendments are made on-site, then approximately 540,000 cubic yards could be exported and 165,000 cubic yards imported. Specific areas where this might occur are not identified in the application materials, making it difficult to judge how existing landforms will be impacted. Removal of this quantity of material could be in conflict with preserving and enhancing the physical characteristics of the site. Staff recommends that, prior to approval of the first implementing project, the Applicant should provide an overall clearing and grading plan including an additional SEPA review.

With the unavoidable exception of several road crossings, it appears that avoidance of sensitive areas was a factor in the overall layout of this project. However, the land use plan/constraints map overlay (CBD-1-11) shows several sensitive areas within development parcels. For example, proposed parcel L6 is encumbered by a moderate mine hazard area.

The application materials indicate that the streets and parks are designed to enhance views of Mt. Rainier, which should be significant from upper portions of the site.

The Visual Quality and Aesthetics section of the FEIS describes a mitigation measure regarding tree retention along the ridgeline of Lawson Hill. This may affect the proposed development layout depicted on the Figure 3-1 Land Use Plan. Staff is recommending this be adopted as a condition of approval.

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

18. This objective is satisfied. Chapter 6 of the MPD application describes the proposed stormwater management plan including incorporation of low impact development (LID) techniques. Staff finds that given the soils on the Main Property

(as described in Ch. 4 of the FEIS), the potential for implementation of LID technologies may be limited. However, LID is essential for improving water quality, reducing urban runoff and preserving natural flow regimes. As a recommended condition of approval, mechanisms should be identified to integrate LID into the overall design of the MPD for the benefit of these resources. A project-wide approach to stormwater management is proposed (rather than at an individual development parcel level), meeting the intent of regional stormwater management.

Staff supports the stormwater management plan as described in the application and recommends the following additional goals and conditions be included in Development Agreement:

- Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.
- Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities.
- Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations.
- If roof runoff will be discharged directly to wetlands or streams for recharge and base-flow purposes, include restrictions on roof types (no galvanized, no copper) and roof treatments (no chemical moss killers, etc.) to ensure that stormwater discharge is suitable for direct entry into wetlands and streams without treatment. These restrictions should be enforced during permitting and also during the life of the project by the Homeowners Association (HOA). The Applicant should develop public education materials that will be readily available to all homeowners and implement a process that can be enforced by the HOA.
- Staff recognizes that there are water quality and balance challenges that are addressed in the storm water management concept; staff also recognizes that storm water management is not an exact science and that shifts in the discharge points of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments. Therefore, staff recommends requiring that the stormwater plan include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

As discussed in Finding of Fact No. 5(G) above, water quality impacts upon Lake Sawyer should be carefully monitored. The City Council should also consider involving the Applicant in proportionate share participation in watershed-wide mitigation efforts as identified in the DOE Water Quality Implementation Plan, Ex. H-9.

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

19. This objective is satisfied. Chapter 8 of the MPD application describes the proposed water system for the MPD including details of the required water conservation plan. Additional conservation measures may be required in the Development Agreement as staff and the Applicant establish design concepts.

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

20. Chapter 3 of the MPD application addresses open space. Pursuant to BDMC Sections 18.98.120(G), 18.98.140(F) and (G), there are amounts of open space required in prior agreements (BDUGAA and BDAOSPA) in addition to the amount required in the City's MPD regulations. The BDUGAA requires that 50 acres of in-City forest be dedicated to the city (this is located outside the MPD boundaries) as an offset for the East Annexation area. A portion of the North Triangle area is to be constrained as view corridor open space.

The remaining portions of the MPD not subject to prior agreements are required to provide 50% of the land area as open space in order to have varied lot dimensions, to cluster housing and to pursue additional density (see 18.98.140.G). Thus, the overall amount of open space required within the MPD is 134 acres. The Figure 3-1 Land Use plan shows that 138 acres of sensitive areas, open space, parks and trails are proposed, while page 1-3 states that 123 ac will be provided on the Main Property. However, page 3-10 of the MPD application indicates that the proposal is to have 119.2 acres of open space on the Main Property. The difference is 14.8 acres, which must be provided to comply with the code requirement. The application materials indicate that the streets and parks are designed to enhance views of Mt. Rainier, which should be significant from upper portions of the site. The "Lookout Park" at the top of the first hill on the Main Property provides a view corridor to the southeast to Mt. Rainier. The rest of the property does not provide much opportunity for views of Mt. Rainier because of topography or stands of tall trees.

It should be noted that the term "open space" as used in the application can include the following:

- Sensitive areas and their required buffers
- Developed parks and trails
- Forested areas
- Stormwater facilities or a water tank designed per city standards

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

21. The objective is satisfied. BDMC 18.98.020(E) doesn't require that the MPD meet the City's economic development objectives but only help to meet them. As discussed in the conclusion of law assessing compliance with BDMC 18.98.120(C), Lawson Hills is projected to create about 642 jobs. As further discussed in that conclusion of law, this does not fully satisfy specific comprehensive plan job creation objectives, but it does "help" to meet them by adding to the total number of jobs within the City.

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

22. COL No. 19 of the Villages MPD recommendation is incorporated by this reference as if set forth in full.

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

23. COL No. 20 of the Villages MPD recommendation is incorporated by this reference as if set forth in full.

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

24. Conclusion of Law No. 21 of the Villages MPD recommendation is incorporated by this reference as if set forth in full.

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

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

25. The recommended conditions of approval required execution of a development agreement before approval of any implementing land use or development permits.

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

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

11 26. The criterion is met. The most controversial policies at issue concern
12 preservation of small town character. As discussed at length in FOF No. 5(A), those
13 policies are met due to the compliance with specific MPD regulations and design
14 requirements as addressed throughout this recommendation.

15 As discussed in the analysis of BDMC 18.98.010(M), the project fails to comply with
16 comprehensive plan policies pertaining to connectivity and secondary access and is
17 conditioned accordingly.

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

20 27. COL No. 24 of the Villages MPD recommendation is incorporated by this
21 reference as if set forth in full. An additional environmental impact that needs to be
22 addressed is the project's pollution risk to Lawson Creek, Grinder Creek and Jones
23 Lake from erosion and sediment during the construction phase of the project, due to
24 slope and soil conditions. Staff recommends that the Development Agreement include
25 provisions to cover the costs of staff to deal with construction runoff discharges that
exceed discharge permit limits; stand-by storage of emergency erosion and sediment
control materials; limitations on the amount of property that may be disturbed in the
winter months; and guaranteed time frames for the establishment of wet weather
erosion and site protection measures.

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

28. The criterion is satisfied as discussed and conditioned in Finding of Fact 5(F).

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

3 *a. Prior to or concurrent with final plat approval or the occupancy of any*
4 *residential or commercial structure, whichever occurs first, the improvements have*
5 *been constructed and accepted and the lands dedicated that are necessary to have*
6 *concurrency at full build-out of that project for all utilities, parks, trails,*
7 *recreational amenities, open space, stormwater and transportation improvements to*
8 *serve the project, and to provide for connectivity of the roads, trails and other open*
9 *space systems to other adjacent developed projects within the MPD and MPD*
10 *boundaries; provided that, the city may allow the posting of financial surety for all*
11 *required improvements except roads and utility improvements if determined to not*
12 *be in conflict with the public interest; and*

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

19 29. Conclusion of Law No. 26 of the Villages MPD recommendation is
20 incorporated by this reference as if set forth in full.

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

24 30. Conclusion of Law No. 27 of the Villages MPD recommendation is
25 incorporated by this reference as if set forth in full.

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

31. Conclusion of Law No. 28 of the Villages MPD recommendation is
incorporated by this reference as if set forth in full.

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

32. The criterion is satisfied. The Black Diamond Urban Growth Area Agreement
(BDUGAA) (Ex. CBD-1-7) applies to the North Triangle Property (a portion of West
Annexation area) and the easternmost portion of the Main Property (East Annexation

1 area). The BDUGAA requires that 50 acres of in-City forest be dedicated to the City
2 (outside the MPD) and a portion of the North Triangle dedicated to view corridor
3 open space. The Black Diamond Area Open Space Protection Agreement
4 (BDAOSPA) (Exhibit CBD-1-8) discusses the 55 acres of view corridor open space
to be set aside along both sides of SR 169. The MPD proposal includes view corridor
open space on the North Triangle. The in-City forest has yet to be dedicated to the
City, but is in process.

5 The BDUGAA requires that for the East Annexation area a minimum average density
6 of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder
7 achieved through transfer of development rights (TDR). All development rights to the
8 in-City forest Land (100 du) will be transferred to the East Annexation area so that it
can achieve an average minimum density of 4 du/ac.

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

11 33. The MPD proposal does not include properties annexed into the City by
12 Ordinances 515 and 517.

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

16 34. The criterion is satisfied. The application materials indicate that the streets
17 and parks are designed to enhance views of Mt. Rainier, which should be significant
from upper portions of the site.

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

20 35. As detailed in the MPD staff report and the analysis above for Sections
21 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions.

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

36. The criterion is satisfied. The North Triangle and Main Property are not adjacent to property already developed as an MPD or adjacent to property within an MPD zone. The North Triangle is adjacent to property located directly south that is Parcel B of the proposed Villages MPD. A soft surface trail connection is shown between the North Triangle and Parcel B in Chapter 5 of the MPD application materials. Chapter 4 of the application shows the North Connector, which will connect the North Triangle and Parcel B with SR 169. The proposed street standards for the two MPD applications are identical, ensuring consistency between the two projects.

BDMC 18.98.080(A)(12): *As part of the phasing plan, show open space acreages that, upon build out, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.*

37. The criterion is satisfied as conditioned. In the MPD application materials, Figure 3-1 Land Use Plan shows the areas intended as open space. Chapter 5 also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency needs to be verified at the permitting stage.

As previously discussed, the portions of the MPD not subject to prior agreements are required to provide 50% open space (134 ac). Page 3-10 of the MPD application indicates that the proposal is to have 119.2 acres of open space on the Main Property. The difference is 14.8 acres, which should be required to be provided through a recommended condition of approval.

Additionally, Figure 3-1 only shows wetlands as “sensitive areas” and their buffers as open space. Sensitive areas in Lawson Hills also include steep slopes and mine hazard areas. Prior to approval of the Development Agreement, the legend of Figure 3-1 needs to be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area.

The phasing of open space is not included within the MPD Application. Phasing of open space (which includes parks and is identified within the MPD application), once acreages have been finalized, should be defined and articulated for timing of final designation within the Development Agreement.

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

38. The criterion is satisfied as conditioned. Analysis of consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of this report. A recommended condition of approval is to

1 require that all implementing projects shall be consistent with the MPD Design
2 Guidelines.

3 **BDMC 18.98.080(A)(14):** *School sites shall be identified so that all school sites*
4 *meet the walkable school standard set for in the comprehensive plan. The number*
5 *and sizes of sites shall be designed to accommodate the total number of children*
6 *that will reside in the MPD through full build-out, using school sizes based upon*
7 *the applicable school district's standard. The requirements of this provision may be*
8 *met by a separate agreement entered into between the Applicant, the city and the*
9 *applicable school district, which shall be incorporated into the MPD permit and*
10 *development agreement by reference.*

11 39. The criterion is satisfied as conditioned. Figure 3-1, Land Use Plan, shows a
12 proposed 10 acre elementary school site on development parcel L5. Alternatively, as
13 shown in Table 3.4 of the application, the Applicant is requesting that any
14 development parcel may be used for an institutional use (which could include a
15 school site). Figure 3-2, School Proximity Exhibit, shows the areas of the project
16 intended for residential use are within 0.5-1 mile of the proposed school site. There is
17 no specific walkable school standard in the 2009 City of Black Diamond
18 Comprehensive Plan or the Enumclaw School District Capital Facilities Plan (2009-
19 2014), although a half-mile standard is consistent with more general policies as
20 discussed in Finding of Fact No. 5(D).

21 The FEIS contains information regarding the school needs generated by the project
22 (Alternative 2). A recommended condition of approval is to require that a separate
23 agreement entered into between the Applicant, the City and the Enumclaw School
24 District be incorporated into the MPD permit and Development Agreement by
25 reference. A draft of that agreement already exists, and staff understands that it is
acceptable to the School District.

City staff, the Applicant and Enumclaw School District are negotiating a draft school
mitigation agreement (Exhibit MPD 194) to address the district's needs for public
schools to serve both The Villages MPD and the proposed Lawson Hills MPD on the
east side of the city. The agreement has been made available to the public for review,
and final action will only occur in conjunction with the City Council's consideration
of the MPD.

The staff report provides that the Examiner does not need to make any
recommendations on the contents of the school mitigation agreement. The Examiner
agrees that he does not need to address the specifics of the agreement. However, the
criterion above and SEPA sets some minimum standards for school facilities that are
within the Examiner's responsibilities. As discussed in Finding of Fact 5(C), the
Examiner will recommend a condition that sets some parameters for the school
mitigation agreement.

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

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

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

12 41. The conditions of approval, as revised by the Examiner, will incorporate the
13 requirements of the criterion above.

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

17 42. Analysis of the MPD master plan consistency with the Master Planned
18 Development Framework Design Standards and Guidelines is discussed in a later
19 section of this recommendation. Any subsequent implementing permit or approval
will be subject to the MPD design standards.

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

22 43. Analysis of the MPD master plan consistency with Master Planned
23 Development Framework Design Standards and Guidelines is discussed in a later
section of this report.

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

1 44. The criterion is satisfied. As previously discussed, the MPD proposes
2 residential and commercial uses and the residential uses are proposed at a variety of
3 densities. The development agreement will also be required to provide specific
4 targets for variety in housing types.

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

9 45. The criterion is satisfied. The Comprehensive Plan designation for the North
10 Triangle is Mixed Use with Master Planned Development Overlay and the Main
11 Property has areas of Low-Density Residential, Medium-Density Residential and
12 Public with Master Planned Development Overlay.

13 The entire project is covered by the MPD Overlay. According to the Comprehensive
14 Plan, "an MPD may include residential and commercial uses clustered around private
15 and community open space, supported by adequate services and facilities". The
16 Mixed Use designation identifies a preferable location for mixed-use development
17 within an MPD, in specific areas where the anticipated larger commercial component
18 can also serve the broader community. The potential of mixed uses is permissive, as
19 opposed to being a requirement of development. The application does not indicate if
20 there will be an attempt to integrate a residential component in this commercial area
21 of the project.

22 The Main Property has areas designated for low and medium density residential uses
23 according to the Comprehensive Plan. The application includes several parcels
24 designated for high-density residential uses in accordance with Section 18.98.120(F)
25 The area designated Public on the Comprehensive Plan contains a water tank, which
will be relocated as a result of this project. Table 3.4 in the application materials lists
neighborhood commercial as a permitted use in low, medium, and high-density
residential areas; however, it is not known if this will actually occur, as the
application makes no other mention of it.

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

32 46. The criterion is not satisfied. The staff report concludes that the criterion is
33 satisfied, but this conclusion is based upon an incorrect reading of the comprehensive
34 plan.

1 The City's comprehensive plan includes the City's updated projection for 2,677 new
2 jobs by the year 2025. The staff report states that Table 3-8 indicates a goal of
3 attaining 0.5 jobs per household by the year 2025. Based upon this standard, the staff
4 report concludes that the project should provide approximately 625 jobs. The
5 Appendix J Fiscal Analysis of the FEIS contains an analysis of the amount of
6 retail/office square footage to be developed along with employment projections of
7 642 employees.² Therefore, under the staff analysis the proposal is compliant with
8 this standard with regard to jobs provided within the MPD boundary. Staff
9 acknowledges that these are projections and that exact numbers will not be known
10 until the project develops, and that jobs may also be provided elsewhere within the
11 city.

12 The staff report is incorrect in its citation to Table 3-8 of the Black Diamond
13 Comprehensive Plan. Table 3-8 doesn't set any standard for jobs per household. The
14 language on top of Table 3-8 sets a goal of one job per household by 2025, not half a
15 job per household. Under the apparently correct standard of one job per household,
16 the Lawson Hills MPD would have to generate 1,250 jobs, which the project does not
17 do. Requiring a development project to be responsible for job creation is of dubious
18 validity, both because there is no clear nexus between job creation and mitigation of
19 development impacts and also because placing this type of burden on a developer can
20 be construed as unreasonable. However, the Examiner has no authority to invalidate
21 the development criterion. The Examiner leaves it to the City Attorney to advise the
22 City Council on how to deal with this situation.

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

47. The criterion is satisfied. Portions of the property are subject to the
BDUGAA and BDAOSPA, which discuss densities and land use for the West (North
Triangle) and East (portion of Main Property) annexation areas. The BDUGAA
requires that the annexation areas achieve a minimum average density of 4 dwelling
units/acre. The East annexation area must have a base density of 2 du/ac with the
remainder of density achieved through transfer of development rights (TDR). All
development rights to the In-City Forest Land (100 du) will be transferred to the East
Annexation area so that it can achieve an average minimum density of 4 du/ac.

The remaining portion of the Main Property primarily has a Comprehensive Plan
designation of Low Density Residential, which has a base density of 4-6 dwelling

² The FEIS appendices do not include the Applicant's fiscal impact analysis. Consequently, it is
unknown what conclusions, if any, are in the Applicant's fiscal analysis regarding job creation.

units du/gross ac. The western portion of the Main Property has a Comp Plan designation of Medium Density Residential which has a base density of 8-12 du/ac. Planned residential development is to consist of approximately 930 single family detached and 320 multi-family attached dwelling units on approximately 165 acres of the site (approximately 7.6 du/ac). The minimum 1 unit per acre density allowance in the application is not consistent with the BDUGAA or the City's Comprehensive Plan. A minimum density of 4 du/ac must be achieved and will be a recommended condition of approval.

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

48. COL No. 45 of the Villages MPD recommendation is incorporated by this reference as if set forth in full.

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

49. Figure 3-1 Land Use Plan in the MPD application shows two areas (development parcels L1 and L3) totaling approximately 8 acres intended for high-density residential over 18 du/ac.

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

50. Parcel L1 is adjacent to SR 169, which is a transit route and is located within ¼ mile of shopping/commercial services located to the northwest. Parcel L3 is located within ¼ mile of an existing transit route. There are not any existing or planned commercial services within ¼ mile of parcel L3.

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

51. Table 3.3 Residential Development Standards in the MPD application shows 45 feet as a maximum height for high-density residential development.

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

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

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

53. Mixed use as described above is not proposed in the application.

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

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

54. The MPD is subject to the requirements of both sections 18.98.140(F) and 18.98.140(G) with analysis provided in a later section of the staff report. Therefore, the above provisions (1-3) do not apply to this project.

BDMC 18.98.130: *MPD standards - Development standards.*

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

1. Is needed in order to provide flexibility to achieve a public benefit; and

1 2. *Furtheres the purposes of this chapter and achieves the public benefits set forth in Section 18.98.010; and*

2 3. *Provides the functional equivalent and adequately achieves the purpose of the development standard for which it is intended to deviate.*

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

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5
6 55. Chapter 13 of the MPD application lists the Applicant's requests for "functionally equivalent standards". There are 18 separate requests that seek to deviate from adopted city codes and standards. Staff finds that many of the requests do not propose a "functionally equivalent" standard, but instead seek to vary or avoid compliance with otherwise applicable City codes and standards (for example, the landscaping code and aspects of the Sensitive Areas Ordinance).

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10 In the last two years, with the Applicant's knowledge and at times over its objection, the City has adopted the following regulations: 1) a new Sensitive Areas Ordinance; 11 2) a Tree Preservation Ordinance; 3) a Parks and Recreation Plan; 4) an updated comprehensive plan; 5) a new zoning code, including the Gateway Overlay District; 12 6) new design guidelines; and 7) updated public works standards. The proposed "functionally equivalent" standards appear to reflect the Applicant's efforts to use the 13 MPD code in order to implement its proposed different development standards. For most of the proposed "functionally equivalent" requests, staff finds that the "public benefit" test is not met. While at this conceptual level of MPD review the Applicant is 14 one member of the public, the Applicant appears likely to be the only member of the public who could or would benefit from its requests. For example, there is not enough 15 justification for the requested reduced commercial parking requirements, as the only commercial component of Lawson Hills is the North Triangle. The residential 16 component would be located at a considerable walking/biking distance for most people and as a result it is unlikely that vehicle trips would be reduced. Staff finds 17 that deviations from the City's Sensitive Areas Ordinance should be evaluated on a case-by-case basis with project specifics and in accordance with BDMC Section 19.10, which offers flexibility and a process for these deviations. The Applicant has 18 withdrawn its request for deviation from the Tree Preservation Ordinance.

19
20
21 City staff recognizes the advantages of flexibility and provides a mechanism for 22 exploring alternatives to the City's street standards and water, sewer and storm water comprehensive plan concepts. Staff and the Applicant can resolve the large, 23 overarching design issues and work to establish functionally equivalent construction standards as part of the Development Agreement. The Engineering Design and 24 Construction Standards contain an administrative deviation process (section 1.3) that does not require a showing of hardship. Any proposed deviation from standards must 25 show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect

1 aesthetic appearance; and will not affect future development or redevelopment. Most
2 of the requested functionally equivalent standards for streets and utilities can be
3 addressed in the Development Agreement and through this administrative deviation
4 process.

5 Therefore, given the lack of detail and supporting information at this stage of the
6 MPD review process, staff cannot support blanket approval of the suggested
7 functionally equivalent standards related to utilities and transportation. There may be
8 some standards for which overall approval can be granted through the Development
9 Agreement (e.g., striped bike lanes vs. shared lanes).

10 Staff finds the following requests do not need to be considered as “functionally
11 equivalent standards” and can therefore be addressed through the Development
12 Agreement process:

13 1) 18.100 Definitions—generally, staff does not consider this to be an area where
14 “functional equivalency” is applicable. Staff supports adding only words that are not
15 already defined in City code, but does not find an advantage in proposed alternative
16 definitions.

17 6) 18.76 Gateway Overlay District—grading, removal of invasive species, and
18 installation of infrastructure within the public right of way is not subject to the
19 overlay (per Section 18.76.020.A). Therefore, staff finds this request to be
20 unnecessary.

21 17) 18.38.040—Community Commercial (CC) standards; none of the property
22 associated with the Lawson Hills MPD is currently zoned CC, nor will be zoned CC.

23 18) 18.30 & 18.32—R4 and MDR8 Zone standards; the Main Property will be
24 rezoned to MPD if the MPD is approved.

25 **BDMC 18.98.140(A):** *Open space is defined as wildlife habitat areas, perimeter
buffers, environmentally sensitive areas and their buffers, and trail corridors. It
may also include developed recreational areas, such as golf courses, trail corridors,
playfields, parks of on-quarter acre or more in size, pocket parks that contain an
active use element, those portions of school sites devoted to outdoor recreation, and
stormwater detention/retention ponds that have been developed as a public amenity
and incorporated into the public park system. An MPD application may propose
other areas to be considered as open space, subject to approval. It shall not include
such space as vegetative strips in medians, isolated lands that are not integrated
into a public trail or park system, landscaped areas required by the landscape code,
and any areas not open to the public, unless included within a sensitive area tract
as required by Chapter 19.10.*

56. The project proposes to preserve amounts of open space as detailed on page 3-10 of the MPD application. They include a mix of passive and active areas comprised of sensitive areas such as wetlands, associated buffers, trails, parks, forested areas and utilities such as stormwater ponds. Figure 3-1 of the MPD application shows a majority of the areas dedicated to open space as a coordinated network. The vast majority of open space will be maintained as sensitive areas and their buffers.

The use of sensitive areas and their associated buffers for development including trails, stormwater management, etc., is regulated by the City's sensitive areas ordinance, BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts and other required measures would apply and will be evaluated on a case-by-case basis at the time of implementing project application.

Chapter 5 also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency would need to be verified at the permitting stage. Additionally, Figure 3-1 only includes wetlands as "sensitive areas", while sensitive areas in this project also include steep slopes and mine hazard areas. Prior to approval of the Development Agreement, the legend needs to be clarified to differentiate between wetlands, their associated buffers, other critical areas and open space, trails and parks and to incorporate the additional required open space area.

Storm ponds should only be considered as open space if they are developed as an amenity for safe and pleasing public recreational use.

BDMC 18.98.140(B): *Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.*

57. Figure 3-1 of the application shows dedicated open space areas can serve as a coordinated network. As previously noted, the figure on page 5-5 depicts some areas as "natural open space" that are also proposed to include stormwater facilities. Staff is supportive of allowing stormwater facilities to be considered as open space if they are designed as an amenity. Other than trails and stormwater facilities designed as amenities, staff is recommending that areas shown as natural open space in the figure on Page 5-5 of the application be required to remain natural with the possibility for vegetation enhancement. The Examiner finds retention in the natural state to be necessary in order to maintain continuous greenbelt areas as required in the criterion above.

The Visual Quality and Aesthetics section of the FEIS describes a mitigation measure regarding tree retention along the ridgeline of Lawson Hill to minimize the visual impact of the development. This may affect the proposed development layout

1 depicted on the application Figure 3-1 Land Use Plan. Staff is recommending this be
2 adopted as a condition of approval.

3 No definitive percentage of non-disturbed open space has been identified and set
4 aside as natural open space to satisfy BDMC 19.30.070(E) (Tree Preservation
5 Ordinance). The value needs to be identified in order for staff to gauge compliance
6 with the tree preservation ordinance. The Applicant should identify additional tree
7 preservation stands on a project by project basis. This is more consistent with the
8 intent of the tree preservation ordinance. The Development Agreement should include
9 text that defines when and under what conditions a parcel may be logged for timber
10 revenue, how that parcel must be secured to minimize the impacts on the community
11 and how long the parcel may remain un-worked before it must be reforested.

12 The Development Agreement should include a narrative of the process and basis for
13 removing selective hazard trees at the project perimeter. The intent of this section
14 will be to leave the majority of the perimeter as designated passive open space, but to
15 have it appear and function as native forest.

16 In order to retain open space areas, the Development Agreement should include text
17 that defines when and under what conditions a parcel may be logged for timber
18 revenue, how that parcel must be secured to minimize the impacts on the community
19 and how long the parcel may remain un-worked before it must be reforested.

20 The Development Agreement should include a narrative of the process and basis for
21 removing selective hazard trees at the project perimeter. The intent of this section
22 will be to leave the majority of the perimeter as designated passive open space, and to
23 have it appear and function as native forest.

24 **BDMC 18.98.140(C):** *The open space shall be located and designed to minimize
25 the adverse impacts on wildlife resources and achieve a high degree of
compatibility with wildlife habitat areas where identified.*

58. The MPD application appears to do this as open space is outlined by sensitive
areas and their relevant buffers. Additionally, the Fish and Wildlife section in
Chapter 4 of the Lawson Hills FEIS contains information regarding the proposed
project's impacts. Mitigation measures related to fish and wildlife are recommended
as conditions of approval.

BDMC 18.98.140(D): *The approved MPD permit and Development Agreement
shall establish specific uses for open space within the approved MPD.*

59. COL No. 56 of the Villages MPD recommendation is incorporated by this
reference as if set forth in full.

1 **BDMC 18.98.140(E):** *The approved MPD permit and Development Agreement*
2 *shall establish which open space shall be dedicated to the city, which shall be*
3 *protected by conservation easements, and which shall be protected and maintained*
4 *by other mechanisms.*

5 60. COL No. 57 of the Villages MPD recommendation is incorporated by this
6 reference as if set forth in full, except that reference to MPD application page 5-7 is
7 replaced with 5-9.

8 **BDMC 18.98.140(F):** *An approved MPD shall contain the amount of open*
9 *space required by any prior agreement.*

10 61. As discussed previously, the MPD application appears to meet the standards
11 as outlined in previous agreements as it pertains to open space.

12 **BDMC 18.98.140(F):** *If an Applicant elects to provide fifty percent (50%) open*
13 *space, then the Applicant may be allowed to vary lot dimensions as authorized*
14 *elsewhere in this chapter, cluster housing, and seek additional density as*
15 *authorized in Section 18.98.120(F).*

16 62. The application is seeking to vary lot dimensions, cluster housing and include
17 high-density residential housing (pursuant to Section 18.98.120(F)). Therefore the
18 portions of the MPD not subject to prior agreements are required to provide 50%
19 open space (134 ac total). Page 3-10 of the MPD application indicates that the
20 proposal is to have 119.2 acres of open space on the Main Property. The MPD must
21 meet the open space requirements as set forth in code. The difference is 14.8 acres,
22 which will be required to be provided through a recommended condition of approval.

23 The Examiner notes that the Applicant can only meet the 50% requirement if it is
24 limited to areas that are not subject to open space agreements. The agreements
25 presumably do not place a cap on the amount of open space that the Applicant can
dedicate and the Applicant could also satisfy a 50% requirement for the entire
Villages MPD by dedicating additional open space in areas that are not subject to
agreement. Consequently, it is unclear how staff came up with the interpretation that
the 50% requirement only applies to areas that are not subject to the open space
agreements. The Examiner will defer to the staff's interpretation on this issue, but
leaves it to Council to ask staff about this if they have any concerns.

26 **BDMC 18.98.150(A):** *An MPD shall provide on-site recreation areas and facilities*
27 *sufficient to meet the needs of MPD residents, exceeding or at a minimum*
28 *consistent with levels of service adopted by the city where applicable. This shall*
29 *include providing for a coordinated system of trails and pedestrian linkages both*
30 *within, and connecting to existing or planned regional or local trail systems outside*
31 *of the MPD.*

1 ***B. The MPD permit and Development Agreement shall establish the sizes,***
2 ***locations, and types of recreation facilities and trails to be built and also shall***
3 ***establish methods of ownership and maintenance.***

4 63. Chapter 5 of the MPD application contains information regarding proposed
5 recreation areas and facilities. The proposal does not meet the adopted levels of
6 service with regard to neighborhood parks; however it exceeds it in pocket parks.

7 Staff concurs with the proposal to provide additional pocket parks (1/2 acre or less) to
8 compensate for the lack of a neighborhood park (1 acre or less). The additional
9 pocket parks may be appropriate as higher residential is being proposed within
10 Lawson Hills. Ownership will be assumed by the master homeowners' association
11 (HOA) or master developer, so maintenance of these facilities should not directly
12 impact City financial resources.

13 Based on maps included with the application, it appears that a significant amount of
14 trail systems will be located within the buffer areas and potentially within sensitive
15 areas themselves. The use of sensitive areas and their associated buffers for
16 development including trails and stormwater management requires appropriate
17 mitigation and other requirements in accordance with BDMC Section 19.10. Staff
18 recommends that a component of the Development Agreement include a unit trigger
19 for when trails need to be constructed.

20 Staff has concerns with regard to the use of publicly owned property (namely, Lake
21 Sawyer Regional Park), for use by the Applicant in meeting Recreational Facility
22 Standards under the Parks, Recreation and Open Space Plan (adopted December
23 2008). The regional park site currently exists as raw, undeveloped land, meaning that
24 significant financial resources, on the magnitude of \$4.5 million, have been estimated
25 in the development of Phase I of the regional park.

Staff also has concerns regarding the proposed recreational facility payment figures
proposed by the Applicant (see Table 5.2 of the application) for fee in lieu of
construction. These values do not appear to include the cost of land acquisition or the
elevated costs for public construction projects if monies were to be dedicated to the
City for their construction. Staff recommends that as part of the Development
Agreement negotiations, these values are re-evaluated to ensure appropriate levels of
funding, include a mechanism to account for inflationary increases in construction
costs, and potentially, the costs of maintaining these types of facilities in the
future. Development Agreement

Additionally, staff is concerned that there is an adequate amount of property suitable
for park development outside of the proposed project. Areas designated as "sending
areas" within the transfer of development rights programs are considered sensitive
and are limited in what can be constructed. More suitable, developable land will need
to be acquired in order to accommodate recreation activities off-site. Other issues

1 including access, parking and maintenance of these facilities need to be evaluated and
2 are more appropriately addressed on a case-by-case basis. The proposal that the
3 Applicant has discretion of when to provide a lump sum payment in lieu of
4 constructing recreational facilities is not supported by staff. To do so could place
hardships on municipal resources to provide these types of facilities, if property
reserves do not exist and the lump sum payment does not equate to adequate financial
resources to construct the facility appropriately.

5 Dependent on the availability of land, the adequacy of funds to construct City-
6 approved recreational facilities and an ability to maintain these facilities, staff
7 recommends that the Development Agreement include a provision that the City, not
8 the Applicant, will maintain discretion when and if a lump sum payment will be
accepted in lieu of constructing off-site recreational facilities.

9 **BDMC 18.98.155(A):** *The requirements of the Sensitive Areas Ordinance (BDMC
10 19.10) shall be the minimum standards imposed for all sensitive areas.*

11 64. Conclusion of Law No. 61 of the Villages MPD recommendation is
incorporated by this reference as if set forth in full.

12 **BDMC 18.98.155(B):** *All development, including road layout and construction,
13 shall be designed, located and constructed to minimize impact of wildlife habitat
14 and migration corridors. This shall include minimizing use of culverts in
preference to open span crossings.*

15 65. Regarding the proposed "Lawson Parkway at Sensitive Areas" (Figure 4-5 in
16 the MPD application) staff finds that impacts to sensitive areas and buffers should be
17 mitigated, as necessary, in accordance with BDMC 19.10. Impacts are more
appropriately addressed on a case-by-case basis. Staff does not support the specific
details of this proposed street section at this time.

18 The project overall, including road locations, has been designed to minimize impacts
19 to wildlife and migration corridors as determined in Finding of Fact No. 5(J).

20 **BDMC 18.98.160(A):** *All proposed transfers of development rights shall be
21 consistent with the TDR program (Chapter 19.24). An MPD permit and
22 Development Agreement shall establish the TDR requirements for a specific MPD.
23 Maximum allowable MPD residential densities can only be achieved through
participation in the city's TDR program as a receiving site.*

24 66. The MPD application is consistent with the City's transfer of development
25 rights program. Specifics as it pertains to development right use and timing should be
included within the Development Agreement.

1 **BDMC 18.98.160(A):** *Property that is subject to a pre-annexation agreement,*
2 *Development Agreement or annexation ordinance conditions relating to residential*
3 *density will have as its base density the density designated in such agreement or*
4 *ordinance. All other property will have as its base density the minimum density*
5 *designated in the comprehensive plan.*

6 67. This has been previously discussed in this recommendation.

7 **BDMC 18.98.170(A):** *Street standards shall be consistent with the MPD design*
8 *guidelines, which may deviate from city-wide street standards in order to*
9 *incorporate "low impact development" concepts such as narrower pavement cross-*
10 *sections, enhanced pedestrian features, low impact stormwater facilities, and*
11 *increased connectivity or streets and trails. Any increased operation and*
12 *maintenance costs to the city associated therewith shall be incorporated into the*
13 *fiscal analysis.*

14 68. Functionally equivalent standards are expected be approved on a general level
15 in the Development Agreement and specific deviations can be dealt with through the
16 existing deviation process at the site development and design phase.

17 **BDMC 18.98.170(B):** *The street layout shall be designed to preserve and*
18 *enhance views of Mt. Rainier or other views identified in the city's comprehensive*
19 *plan to the extent possible without adversely impacting sensitive areas and their*
20 *buffers.*

21 69. The criterion is satisfied. There are minimal site opportunities for Mt. Rainier
22 views, as much of the topography slopes to the west and north or is bounded by
23 forested slopes that would likely block views. However, site design takes advantage
24 of the one location that will have a prime mountain view, "Lookout Park."

25 **BDMC 18.98.170(C):** *The approved street standards shall become part of the*
MPD permit approval, and shall apply to public and private streets in all
subsequent implementing projects except when new or different standards are
specifically determined by the city council to be necessary for public safety.

Staff recommends that implementing projects shall be designed to foster the
development of a street grid system. Functionally equivalent standards are expected
be approved on a general level in the Development Agreement and specific deviations
will be dealt with through the existing deviation process at the site development and
design phase.

BDMC 18.98.180(A): *The stormwater management system shall enhance the*
adopted standards that apply generally within the city, in order to implement the
concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and
18.98.180(C). The stormwater detention system shall be publicly owned. Provided,

1 *in non-residential areas, the use of private vaults and filters may be authorized*
2 *where: 1) the transmission of the stormwater by gravity flow to a regional system is*
3 *not possible and 2) there is imposed a maintenance/replacement condition that*
4 *requires vault filters to be regularly inspected and maintained by the property*
5 *owner.*

6 71. The proposal meets City standards and provides several enhancements:

- 7 • Reduces the discharge to the steep slopes to the south
- 8 • Provides a safe overflow for storms that exceed the 100-year-design
- 9 storm

10 Staff recommends that a downstream analysis be required prior to commencing of
11 development on the Main Property to determine the impact of the Lawson Hills
12 development to the flood elevations at Abrams Avenue and the flood peaking impact
13 to the wetlands.

14 During construction, an NPDES permit for stormwater treatment and discharge will
15 be required from the Department of Ecology. These permits are administered by
16 Ecology and are separate from city permits. The City does not have a role in the
17 NPDES process except to insure that any subsequent permits issued by the City do
18 not conflict with the NPDES permit requirements. The City does have an obligation
19 to prohibit polluted water from construction sites as well as oversight and inspection
20 of the grading and construction. Staff recommends that the Development Agreement
21 include language that will require developers and contractors to comply with any
22 NPDES permits issued by the Department of Ecology. Although permit conditions
23 imposed by NPDES permits are not administered by the City, staff reserves the right
24 to enforce the conditions of the NPDES permit. Since the City has a high interest in
25 protecting receiving waters under the city storm water permit, the developer should
be required to cover the City's cost of NPDES storm water permit oversight.

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

Over time, the City may be required to implement new storm water regulations as
mandated by the Department of Ecology through the City's storm water discharge
permit. Staff therefore recommends storm ponds for hydraulic sizing purposes vest
phase by phase to the extent allowed by the City's storm water discharge permit and
state law.

1 **BDMC 18.98.180(B):** *The stormwater management system shall apply to public*
2 *and private stormwater management systems in all subsequent implementing*
3 *projects within the MPD, except when new or different standards are specifically*
4 *determined by the city council to be necessary for public health or safety, or as*
5 *modified as authorized in section 18.98.195(B).*

6 72. The City's storm water codes apply to both public and private improvements.
7 Construction run-off impacts to Lawson Creek, Grinder Creek and Jones Lake should
8 be addressed as discussed in Conclusion of Law No. 27. Added protections for Lake
9 Sawyer water quality, as identified in the recommended conditions of approval, are
10 also necessary and appropriate to protect public health and safety.

11 **BDMC 18.98.180(C):** *Opportunities to infiltrate stormwater to the benefit of the*
12 *aquifer, including opportunities for reuse, shall be implemented as part of the*
13 *stormwater management plan for the MPD.*

14 73. Staff finds that given the soils on the Main Property (as described in Ch. 4 of
15 the FEIS), the potential for implementation of LID technologies may be limited. Most
16 of the Main Property has soils that will not allow major infiltration facilities.
17 However, LID is essential for improving water quality and helping the area maintain
18 natural flow regimes within the area's natural resources. The proposed storm water
19 management plan does take advantage of stormwater infiltration where the soils are
20 conducive. As a recommended condition of approval, mechanisms should be
21 identified to integrate LID into the overall design of the MPD for the benefit of these
22 resources, provided that future Homeowners' Associations bear the increased cost of
23 landscape maintenance.

24 **BDMC 18.98.180(D):** *The use of small detention/retention ponds shall be*
25 *discouraged in favor of the maximum use of regional ponds within the MPD,*
recognizing basin constraints. Ponds shall be designed with shallow slopes with
native shrub and tree landscaping and integrated into the trail system or open space
corridors whenever possible. Small ponds shall not be allowed unless designed as a
public amenity and it is demonstrated that transmitting the stormwater to a regional
pond within the MPD is not technically feasible.

74. The stormwater management plan presented uses regional ponds that are
designed to maintain the hydrology of the sub-basins.

BDMC 18.98.190(A): *An MPD shall be served with public water and sanitary*
sewer systems that:

1. *Employ innovative water conservation measures including metering*
technologies, irrigation technologies, landscaping and soil amendment
technologies, and reuse technologies to reduce and/or discourage the reliance upon
potable water for nonpotable uses including outdoor watering.

75. See B below in this section.

BDMC 18.98.190(A)(2): *Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.*

76. The sewer service plan of the main property will serve the majority of the site by gravity. This is consistent with the City's sewer plan.

For the North Triangle, the application indicates there will be a point of connection in SR 169. Although that connection point will functionally work, staff recommends requiring abandonment of the Diamond Glen sewer pump station and connection of the new sewer force main to the existing Diamond Glen force main. Staff is opposed to installation of redundant sewer pump stations.

BDMC 18.98.190(B): *Each MPD shall develop and implement a water conservation plan to be approved as part of the Development Agreement that sets forth strategies for achieving water conservation at all phases of development and at full build out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit.*

77. Staff finds the proposed water conservation plan, but recommends it be evaluated for its effectiveness in light of the City's available water resources after 300 to 500 dwelling units have been constructed. At that time, additional measures may be necessary.

The Villages Staff report had what appears to be a typographical error, which was construed by the Examiner to only require a reevaluation of the water conservation plan after the construction of 500 dwelling units. This threshold was incorporated into the already issued Villages recommendation. Given that there is nothing apparent in the record that would justify treating Lawson Hills differently than the Village, the Examiner recommends that whichever threshold the Council chooses to adopt that it be the same for both MPDs.

Master Planned Development Framework Design Standards and Guidelines (MPDFSG) (A)(Environmentally Sustainable)(p. 3): *To provide resource-efficient site design which includes consideration for saving trees, constructing on-site stormwater retention/infiltration features, and building orientation to maximize passive solar heating and cooling.*

1 78. The application indicates a desire to use Low Impact Development techniques
2 for treating and disposing of stormwater. Staff is recommending this be pursued (see
3 comment on previous page). Since no specific lot layouts are included in the current
4 proposal, compliance or noncompliance with solar orientation cannot be determined
at this time. The City's Tree Preservation Ordinance will assure a significant
retention of trees.

5 **MPDFSG (A)(1):** *Implement a construction waste management plan to reduce*
6 *construction waste. Consider life-cycle environmental impacts of building*
7 *materials.*

8 79. Staff recommends the Applicant be required to submit a construction waste
management plan as part of the Development Agreement.

9 **MPDFSG (A)(2):** *Incorporate energy saving techniques into all aspects of*
10 *building's design and operation.*

11 80. This will be evaluated at the time of individual building permit applications.

12 **MPDFSG (A)(3):** *Maximize water conservation by maintaining or restoring pre-*
13 *development hydrology with regard to temperature, rate, volume and duration of*
14 *flow; use native species in landscaping; recycle water for on-site irrigation use.*

15 81. Staff is recommending the use of native vegetation in street landscaping and
16 in parks. Staff recommends that the Development Agreement be required to include a
water conservation plan with performance measurements; a general landscape plan;
and a stormwater management plan.

17 **MPDFSG (A)(4):** *Use measures that can mitigate the effects of potential indoor*
18 *air quality contaminants through controlling the source, diluting the source, and*
19 *capturing the source through filtration.*

20 82. This will be addressed at the time of future building permit applications.

21 **MPDFSG (A)(5):** *Reduce overall community impacts by providing connectivity*
22 *from the project to the community; by incorporating best management practices for*
23 *stormwater management; by creating useable public spaces such as plazas and*
parks; and by protecting important community-identified viewsheds and scenic
areas.

24 83. As noted previously in this recommendation, the proposal provides for all
25 these objectives.

1 **MPDFSG (A)(6):** *Grading plans shall incorporate best management practices with*
2 *phased grading to minimize surface disturbance and to maintain significant*
3 *natural contours.*

4 84. A grading plan has not been proposed at this time, so compliance or
5 noncompliance with this guideline cannot be determined. However, this does not
6 relieve the Applicant from the need to comply with this provision in the future. The
7 Applicant expects that as much as 1,000,000 cubic yards of material may be exported
8 from the site. Staff is recommending a condition to require an overall site grading
9 plan be developed in order to assess the impacts of grading, prior to the first
10 implementing project action.

11 **MPDFSG (B)(p. 4):** *Black Diamond has a specific history and setting that involves*
12 *varied topography, an agricultural past, forested areas, mining, and a small town*
13 *scale. Care should be taken to reflect these patterns in master planned*
14 *developments. In addition, the MPD chapter of Black Diamond's Municipal Code*
15 *requires that fifty percent (50%) of the total land area of an MPD be maintained as*
16 *open space. Proper design and integration of this open space into a development is*
17 *very important.*

18 ***Guidelines***

19 ***1. All master planned developments shall include a wide range of open spaces,***
20 ***including the following:***

- 21 ***a. Sensitive environmental features and their buffers***
- 22 ***b. Greenbelts***
- 23 ***c. Village greens***
- 24 ***d. Parks and school playgrounds***
- 25 ***e. Public squares***
- f. Multi-purpose trails***

These features should be deliberately planned to organize the pattern of
development and serve as centerpieces to development cluster, not merely as
"leftover" spaces.

2. Open spaces shall be linked into an overall non-motorized network through
sidewalks, trails and parkways. The overall network shall be delineated at initial
MPD approval and implanted through subsequent plats and permit approvals.

85. For reasons previously discussed, staff finds that the proposal meets the intent
of these guidelines.

MPDFSG (B)(3): *Stands of trees as an element of open space. Due to the*
propensity of severe wind events in the Black Diamond area, an MPD should
incorporate the preservation of larger rather than smaller stands of native trees.

86. There are forested areas proposed for retention as open space (see Figure 10-1 and compare to the Land Use Plan (Figure 3-1). Staff is recommending a condition that will require a tree inventory prior to the development of implementing projects so that other opportunities to preserve trees may be realized. The City's Tree Preservation Ordinance will also result in significant large tree retention.

MPDFSG (C)(p. 5): *To allow for an efficient use of land, lower the cost of infrastructure and construction, protect environmentally sensitive areas, and maintain a small town "village" character within an MPD. Development is to be integrated with networks of preserved natural features and developed open space for both passive and active recreational uses.*

Guidelines

1. Use of conventional, suburban-style subdivision design that provides little common open space shall be avoided.

2. Groupings of primarily residential development of approximately 400-600 units should be contained generally within a quarter mile radius to support walking, bicycling and future transit service. Development clusters shall be surrounded by a network of open space with a variety of recreational uses (including trails) to provide connections between clusters.

3. Methodology for Planning Development in clusters.

a. environmentally sensitive areas to be protected (including streams, wetlands, steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and used as an organizing element for design;

b. areas for development of housing and commercial development shall be indicated;

c. streets and public spaces (as well as sites for public facilities such as schools, fire stations and other civic structures) shall be identified;

d. lots and groups of lots with various ownerships (i.e. fee simple by occupant, condominium, single ownership apartments, etc) shall be integrated with one another throughout all phases of a project;

e. views of Mt Rainier and other desirable territorial views shall be identified and integrated into site planning to maximize viewing from public spaces (streets, trails, parks, plazas, etc.).

87. For reasons previously discussed and as demonstrated in the layout proposed in the MPD applications, staff finds that the proposal meets the intent of these guidelines.

MPDFSG (D)(Ensuring Connectivity)(p. 6): *To promote ease of mobility and access within all portions of the development.*

1. Pedestrian Connectivity

1 *a. Similar to a traditional small town, services and common spaces shall be*
2 *easily accessible to residents on foot. Off-street pedestrian trails are to be provided*
3 *as a network throughout the development. Pedestrian connections shall be*
4 *provided where cul-de-sacs or other dead-end streets are used.*

5 88. The City's comprehensive plan policies T-2 and T-8 call for pedestrian
6 connections between neighborhoods and community centers. The Lawson Hills
7 development will ultimately create a pedestrian draw for children walking to the
8 school site and demand for Lawson Hills residents desiring to walk to the historic
9 town center. Staff is recommending that the Applicant be required to construct a
10 sidewalk along Lawson Street from the proposed Lawson Parkway to SR 169 (3rd
11 St.).

12 **MPDFSG (D)(2)(a):** *The system of streets shall demonstrate a high degree of both*
13 *vehicular and pedestrian connectivity, allowing residents and visitors multiple*
14 *choices of movement. Isolated and dead-end pockets of development are not*
15 *desired.*

16 89. As depicted in Figure 4-1 of the MPD applications, the proposals depict only
17 an "approximate" and basic "skeleton" of a future street system and descriptions of
18 street types including cul-de-sacs. The trail networks depicted in Chapter 5 of the
19 applications provide a little more detail. The vehicular and pedestrian circulation
20 plans proposed by the Applicant do exhibit several connection points to adjoining
21 properties as required by the criterion above, except for a missing second access for
22 the overall project as previously discussed. Regulations and conditions of approval
23 require consistency with the MPDFSG at all stages of development, and it does not
24 appear that the project design at this stage will prevent compliance in future stages of
25 development.

26 **MPDFSG (D)(2)(b):** *Cul-de-sacs shall be avoided unless there are no other*
27 *alternatives.*

28 90. No cul-de-sacs are proposed at this general level of design. Regulations and
29 conditions of approval require consistency with the MPDFSG at all stages of
30 development, and it does not appear that the project design at this stage will prevent
31 compliance in future stages of development.

32 **MPDFSG (E)(Mixing of Housing)(p. 7):** *To encourage a diversity of population*
33 *and households within Black Diamond through a range of choices in housing types*
34 *and price.*

35 **Guidelines**

36 **1. MPD's shall include various types of housing, such as:**

37 ***a.-e. [Not listed here; refer to Design Guidelines for complete text.]***

2. *Each cluster of development shall include a variety of unit types and densities.*

91. As noted previously in this recommendation, it is not clear what the intended housing mix in the project will be. The Executive Summary states all non-multifamily housing will be "single family detached," yet the description of low- and medium-density residential areas indicates intent to comply with this policy. As previously noted, staff is recommending compliance with this guideline be required. The Examiner also recommends that the development agreement contain specific targets for various types of housing for each phase of development so that this requirement does not become perpetually deferred from one phase to the next with no real compliance at the end. The cluster requirement helps to assure minimal compliance at each stage of development, but minimal compliance at each stage may not result in an overall variety as contemplated in the guideline.

MPDFSG (E)(3): *For Single Family developments, alley access to garages is desired. Direct driveway access to streets should only occur if there are no other alternatives.*

92. Page 3-18 of the MPD application materials indicates that front-loaded single-family homes will "form the majority of the residential typology" within the Lawson Hills MPD. This is inconsistent with this guideline; staff recommends that generally, no more than 25% of housing be "front-loaded lots."

While alleys provide convenience and a clean streetscape, staff anticipates that the City will not be able to cover the additional cost of policing the alleys and maintaining double public street frontage. The City does not have the ability to charge a street utility fee as suggested in the application. Staff recommends requiring that cul-de-sacs serving less than 20 lots, alleys and auto courts be privately owned and maintained.

MPDFSG (E)(4): *Large apartment complexes and other repetitive housing types are discouraged. Apartments should replicate features found in Single Family Residential areas (i.e., garages associated with individual units, individual outdoor entries, internal driveway systems that resemble standard streets, etc.).*

93. Other than the high density residential guidelines included as Appendix E to the application, the Applicant has not submitted this level of detail. Compliance with this guideline can be required as a condition of the Development Agreement.

MPDFSG (F)(Creating Neighborhood Civic/Commercial Centers)(p. 8): *To conveniently concentrate services and activities to serve multiple residential clusters.*

Guidelines

1 *1. Civic/Commercial Centers shall be located to serve groupings of clusters as well*
2 *as pass-by traffic in order to support an array of shops and services.*

3 *2. Such centers shall be anchored by a public green space and, ideally, a public*
4 *building such as a school or meeting hall.*

5 94. Although the proposed allowed uses in the various land use categories
6 indicate the potential for small-scale (neighborhood) commercial development
7 occurring in the residential classifications, actual locations are not defined at this
8 time. Staff recommends that commercial areas be identified on the Land Use Plan
9 through a future amendment to the MPD. Proposed parks are located in areas that
10 comply with this guideline.

11 **MPDFSG (F)(3):** *Upper story housing above retail or commercial space is*
12 *strongly encouraged within Civic/Commercial Centers.*

13 95. See response above. Housing could be provided as a component of
14 commercial development in the North Triangle.

15 **MPDFSG (F)(Interface with Adjoining Development)(p. 9):** *To ensure a transition*
16 *in development intensity at the perimeter of MPD projects.*

17 ***Guidelines***

18 *1. Where individual lot residential development is located along the boundary of*
19 *an MPD, lot sizes shall be no less than 75% the size of the abutting residential zone*
20 *or 7200 sq. ft., whatever is less.*

21 *2. Multi-family and non-residential land uses should include a minimum 25 ft.*
22 *wide dense vegetative buffer when located along the boundary of an MPD.*

23 *3. When there is no intervening development proposed, a minimum 25 ft. wide*
24 *dense vegetative buffer should be provided between main entrance or access routes*
25 *into an MPD and any adjoining residential development.*

96. As to compliance with the general intent of MPDFSG(F), staff is opposed to
the proposed High Density Residential designation of parcel L2, given its location
directly across the street from an existing residential area. This parcel should be
designated Medium or Low Density. Compliance with the more specific standards of
MPDFSG(F) will be required at the time of implementing projects.

MPDFSG (A)(Streets)(p. 10): *To establish a safe, efficient and attractive street*
network that supports multiple choices of circulation, including walking, biking,
transit and motor vehicles.

1. Connectivity

a. The street layout shall create a network that promotes convenient and
efficient traffic circulation and is well connected to other existing City streets.

1 97. Staff finds that the intent of the streets element is satisfied, in terms of internal
2 circulation. As noted, a condition to require sidewalk connectivity to the historic
3 town center is recommended. The FEIS analysis indicates that traffic impacts to the
4 city and region's street system can be mitigated, and the basic system depicted on the
5 Land Use Plan appears to provide for the basic elements of a system that provides
6 both efficient and convenient traffic circulation. As discussed elsewhere, the
7 conditions of approval will require a significant amount of new modeling that may
8 result in a redistribution of traffic impacts, but the conditions essentially require that
9 the end result be efficient and convenient by requiring consistency with level of
10 services standards. Further, any significant deviation from the currently proposed
11 circulation system would require an amendment to the MPD application. However,
12 the lack of a second general purpose access to the Main Property situated to the
13 southeast of Lawson Street also means that the project is not well connected to other
14 city streets. Staff is recommending that only a limited amount of development be
15 allowed to occur within this area and that if a solution to the access issue cannot be
16 resolved within a reasonable time period, the MPD approval shall expire.

11 **2. Design**

12 ***a. The layout of streets should relate to a community-wide focal point.***

13 98. Staff finds that the proposal meets the intent of this guideline. The staff
14 report does not identify how this is accomplished in the Lawson Hills MPD. The
15 Examiner finds that this relation revolves around the significant open space of the
16 project. The road network at this level of review goes through the center of the open
17 space network, providing broad views of natural areas on all sides. In the north
18 triangle, the primary roads connect SR 169 to what will be one of the primary
19 commercial hubs of the City.

18 ***b. A consistent overall landscape theme should be utilized, with variations 19 provided to indicate passage through areas of different use, densities, topography, 20 etc.***

20 99. The application includes a variety of street sections, which can be unified
21 through a landscape theme that emphasizes the use of native plant species.

22 ***c. Limit the use of backyard fences or solid walls along arterial streets.***

23 100. Compliance with this standard will be required at the time of implementing
24 projects.

24 **3. Reduced Pavement Widths**

1 *a. Pavement widths should be minimized to slow vehicular speeds and*
2 *maintain an area friendly to pedestrians and non-motorized users.*

3 101. Staff finds that the proposal meets the intent of this guideline.

4 **4. Low-Impact Design**

5 *a. Stormwater runoff should be reduced through “natural” techniques: flush*
6 *curbs, bio-filtration swales, use of drought-tolerant vegetation within medians and*
7 *planting strips, etc.*

8 102. This has been previously discussed in this recommendation.

9 **5. Traffic calming methods should include:**

- 10 • *Roundabouts*
- 11 • *Traffic Circles*
- 12 • *Chicanes*
- 13 • *Corner bulbs*

14 103. A roundabout is proposed along Lawson Parkway and its intersection with
15 SR 169. Staff recommends that road design speed and traffic calming measures be
16 incorporated in street design with each implementing development action.

17 **6. Lanes and Alleys**

18 *a. Access to rear residential garages and commercial loading and service areas*
19 *shall be available through lanes and alleys.*

20 104. As noted, the application materials indicate that the majority of homes will be
21 “front-loaded lots,” which is inconsistent with this guideline. The recommended
22 conditions of approval require that at least 25% of homes have alley access.

23 **7. Non-motorized Circulation**

24 *a. All streets shall include either sidewalks or trails on at least one side of the*
25 *street. Design streets to be “bicycle” friendly.*

26 **8. Street Landscaping**

27 *a. All streets shall include native and/or drought-tolerant vegetation (trees,*
28 *shrubs and groundcover) planted within a strip abutting the curb or edge of*
29 *pavement. Native and/or drought-tolerant vegetation shall also be used within all*
30 *medians.*

31 105. Compliance with these standards will be required at the time of implementing
32 projects. The City does not have adequate funds to manage street landscaping. The

staff is recommending that future Homeowners' Association(s) be required to maintain the street side landscaping.

9. On-Street Parking

a. Curbside parallel parking shall be included along residential streets. Parallel or angle parking should be included within non-residential areas.

106. The proposed street standards indicate that parallel parking will be available along residential streets. Compliance with these standards will also be required at the time of implementing project review.

MPDFSG (B)(Sidewalks)(p. 11): implementing projects.

B. Sidewalks

Intent

Guidelines

1. Width

a. The minimum clear pathway shall generally be between 5 ft and 8 ft, depending upon adjacent land uses and anticipated activity levels.

2. Lighting

a. All lighting shall be shielded from the sky and surrounding development and shall be of a consistent design throughout various clusters of the development.

3. Furnishings

a. Street furnishings including seating, bike racks, and waste receptacles shall be located along main streets in Civic/Commercial areas.

b. Furnishings serving specific businesses (outdoor seating) will require a building setback and shall maintain a minimum passable width of the sidewalk.

c. Mailbox stations shall be designed to be architecturally compatible with the development in which they are located.

107. The requirements above will be addressed at more specific implementing project review.

MPDFSG (C)(Walkways and Trails)(p. 12):

Intent

To provide safe, continuous pedestrian linkages throughout and sensitive to the project site, open to both the public and project residents.

108. Staff finds that the proposal meets the intent of this guideline.

1 **Guidelines**

2 **1. Location**

3 *a. Walkways and trails shall be integrated with the overall open space network*
4 *as well as provide access from individual properties. Trail routes shall lead to*
5 *major community activity centers such as schools, parks and shopping areas.*

109. Staff finds that the proposal meets the intent of this guideline.

6 **2. Width**

7 *a. Not less than 8 feet wide to allow for multiple modes of use.*

8 110. Both 8' wide hard and a 6' wide soft surface trail types are proposed within
9 the project (see page 5-14 of the application). Staff finds that the proposal meets the
10 intent of this guideline, with the exception of the soft-surface trail which is proposed
11 to be 6' in width. However, given that the narrower trails are most likely to be within
12 sensitive area buffers, staff is supportive of the narrower width for these areas.

13 **3. Materials**

14 *a. Walkways connecting buildings and hardscaped common spaces shall have*
15 *a paved surface.*

16 *b. Trails throughout the development and connecting to larger landscaped*
17 *common spaces shall be of at least a semi-permeable material.*

18 111. Staff finds that the proposal meets the intent of this guideline as proposed and
19 the requirement will be enforced for applications implementing the project.

20 **MPDFSG(p. 13-18):**

21 *Text not included.*

22 112. The remaining design guidelines in the MPDFSG concern design
23 requirements for site plan and building permit level development that are not
24 addressed at this stage of development review. The staff report references some
25 specific design standards proposed by the developer, which does not warrant analysis
at this stage of review because the staff recommended conditions of approval exclude
those proposals from the scope of approval. As to land use, the conditions of
approval limit the proposal to the land use plan map (Figure 3-1 in the MPD
applications), description of categories (beginning on page 3-18), and target densities.
BDMC 18.98.110 and the conditions of approval both require application of the
MPDFSG for implementation projects. Deferral of the site plan and building level of
MPDFSG review for implementing permits will not compromise the ability to
comply with those standards.

International Fire Code, 2006 Edition

113. BDMC 18.98.080(A)(1) requires the MPD to comply with all adopted regulations, which includes the International Fire Code. The requirements below are necessary at this stage of project review to assure compliance with the Fire Code.

Access: All Fire Department access roads should be required to meet the International Fire Code, specifically Section 503 (Fire Department Access Roads) and Appendix D (Fire Department Access Roads). Generally this requires that all roads be at least 20 feet in unobstructed width with 13 feet 6 inches of unobstructed vertical clearance across the entire road surface. If fire hydrants are located on the Fire Department access road, then the roads must be at least 26 feet in width. The proposed street designs include some elements (e.g., "auto courts") that do not comply with this standard. Per the Fire Code, road grades should not exceed 10 percent. All portions of the first floor exterior walls of structures should be within 150 feet of approved fire apparatus access roads (especially with high density housing, multi-family and commercial occupancies).

More than one means of access and egress is required per the International Fire Code 2006 ed. Appendix D Section D107. Specifically D107.1 States: "Developments of one or two family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3...."

Parks and Open Spaces: Separation of combustible structures and vegetation must be provided to prevent potential wild land fires from the east and south from spreading to structures. This separation will vary with types of structures and the natural vegetation and will be evaluated at the time of implementing project approval.

Access to Park/Open Space Trails: To allow for Fire Department access to medical emergencies and small fires involving natural vegetation within the open space and park trails, these trails to be wide enough to allow for passage of the Fire Department off road "Gator" and wheeled stretchers.

VI. RECOMMENDATION

The Hearing Examiner recommends approval of the requested Lawson Hills Master Planned Development, subject to the following conditions:

[Conditions are organized into categories; however the categories themselves are not meant to limit the applicability of the condition to the overall project; track changes identify changes to the recommended staff conditions.]

[GENERAL]

1. Approval of the MPD is limited to the terms and conditions set forth in the City Council's written decision, and does not include approval of any other portion of the MPD set forth in the application.

2. After approval by the City Council at an open public meeting and after a public hearing as required by law, a Development Agreement shall be signed by the Mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the City shall approve any subsequent implementing permits or approvals. Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of any implementing permits or approvals. The Development Agreement shall be binding on all MPD property owners and their successors and shall require that they develop the subject property only in accordance with the terms of the MPD approval.

3. The Phasing Plan of Chapter 9 of the MPD Application is approved, with the exception of the bonding proposal at p. 9-3, and Staff is directed to assure that the Development Agreement shall specify the following additional details: which infrastructure projects from the Phasing Plan and other mitigation obligations the applicant will build; which projects the City will build; and for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

4. The Development Agreement shall specifically describe when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

5. The Development Agreement shall include language that defines and identifies a "Master Developer." A single Master Developer shall be maintained through the life of the Development Agreement. The duties of the Master Developer shall include at least the following: a) function as a single point of contact for City billing purposes; b) function as a single authority for Development Agreement revisions and modifications; c) provide proof of approval of all permit applications (except building permits) by other parties prior to their submittal to the City; and d) assume responsibility for distributing Development Agreement entitlements and obligations and administering such.

6. The City shall have the ability but not the obligation to administratively approve off-site projects that would otherwise be compromised if they cannot be completed prior to approval and execution of the Development Agreement. In these instances, the applicant shall acknowledge in writing that the approval of any such applicable projects does not in any way obligate the City to incur obligations other than those specifically identified in the approved permits for the applicable project.

7. ~~The applicant shall be responsible for addressing any projected city fiscal shortfall as a result of The Villages project. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues.~~

8.7. The applicant shall submit a construction waste management plan for inclusion in the Development Agreement.

9.8. Homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings. In addition, the CCRs shall include provisions, to be enforced by the HOA, prohibiting washing of cars in driveways or other paved surfaces, except for commercial car washes, and limiting the use of phosphorous fertilizers in common areas, so as to limit phosphorous loading in stormwater.

[TRANSPORTATION]

10. ~~Over the course of project build out, construct all new roadway alignments as depicted in the 2025 Transportation Element of the Comprehensive Plan, or functionally equivalent alignments as approved by the City and/or other jurisdictions, that are necessary to provide access to the project, circulation within the project and to maintain the City's level of service standards. [FEIS Mitigation Measure]~~

11.9. Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 6 and 21 below. The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur. Any "functionally equivalent" realignment that results in a connection of MPD roads to Green Valley Road shall be processed as a major amendment to the MPD.

12.10. The applicant shall create a new transportation model for this project which incorporates, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR

169 through the City of Maple Valley to the northern limits of that city, and west to SR 167 in Auburn. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic.

13.11. The new model must consider recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, current peak hour factors and existing speed limits on all project roads. The model must be run with both currently funded and unfunded transportation projects for each affected jurisdiction as shown in the applicable 6 year Transportation Improvement Plans and 20 year Transportation Plans, respectively.

14.12. The new model must contain a sensitivity analysis for the effect of projected peak hour factor assumptions and the varying consequences to project impacts and mitigation measures must be presented to the City and all affected jurisdictions.

15.13. The new model must contain a mode split analysis that reflects the transit service plans of Sound Transit, King County Metro and any other transit provider likely to provide service in the study area. This mode split analysis should include an estimate of the number of project residents likely to use the Sounder and to which stations these trips might be attributed. This analysis must be presented to the City, the applicable transit agencies, and the jurisdictions in which trips are likely to use park and ride, Sound Transit parking garages or other facilities.

16.14. The new model must contain an analysis of varying internal trip capture rates utilizing currently available ITE methodologies as well as information from local master planned developments with similar land use mixes. The methodology for choosing the final internal trip capture rates must be justified. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.

15. The resulting project impacts and mitigations must be integrated into the development agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects

17.16. The intersections needing mitigation as identified in the analysis required above noted in the FEIS shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. [FEIS Mitigation Measure]-The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard.

18.17. Intersection improvements outside the City limits shall be mitigated through measures acceptable to the applicable agency. [FEIS Mitigation Measure] The

1 developer shall enter into traffic mitigation agreements with impacted agencies
2 outside the city that have projects under their jurisdiction in the list below as part of
3 the Development Agreement. If those mitigation agreements include the construction
4 of a project, those projects shall be added to the regional project list and included as
5 part of the Development Agreement.

6 49.18. The responsibilities and pro-rata shares of the cumulative transportation
7 mitigation projects shall be established in the two Development Agreements, which
8 must cover the complete mitigation list and be consistent with one another. (Traffic
9 impacts should be ~~were studied~~ based on the cumulative impacts of The Villages and
10 the Lawson Hills MPDs. These various projects have a mutual benefit and need
11 crossing over between them.)

12 **Exhibit—INTERSECTION IMPROVEMENTS**

13 Study Intersection	14 Jurisdiction	15 Mitigation
16 SE 288th Street/216th Avenue SE	Black Diamond	Signalize. Add NBR turn pocket.
17 SE 288th Street/232nd Avenue SE	Black Diamond	Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.
18 SR 169/SE 288th Street	WSDOT	Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).
19 SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.
20 SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.
21 SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.
22 SE Auburn Black Diamond Road/ Morgan Street	Black Diamond	Roundabout.
23 SR 169/Roberts Drive	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.
24 SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.

Exhibit—INTERSECTION IMPROVEMENTS

Study Intersection	Jurisdiction	Mitigation
SR 169/Baker Street	Black Diamond/ WSDOT	Signalize.
SR 169/Lawson Road	Black Diamond/ WSDOT	Signalize. Add SBL turn pocket.
SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/ WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.
SR 169/SR 516	Maple Valley/ WSDOT	Add second NBL turn pocket.
SR 169/SE 240th Street	Maple Valley/ WSDOT	Add additional SBT lane on SR 169 from north of 231st Street to Witte Road. Add second NBT lane at SR 169/240th Street.
SR 169/Witte Road	Maple Valley/ WSDOT	
SR 169/SE Wax Road	Maple Valley/ WSDOT	
SR 169/SE 231st Street	Maple Valley/ WSDOT	
SR 169/SR 18 EB Ramps	Maple Valley/ WSDOT	
SR 516/SE Wax Road	Covington/ WSDOT	Add second SBL, WBR, and NBL turn pockets.
SR 516/168th Pl SE	Covington/ WSDOT	Add NBL and EBR turn pockets.
SR 516/Covington Way SE	Covington/ WSDOT	Optimize signal timings.
SE 272nd Street/160th Avenue SE	Covington/ WSDOT	Signalize.
SE Kent Kangley Road/ Landsburg Road SE	Maple Valley/King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.
SR 169/SE Green Valley Road	WSDOT	Signalize.
SE Auburn-Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.
SR 169/North Connector	Black Diamond/ WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional

Exhibit—INTERSECTION IMPROVEMENTS

Study Intersection	Jurisdiction	Mitigation
		NBT lane 1,000 feet north of intersection.
Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.
SE Auburn Black Road/Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.
SR 169/South Connector	Black Diamond/WSDOT	Signalize. Add SBR and NBL turn pockets.

20. Given that the SE Connector and the south half of the North Connector are not included in The Villages proposal, these additional traffic mitigation projects shall be required and needed to maintain the City's Level of Service.

a. Two south bound lanes on SR 169 from SE 288th Street to 100 ft. south of the South Connector (this would be a shared responsibility of the two MPD proposals from 288th Street to a location 600 feet south of Roberts Drive).

b. Two north bound lanes on SR 169 from 600 ft. south of Roberts Dr. to SE 288th Street. (Also a shared responsibility of both projects)

c. Add an additional south bound lane on SR 169 from 600 feet south of Roberts Drive to the South Connector.

d. An additional east bound left turn lane and an east bound right turn pocket will be needed at SR 169 and Roberts Drive. (if to be a signal controlled intersection)

e. An additional north bound right turn pocket at SR 169 and Lawson Street.

f. The south bound right at SR 169 and the South Connector will need to be converted to a south bound through/right lane.

24.19. For each potential signal, first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control. [FEIS Mitigation Measure]

22.20. A proactive rather than reactionary transportation monitoring plan shall be established as part of the Development Agreement with using the projects identified in the new traffic analysis required above, a list of projects and including trigger mechanisms acceptable to the City. To the extent site conditions permit,

1 Implementing projects shall be designed to foster the development of a street grid
2 system throughout the Main Property. The monitoring plan shall ensure that
3 construction of improvements commences before the impacted street or intersection
4 falls below the applicable level of service.

5 23.21. Implementing projects shall be designed to foster the development of a street
6 grid system throughout the project.

7 24.22. In order to balance the impact of the added street maintenance and the
8 proposed street standards with higher maintenance costs, all cul-de-sacs and auto
9 courts serving 20 units or less, and all alleys shall be private and maintained by the
10 applicant or future Homeowners' Association(s).

11 25.23. The applicant or future Homeowners' Association(s) shall be required to
12 maintain all street side landscaping.

13 24.24. The applicant shall install a sidewalk along Lawson St. from its intersection
14 with the proposed Lawson Parkway west to SR-169 (3rd St) prior to Phase 3
15 construction as defined in the application. The City and Applicant shall work in good
16 faith to seek grants and other funding mechanisms to construct this improvement
17 prior to holding the Applicant responsible for its proportionate share.

18 26. ~~The applicant shall model the traffic impacts of a development phase before~~
19 ~~submitting land use applications for that phase, in order to determine at what point a~~
20 ~~street or intersection is likely to drop below the adopted level of service. Necessary~~
21 ~~transportation mitigation projects shall then be listed in the schedule to prevent~~
22 ~~failure. The applicant shall also monitor traffic levels midway through each phase to~~
23 ~~determine if the traffic generation assumptions and distribution patterns are~~
24 ~~developing as expected. Traffic mitigation projects may therefore change or~~
25 ~~additional projects be added to address traffic issues as they actually develop.~~

26 27.25. The monitoring plan required by these conditions shall require the applicant to
27 model the traffic impacts of a development phase before submitting land use
28 applications for that phase, in order to determine at what point a street or intersection
29 is likely to drop below the City's adopted level of service. The monitoring plan shall
30 provide for the timing of commencement of construction of projects identified in the
31 required traffic modeling, as well as the amendments to the scope of said projects
32 and/or additions to projects as determined by the City in its reasonable discretion as
33 necessary to maintain the City's adopted levels of service in effect at the time of the
34 modeling, to the extent that project traffic would cause or contribute to any level of
35 service failure as determined by the City's adopted level of service standard. In the
36 event of a disagreement between the applicant and the City about the timing of
37 construction of a transportation project under the monitoring plan, and if the
38 monitoring plan does not already include period modeling, the applicant shall also

1 monitor traffic levels midway through each phase to determine if the traffic
2 generation, trip distribution and assignment patterns are developing as expected.

3 28.26. No more than 150 residential units shall be permitted to the area southeast of
4 Lawson Street until a second general purpose access route to this area is approved.
5 Approval shall occur through a Major Amendment to the MPD if a connection other
6 than the SE Connector is proposed.³ No more than 300 residential units shall be
7 permitted in this area until such time the identified second general purpose access
8 route is constructed. If a second route is not approved within two years of the date of
9 MPD approval, then MPD approval shall expire. The applicant shall seek approval
10 of the secondary access once approval of 150 units is achieved.

11 27. Once the applicant has identified a second fully functional access point to the
12 Main Lawson Hill property southeast of Lawson Street, the applicant shall provide a
13 traffic and engineering study to determine the impact of the redistributed traffic and
14 propose mitigation projects to maintain the City level of service standards. The
15 existing public roads that are impacted by the second new connection shall be
16 upgraded as needed to comply with adopted functional and structural standards.

17 29.28. Prior to the first implementing project of any one phase beingis approved, a
18 more detailed implementation schedule of the regional infrastructure projects
19 supporting that phase shall be submitted for approval. The timing of the projects
20 should be tied to the number of residential units and/or square feet of commercial
21 projects.

22 22.29. The applicant shall apply road design speed control and traffic calming
23 measures so that inappropriate speeds are avoided on neighborhood streets.

24 30. The City shall commission a study, at Applicant's expense, on how to prevent
25 MPD traffic from using Green Valley Road, which shall include an assessment of
26 traffic calming devices. The study shall also include an analysis and recommended
27 mitigation ensuring safety and compatibility of the various uses of the road. All
28 reasonable measures identified in the study shall be incorporated into the
29 Development Agreement or processed as an amendment to the MPD along with the
30 timing required for installation of the improvements.⁴

31 ³ In its analysis of BDMC 18.98.010, the staff report recommends that a second
32 connector be identified in the Development Agreement in one portion of the analysis
33 and recommends that it be processed as a major MPD amendment in another. The
34 staff did not integrate the Development Agreement requirement into its
35 recommended conditions of approval. Clarification from staff may be needed on this
36 issue.

37 ⁴ This condition may be dispensed with if the City determines that the Lawson Hills
38 MPD will not generate any appreciable traffic upon Green Valley Road.

1 [NOISE]

2 30.31. Each implementing development shall include a plan for reducing short term
3 construction noise by employing the best management practices such as minimizing
4 construction noise with properly sized and maintained mufflers, engine intake
5 silencers, engine enclosures, and turning off equipment when not in use. [FEIS
6 Mitigation Measure]

7 31.32. Stationary construction equipment shall be located distant from sensitive
8 receiving properties whenever possible. Where this is infeasible, or where noise
9 impacts would still be likely to occur, portable noise barriers shall be placed around
10 the equipment (pumps, compressors, welding machines, etc.) with the opening
11 directed away from the sensitive receiving property. [FEIS Mitigation Measure]

12 32.33. Ensure that all equipment required to use backup alarms utilizes ambient-
13 sensing alarms that broadcast a warning sound loud enough to be heard over
14 background noise, but without having to use a preset, maximum volume.
15 Alternatively, use broadband backup alarms instead of typical pure tone alarms.
16 [FEIS Mitigation Measure]

17 33.34. Require operators to lift, rather than drag materials wherever feasible. [FEIS
18 Mitigation Measure]

19 34.35. Substitute hydraulic or electric models for impact tools such as jackhammers,
20 rock drills and pavement breakers. [FEIS Mitigation Measure]

21 35.36. Electric pumps shall be specified whenever pumps are required. [FEIS
22 Mitigation Measure]

23 36.37. The developer shall establish a noise control "hotline" to allow neighbors
24 affected by noise to contact the City or the construction contractor to ask questions or
25 to complain about noncompliance with the noise reduction program particularly noisy
activities. Failure to comply with the noise reduction program shall result first in a
warning and one or more continuing failures may result in cessation of construction
activities until the developer provides adequate assurance to the City that there will be
no further noncompliance. a solution is found. Noting in this condition shall be
construed as limiting or altering the City's authority to enforce its noise regulations.
[FEIS Mitigation Measure]

37.38. If pile driving becomes necessary, impact pile-driving shall be minimized in
favor of less noisy pile installation methods. If impact pile driving is required, the
potential for noise impacts shall be minimized by strict adherence to daytime only.
[FEIS Mitigation Measure]

38.39. Work hours of operation shall be established and made part of the Development Agreement.

39.40. Install noise mitigation (6-foot solid wooden fence and/or berms and landscaping) along the Lawson Connector wherever it abuts existing residential uses. [FEIS Mitigation Measure]

40.41. The City shall commission a noise study, at Applicant's expense, that identifies long term noise impacts resulting from the 15 year development window. Long term noise impacts shall comply with Chapter 173-60 and not qualify under construction noise exemptions. The noise study shall define the period(s) of time that constitute long term noise, based upon professionally accepted standards or noise regulations from other agencies. If this information is not available, six months shall qualify as long term. Particular attention shall be paid to any truck traffic generated by the large amount of grading proposed by the Applicant. The study shall propose mitigation to mitigate noise within the levels required by Chapter 173-60, which could include rerouting of truck traffic, sound barriers and/or sound proof windows. Any reasonable mitigation shall be addressed in the Development Agreement or processed as an amendment to the MPD.

[PUBLIC UTILITIES – WATER]

41.42. ~~Upgrade Spring Supply source per~~ Comply with the terms of the Water Services Future Funding Agreement (WSFFA). ~~[FEIS Mitigation Measure]~~

42.43. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA. [FEIS Mitigation Measure]

23.44. Construct an appropriately sized Upper Lawson Reservoir. [FEIS Mitigation Measure]

43.45. Construct a pump station and transmission main adjacent to 965 reservoir to serve the east annexation area in coordination with the City. Alternatively, in coordination with the City provide water modeling to support a functionally equivalent improvement, upgrade the pump station at the 850 reservoir to pump directly to the 1175 reservoir and remove the 965 reservoir from service. [FEIS Mitigation Measure]

44.46. Install local water main distribution system within Lawson Hills with appropriate pressure reducing stations in 1175, 965, and 850 pressure zones consistent with the comprehensive plan. [FEIS Mitigation Measure]

45.47. Extend and loop the 850 zone water main to North Triangle. [FEIS Mitigation Measure] at the North Triangle. [FEIS Mitigation Measure]

48. Install 750 and 850 zone water main distribution main within North Triangle.
[FEIS Mitigation Measure]

~~2.~~

49. Construct needed water supply and storage improvements in accordance with the City's Comprehensive Plan and necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD. [FEIS Mitigation Measure]

46.50. Should new water distribution alternatives be desired by the applicant that are not consistent with the recently adopted Water Comprehensive Plan, the applicant shall be responsible for the cost of updating the Plan if needed.

47.51. The Water Conservation Plan included in the Chapter 8 of the MPD Application is approved. The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings, and the impacts if the required savings targets of 10% less than the average water use in the City by residential uses at the time the MPD was submitted are not achieved.

48.52. The proposed water conservation plan shall be evaluated for its effectiveness in light of the City's available water resources after the first 500 units have been constructed. At that time, additional measures may be required if goals are not being achieved.

[PUBLIC UTILITIES – SEWER]

49.53. Construct Trunk Line No. 2 in Lawson Hills. [FEIS Mitigation Measure]

50.54. Upgrade and connect Botts Drive sewer main to Trunk Line No. 2. [FEIS Mitigation Measure]

51.55. Construct Trunk Line No. 3 in the North Triangle to new Pump Station No. 2. Alternatively, a functionally equivalent improvement, such as temporarily locating the interim pump station proposed on the North Triangle, may be considered. [FEIS Mitigation Measure]

52.56. Construct Pump Station No. 2, or construct the pump station on site within the North Triangle, consistent with the preceding condition in which case Pump Station No. 2 need not be constructed. [FEIS Mitigation Measure]

53.57. Construct Force Main No. 2. [FEIS Mitigation Measure]

a. If a pump station is located on the North Triangle, the applicant shall also abandon the Diamond Glen sewer pump station and connect the sewer flows from Diamond Glen to the new sewer pump station on the North Triangle. Projects listed

1 in Tables 9.2, 9.3 and 9.4 shall include the abandonment of the Diamond Glen sewer
2 pump station and the connection of sewer flows from Diamond Glen to the new sewer
3 pump station.

4 [PUBLIC UTILITIES – STORMWATER AND WATER QUALITY]

5 54.58. Stormwater runoff that is collected from impervious surfaces shall be
6 mitigated in accordance with the 2005 *Stormwater Management Manual for Western
7 Washington*, and stormwater designs shall include low impact development
8 techniques wherever practical and feasible. [FEIS Mitigation Measure]

9 55.59. Runoff from basins tributary to Lake Sawyer shall provide water quality
10 treatment in accordance with the phosphorous control menu in the 2005 *Stormwater
11 Management Manual for Western Washington*⁵. [FEIS Mitigation Measure]

12 24.60. Enhanced water quality treatment shall be provided as required by the 2005
13 *Stormwater Management Manual for Western Washington*⁶. [FEIS Mitigation
14 Measure]

15 61. All development within the North Triangle shall utilize infiltration for flow
16 control and phosphorous control mitigation due to the well drained soils on-site.
17 [FEIS Mitigation Measure]

18 25.62. The applicant shall implement a surface water monitoring plan that identifies
19 locations to monitor surface water upstream and downstream of stormwater pond
20 outfalls. The purpose of the plan is to monitor surface water temperatures during the
21 warmest six months of the year and ensure that stormwater discharge does not cause a
22 temperature increase in receiving water bodies. Monitoring shall occur for a period of
23 two years once discharge occurs. The plan shall describe a threshold and evaluation
24 using state standards and outline possible remedies if negative temperature impacts
25 are found⁷. [FEIS Mitigation Measure]

26 ⁵ This condition was not recommended by staff for the Villages MPD and there does
27 not appear to be any reason for treating the MPDs differently on this issue. The
28 Council should either require the condition for both or not at all. The Examiner
29 recommends that the condition be imposed for both MPDs.

30 ⁶ This condition was not recommended by staff for the Villages MPD and there does
31 not appear to be any reason for treating the MPDs differently on this issue. The
32 Council should either require the condition for both or not at all. The Examiner
33 recommends that the condition be imposed for both MPDs.

34 ⁷ This condition was not recommended by staff for the Villages MPD and there does
35 not appear to be any reason for treating the MPDs differently on this issue. The

1 56-63. Native plants shall be primarily used as part of the planting palette within the
2 MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation
3 Measure]

4 64. Where point discharges to streams must occur, design the outfall to minimize
5 impacts to the stream channel and avoid areas of significant vegetation. [FEIS
6 Mitigation Measure]

7 57-65. Mechanisms shall be identified to integrate Low Impact Development
8 technologies into the overall design of the MPD and incorporated into the
9 Development Agreement. Future Homeowners' Associations shall bear any
10 increased cost of landscape maintenance.

11 58-66. The Development Agreement shall include restrictions on roof types (no
12 galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure
13 that stormwater discharged from roof downspouts is suitable for direct entry into
14 wetlands and streams without treatment. The applicant shall develop related public
15 education materials that will be readily available to all homeowners and implement a
16 process that can be enforced by future homeowners associations.

17 67. Stormwater facilities to be considered as part of required open space shall be
18 designed as an amenity per the Public Works and Natural Resources Directors. If
19 approved, future Homeowners Association(s) shall be required to provide landscape
20 maintenance of these facilities.

21 26-68. The proposed stormwater bypass line from the Main Property to the Jones
22 Lake area shall be sized to accommodate street flows along the proposed route.

23 59-69. The Development Agreement shall include language that binds future
24 developers and contractors to a requirement to comply with any NPDES permits
25 issued by the Washington State Department of Ecology and acknowledge that
although permit conditions imposed by NPDES permits are not administered by the
City, staff reserves the right to enforce the conditions of the NPDES permit. Since
the city has a high interest in protecting receiving waters under the city storm water
permit, the developer shall fund necessary costs for training related to inspection
services. ~~cover the city's cost of NPDES stormwater permit oversight.~~

23 Council should either require the condition for both or not at all. The Examiner
24 recommends that the condition be imposed for both MPDs.

1 60.70. Develop a proactive temporary erosion and sediment control plan to prevent
2 erosion and sediment transport and provide a response plan to protect receiving
3 waters during the construction phase.

4 61.71. Construct a storm water system that does not burden the city with excessive
5 maintenance costs; assist the city with maintenance of landscape features in storm
6 water facilities. The City shall have the right to reject higher cost of maintenance
7 facilities when lower cost options may be available.

8 62.72. Include a tabular list of stormwater monitoring requirements. The list should
9 include the term of the monitoring, the allowable deviation from design objectives or
10 standards, and the action items necessary as a result of excess deviations.

11 63.73. The stormwater plan shall include the ability to adaptively manage detention
12 and discharge rates and redirect stormwater overflows when environmental
13 advantages become apparent.

14 64.74. The size of storm ponds for hydraulic purposes shall vest on a phase by phase
15 basis to the extent allowed by the City's DOE discharge permit and state law.

16 65.75. The Development Agreement shall include language to allow deviations from
17 the stormwater facilities listed in the FEIS when justified by a technical analysis and
18 risk assessment.

19 66.76. A downstream analysis shall be performed prior to the first implementing
20 development proposal for the Main Property to determine the impact of the Lawson
21 Hills development to the flood elevations at Abrams Ave and the flood peaking
22 impact to the wetlands.

23 67.77. The City shall determine whether the Applicant's reasonable proportionate
24 share participation in any watershed-wide implementation measures identified in
25 Exhibit H-9 would be of significant benefit in protecting Lake Sawyer water quality.
If so, those measures shall be incorporated into the Development Agreement.

26 [VISUAL AND AESTHETICS]

27 68.78. The Development Agreement shall include a narrative of the process and basis
28 for selectively removing hazard trees within sensitive areas ~~at the project perimeter~~.
29 The intent of this section will be to leave the majority of the ~~perimeter~~ sensitive areas
30 as designated passive open space but to have it appear and function as native forest.

31 69.79. The Development Agreement shall define when and under what conditions a
32 development parcel may be logged for timber revenue, how that parcel must be
33 secured to minimize the impacts on the community and how long the parcel may
34 remain undeveloped before it must be reforested.

1 ~~70.80.~~ Minimize the aesthetic impacts of grading along the ridgeline of Lawson Hill
2 and promote views from areas of lower elevation that blend rooftops with the
3 surrounding natural environment by implementing one or more of the following:

4 a. Preserve mature trees in natural open spaces, and if hazardous tree removal is
5 required, replant at a 3:1 ratio with minimum 12-foot-tall evergreen trees.

6 b. Require design guidelines that include material and color choices that blend
7 with the surrounding environment and preclude materials such as shiny metal roofs.

8 c. Plant native trees in open spaces, parks, and streetscaping. [FEIS Mitigation
9 Measure]

10 **[HISTORIC AND CULTURAL RESOURCES]**

11 ~~3.2.~~ Prior to demolition of the miners' housing on the project site, the applicant
12 shall complete the National Register of Historic Places nomination process with the
13 Washington State Department of Archaeology and Historic Preservation (DAHP). If
14 any properties are determined eligible for the NRHP, additional consultation with the
15 DAHP shall be documented to determine if additional research and archaeological
16 testing is necessary to determine the limits and contents of the site with respect to
17 NRHP eligibility and controls. [FEIS Mitigation Measure]

18 **[PUBLIC SERVICES – PARKS AND RECREATION]**

19 ~~71.81.~~ If the Lawson Hills school site is developed and the proponent proposes to
20 build a joint-use facility, the proponent shall provide one or more youth/adult
21 baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction
22 with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

23 ~~72.82.~~ The Development Agreement shall include provisions to define which parks
24 and trails facilities will be public and which shall be private. The Agreement shall
25 also include language to guarantee public access to privately-owned parks and trails
26 facilities.

27 ~~73.83.~~ As part of the Development Agreement, the fee-in-lieu values for park
28 facilities shall be re-evaluated to ensure appropriate levels of funding and to include a
29 mechanism to account for inflationary rises in construction costs and potentially, the
30 costs of maintaining these types of facilities in the future. The City shall maintain
31 discretion concerning when and if a lump sum payment will be accepted in lieu of
32 constructing off-site recreational facilities

33 ~~74.84.~~ The details regarding the timing of construction and optional off-site
34 construction or payment of fee in lieu of construction included in ~~contents of~~ Table

5.2 of the MPD application (Recreation Facilities) shall be specified resolved in the Development Agreement.

~~75.85.~~ Dependant on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement.

~~86.~~ The Development Agreement shall define when trails are required to be constructed. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

~~76.87.~~ Parks within each phase of development shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the phase, whichever occurs first, to the extent necessary to meet park level of service standards for the implementing project.

~~77.88.~~ The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

[PUBLIC SERVICES – SCHOOLS]

~~78.89.~~ A separate school mitigation agreement shall be entered into between the applicant, the City and the Enumclaw School District which provides adequate mitigation of impacts to school facilities and be incorporated into the MPD permit and Development Agreement by reference. [FEIS Mitigation Measure] Alternatively, school mitigation may be addressed in the Development Agreement if authorized by the City. The capital facilities plan adopted by the City shall govern the acreage requirements for school sites and shall also serve as the source of enrollment projections. Smaller sites may be used if it can be established that less areas will still meet the needs of the District. All proposed schools shall be located within a half-mile walk or residential areas.

[PUBLIC SERVICES – PUBLIC SAFETY]

~~79.90.~~ The Development Agreement shall include specific provisions for providing both fire station sites and funding for future fire facilities and equipment to ensure protection concurrent with project build out. [FEIS Mitigation Measure]

80.91. All Fire Department access roads must meet International Fire Code, specifically Section 503 Fire Department Access Roads and Appendix D Fire Department Access Roads, except to the extent modifications or exceptions are approved by the designated official and authorized by applicable regulations

81.92. Auto courts shall meet the requirements of the International Fire Code 2006 ed. Per IFC Section 503, specifically 503.2.1, except to the extent modifications or exceptions are approved by the designated official and authorized by applicable regulations.

82.93. Separation of combustible structures and vegetation shall be provided to prevent wildland fires from the east and south from spreading to buildings. This shall be determined at the time of implementing projects.

[EROSION HAZARDS]

83.94. Major earth moving and grading ~~shall~~ may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

84.95. In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion. [FEIS Mitigation Measure]

85.96. Bridges or appropriately sized box culverts shall be used for roadway crossings of streams to allow peak flow high-water events to pass unimpeded and to preserve some normal stream processes. [FEIS Mitigation Measure]

86.97. Design stormwater facilities to avoid discharging concentrated stormwater flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS Mitigation Measure]

87.98. Utilize stormwater detention facilities that avoid increases in peak stream flows. [FEIS Mitigation Measure]

99. ~~The Development Agreement shall identify an appropriate administrative fee to cover the costs of staff to deal with construction runoff discharges that exceed discharge permit limits. The Applicant developer shall provide submit a Temporary Erosion and Sedimentation Control (TESC) plan meeting City standards that will mitigate the potential for construction run-off from the site prior to grading or land clearing activities. The best management practices in the TESC plan shall include standby storage of emergency erosion and sediment control materials; a limit to the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.~~

1 88.100. Prior to approval of the first implementing project, the applicant shall provide
2 an overall clearing and grading plan that will be subject to additional SEPA review.
3 Separate permits will be submitted for the North Triangle and Main Property.

4 **[LANDSLIDE HAZARDS]**

5 89.101. Development of landslide hazard areas shall be avoided. Sufficient setbacks
6 shall be required to assure or increase the safety of nearby uses, or where feasible
7 grade out the landslide hazard area to eliminate the hazard in compliance with the
8 city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

9 90.102. Stormwater and groundwater shall be managed to avoid increases in overland
10 flow or infiltration in areas of potential slope failure to avoid water-induced
11 landslides. [FEIS Mitigation Measure]

12 94.103. Geologically hazardous areas shall be designated as open space and roads and
13 utilities routed to avoid such areas. Where avoidance is impossible, utilize the
14 process in the Sensitive Areas Ordinance (supplied with adequate information as
15 defined in code) and Engineering Design and Construction Standards (ED&CS) to
16 build roads and utilities through these areas.

17 **[MINE HAZARDS]**

18 104. Development within the moderate mine hazard area may require additional
19 mitigation measures, which shall be evaluated with future implementing development
20 proposals.

21 105. Flexible utility lines shall be utilized when developing above mine hazard
22 areas.

23 27.106. The most severe mine hazard areas shall be designated as open space; as
24 feasible, roads and utilities shall be routed to avoid such areas. [FEIS Mitigation
25 Measure]

92.107. All proposed development within mine hazard areas shall occur in
conformance with BDMC 19.10.

93.108. All houses that are sold in classified or ~~declassified~~⁸ coal mine hazard areas
shall require a liability release from the homeowner to the City. The release must
recognize that the City is not liable for actual or perceived damage or impact from the

⁸ This deletion should also be applied to the same Villages condition. This was a
revision requested by the Applicant and agreed to by the City.

1 coal mine hazard area. The release form shall be developed and included in the
2 Development Agreement.

3 [VEGETATION AND WETLANDS]

4 ~~94.109.~~ Structural measures such as silt fences and temporary sediment ponds shall be
5 used to avoid discharging sediment into wetlands and other critical areas. [FEIS
6 Mitigation Measure]

7 ~~110.~~ Implementing projects shall provide "on the ground" protection measures
8 such as wetland buffers or root protection zones for significant trees. [FEIS
9 Mitigation Measure]

10 ~~28.111.~~ Clean excess water flows shall be routed to Jones Lake and the wetland
11 complex to ensure that summer water levels are not significantly decreased below
12 existing water levels. [FEIS Mitigation Measure]

13 ~~5.~~

14 ~~112.~~ New stormwater outfalls shall be located to avoid impacts to any stream and
15 adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream
16 habitat. Where all practical and feasible avoidance measures have been employed,
17 provide mitigation in the form of outfall energy dissipaters and/or vegetation
18 restoration and slope stabilization as necessary⁹. [FEIS Mitigation Measure]

19 ~~95.~~ Any deviations from the Tree Preservation Ordinance (BDMC 19.30) shall
20 only be considered through implementing projects on a case-by-case basis.

21 ~~96.113.~~ A tree inventory shall be required prior to the development of implementing
22 projects so that other opportunities to preserve trees may be realized.

23 ~~97.114.~~ The Development Agreement shall include text that defines when and under
24 what conditions a parcel may be logged for timber revenue, how that parcel must be
25 secured to minimize the impacts on the community and how long the parcel may
remain un-worked before it must be reforested.

98.115. The Development Agreement shall describe the process and basis for
removing selective hazard trees at the project perimeter. The intent of this section
will be to leave the majority of the perimeter as designated passive open space, but to
have it appear and function as native forest.

⁹ This condition was required for the Villages but not for Lawson Hills. There is no
reason to treat the MPDs differently on this issue. The Examiner recommends that
both MPDs be subject to this condition.

99.116. The use of native vegetation in street landscaping and in parks shall be required.

[FISH AND WILDLIFE]

117. Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]

118. Potential impacts to Lawson Creek and Jones Lake Creek shall be limited by connecting, when feasible, new stormwater conveyance pipes associated with development to the existing culverts that contain Lawson Creek and Jones Lake Creek under SR 169. This is the preferred discharge location for the proposed stormwater bypass line from the Main Property. Alternative discharge locations may be required based on capacity analysis of existing culverts and permitting issues associated with this connection. [FEIS Mitigation Measure]

119. Prior to commencing construction, wildlife crossing signs shall be installed along Lawson Street to warn drivers of elk crossing the road. [FEIS Mitigation Measure]

6.

400.120. Mast-producing species (such as hazelnut) shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure]

[CLIMATE CHANGE]

401.121. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

402.122. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

[LAND USE]

403.123. Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1); description of categories (beginning on page 3-18); 1,250 residential units and 390,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Commercial uses within residential land use categories shall only be allowed through amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

124. Parcel L2 shall be designated either Low or Medium Density Residential, or open space.

1 104.125. The project shall provide a mix of housing types in conformance with the
2 MPD Design Guidelines. The Development agreement shall set targets for various
3 types of housing for each phase of development.

4 105.126. Identification of specific areas where live/work units can be permitted
5 shall be done as part of the Development Agreement or through an MPD minor
6 amendment.

7 106.127. A minimum density of 4 du/ac for residential properties shall be required
8 for implementing projects.

9 107.128. If the applicant requests to increase a residential category that abuts the
10 perimeter of the MPD, it shall be processed as a Major Amendment to the MPD.
11 Residential land use categories can otherwise be adjusted one category up or down
12 through an administrative approval process provided they also otherwise meet the
13 requirements for minor amendments outlined in BDMC 18.98.100.

14 108.129. The Development Agreement shall limit the frequency of proposed
15 reclassification of development parcels to no more frequently than once per calendar
16 year.

17 109.130. Project specific design standards shall be incorporated into the
18 Development Agreement. These design guidelines must comply with the Master
19 Planned Development Framework Design Standards and Guidelines. All MPD
20 construction shall comply with the Master Planned Development Framework Design
21 Standards and Guidelines, whether or not required by the Development Agreement.

22 110.131. A unit split (percentages of single family and multifamily) and
23 commercial use split (commercial, office and industrial) shall be incorporated into the
24 Development Agreement.

25 111.132. All commercial/office uses (other than home occupations and identified
live/work areas) shall only occur on lands so designated. Additional commercial
areas shall be identified on the Land Use Plan through a future amendment to the
MPD.

112.133. The project shall include a mix of housing types that contribute to the
affordable housing goals of the City, priced to meet the needs of individuals who are
employed within the commercial/retail/office area. As a general guideline,
approximately 816 units (17%) shall be available to households with 50% to 80% of
the median income and 912 (19%) units be available to households with less than
50% of the median income (as established at the time of implementing project
construction). Alternatively, The Development Agreement shall provide for a phase-
by-phase analysis a periodic analysis of affordable housing Citywide to ensure that
housing is being provided at affordable prices. Specifications for affordable housing

1 needs within the project shall be determined as a result of the phase-by-phase
2 analysis. ~~shall be required to ensure that housing is being provided at prices that meet~~
3 ~~the earning potential of those jobs being created within the project. Exact~~
4 ~~specifications shall be included within the Development Agreement.~~

5 ~~113.134. Exact s~~Specifications for the housing described in the preceding paragraph
6 ~~shall be included within the Development Agreement~~ affordable housing needs within
7 the project shall be determined as a result of the phase-by-phase analysis referenced
8 in the preceding condition.

9 ~~114.135.~~ A distinct land use category shall be created to recognize potential light
10 industrial uses or the "office" category shall be renamed to properly indicate the
11 range of potential uses. Areas intended to have light industrial type uses shall be
12 identified on the Land Use Map that is made part of the Development Agreement.

13 ~~29.136.~~ An additional 14.8 acres of open space shall be provided and designated as
14 such on the Land Use Plan or a plan for providing the acreage shall be provided in the
15 Development Agreement.

16 ~~115.137.~~ The high density residential (18-30 du/ac) supplemental design standards
17 and guidelines (MPD application Appendix E) shall become part of the Development
18 Agreement.

19 ~~116.138.~~ No more than 25% of non-multifamily housing shall consist of "front-
20 loaded lots."

21 ~~117.139.~~ Homeowners Association conditions, covenants and restrictions (CCRs) or
22 the Architectural Review Committee shall review, but shall not preclude, the use of
23 green technologies such as solar panels.

24 ~~118.140.~~ Front yard setbacks and other specific lot standards shall be determined as
25 part of the Development Agreement.

~~119.141.~~ A FAR standard shall be established through the Development Agreement
process.

21 ~~142.~~ Prior to approval of the Development Agreement, the legend on Figure 3-1
22 (Land Use Plan) must be clarified to differentiate between wetlands, their associated
23 buffers, other critical areas and open space, trails and parks and to incorporate the
24 additional required open space area.

25 ~~120.143.~~ All requests for deviation in Chapter 13 of the MPD application should be
denied except for those deviations, mostly utility and street standards, that are
identified in the recommendation as amenable to further review in the development
agreement process. Any MPD deviations to the Sensitive Areas Ordinance should be

denied, since BDMC 18.98.155(A) provides that the Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs.

[SENSITIVE AREAS/OPEN SPACE]

~~121.~~144. The use of sensitive areas including but not limited to wetlands, landslide and mine hazard areas and their associated buffers for development including trails, stormwater management, etc. shall be regulated by BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts as well as other required measures shall be evaluated on a case-by-case basis at the time of implementing project application.

~~122.~~145. Areas shown as natural open space in the figure on Page 5-5 of the application are required to remain natural with the possibility for vegetation enhancement. Modifications to these areas may be approved by the City in its reasonable discretion, on a case-by-case basis, only if necessary for construction of required infrastructure such as roads, trails or stormwater facilities. Any areas disturbed pursuant to such approval shall be replanted with native plants. No other land clearing shall be permitted besides trails and stormwater facilities. Nothing in this condition shall allow grading or modifications in the sensitive areas and buffers, except as provided in the Sensitive Areas Ordinance.

~~123.~~146. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

~~_____The Development Agreement shall specify where and how the additional required 14.8 acres of open space shall be provided.~~

~~124.~~147. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

~~125.~~148. Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

~~126.~~149. Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement.

150. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If

1 during construction it is discovered that the actual boundary is smaller or larger than
2 what was mapped, the mapped boundary shall prevail. The applicant shall neither
3 benefit nor be penalized by errors or changes in the sensitive area boundaries as the
4 projects are developed.

5 151. Storm ponds should only be considered as open space if they are developed as
6 an amenity for safe recreational use.

7 49

8 [ADMINISTRATION]

9 30.152. The proposed project shall have no adverse financial impact upon the city, as
10 determined after each phase of development and at full build-out. The required fiscal
11 analysis shall include the costs to the city for operating, maintaining and replacing
12 public facilities required to be constructed as a condition of MPD approval or any
13 implementing approvals related thereto. The fiscal analysis shall ensure that revenues
14 from the project are sufficient to maintain the project's proportionate share of adopted
15 City staffing levels of service. The fiscal analysis shall be updated to show
16 continued compliance with this criterion, in accordance with the following schedule:

17 a. If any phase has not been completed within five years, a new fiscal
18 analysis must be completed with regards to that phase before an extension can
19 be granted¹⁰; and

20 b. Prior to commencing a new phase, including the first phase of
21 construction.

22 The exact terms and process for performing the fiscal analysis and evaluating fiscal
23 impacts shall be outlined in the Development Agreement, and shall include a specific
24 "MPD Funding Agreement," which shall replace the existing City of Black Diamond
25 Staff and Facilities Funding Agreement. The applicant shall be responsible for
addressing any projected city fiscal shortfall that is identified in the fiscal projections
required by this condition. This shall include provisions for interim funding of
necessary service and maintenance costs (staff and equipment) between the time of
individual project entitlements and off-setting tax revenues.

26 427.153. The Development Agreement shall include language that specifically
27 defines when the various components of permitting and construction must be

28 ¹⁰ The wording of this subsection differs from that of the corresponding subsection of
29 the Villages condition. There is no immediately apparent reason for this difference,
30 although the Examiner recognizes that the fiscal impacts of Lawson Hills differ from
31 those of the Villages in that Lawson Hills is projected to create a budget surplus. The
32 City should only impose different fiscal conditions if justified by this difference in
33 fiscal impacts.

1 approved, completed or terminated. For example: when must open space be
2 dedicated, plats recorded, and utility improvements be accepted by the City.

3 ~~128.~~154. The Development Agreement shall document a collaborative
4 design/review/permitting process that allows City staff to participate in the conceptual
5 stage of project planning in order to provide input on designs and choices that benefit
6 the City as well as the applicant.

7 ~~129.~~155. The Development Agreement shall specifically identify which rights and
8 entitlements are vested with each level of permitting, including but not limited to the
9 MPD Application approval, the Development Agreement approval, and Utility Permit
10 approvals.

11 ~~156.~~ Reclassification of development parcels shall occur no more frequently than
12 once per calendar year.

13 ~~31.~~157. A process for including lands identified as "Expansion Areas" in the
14 application shall be defined in the Development Agreement.

15 ~~130.~~158. Proposed reclassification of development parcels located at the project
16 perimeter to a higher density shall only occur through a Major Amendment to the
17 MPD.

18 ~~131.~~159. A process for including lands identified as "Expansion Areas" in the
19 application shall be defined in the Development Agreement.

20 ~~132.~~160. The Development Agreement shall define the proposed phasing plan for
21 the various matters (utility and street infrastructure, parks, transferred development
22 rights, etc.) subject to phasing standards.

23 ~~161.~~ Prior to the approval of the first implementing project of a defined phase, a
24 detailed implementation schedule of the regional projects supporting that phase shall
25 be submitted to the City for approval. The timing of the projects shall be tied to the
number of residential units and/or square feet of commercial projects.

[MID POINT TRAFFIC ANALYSIS]

16257. a. At the point where building permits have been issued for 3,000
dwelling units at the Villages and Lawson Hills together, the City shall
perform a single comprehensive review of the combined cumulative
transportation impacts of the Villages MPD and the Lawson Hills MPD and shall
issue findings, conclusions and a recommendation as provided below. This
review shall determine whether the cumulative transportation impacts of the two
projects are reasonably close to the environmental impacts identified and
projected within the SEPA documents; whether such impacts have been

1 adequately mitigated; and whether the projects comply with their respective
2 MPD permit conditions regulating their cumulative transportation impacts.

3 b. The midpoint review, as provided below, may be performed concurrent
4 with a preliminary plat application held on either the Villages or Lawson
5 Hills implementing plat, and the City review may incorporate relevant portions
6 of any SEPA documents prepared for the implementing plat which analyze
7 cumulative MPD impacts.

8 c. When the midpoint review threshold identified in subparagraph a,
9 above, has been reached, the City shall issue written notice to the Master
10 Developer(s) to each submit within 90 days midpoint review documentation
11 summarizing their respective project impacts and compliance with
12 mitigations and conditions to date. In addition, the Master Developer(s) shall
13 each pay a proportionate share of the midpoint review costs incurred by the
14 City.

15 Not later than 90 days following receipt of cumulative impact summaries from
16 the Master Developer(s), the City Director of Community Development shall
17 consult with other affected jurisdictions as to the midpoint review results, shall
18 issue the City's proposed findings, conclusions and recommendation, and at the
19 close of the 90-day period, the City shall meet with the Master Developer(s) to
20 review the proposed findings, conclusions and recommendation and identify
21 what improvements the Master Developer(s) plans to construct. Within 14
22 days of the City meeting with the Master Developer(s), the City shall finalize its
23 findings, conclusions and recommendation and shall provide mailed notice to all
24 Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the
25 midpoint review has been issued.

If a Master Developer fails to submit satisfactory midpoint review documentation
regarding its project within the 90-day period after notice has been issued as
required herein, further permits shall not be approved for that MPD until the
required documentation has been submitted.

d. The review of cumulative transportation impacts of the two projects
shall be limited to analysis of the following issues. The comprehensive
review need not include a detailed discussion of cumulative impacts other
than those listed below if general findings are made that such other impacts
are in compliance with the review standards contained in the second sentence
of Section a above.

Review the adequacy of the City's 2025 Transportation Network' and EIS study
intersections impacted by the Villages and Lawson Hills MPDs to meet the

1 applicable service standards in effect at the time the EISs were prepared,
2 including consideration of the following specific topics:

3 i. The accuracy of background PM peak hour traffic level forecasts;

4 ii. Levels of PM peak hour traffic generated cumulatively by the Villages and
5 Lawson Hills and traveling outside the MPDs;

6 iii. The accuracy of the regional PM peak hour trip distribution forecasts;
7 and

8 iv. Identification of any EIS study intersection(s) not meeting the applicable
9 LOS standard which are impacted by the Villages/Lawson Hills PM peak hour
10 traffic.

11 e. The City review of above-stated cumulative transportation impacts
12 required herein (the "midpoint review analysis") shall result in written
13 findings and conclusions plus a recommendation for new future permit
14 conditions and mitigations for the Villages and/or Lawson Hills, as required.
15 Proposed conditions and mitigations applicable to future permits and
16 associated mitigation within either or both projects shall be revised if the
17 City finds that the conditions or mitigation measures imposed pursuant to the
18 City's standards in effect at the time of MPD approval have resulted in an
19 unsatisfactory level of mitigation, either because the degree of mitigation is
20 substantially inadequate or the quantity of impact demonstrated to be
21 attributable to MPD development significantly exceeds levels predicted.
22 New permit conditions and mitigations imposed for cumulative impacts
23 through the midpoint review process shall comply with the following
24 standards and limitations:

25 i. No new standards or requirements shall be imposed upon property in any
plat recorded within 60 months of MPD approval to the extent that such standards
or requirements would affect infrastructure serving said property also
constructed within the 60-month timeframe.

ii. Performance standards more stringent than those contained in the original
MPD permit shall not be imposed.

iii. No retrofitting or major modification shall be required for facilities
properly installed in accordance with MPD permits unless such is determined
necessary to avoid a threat to public health or safety or a new significant adverse
environmental impact, and such impact or threat cannot be mitigated by
requirements imposed upon or downsizing of MPD development yet to be
constructed.

1 iv. New conditions and mitigations shall be limited to those shown to be
2 necessary as a direct result of the MPD development, and such mitigation must be
3 reasonable and achievable without compromising other MPD permit requirements.

4 v. Conditions and mitigations applicable to a MPD shall be modified only
5 to the extent that cumulative impacts are demonstrated to be the result of
6 development of such project. If cumulative impacts have been demonstrated to
7 exist but cannot be attributed solely to the MPDs, or allocated between the two
8 MPDs, responsibility for mitigation shall be apportioned equitably in a pro-rata
9 or lair share" based on objective causal factors (e.g., number of trips). Any
10 mitigations or conditions imposed shall specify clearly which project and which
11 portion thereof to which they apply.

12 f. The Villages Master Developer, the Lawson Hills Master Developer,
13 or any other party of record may appeal the midpoint review analysis within 21
14 days of the date of its issuance by filing an appeal statement with the
15 Community Development Director, plus a fee in the amount then applicable to
16 an administrative appeal of a SEPA threshold determination. The appeal
17 statement shall specify in detail the errors alleged to exist in the midpoint
18 review analysis and any appeal proceedings shall be limited to analysis of such
19 allegations.

20 g. If one or more timely appeals are filed of the City's midpoint review
21 analysis, they shall be heard and decided by the Hearing Examiner within 90
22 days of the date the appeal is filed. The hearing shall be limited to the
23 issues included within the written appeal statement. Participation in the
24 appeal shall be strictly limited to the City, the Applicant and parties who
25 timely filed complete written appeal statements and paid the appeal fee.
 The appellant shall bear the burden of proof in the appeal. The midpoint
 review analysis shall be upheld on appeal unless found to be clearly
 erroneous based on the record as a whole.

h. The Hearing Examiner's decision on the midpoint review analysis shall be
 a final decision appealable under the Land Use Petition Act, Chapter 36.70C
 RCW.

i. If no timely appeal of the midpoint review analysis is received, its
 findings, conclusions, and recommendation shall become final and non-
 appealable 21 days after issuance. If an appeal is filed, the time required for
 determination of such appeal shall be excluded from the approval period for
 any MPD permit and preliminary plat in effect on the date of issuance of the
 midpoint review analysis.

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DATED this 17th day of May, 2010.



Phil Olbrechts
City of Black Diamond Hearing Examiner