

1 **BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER**

2
3 IN RE: MASTER PLANNED
4 DEVELOPMENT APPLICATION
5 FOR THE VILLAGES, PLN09-
6 0017

7 **HEARING EXAMINER**
8 **RECOMMENDATION**

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I. SUMMARY/HOW TO NAVIGATE THIS DOCUMENT

BD Village Partners ("Applicant") requests approval of a master plan development ("MPD") consisting of 4,800 dwelling units and 775,000 square feet of retail, office and light industrial on 1,196 acres. The Hearing Examiner recommends approval subject to conditions, with the caveat that noncompliance with job creation requirements must be resolved.

This is a long document, but it is organized in a manner that should enable the Council to find information it needs without too much difficulty. Most of this recommendation is composed of a summary of testimony, so the length of this document is not as intimidating as it appears. The most important part of the recommendation may be Finding of Fact ("FOF") No. 5. This finding identifies the most significant impacts of the proposal. FOF No. 5 summarizes the concerns raised by Black Diamond citizens, identifies how many people raised the concerns and explains how the concern has been addressed in the proposed MPD and recommended conditions of approval. The Conclusions of Law quote every MPD regulation that applies to the project and assesses how those regulations are satisfied. The summary of testimony condenses the 3,818 pages of hearing transcripts. It is divided into citizen testimony and expert testimony. Revisions to the staff recommended conditions of approval are identified by track changes. An integral part of this recommendation is the Examiner's decision on the Villages Final Environmental Impact Statement ("FEIS"). The FEIS decision provides a detailed analysis of the significant impacts of the proposal and concludes that they are adequately mitigated.

Overall the proposed Villages MPD does a fairly good job of satisfying MPD criteria. The one and notable exception is that the MPD does not meet job creation objectives. BDMC 18.98.120(C) requires that the MPD meet comprehensive plan employment objectives by build out "with reasonable certainty". As detailed in Conclusion of Law No. 43, the Villages MPD is projected to create 1,365 jobs, which falls short of the 0.5 jobs per household (requiring 2,400 jobs) applied by staff and the 1.0 jobs per household (requiring 4,800 jobs) that is more explicitly required in the Comprehensive Plan. At best (under the staff's standard), the project only meets 57% of required employment objectives and only 28% under the express Comprehensive Plan standard. There is nothing in the record to suggest that the MPD will meet employment projections with "reasonable certainty".

The situation is exacerbated by the fact that the job creation requirement is of dubious legal validity. The courts are likely to find it an unconstitutionally unreasonable requirement to make a developer responsible for job creation. However, if the MPD is not an entitlement¹, as discussed in Conclusion of Law No. 2, the Council would be on

¹ Meaning that the Applicant would not be "entitled" to approval if all MPD criteria are met.

1 solid legal ground to deny the MPD solely because of the job creation requirement.
2 The Council is encouraged to consult with the City Attorney to resolve this issue.

3 Several conditions have been added to the project as a result of the hearings and public
4 involvement. Probably the most significant condition added by the Examiner is a
5 requirement to reassess traffic impacts through more detailed traffic modeling. The
6 Black Diamond traffic model is composed of a local model for traffic impacts within
7 the City and the Puget Sound Regional Council ("PSRC") model for all exterior
8 impacts. This model and the assumptions underlying it came under considerable
9 attack by the SEPA appellants, Maple Valley and other affected agencies. Maple
10 Valley pointed out that the PSRC model is only intended to predict impacts at a
11 regional level and that it does not contain local streets or integrate much detail on local
12 land use and development patterns. Maple Valley advocated the use of its local
13 model, which employed a much more detailed basis for its assumptions for Maple
14 Valley and surrounding cities. Maple Valley and Black Diamond provided extensive
15 expert testimony on the shortcomings of each other's model. The result was a fairly
16 compelling case that neither model is appropriate. The conditions of approval require
17 the Applicant to put together a local model that extends to all jurisdictions within the
18 vicinity, but without the flaws in the Maple Valley model. The new modeling may
19 prove to be costly, but it may also stave off litigation from Maple Valley and other
20 interested parties, which would result in a significant savings to all involved. Most
21 importantly, the new modeling will more accurately predict traffic impacts, which will
22 be of a profound benefit to the quality of life of Black Diamond residents.

23 Another significant condition is a requirement for more noise analysis. As noted in
24 the Villages Final Environmental Impact Statement ("FEIS"), construction noise is
25 often exempt from noise standards. This is presumably based upon the understanding
that construction noise impacts are temporary. However, the Villages MPD involves a
fifteen year build out. This build-out includes a tremendous amount of grading and
filling that could conceivably result in a continuous stream of over 150,000² truck trips
over the course of the build out period. For some properties, there may very well be
nothing temporary about construction noise. The FEIS noise analysis didn't consider
potential long-term construction noise impacts. The recommended conditions of
approval require consideration and mitigation of these impacts.

26 The school conditions added by the Examiner are also a significant part of this
27 recommendation. The Examiner agrees with the District position that schools must
28 meet the site requirements of the District's capital facilities plan and meet the
29 population projections of the plan. Schools must also be located within a half mile of
30 residential areas.

² The recommended conditions impose a limit on grading activities that could reduce the truck trips.
The point is that a project this size can produce noise impacts on some properties for several years.

II. TESTIMONY

The testimony below is intended to serve as a convenience to the reader only. It should not be read as having any legal significance. The Hearing Examiner did not base his recommendation on what is written below, but upon the testimony and transcripts of the hearings. The basis of the Examiner's recommendation on any issue may or may not be included in the testimony summarized below. "Tr" refers to transcript pages, i.e. "Tr. 3642" means the testimony can be found at p. 3,642 in the transcripts.

A. Citizen Testimony

March 6, 2010

Judith Carrier (24305 SE Green Valley Road, Auburn). Tr. 192-222.

Ms. Carrier testified that the FEIS erred in its analysis of and mitigations for transportation, environmental, and safety impacts on the connection of the Villages development with SR 169 and in particular with Southeast Green Valley Road.

Under the traffic configuration proposed in the development plans, she said, Green Valley Road is positioned to receive a great deal of traffic from a very large development of 4,800 homes and 775,000 square feet of commercial office space. A study of connection plans is not discussed in the EIS or FEIS, she noted, but because Plass Road connects to SR 169 from Green Valley Road, she anticipates that a colossal amount of traffic could empty out onto Green Valley Road. She added that, if the project was built as explained in the FEIS, there would be no highway improvement funds coming from the state in the foreseeable future to expand SR 169 to accommodate the increase in traffic.

Green Valley Road is particularly ill-suited to such an increase, Ms. Carrier said. It is a windy route used by wildlife, bicyclists, visitors to Flaming Geyser State Park, and farm equipment. The Auburn School District runs school buses along the road, which make many stops. In the mornings, she said, students wait for the bus in the dark, and in the afternoon they cross in front of the buses as they come home. She also noted that the road is a designated Heritage Corridor, and the upper portion runs through a protected agricultural district. Because properties in this district can only be used for farming purposes, any widening of the road or similar mitigations are impossible here.

In sum, she said, developers need to create a binding written agreement, applying to all current and future property owners, that there will be no direct traffic outlet onto Green Valley Road for any reason. The developers should make plans to assure that a direct connection will never be necessary. She also requested a repetition of the

1 DEIS/FEIS process to analyze and mitigate the transportation, safety, and
2 environmental issues for the connection of the Villages with SR 169, and another
3 repetition of the process to include further assessment and mitigation of impacts on
4 SE Green Valley Road's transportation and safety issues, as well as its agricultural,
5 historic, and uniquely rural characteristics. She also recommended planning for 50-
6 100 foot buffers along the Villages south boundary, to be comprised partly of existing
7 trees and native growth.

8 Robert Taeschner (30846 229th Place SE, Black Diamond). Tr. 222-26.

9 Mr. Taeschner's testimony focused on traffic concerns. He noted that Lake Sawyer
10 Road and Auburn-Black Diamond Road already experience heavy traffic loads from
11 students driving to and from school. The location of new schools in the area would
12 bring even greater traffic problems, he said. He added that it is already difficult to
13 turn either left or right at several intersections in the area between 7:10 a.m. and 7:30
14 a.m. He asked who would pay to widen these roads, inasmuch as he did not believe
15 the FEIS included mitigations for this problem.

16 Jacqueline Taeschner (30846 229th Place SE, Black Diamond). Tr. 226-32.

17 Ms. Taeschner voiced concerns regarding several environmental issues, particularly
18 the negative impacts of excessive tree cutting. She said she moved to the area for its
19 rural character. She noted that trees offer a number of environmental benefits,
20 including scrubbing the air and producing oxygen. She said the requested exemptions
21 by YarrowBay from regulations that limit tree removal were a mistake, and that past
22 civilizations have been destroyed by the over-destruction of trees. Excessive removal
23 by the developer might not only harm local tourism, she said, but local wildlife also
24 would vanish. Some of the animals she can now see or hear from her home include
25 pigeons, owls, woodpeckers, white swans, otter, deer, raccoons, coyotes, bear,
Canadian geese, kingfishers, ducks, blue heron, cormorants, snow ducks, wild
canaries, hummingbirds, meadowlarks, swallows, chickadees, and robins. She said
she also fears a decline in Lake Sawyer water quality, which would cause deep-water
fish and the bird populations that feed on them to decline.

She also said she had not learned of the FEIS's release until after the time had lapsed
to file an appeal.

Susan Ball (229th Place SE, Black Diamond; no specific address given). Tr. 232-33.

Ms. Ball testified that she never received notice of the FEIS's availability.

Lori Seaman (22725 SE 321st Place, Black Diamond). Tr. 237-39.

Ms. Seaman testified that, as a resident of the 101 Pines neighborhood, she frequently
uses Auburn-Black Diamond Road. Access to that road has become increasingly

1 difficult due to increased traffic, she said. The Villages development will bring 9,000
2 additional vehicles to local roads, and some percentage of them will use Auburn-
3 Black Diamond Road, she added. She said she is concerned about the potential
4 adverse impact this increase would create. She also voiced concerns about preserving
5 the quiet, rural character of the area, and about impacts on local wildlife.

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March 9, 2010

Cindy Proctor (32508 236th Ave. SE, Black Diamond). Tr. 828-33.

Ms. Proctor said she and her family had followed the planning process for the project since its inception and had watched as the proposed developments grew in size and density over time. Over that time, she said, she had found the city's notice practices to be flawed: while the city reliably issued colorful letters announcing informational meetings, at which no public input was allowed, it only placed hard-to-find notices in the local newspaper for public hearings. She voiced particular concern over flaws in the DEIS hearing transcript, which she said contained hundreds of "inaudible" notations, which connoted portions of the hearing tapes during which the speaker's words could not be discerned, and noted that several testimonies given at the end of the hearing were entirely missing from the record.

Melanie Gauthier (25565 Baker St., Black Diamond). Tr. 838-41.

Ms. Gauthier testified that it has been difficult to participate in the public-input process because of the amount of information that needed to be reviewed, the level of technical knowledge required for nonexperts to understand that information, and the short time frames given citizens to do so.

Susan Graham Tr. 894-926; 927-67.

Ms. Susan Graham is a community building program manager with Parametrix. She is responsible for planning, design, and construction of projects that involve "planning of development, land development, parks." She has worked with Parametrix for fifteen years, in the Sumner, Lacey, and Boise offices.

Ms. Graham was the project manager on the EISs for both The Villages and Lawson Hills. Her role involved coordinating the technical experts within her firm and making the writing in the technical reports into a style that is accessible and readable by the general public.

She was also responsible for community outreach programs, which included the SEPA-required public hearings, as well as six to eight other meetings for local agencies and for the general public, in the forms of open houses, stakeholder meetings, and agency meetings. She was not involved in giving notice to the public of these meetings.

1 Parametrix was not the first EIS consultant on these projects. There was a prior land
2 use consultant, as well as many other technical consultants. Parametrix became
3 involved when the City believed it needed "a more third-party objective consultant
4 that was working directly for the city." Parametrix's contract is with the City, and it
5 is paid by the City. Parametrix had to request additional budget, which was paid the
6 same way. Although Mr. Bricklin intimates that Parametrix's work is ultimately paid
7 for by YarrowBay, Ms. Graham doesn't believe this affects Parametrix's ability to
8 remain objective.

9 These were "plan level" EISs, which is a higher level EIS, as opposed to "project
10 level" EISs, which focus on the details of a specific project. The EISs considered
11 four different alternatives for the projects. Parametrix's various engineers, scientists,
12 and planners, along with two subconsultants, peer reviewed the technical
13 documentation. Its experts requested additional analysis or clarification in three
14 areas: transportation, stormwater, and fiscal analysis.

15 The technical reports were prepared by YarrowBay's consultants. When Parametrix
16 needed additional information to supplement the reports, Parametrix did the
17 additional work.

18 With respect to the stormwater analysis of the impact on Lake Sawyer, Parametrix
19 determined that additional work may need to be done at the time of project approval.
20 Graham did not have an opinion as to whether this was appropriate.

21 In preparing the EISs, Parametrix tried to use language aimed at laypersons in the
22 actual EIS, while putting the technical information in the technical appendices. This
23 is the standard practice of the Washington Department of Transportation.

24 Ms. Graham was responsible for turning the final EISs over to the City's SEPA-
25 responsible official. She believes that the EISs were adequate and "beyond the level
of detail required for a plan level EIS...." Because these were plan level EISs, they
needed to give enough information for the City to make a final decision on a master
plan development permit. She believes the EISs adequately address the cumulative
overall impacts of the project.

She did not believe the "so-called rural school sites" should have been included in the
EISs. Parametrix was charged with considering a range of impacts within the four
alternatives. It "assumed all school sites within those boundaries...."

She believes the third alternative was developed comparably to the first two
alternatives.

The experts in particular fields concurred in the final reports. The individual experts
would need to be consulted to determine the bases for their opinions.

1 In responding to comments on the draft EIS, generic responses were used, saying that
2 appropriate clarifications and/or corrections have been made to the EIS. Sometimes
3 the change this refers to is reflected in the technical appendices, which are
4 incorporated into the EIS.

5 Ms. Graham acknowledged that King County thought that "plan level" detail in the
6 EIS was not sufficient, even at this stage of decision-making and asked for more
7 detail.

8 In response to questions regarding the availability of technical appendices, Ms.
9 Graham stated that she (Parametrix) provided the City of Black Diamond with the
10 CD-ROMs containing the technical appendices. It was then up to the City to
11 distribute those appendices as needed. Ms. Graham was not aware that there were
12 issues with members of the public and agencies getting access to the appendices
13 during the time available to formulate comments.

14 Ms. Graham stated that the EIS included assessment of the expected effectiveness of
15 mitigation measures. These impacts would be mitigated to the appropriate standard.
16 For example, in transportation, the appropriate mitigation standard would be the level
17 of service standard. Ms. Graham was not comfortable responding to specific
18 questions regarding traffic analysis and comments, stating that these questions should
19 be directed to Mr. John Perlic.

20 Ms. Graham testified that her team that prepared the draft and final EISs were sharing
21 internal working drafts as early as July 2009. She indicated that she was aware of the
22 need for seven school facilities during the course of the DEIS. The DEIS for Lawson
23 Hills and the Villages do not identify seven school sites, but according to Ms.
24 Graham, identify the acreage required for seven school sites based on Enumclaw
25 School District's requirements within the MPD. Ms. Graham pointed to Exhibit 2-5
of the Villages FEIS, where the footnote states that, "Exhibits in this EIS are intended
to provide a general graphical depiction of built and natural environment conditions
and may not be accurate to the parcel level." Thus, Ms. Graham stated that the FEIS
was not intended to be a project site plan, but was intended to depict acreage
requirements. Ms. Graham also stated that the FEIS identified that the school
requirement could be achieved through an agreement with the City, the school
district, and the applicant.

Ms. Graham was not aware of the map that had been passed out to the public in the
Enumclaw School District meetings, Wheeler Exhibit 30 and Bortleson Exhibit 15.
Mr. Clifford asked numerous questions about the similarities between the map handed
out by the School District, Bortleson Exhibit 15, and the map in the DEIS, Exhibit 2-5
on page 2-11. While Ms. Graham recognized some similarities between the maps,
she maintained that she had never seen the map before and was not aware if the
School District's map had been created using the map from the DEIS. Ms. Graham

1 stated that she believed the impacts resulting from the siting of schools, particularly
2 those sites outside of the MPD, would be addressed through a separate tri-party
3 agreement.

4 With respect to the similarity between the DEISs, during Ms. Graham's testimony,
5 Mr. Kenyon stipulated that the contents of the documents speak for themselves to
6 avoid having to line up each DEIS side by side to compare.

7 With respect to the number of times that the responses to the comments to the DEIS
8 stated that the recording of the public hearing was inaudible, Mr. Kenyon stipulated
9 that the transcript of the hearing stands on its own to avoid Ms. Graham having to
10 count the number of times.

11 Ms. Graham stated that she was the person that went through the comments to the
12 DEIS and responded to them. She described software that is used to catalog
13 comments to the DEIS so that she or her team could sort the comments. She
14 acknowledged that if a comment was inaudible, it would make it "difficult" to
15 formulate a response.

16 Ms. Graham stated that she would have to look page by page to determine how the
17 stormwater discussions differed in the DEIS to the FEIS with respect to the Villages.

18 During re-cross by Mr. Bricklin, Ms. Graham again stated that the need for the
19 acreage for schools was contained in the FEIS, but the school sites were not identified
20 because it would be addressed in a different agreement. She stated that she was
21 aware that under the City code, the ordinance with respect to MPD approval allows
22 for the negotiation to occur within the MPD.

23 On page 2-7 of the Villages FEIS, the accelerated land use map, Ms. Graham was
24 unable to recall personally the difference between the two high-density residential,
25 one which is striped orange, and another that is solid orange.

Mr. Bricklin also read some of the transcript of Mr. Brian Ross's testimony from the
public hearing, in which the word "inaudible" appeared several times throughout the
passage. In response to a question about how she was able to discern the substance of
Mr. Ross' comment, Ms. Graham said the comment was not identified as a comment
that needed to be addressed in the EIS. On the same page of the hearing transcript,
Exhibit 2, page 172 of the CMART document, Ms. Graham also acknowledged a
mistake where it says "text will come" in response to comment 005. Ms. Graham
stated it should have been referenced to a Green Valley Road response.

March 10, 2010

Steve Pilcher Tr. 1192-1207; 1253-57; 1273-75.

1 Mr. Steve Pilcher is the community development director for the City of Black
2 Diamond.

3 Mr. Pilcher notes that although there is some commonality in the terms of the land
4 use categories in the applications for the two projects and some of the proposed
5 development forms and types, he wants to emphasize that they are two distinctive
6 projects that have been filed with the city and that these projects are the result of 15
7 years of planning by the City.

8 Mr. Pilcher gave a brief description of the history of the projects. He stated that
9 discussions began with King County and area property owners about the future urban
10 growth area and size of the city of Black Diamond were memorialized in the Black
11 Diamond Urban Growth Area Agreement ("BDUGAA") which established the
12 parameters of what land mass the City would eventually grow to over time. He
13 further stated that subsequent to the BDUGAA, there was a vision that there would be
14 some major developments that could potentially occur within the city limits, but in a
15 way that reflected some of the characters and values of the community and some of
16 those were contained in the Black Diamond Area Open Space Agreement.

17 Mr. Pilcher said that subsequent to those agreements, there have been other
18 agreements that are referred to in the staff report, including various annexation
19 agreements. He stated that a portion of both projects were annexed to the City in
20 December 2009. He noted that the City has undergone a lot of work updating its
21 comprehensive plans, codes, and relations, most of which was completed in June
22 2009 and that after that, a longstanding moratorium preventing a submittal of a
23 Master Planned Development or any subdivisions within the City was finally lifted.

24 Mr. Pilcher said that when the areas were brought into the urban growth area, there is
25 always anticipation that they would be developing at urban densities, which is about
four dwelling units to the acre of land and that the Villages and the Lawson Hills
proposals are consistent with that type of density.

Mr. Pilcher also said that it has always been a concern of the City, being a very small
city and knowing some impacts of growth, that there be financially viable
development in the town. Mr. Pilcher notes that this is why these projects include
both a commercial component and also a residential component, to try to achieve
fiscal balance and a housing/jobs mix and make it possible for people to both live and
work within the City of Black Diamond.

Mr. Pilcher also emphasized that an MPD approval does not approve anything for
construction, so there will need to be subsequent implementing approvals. Mr. Pilcher
noted that assuming the MPD is approved, there also has to be a development
agreement adopted by the city council as a subsequent implementing action, which
does not specifically authorize any development of the land, and that development of

1 the land can only occur upon either subsequent subdivision applications, or site plan
2 approval applications.

3 Mr. Pilcher said that MPD is only the first layer of approval, which is why the maps
4 in the Master Planned Development proposal are somewhat like what planners call a
5 subarea plan in that they define general categories of land that are anticipated to
6 develop over the next 15 years. Mr. Pilcher stated that these categories are low-,
7 medium- and high-density residential, and there is also a category for higher density
8 residential, which can go up to 30 dwelling units to the acre. He further noted that
9 there is a mixed use component to The Villages, which the developer will refer to as
10 the town center, and there is commercial development and that the project also
11 designates sites that can be eventually set aside for school facilities for children who
12 reside in these projects. Mr. Pilcher stated that in his opinion, many more detailed
13 development issues including specific standards, for example, for building setbacks,
14 parking standard, and landscaping standards, would be more appropriately addressed
15 in the development agreement. Mr. Pilcher's recommendation is that some of those
16 be foregone to the development agreement process.

17 Mr. Pilcher gave an overview of the prior opportunities for public input. He stated
18 that the application process for an MPD required both presubmittal meeting with the
19 public and with the planning commission, which were both held in early 2009. He
20 noted that initial applications were submitted in the middle of May 2009, and they
21 were determined to be complete in July 2009. He further stated that at that time sites
22 were posted to let the public know there was a complete application on file, legal
23 notices were published in the newspaper, and the notice of application was mailed to
24 all residents within 500 feet of the boundary of these projects.

25 Mr. Pilcher noted that the original May 2009 application has been superseded by the
revised submittal binder which was received by the City on December 31, 2009, and
which was posted on the City's website and has been available at the public library
and city hall for review by the public.

Mr. Pilcher stated that when the hearing dates were established, the notices went up
again, the boards were posted with the hearing dates, legal ads were posted in three
area newspapers, and 1,850 mail notices were sent out to a wider range of people
including anyone who had ever expressed an interest in it, a month prior to the
hearings. Mr. Pilcher said that only 113 of the mailings were returned and the City
was able to re-mail 63 of those. Mr. Pilcher stated that it is very common to have
some of the notices returned and that 70 returns out of 1,850 is not many overall.

Mr. Pilcher described the maps contained in the Master Planned Application. He
stated that the Villages project, is approximately 1,200 acres combined which
includes the parcel known as the northern parcel, which is geographically not
attached. He stated that the main portion of the project is located in the northern
portion of the City, that it is an area primarily planned for commercial office

1 development, and that there is a small amount of multi-family or medium density
2 housing proposed in that area. He further noted that the main portion of the project is
3 roughly 1,100 acres, and where the majority of the residential development is
4 proposed to occur. Mr. Pilcher stated that school sites are identified in green on the
5 map, which indicates areas that are being preserved as open space and that a portion
6 of that open space is wetlands and their associated required buffers. He further noted
7 that there are also planned parks and recreational facilities shown in blue on the map.
8 Mr. Pilcher further stated that The Villages project includes a proposal to build a
9 large stormwater infiltration pond outside the project boundaries, which is outside the
10 city limits just to the west of the project, which would be subject to King County
11 review and approval as it is outside the City of Black Diamond.

12 Mr. Pilcher stated that it was not clear what the mix of housing being proposed
13 between low-, medium-, high- and very high-density areas was, but that the low-
14 density category is intended to include more than just single family detached housing,
15 the medium-density would include more higher density attached units, and the higher
16 density housing would be most likely almost all attached units.

17 Mr. Pilcher stated that the applicant is asking to be able to move some of the land use
18 categories around as market conditions change. Mr. Pilcher stated that the staff's
19 concern is that if it is proposed to occur at properties abutting the boundary of the
20 project, there should be a public comment process. Mr. Pilcher stated that if this
21 happens in properties that are internal to the project, the staff does not feel this is as
22 much of a concern.

23 Mr. Pilcher stated that there are a number of functionally equivalent standards
24 requests in the application, where the applicant is seeking to do some of their
25 development standards differently than otherwise required by Black Diamond's
codes, policies and regulations. He stated that for most of those, the staff is
recommending to be deferred to the development agreement, and notes that a public
hearing is still required on the development agreement.

Mr. Pilcher notes that for the traffic plan, most of the analysis in the Environmental
Impact Statement has been more about when the project is totally built out, so the
question is how to get from here to there. Mr. Pilcher recommends a traffic
monitoring program as the project builds out and that the improvements are made in
anticipation of the impact on those intersections.

Mr. Pilcher stated that the staff is supportive of reduced parking standards in the town
center area on the south side of Auburn Black Diamond Road that are otherwise
required by the city codes, because most of the City's parking standards are focused
on traditional suburban style rather than denser development around the town center,
which would lend itself to more pedestrian access.

1 Mr. Pilcher stated that the staff has concerns about adequate access provided to all
2 portions of the property. Mr. Pilcher says that the staff recommends that connection
3 by the main road in the proposal through the property occur before too much
4 development is allowed to happen beyond the constriction point in the narrower
portion of the property before the property widens out to the southern area. Mr.
Pilcher recommends this be defined better in the development agreement.

5 Mr. Pilcher also states that the application mentions quite a bit of site grading activity
6 that could occur but that the staff has not had a chance to review a preliminary
7 grading plan. He states that the staff recommends a conditional approval and that the
8 staff have an opportunity to review that preliminary grading plan, and that the goal of
the plan be to try to obtain more of a balanced cut-and-fill on the site. Mr. Pilcher
would like to work with the developer to minimize the export from the property to the
extent possible.

9 Mr. Pilcher says that the staff is recommending approval of The Villages, but there
10 are approximately 125 to 130 conditions of approval which addresses the majority of
11 the staff's concerns. A large portion of those conditions would defer some of the
12 proposed issues to the development agreement, which the staff feels is a more
appropriate place for them to be addressed.

13 Mr. Pilcher stated that the majority of comments he made for The Villages project
14 will be equally applicable to the Lawson Hills project, particularly in terms of history
and what the MPD approval process means.

15 Mr. Pilcher stated that Lawson Hills is the other Master Planned Development
16 proposal in front of the examiner. It is a smaller projects, 371 acres, divided into two
17 separate geographic areas. Mr. Pilcher explained that north portion of the property,
18 referred to as the north triangle, is north of The Villages project, is planned for
commercial office development, and contains some wetlands and a greenbelt along
19 the highway. He further stated that the majority of the site is to the south and east of
Lawson street, which heads up from the downtown historical Black Diamond and on
out past some of the mining operations out to Lake 12.

20 Mr. Pilcher stated that there are low-, medium-, and high-density land use categories,
21 and some areas could even be the higher density residential, which could be up to 30
22 units per acre. He further noted that there is one elementary school site identified on
23 the property and that on the map green indicates open space areas and the darker
green buffers around some wetlands found on the properties.

24 Mr. Pilcher noted that there are more hills and topography involved with the Lawson
25 Hills project than with The Villages project, and there will be more unique
construction considerations due to the hills and topography. He further noted that
some of the underlying geology stormwater will be handled somewhat differently

1 than in The Villages because there is not a lot of opportunities for stormwater
2 infiltration on The Villages.

3 Mr. Pilcher stated that one of the main concerns of the staff was, as noted in the staff
4 report, the majority of the development in is in the area referred to as Upper Lawson
5 in the EIS, and as currently proposed there is just a single point of access to it. Mr.
6 Pilcher states that the staff is recommending that, per the City's design guidelines,
7 there be no more than 150 homes built on the area until a secondary access point is
8 identified, and then an additional 150 homes built, but once you would actually build
9 more than 300 homes or wish to build beyond 300 homes, the secondary access
10 would actually need to be built. He stated that this provides both for a life-safety
11 issue to make sure there is more than one way in and out from the project, and also to
12 provide better connectivity with the remainder of the community.

13 Mr. Pilcher stated that the analysis contained in the impact statement indicates that
14 the project would be fiscally balanced, per the economic consulting firm that did that
15 particular analysis.

16 Mr. Pilcher stated that grading is also a concern in this area, particularly due to the
17 geology and topography on the site. Mr. Pilcher stated that staff is recommending
18 there be a grading plan, with goals of looking to balance the cuts-and-fills on the
19 property and to minimize the amount of soils that would need to be exported.

20 Mr. Pilcher (on direct examination by the Examiner) stated that there are just two
21 phases that apply to Lawson Hills and that there is a real geographic separation
22 between the two different phases.

23 Mr. Pilcher (on direct examination by the Examiner) stated that the north triangle is
24 directly north of the northern parcel of The Villages. He further clarified that in other
25 words, there is an 80 acre parcel of The Villages just south of the north corner.

Mr. Pilcher (on direct examination by the Examiner) stated that the northern parcel of
The Villages is probably much more dependent on the north triangle being built than
vice versa, as the north triangle is the one that provides access to the highway.

21 Nancy Rogers Tr. 1207-09; 1210-18; 1244-50; 1257-58; 1259-63; 1272-73.

22 Ms. Rogers is a land-use attorney with Cairncross & Hemplemann, representing the
23 Applicant.

24 Ms. Rogers testified that the YarrowBay MPD is a guide to future development. The
25 flexibility it incorporates is intended to complement the City of Black Diamond's
vision for the projects. However, she noted, the city retains approval authority; all
future development must go through a further permitting process.

1 She said extensive work has gone into the plan, which has been 15 years in the
2 making and includes 2,000 acres of open space. It preserves the wildlife corridor from
3 King County's regional plan and contains a description of open spaces. It addresses
4 water circulation needs, including an on-site alternative to its proposed offsite
5 stormwater facility if county permitting is not approved, she said.

6 She added that the plan is in compliance with BDMC 18.98.080, with particular
7 attention to section (a)(1), which calls for compliance with adopted policies,
8 standards and regulations. The developer has submitted a summary of plans and
9 policies in the EIS process, she said, and chapter 2 of the MPD contains a compliance
10 narrative. Comprehensive-plan policies include: the creation of a diversity of high-
11 quality places to live, work, shop and recreate; the encouragement of a variety of
12 housing types for all income levels and family sizes; the encouragement of well-
13 planned, coordinated commercial development with the SR 169 community
14 commercial area; and the discouragement of strict retail development. She said the
15 project complies with the city's Sensitive Areas Ordinance and its Tree Preservation
16 Ordinance.

17 Furthermore, she said, the developer's analysis shows no adverse fiscal impact on the
18 city, and this analysis must be updated each five years or at each new phase of
19 development. She added that she doesn't believe there is a requirement to establish
20 fiscal impacts five years after buildout; however, the MPD study does go out two
21 years and finds no adverse fiscal impact.

22 The MPD contains a mix of housing types that contribute to the city's affordable
23 housing goals, she continued. There is very low-density, single-family housing;
24 medium-density areas with single-family units on smaller lots; and high-density zones
25 with a range of cottages, town homes, stacked flats, and other types of housing. The
plan allows the developer to change land-use designations up or down one level, she
said, although not around the development's perimeter, and the total number of units
would be capped.

She noted that YarrowBay, the Enumclaw School District and the city have been
involved in extensive negotiations regarding school mitigations, and that there is a
draft school mitigation agreement that assumes sites for all necessary school facilities
that would be needed as a result of development. She added that the developer has an
alternate plan under which sites designated on the MPD would be provided to the
school district in the event the ongoing negotiations were unsuccessful.

On grading issues, Ms. Rogers said the developer concurs with the city staff's report.
Regarding traffic concerns, she said traffic modeling was being conducted
proactively. Stormwater facilities are being developed using low-impact techniques
wherever feasible, she said. These facilities are also designed using phosphorous
controls to protect downstream resources, she noted, and an additional restriction has
been added on the use of phosphorous fertilizers.

1 She also made note of two project issues: land over 80 acres must go through the
2 MPD process, and the MPD land mass is required to be contiguous, except for the
3 commercial parcel. That's why, she said, a distinction has been made between the
4 north triangle versus the main property in the Lawson Hills section of the
development.

5 Like the Villages, she added, Lawson Hills' design has been based on a great deal of
6 exploration and understanding of the site constraints, including wetlands and sensitive
mine areas.

7 She said the Lawson Hills site includes an elementary school, a large amount of open
8 spaces such as trails and parks, and low- to medium-density residential development.
9 The commercial area includes commercial development and a substantial open-space
10 buffer along SR 169. Plans also incorporate conceptual stormwater and sewer water
designs and address circulation needs from all of the development's amenities, parks,
trails and open space.

11 She said YarrowBay supports the staff report recommendation of approval. She noted
12 that the developer has requested revisions to some conditions, to be further discussed
13 with city staff. School mitigations are the same as the Villages'. The developer also
14 recommends changes to some transportation-related conditions: over the course of the
15 buildout, the developer asks the city to allow construction of any roadway alignments
16 as depicted in the 2005 transportation element of the comprehensive plan, or a
functionally equivalent alignment as approved by the city. This request is intended to
address secondary access issues. Alternatives include the construction of the
southeast connection off the backside of Lawson.

17 Ms. Rogers agreed that grading is a concern. She said the developer will impose strict
18 controls on how grading is conducted.

19 Finally, regarding stormwater concerns in Lawson Hills, she noted that there is a
20 detailed conceptual plan to address these issues based on geological and hydrological
studies as well as downstream analysis. She said that all appropriate phosphorous
controls are being imposed.

21 Brian Ross Tr. 1209-10; 1263-68.

22 Mr. Ross is the CEO of YarrowBay Holdings.

23 Mr. Ross said his company has been working on the projects since 2005. Since then,
24 it has gone through a rigorous planning process that has included thousands of hours
25 of listening, analyzing, understanding impacts, understanding possible mitigations of
impacts, and trying to minimize these impacts. He noted that the first outreach
meeting was held in 2006, two-and-a-half years before the first MPD approval,

1 followed by many meetings with interested groups and individuals. While he agreed
2 that the project would change Black Diamond, he said he strongly feels that it is
possible to retain the look, feel and rural character of the city.

3 Lauri Fehlberg Tr. 1218-30; 1263-68.

4 Ms. Fehlberg is a partner with Dahlin Group Architecture and Planning, representing
5 the applicant.

6 Ms. Fehlberg testified that her company's plans are built on comprehensive-plan
7 policies, the MPD, the book *Rural by Design*, and input from the community to make
8 a place that fits within the context of the area. Defining development parcels around
existing open space is key to their approach, she said.

9 She said the development plans contain a broad mix of uses. Parcel B has a retail and
employment focus; the goal is to generate revenue and jobs for the city and capture
10 some of the retail dollars that are currently being spent elsewhere, she said. The
residential component accommodates a diverse range of lifestyles, income levels and
11 personal needs. The housing mix will include smaller, starter homes (a concept her
company calls "affordable by design") and a wide variety of other single-family,
12 detached homes, including large homes, duplexes, triplexes, quads, row town houses
and others, she said. One-third of these will be alley loaded; she maintained that a
13 higher proportion would not be appropriate within the context of the site. Plans also
contain additional guidelines for 18-30 dwelling units per acre zones to ensure that
14 they fit in with their surroundings.

15
16 By mixing densities, she said, it is possible to eliminate walled-off communities. Her
company is also requesting the option to include small areas of commercial
17 development within residential areas to provide the flexibility to add such amenities
as corner stores. Developed areas have been woven in with the topography, she said,
18 to create enclaves that are framed and separated from each other.

19 One of the main organizing elements of the plan is the community connector, which
she said is intended to become part of the Black Diamond street network. The
20 connector will include bike lanes and trails that link neighborhoods, she added; these
lanes and trails should reduce the need for auto use. Portions of the connector will
21 align with Mt. Rainier views and will use existing logging roads where possible to
minimize impacts to sensitive areas. She said homes along the connector would not
22 be front loaded.

23
24 Each neighborhood, she continued, will be oriented toward its own small park. There
will also be a plaza space/gathering area intended to draw in as many people as
25 possible.

1 Many of the design tenets used in the Villages will also be used in Lawson Hills, she
2 said. The north triangle is a sister site to other components in the north property of the
3 Villages; they are intended to work together, she said. The commercial portions of
4 each development has the same goal of creating tax revenue for the city by bringing
in retail employment and by capturing retail dollars currently being spent outside of
Black Diamond.

5 Land uses in both developments include essentially the same categories, she said,
6 except that there will be no mixed-use area in Lawson Hills. Higher-density areas
7 again offer affordable housing. She noted that the hill area would require flexible
8 planning approaches, including the type and mix of houses, the mix of alley- and
9 standard-loaded homes, the ability to work with the grade, to balance cut and fill, and
10 to minimize the grading. Like the Villages, she said, the area will also include a mix
of small and large single-family homes, duplexes, triplexes, quads, row town houses,
multi-family units and garden apartments. She added that her company again asks for
the ability to include a limited commercial area within the residential area for future
flexibility.

11 Plans for Lawson Hills work with open space, creek crossings and topography to
12 create enclaves framed by open space, also like the Villages, she said. Neighborhoods
13 will be organized along Lawson Parkway, which will include on-street bike lanes and
14 an adjacent multipurpose trail. Land uses will respond to topography, and there will
be an interconnected trail system, she added.

15 She said her company asks permission to narrow roadways as they travel through
16 sensitive areas to minimize the roads' impacts.

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Gill Bortleson (rural residence 23831 Southeast Green Valley Road). Mr. Bortleson's
comments were directed at the Villages development. Tr. 1611-16.

19 Mr. Bortleson first raised the question of whether the development was consistent
20 with the rural nature of the community, particularly its designation as a King County
21 agricultural production district. He also had a number of concerns regarding water
22 issues, namely: 1) the effect of the development on the wells and springs north of
23 Flaming Geyser State Park; 2) his belief that current plans do not adequately address
24 the prospect of mudslides and washouts, especially given plans to locate a school
25 complex near local springs; 3) the potential for septic tank flooding; and 4) the effect
of development on water quality.

Rich Ostrowski (31314 293rd Place SE, Black Diamond). Mr. Ostrowski's comments
were directed at both the Villages and Lawson Hills developments. Tr. 1616-19.

Mr. Ostrowski's concerns centered on the negative impact of the developments on the

1 area's quality of life, specifically that the projects are too large, will add too many
2 people to the area, and will have a significant negative impact on traffic congestion.

3 He cited additional concerns regarding potential environmental impacts, including
4 increased noise and garbage, the impairment of scenic views, a decrease in air quality,
5 and a negative impact on local wildlife. Last, he objected to the possibility that new
6 taxes would be levied on city residents to pay for expansion of local services such as
7 police and fire protection, new schools, and medical and social services.

8 Susan Ball (Lake Sawyer resident; no address given). Ms. Ball's comments were
9 directed at both developments. Tr. 1619-20.

10 Ms. Ball stated that she wants the quality of life in Black Diamond to be maintained.
11 She also voiced concerns about added traffic and its effect on lake water quality,
12 specifically the prospect of the release of phosphorous into Lake Sawyer.

13 Annette Smith (24319 Southeast Green Valley Road). Ms. Smith's comments were
14 directed at both developments. Tr. 1621-24.

15 Ms. Smith testified to her concerns regarding the resident elk herds in her
16 neighborhood. She said the elk would not leave the area, and that they may be killed
17 trying to cross Green Valley Road, given the increased traffic on the road that would
18 accompany the developments. She stated that the wildlife corridor specified in the
19 developments' plans were inadequate in size to accommodate large animals.

20 Jay McElroy (24417 Southeast Green Valley Road). Mr. McElroy did not specify
21 whether his comments were directed at a particular development or at both. Tr. 1624-
22 36.

23 Mr. McElroy said many of the area's residents came to Black Diamond because of its
24 rural character, because it is a low-traffic, tranquil, placid place to live. These
25 residents, he said, do not want the crowding that other municipalities in the region
have experienced with development. In YarrowBay's plans, he argued, land
designated for uses other than housing will cause even more crowding that the
developer's plans indicate. He also voiced concerns that the developments would
further limit the area's already meager water supply, particularly the wells on which
some area residents rely as their primary water source. Finally, he objected to the
prospect of increased traffic problems and the environmental impact on Lake Sawyer
that would accompany the developments.

26 Tom Hanson (32506 236th Ave. SE, Black Diamond). Mr. Hanson's comments were
27 directed at both developments. Tr. 1636-44.

28 Mr. Hanson testified that he and two neighbors owned property that would be
29 surrounded by the developments; therefore, he said, he was one of the residents who

1 would be most affected by the projects. He was particularly concerned by the
2 potential negative impacts of the construction phase of the projects on some resident's
3 health, including his son, whose asthma might be exacerbated by the extensive dirt
4 removal the projects would entail. He also noted the noise level and ground vibrations
5 that would be generated by construction equipment, a negative impact that he said the
6 developers' plans do not adequately address. For these reasons, he requested that
7 construction hours be limited to 8 am-5 pm Mon.-Fri., limited on Saturdays, and
8 prohibited on Sundays. Finally, he objected to the size of setbacks in the plans, which
9 he said should be larger, and to the prospect of elk and other animals encroaching on
10 his property once their usual patterns of movement had been disrupted.

11 Nancy Merrill (28308 SE 392nd, Enumclaw). Ms. Merrill's comments were directed
12 at both developments. Tr. 1644-46.

13 Ms. Merrill is board president of the Enumclaw School District. She noted that three
14 other board members and two former members were also present in the audience.

15 In her testimony, she emphasized that the developments would nearly double the size
16 of the Enumclaw School District, which she said is already at or over capacity in its
17 present schools. She said she wants to ensure that both developments will be
18 conditioned on having adequate school facilities and that the developer, YarrowBay,
19 pays its fair share of the costs for these new facilities.

20 Kathy Dahlquist (1348 Florence St., Enumclaw). Ms. Dahlquist's comments were
21 directed at both developments. Tr. 1647-48.

22 Ms. Dahlquist is a member of the board of the Enumclaw School District.

23 Ms. Dahlquist expanded on Ms. Merrill's testimony, noting that if new school
24 construction were not a condition of the developments' approval, then the school
25 district would suffer from the added transportation costs and overcrowding the
developments would bring. Without such conditions, the district also would likely
have difficulty finding affordable land to place schools within walking distance of
new students.

26 Jack Sperry (29051 229th Ave. S., Black Diamond). Mr. Sperry's comments were
27 directed at both developments. Tr. 1648-54.

28 Mr. Sperry testified that both developments lack adequate consideration of the
29 potential for flooding from Lake Sawyer during abnormally high rainfall periods. He
30 noted that lake water level peaks already cause flooding of homes adjacent to the lake
31 during winter, citing an instance in January 2009 when his own home was nearly
32 flooded; consequently, a further rise in water levels cannot be tolerated. Because both
33 developments would create an additional 526 acres of impervious surface area, he
34 said, there may be large amounts of additional water released into Rock Creek and

1 Lake Sawyer without proper design mitigations. Plans must encompass worst-case,
2 peak-level scenarios.

3 Susie Davidson (22915 SE 392nd Place, Black Diamond). Ms. Davidson's comments
4 were directed at both developments. Tr. 1655-58.

5 Ms. Davidson stated that she also was concerned about the potential for flooding, and
6 for the potential negative impacts of the developments on area wildlife. She submitted
7 for the city council two logs her family had made listing the wildlife she and her
8 family had observed from her home, including eagles, great blue herons, a Kingfisher
9 a sharpshin hawk, ring-necked ducks, buffleheads, common goldeneyes, barrow
10 goldeneyes, hooded merganser, mallard ducks, Canadian geese, double-crested
11 cormorants, osprey, a pied-billed grebe, trumpeter swans, deer, rabbits, and raccoons.

12 Mark Davidson (22975 SE 296th Place, Black Diamond). Mr. Davidsons's comments
13 were directed at both developments. Tr. 1658-62.

14 Mr. Davidson began his testimony by citing aspects of the city's approach to growth
15 as listed on its website: that the city was "rural by design," and that projects would
16 emphasize protection of surface and groundwater for fish and people, conservation of
17 water and other resources, preservation and enhancements of open spaces and view of
18 Mount Rainier, provision of employment uses, improvement of the city's fiscal
19 performance, timely provision of necessary facilities and infrastructure, development
20 of a coordinated system of pedestrian-oriented facilities including trails and bicycle
21 paths, and growth should pay for growth – existing citizens should not bear the
22 burden of development. These are the principles, he said, that should frame the city
23 council's decision.

24 He expressed support for the inclusion of new school sites in development plans.
25 However, he pointed to the need to mitigate increased phosphorous levels in Lake
Sawyer, increases in traffic congestion that would accompany the developments, and
the need for the city's tree ordinance to apply fairly and equally to citizens and
developers.

26 Ralph Loewen (no address given). Mr. Loewen did not specify to which
27 developments his testimony should apply. Tr. 1661-62.

28 Mr. Loewen briefly spoke in favor of creating a detailed plan that accounts for
29 recreational needs and proper land use. He submitted a more detailed version of his
30 comments in writing.

31 Tina McGann (no address given). Ms. McGann's comments were directed at both
32 developments. Tr. 1662-63.

33 Ms. McGann is president of the Black Diamond Elementary School PTA.

1 Ms. McGann testified that good local schools contribute to an area's quality of life
2 and enhance property values. She wants the city to consider whether the two Master
3 Plan Developments provide adequate school sites and address the developer's
4 contributions to school construction. She does not want a failed school system in
5 which the schools are overcrowded. The city must require the designation of school
sites and provide for mitigation fees needed to pay for a portion of school
construction costs, she said.

6 Chris Clifford (P.O. Box 57, Renton). Mr. Clifford's comments were directed at both
7 developments. Tr. 1663-68.

8 Mr. Clifford testified that the city now faces a choice: to maintain the community's
9 quality of life or to enrich developers. He noted the increases in population and traffic
10 that the developments would entail. He said the developers do not care about such
impacts.

11 He also noted the absence of public input into the location of school sites in the plans,
12 and argued many costs that ought to be paid by the developer will be paid for by the
13 community, from school costs to road, sewage, and water line improvements. He also
objected to the dangers of building schools over abandoned mines, and the lack of
provision for adequate wildlife habitat.

14 In short, he said, the developers have been misleading the community about the costs
15 and negative impacts of their plans.

16 Sean Taeschner (30846 229th Place S., Black Diamond). Mr. Taeschner's comments
17 were directed at both developments. Tr. 1668-73.

18 Mr. Taeschner began his testimony by recounting that he moved from Seattle to
19 Black Diamond to escape Seattle's congestion. Some of the Black Diamond residents
he spoke to came here to preserve wildlife of the kind long vanished from heavily
developed areas.

20 He also addressed the dangers of building over mines. He said his grandfather and
21 great-grandfather had been miners in the area, and that many people were unaware of
22 the existence of abandoned mine shafts under Lake Sawyer and the city. He cited an
23 air shaft from one of these mines that had opened up 150 feet from a school and the
death of several youths in the 1950s that had crawled into a shaft and died within 45
minutes from the poisonous gases that and other mines can contain.

24 He also cited the dangers of tree removal. He noted that the area sometimes
25 experiences severe winds and that trees provide an effective windbreak. He said
tornados sometimes touch down in the area, and that these storms are attracted to
treeless, flat ground. In written testimony, he added that the developer should plant

1 three trees for each tree it cuts down and should be held responsible for tornado
2 damage in the city.

3 Robert Taeschner (30846 229th Place SE, Black Diamond). Mr. Taeschner did not
4 specify whether his comments were directed at a particular development or at both.
Tr. 1673-80.

5 Mr. Taeschner, a teacher, first voiced concerns about the increase in adolescent
6 drivers the developments would bring to local roads, in particular 216th Southwest,
7 224th Southeast, Lake Sawyer Road, and Covington-Sawyer Road. Hundreds of
8 student drivers and parents deliver and pick up their children and to and from Kent
9 Lake twice per day, he said. Add to this a projected total of one additional school
10 population of drivers and parents delivering and picking up students. Then add a daily
11 myriad of construction and delivery vehicles, as well as the noise and potential danger
12 to any students walking to or from Sawyer Woods Elementary, which is located a
13 228th SE and SE 312th. This combination of construction and delivery vehicles and
14 adolescent-driven vehicles poses an unaddressed danger to pedestrians and cyclists of
15 any age, he said.

16 Mr. Taeschner also opposed the quantity of tree cutting proposed by the developers.
17 Trees serve as an important provider of oxygen and as a wind break, needed due to
18 the area's high winds. Current plans, he said, do not adequately address their loss.

19 He concluded by noting the diminishment of wildlife in and around Lake Sawyer
20 over the years. Added runoff water from the developments could further diminish the
21 lake's wildlife population, he said, and with it an important part of the community's
22 history.

23 Angela Taeschner (30846 229th Place SE, Black Diamond). Ms. Taeschner did not
24 specify whether his comments were directed at a particular development or at both.
25 Tr. 1680-88.

Ms. Taeschner spoke to her concerns regarding the negative impact of the
developments, in particular the addition of phosphorus to Lake Sawyer, to local
wildlife, specifically the American bald eagle. She cited the requirements of WAC
232.12.292 in support of her position.

26 Howard Meece (24515 SE Green Valley Road, Black Diamond). Mr. Meece did not
27 specify whether his comments were directed at a particular development or at both.
28 Tr. 1688-89.

29 Mr. Meece voiced his concern that the developments will cause the spring that
30 supplies water to his 80-acre property will run dry or to become polluted, thus
31 destroying the land's property value.

1 He also cited concerns about increased traffic in front of the property, and the elk that
2 will no longer move through it.

3 Mike Nelson (25643 SE 394th, Enumclaw). Mr. Nelson's comments were directed at
4 both developments. Tr. 1689-92.

5 Mr. Nelson is a superintendent in the Enumclaw School District.

6 He stated that the school district has invested a great deal of time and resources in
7 reviewing the master plan communities over the last several years and in assessing
8 the significant impacts of the developments on the school system. While district
9 officials look forward to a growing school district along with our community, he said,
10 they also need to make sure that the development is not approved without providing
11 all of necessary school facilities that are be required to serve future students.

12 He noted that the district has worked with the City of Black Diamond and the
13 developer to create a draft school mitigation agreement that provides a logical
14 approach to neighborhood schools. It has been the district's primary goal, he said, to
15 secure school sites within the master plan development and near the master plan
16 development because district officials know that once these developments are
17 approved land in the City of Black Diamond will be hard to come by. There are some
18 issues still with this draft school mitigation agreement that still need to be resolved,
19 and the district is committed continue that work to that end, he added. The purpose of
20 his testimony, he said, is to strongly ensure the Master Plan Development permits will
21 be appropriately conditioned to ensure that adequate school facilities are provided for
22 this development.

23 Denise Stiffarm (no address given). Ms. Stiffarm's comments were directed at both
24 developments. Tr. 1692-95.

25 Ms. Stiffarm is an attorney working with the Enumclaw School District to evaluate
school-related impacts that will result from the two MPDs at issue.

Like Mr. Nelson, Ms. Stiffarm noted the significant resources the district has invested
to review these projects and to work proactively with the City of Black Diamond and
the developer on a comprehensive school mitigation agreement that would provide a
reasoned and logical approach to schools and the needs that will be required once the
new residents do arrive. That agreement has not been finalized or adopted. She said
the district is committed to continuing to work on that agreement, but district officials
also recognize the limited window to provide comments as a part of the permit
process. As it was discussed and analyzed in the final Environmental Impact
Statements for the two projects, she continued, there will be significant impacts on
schools. The more than 6,000 residential dwelling units will translate to a need for
approximately four new elementary schools, two middle schools, and one
comprehensive high school.

1 Ms. Stiffarm noted that there is a comprehensive regulatory framework in place to
2 ensure that adequate schools are provided as part of the development approval. First
3 and foremost, she said, the City's MPD ordinance requires that MPD approval be
4 conditioned on the identification of walkable schools at the number and size required
5 to accommodate the total number of students at full buildout. The MPD ordinance
6 also specifically references that those schools meet the district's adopted service
7 standards and recognizes that schools and other public services need to be provided in
8 a fiscally responsible manner, she added. This is also reflected in various provisions
9 of the city's comprehensive plan. Taken together, she asserted, these provisions
10 require that the City carefully consider whether the MPD application does includes
11 adequate provisions for schools.

12 As submitted, Ms. Stiffarm stated, the two existing MPD applications as submitted do
13 not fully provide for schools. The Villages MPD application identifies four school
14 sites: two 10-acre elementary schools, one 4.1-acre elementary school, and one 8.4-
15 acre middle school. The 4.1 acre elementary school and the 8.4-acre middle school
16 fall significantly below the district adopted service standards for acreage, she noted,
17 and they also fall below the State's minimum requirement for school sites. In addition,
18 the Villages application does not mention of a fourth elementary school, a second
19 middle school, or a high school. The Lawson Hills application does include one
20 elementary school site, she said, and the district does have some current concerns
21 regarding the viability of that site based upon identified site constraints district
22 officials have discussed this with the project applicant. The details regarding those
23 sites are detailed in the district's comment letter.

24 It is the district's hope, she concluded, that a reasoned logical approach to schools will
25 be addressed through the draft school mitigation agreement. In the event that that
does not happen, the MPD conditions should assure that adequate schools are
provided.

Gomer Evans (25331 Lawson St., Black Diamond). Mr. Evans's comments were
directed at both developments. Tr. 1695-98.

Mr. Evans is a former city-council member and mayor of Black Diamond.

Mr. Evans testified in support of the developments. It is important for the city to plan
well for the future, he said, and to support the MPDs so that citizens have a say in
shaping how the city will grow. The planned developments will create jobs and is
well thought out, he added. He said the mayor, city council, and staff are entirely
capable of overseeing the development. Mr. Evans cited his involvement in the
incorporation of Black Diamond, noting that it proved to be a positive change for the
community. The YarrowBay developments are likewise in the city's interests, he said.

March 12, 2010

Randy Hamblin (999 3rd Ave., Seattle). Mr. Hamblin's comments were directed at both the Villages and Lawson Hills developments. Tr. 1902-03.

Mr. Hamblin represented Plum Creek.

Mr. Hamblin began his testimony by noting Plum Creek's previous partnership with the city of Black Diamond in its annexation efforts, which he said had benefited the city. His present testimony was to register the support of Plum Creek for the two YarrowBay developments.

Rick Stocks (22450 SE 296th St., Black Diamond). Mr. Stocks' comments were directed at both developments. Tr. 1903-07.

Mr. Stocks stated that the developments would alter the small-town nature of the Black Diamond community. He said the developer's plans were not adequate for the scope of the project. He also agrees with the testimony of other residents who expressed concerns about traffic congestion, water runoff issues, and the need for an additional fire station, as well as more schools.

He said he is especially concerned with the potential negative impacts to Lake Sawyer. Due to overcrowding, he said, the current limits on activities over three mph are insufficient; he would like to see these hours expanded to reduce congestion and increase lake residents' property values. In addition, he pointed to the potential for parking problems in the area and to negative impacts on the lake's water quality.

Dan Streiffert (Kent – no specific address given). Mr. Streiffert's comments were directed at both developments. Tr. 1908-13.

Mr. Streiffert is chair of the King County Sierra Club.

Mr. Streiffert listed a range of negative impacts he believed the developments would create. He began by noting the effect on area wildlife. He said habitats, food sources, and movement corridors would be disrupted, even with mitigations.

Water runoff is another serious concern, he said, given the amount of new, impervious surfaces that would be constructed. Likewise, water quality would be degraded, impeding efforts to save endangered salmon threatened by storm runoff, and also affecting nearby lakes. Wetlands preservation efforts would be negatively impacted by water infiltration and runoff.

He also noted the negative effects on forest preservation. The developments call for many trees to be cut down, with adverse impacts on recreation and on efforts to address climate change.

1 Air quality will be impacted, he stated, with the creation of smog from the added
2 traffic in the area. This traffic would further contribute to greenhouse gas emissions,
3 to a degree that he said the King County emissions tables grossly underestimate.

4 Finally, Mr. Streiffert addressed the need to create within the developments an
5 affordable housing mix, one that keeps travel destinations close for residents at all
6 income levels and thereby minimizes car travel. He said this is a critical issue for the
7 Sierra Club, given that the proposed plans greatly exceed the city's growth targets.

8 Gary Habenicht (37405 SE 265th, Ravensdale). Mr. Habenicht's comments were
9 directed at both developments. Tr. 1913-16.

10 Mr. Habenicht spoke in favor of the developments. He noted that the projects would
11 be long term, with construction phased in over time, mitigating negative impacts. He
12 also argued that the developer, YarrowBay, has every intention to mitigate negative
13 environmental impacts as much as possible. Furthermore, he said, the projects were
14 an opportunity for the creation of new jobs and new industries in the area. He
15 concluded by urging cooperation with surrounding communities in the process of
16 developing the higher-capacity roads the developments will require.

17 Bonnie Scott (30014 312th Way SE, Ravensdale). Ms. Scott did not specify whether
18 her comments were directed at a particular development or at both. Tr. 1917-18.

19 Ms. Scott's primary objection to the proposed developments was their size. She said
20 she is not completely against development, but 6,000 new homes would create too
21 drastic a change to the community's character. She said that, as a Sierra Club
22 member, she appreciated Mr. Streiffert's comments and felt that "mitigation" is never
23 the same as natural habitat. She said she also fears that, as a dog walker and bicyclist,
24 recreational opportunities will be diminished. She also wondered who would buy the
25 homes and be able to establish successful businesses given the poor state of the
economy.

March 15, 2010

21 Ron Taylor (32110 Botts Drive, Black Diamond). Mr. Taylor's comments were
22 directed at the Lawson Hills development. Tr. 2206-12.

23 Mr. Taylor first stated that Botts Drive must be brought up to code, including full-
24 width right of way, curbing, sidewalks, landscaping, utilities, and buffering of
25 existing privately held land per city regulations, if it is to be used in any way during
the development process. The road is not suitable as a secondary access route, he
said. The use of Botts Drive as a secondary access road for Lawson Hills is also
problematic, he added: with the primary road leaving the intersection of Lawson
Avenue and Botts Drive, using Botts as the secondary access would connect the

1 arterial at the same point as the access road, defeating the purpose of a secondary
2 access by funneling all traffic through a common point.

3 He also voiced concerns about the development's impact on quality of life at his
4 home, particularly in terms of noise, vibration, and loss of privacy, given that primary
5 access to Lawson Hills will go around two sides of his property. He also noted that
6 the home is located downhill from one of these roads, which may create problems
7 with water runoff, slides, and even out-of-control vehicles intruding on the property.
8 Given that the development area surrounds his property, he also asserted that
mitigations should apply to the line where his property meets the development line,
not simply to the development's outer edges. These mitigations, he said, should
include a buffer, landscaping, and a sound barrier per city regulations, as well as a
gradient density of housing should it adjoin property that is less dense.

9 Mr. Taylor also expressed reservations about the negative effect of growth on fire
10 services. Those services are already below standard for a city of Black Diamond's
11 population, he said, with response times in the seven- to nine-minute range while the
12 national standard is four minutes. The city falls short of its own standard of having a
13 manned fire station within one-and-a-half road miles of all developed property. He
14 noted that it's a ten minute drive from the city's single-man station to the proposed
15 site of the Lawson Hills and to the far end of the Villages, as well as being far outside
16 the one-and-a-half mile road standard. Mr. Taylor said he had found no indication of
17 future fire-services expansion in the project's plans. If left to the city to broaden fire
18 services after development is done and the tax base is expanded, he maintained, it
19 would take many years after the need arises to have adequate fire coverage. This will
leave populated and industrial areas with completely inadequate protection for
extended periods of time, he said. This must be mitigated before and during
development. It is imperative that fire services are planned and financed in advance,
he continued, and employed concurrent with development. He said these plans should
include a fire services study and provisions made by the developer for at least one fire
facility with apparatus in each of the development locations; the City, he added, does
not have the resources to finance this large need.

20 Robbin Taylor (32110 Botts Drive, Black Diamond). Ms. Taylor's comments were
21 directed at both developments. Tr. 2212-18.

22 Ms. Taylor first addressed the question of parking at the developments' retail areas.
23 She noted that the amount of parking provided in the plans had been reduced. When
24 there is inadequate parking, she said, shoppers will often patronize other businesses
with more convenient facilities. This loss of business would diminish the revenue
potential for these businesses and the city.

25 She also voiced concerns about the hazard posed by the abandoned mines that lay
underneath the Lawson Hills development area. It is unsafe to build schools there, she
said, and particularly dangerous with heavy construction equipment working over

1 potentially unstable ground. She said she had been told that there were many smaller,
2 private coal mines in the area that may not be documented. She noted that a large
3 sinkhole from a mine collapse lies south of her own property; similar sinkholes
4 appearing in the new development would cause property values to plummet. She
questioned whether YarrowBay would be required to disclose the existence of the
mines to new homebuyers.

5 Ms. Taylor also voiced a concern expressed by Ron Taylor during his testimony.
6 With one of the project's primary access roads running above her property, she and
7 Mr. Taylor may face problems with water runoff, mudslides, and vehicles sliding off
the road in winter.

8 Geoff Bowie (26052 Lawson St., Black Diamond). Mr. Bowie's comments were
9 directed at both developments. Tr. 2219-25.

10 Mr. Bowie began his testimony by noting his pleasure at seeing so many citizens
11 participating in civic issues and then recounted the history of the two developments.

12 He said he supports these developments because the city needs new jobs and growth.
Without responsible, controlled, regulated growth, he said, the city will die.

13 Lisa Garvich (29625 232nd Ave. SE, Black Diamond). Ms. Garvich's comments were
14 directed at both developments. Tr. 2225-32.

15 Ms. Garvich testified that, as proposed, the developments would have a negative
16 impact on Black Diamond. She agreed with others' concerns about tree cutting,
wildlife, local traffic, land preservation, and water quality impacts to Lake Sawyer.

17 Her said her primary concern was for public safety. The city is not prepared to deal
18 with a project of this size, she argued, as manifested in the need for the developer to
19 pay the salaries of additional city staff members to work on the project. She also
20 cited the question of fire protection: the only mention of the need for increased
21 protection in the project's plans, she said, was for a special levy to cover the costs of
22 expanded service. This course of action raises two problems, she added: levies do not
23 always pass, and they pose unfair burden on citizens who must pay the costs of a
development they do not want. The city's services are already barely adequate as is,
she argued. On the question of public safety, she said, emergency response times
could be adversely impacted by increased traffic and the increased number of
accidents that would accompany it.

24 The city council has the ability to enforce stricter codes than the ones currently
25 adopted to ensure the public safety, she said: They can require higher standards on
building construction, broader use of residential sprinklers, less density of housing
and the inclusion of mitigation efforts to better protect the open and sensitive areas of
Black Diamond. As it is, however, the city is unprepared to deal with the public-

1 safety needs of such a large development. If the city needs to grow, then city officials
2 need to consider smaller developments with greater balance of retail and residential to
assist the expanding needs for public safety.

3 John McGibbon (32202 3rd Ave., Black Diamond). Mr. McGibbon's comments were
4 directed at the Lawson Hills development. Tr. 2233-36.

5 Mr. McGibbon testified that, as a lifelong resident of the area, he was brokenhearted
6 to hear of the YarrowBay development plans. His first concern was increased traffic.
7 The area's roads are already congested, he said; it sometimes takes him two light
8 cycles to make a left turn onto Kent-Kangley Road. There are many side roads that
9 would also be adversely affected, he said. He noted other problems accompanying the
project: loss of parking in his neighborhood, loss of scenic areas such as a forested
area near his home, and the effects of drainage into Lake Sawyer.

10 In essence, he said, the YarrowBay project creates too much growth too quickly.
11 While he said he does not oppose all development, he would like to see it regulated in
a manner that acknowledges public safety issues, e.g., emergency response times, and
that does not overly increase residents' tax burdens.

12 Janie Edelman (29871 232nd Ave. SE, Black Diamond). Ms. Edelman's comments
13 were directed at both developments. Tr. 2237-41.

14 Ms. Edelman stated that she has been an area resident for 20 years. In that time, she
15 has seen development overtake some surrounding communities, and said she does not
want to see the same thing happen to Black Diamond.

16 The local infrastructure will not tolerate this large a development, she said: it would
17 pollute the water, clear-cut the forests, and displace wildlife, which will not remain
18 within designated wildlife corridors but will overrun neighborhoods.

19 She said the city does need new retail growth, but not in the form of generic
20 businesses such as nail salons, pizza restaurants, and dollar stores. Instead, she said, it
needs a grocery store and a drug store; these businesses will also need adequate
parking.

21 She also objected to the prospect of being taxed to pay for development costs. She
22 said that the project's fiscal analysis should account for worst-case scenarios such as
23 the prospect of financial failure.

24 Clarissa Cross (19102 SE Green Valley Rd., Black Diamond). Ms. Cross' comments
25 were directed at both developments. Tr. 2241-47.

Ms. Cross testified about the current and prospective problem of increased traffic on
Green Valley Road. The road is secondary and agricultural in nature, she said, and is

1 ill suited for commuter traffic. She said that she has already had a near-accident when
2 a car barely missed her as she and her horse were walking along the road, and has
3 witnessed other cars aggressively passing a neighbor's slow-moving tractor. She and
4 her husband are farmers, and their land is protected farmland, she said; because of
5 existing land covenants, the road cannot feasibly be widened or otherwise made more
6 amenable to higher traffic levels. She added that traffic problems would be further
7 compounded if there were a closure of main routes such as SR 169 or Auburn-Black
8 Diamond Road due to accidents or weather-related events.

9 She also noted that, even with existing developments, wildlife migration patterns
10 have been altered, an issue that the YarrowBay developments would be sure to
11 exacerbate.

12 Jeff Dixon (no address given). Mr. Dixon's comments were directed at both
13 developments. Tr. 2247-54.

14 Mr. Dixon is a planner for the city of Auburn.

15 He said the city is primarily concerned with traffic impacts to Auburn, in particular
16 with parking at the Sound Transit commuter rail station as well as with on-street
17 parking in the Auburn city center near the station. He noted that the MPD for the
18 YarrowBay developments can be approved only if it includes mitigations for adverse
19 environmental impacts. It will be hard to find that these criteria have been met, he
20 said, noting that the Sound Transit parking garage is already filled to capacity on a
21 regular basis and there have been code-enforcement problems regarding parking in
22 non-permitted areas.

23 Given these problems, Mr. Dixon said, the City of Auburn requests two conditions of
24 approval for the projects: 1) an updated, more accurate and detailed transportation
25 study addressing adverse impacts to Auburn; and 2) a mitigation program that takes
into account the findings and recommendations of the updated study.

He said the city also requests that two more conditions be applied to each project: 1)
prior to specific site approvals, the developer will prepare an updated transportation
study of traffic impacts on SR 18, specifically addressing how much traffic from the
two developments would use SR 18 and where the impacts would occur; and 2) the
developer will conduct a study of traffic into Auburn west of SR 18 near Auburn-
Black Diamond Road and Green Valley Road, specifically addressing how traffic
from the developments would impact Auburn-Black Diamond Road and other streets
in Auburn.

Dennis Boxx (32517 Second Ave., Black Diamond). Mr. Boxx's comments were
directed at both developments. Tr. 2255-56.

1 Mr. Boxx testified that he was concerned that the retail business component of the
2 project would include only minimum-wage jobs, not living-wage jobs. He said the
remainder of his concerns had been addressed during other testimony.

3 Robert Rothchilds (29411 232nd Ave. SE, Black Diamond). Mr. Rothchilds did not
4 specify whether his comments were directed to a particular development or both. Tr.
2256-63.

5 Mr. Rothchilds stated that his primary concern was water quality. When comparing
6 the developer's plans with the city code, he said he found the plans lacking in regard
7 to code section 19.98.01, item F: Identify significant environmental impacts and
8 ensure appropriate mitigation. Specifically, he said, the plans do not identify the
9 environmental impacts of the amount of phosphorous (double the concentration of the
background level) that the projects will release into Lake Sawyer and other local
water sources.

10 Consequently, he requested that the Hearing Examiner recommend conditions be
11 attached to the MPD requiring that phosphorus loading impacts be identified
12 and appropriately mitigated, which, he said, has yet to be done. He added that
13 language in the city code (18.98.020) also requires preservation and enhancement of
14 the area's physical characteristics. Because "preserving" means keeping things as
15 they are and "enhancing" means improving, Mr. Rothchilds said he doubts that
doubling the concentration of phosphorous in the water would meet either
requirement, and asserted that significant impacts on fish habitat, swimming, and
wildlife had not been mitigated.

16 Peter Rimbos (19711 241st Ave. SE, Maple Valley). Mr. Rimbo's comments were
17 directed at both developments. Tr. 2264-68.

18 Mr. Rimbo began his testimony by stating that the ramifications of approving the
19 developments would ripple throughout the region and set a dangerous precedent. In
20 general, he said, the developments are in the wrong places, its impacts are
inadequately identified and, for those that have been identified, proposed mitigations
may not be feasible.

21 The Achilles heel of both developments, he said, was the complete lack of adequate
22 transportation infrastructure in the area. Solving some key transportation issues will
23 probably be cost prohibitive, he said. Transportation is a regional issue and
24 developers did not address stakeholders across the region, particularly those southeast
King County residents who use the SR 169 corridor.

25 Mr. Rimbo also voiced concerns about rural issues, such as the impact of facilities,
such as schools and a stormwater retention facility, to be located outside the city.
With such a large increase in population, he said, wastewater facilities may also need
to be increased.

1 He argued that Black Diamond residents would be made to pay higher taxes and to
2 experience negative environmental and traffic impacts as a result of the
3 developments. He warned that retail/commercial development may not happen or
4 could be less than planned.

5 Judith Carrier (24305 SE Green Valley Road, Auburn). Ms. Carrier's comments were
6 directed at both developments. Tr. 2269-77.

7 Ms. Carrier first addressed two traffic-related concerns regarding the Villages south
8 connector onto SR169: the connector as it crosses Plass Road/257th Southeast, and
9 also the direct connection to Southeast Green Valley Road. She said that Plass Road
10 should not become the new south connector.

11 Further, on The Villages side of the intersection, she said there are two traffic
12 mitigations that have been shown to become inadequate by 2025 (FEIS, page 222);
13 those mitigations should be reanalyzed, improved, and extended for 2025 conditions.
14 There is no traffic safety or environmental mitigation for the SR169 side of this
15 connection, she added, which is a highway with no projected capacity improvements
16 planned for many years.

17 She noted that the Plass/257th/Green Valley Road intersection is only four-tenths of a
18 mile from SR169/Green Valley Road intersection; also, the south connector crosses
19 Stream 54 flowing into Jones Lake. Stream 54 parallels Plass Road. None of these
20 issues are examined for construction, traffic, and safety impacts or effects on the
21 environment, she said, and are not mitigated. One of the possible mitigations to avoid
22 wetland damage, save wildlife habitat, and bypass the intersection with 257th Avenue
23 Southeast/Plass Road, which is narrow and has one blind hill, she said, would be to
24 span the 257th/Plass area with a well-designed overpass using current forested growth
25 as camouflage, as has been done on sections of I-90. With very careful planning, she
argued, only a few wetlands might be damaged by construction.

Regarding buffers outside the project, she noted that the MPD discusses screening
urban development to maintain the rural character the city of Black Diamond's
website visualizes for this development. Visual, aesthetic, light, noise, and rural
buffers for residences and schools or other structures near or abutting Southeast
Green Valley Road are not mentioned in any way in the FEIS, she said. There are
plans for a steel water storage reservoir of 1.2 million gallons about 1200 feet north of
Green Valley Road, which would affect local views, she noted, while there is no
mention of the visual or safety impacts or environmental effects of residences,
schools, or the reservoir so close to the road. The forest should be preserved as a
buffer, she said.

Steve Sundquist (24713 SE Green Valley Road, Black Diamond). Mr. Sundquist's
comments were directed at both developments. Tr. 2277-79.

1 Mr. Sundquist questioned whether the area's water supply and the traffic capacity of
2 its roads were adequate for the size of the proposed projects. He said he might be
3 more willing to support a project half the proposed size.

4 Erika Morgan (33624 Abrams Ave., Black Diamond). Ms. Morgan's comments were
5 directed at both developments. Tr. 2279-87.

6 Ms. Morgan said the city must make a choice between its present village character
7 and suburban sprawl. One can't have both at once, she noted, though she said it
8 appeared that the city council believed both were possible. She also maintained that
9 the council had refused to listen to citizens during the planning process. She said the
10 council had reversed its previous support for maintaining the area's rural character,
11 adding that the city cannot solve its fiscal problems by adopting the failed solutions of
12 surrounding communities.

13 Steve Heister (20428 SE 2nd St., Maple Valley). Mr. Heister's comments were
14 directed at both developments. Tr. 2288-92.

15 Mr. Heister is chairman of the greater Maple Valley area council.

16 Mr. Heister stated that he had deep reservations about both developments in regard to
17 adverse impacts. In particular, Mr. Heister said he questioned whether developments
18 that would bring 6,000 new residences and 1 million square feet of commercial and
19 office space to the area was consistent with area growth targets specified in the
20 Washington state Growth Management Act. Under that plan, he said, Black
21 Diamond's growth target was 1,900 residences (versus 6,000).

22 He also warned about the amount of traffic that would be added to SR 169, SR 516,
23 and SR 18, which he said are already overcrowded.

24 He also addressed the question of supporting infrastructure that would be located in
25 rural areas outside the Black Diamond city limit. The YarrowBay developments
would seriously affect the character of those areas, he said.

In sum, he said, he would like to hear assurances that the developers will meet the
requirements of the King County Comprehensive Plan and the state Growth
Management Act, that the necessary infrastructure will be put in place, and that
negative impacts will be mitigated.

March 17, 2010

Steve Pilcher Tr. 2778-2808.

1 Steve Pilcher is the community development director and SEPA responsible official
2 for the City of Black Diamond (the "City"). Mr. Pilcher (on cross examination by
3 David A. Bricklin) testified that, under City code, the SEPA responsible official
4 position is normally assigned to the Public Works Superintendent, but was expressly
5 delegated to Mr. Pilcher by the Public Works Director in the fall of 2008.

6 As the SEPA responsible official, Mr. Pilcher oversees the preparation of
7 Environmental Impact Statements ("EIS"). He has previously worked as an aid to the
8 SEPA responsible official for the cities of Auburn (2005 - 2008) and Puyallup (1996 -
9 2005). In addition to the EIS's under review in this matter, Mr. Pilcher testified that
10 he has overseen two (2) prior EIS's concerning the Good Samaritan Hospital
11 expansion and the final EIS for the Kersey 3 residential project in Auburn, and is
12 currently overseeing the Morgan-Kame Mine Terrace expansion. Although Mr.
13 Pilcher testified that has not worked on an EIS addressing the size of projects
14 currently under review, he testified that the SEPA process is the same regardless of
15 the size or scale of a project. He further testified that part of his duties as the SEPA
16 responsible official is to ensure that an EIS meets the rule of reason standard before it
17 is issued. And, Mr. Pilcher testified that the EIS's issued in this matter met the rule of
18 reason.

19 Mr. Pilcher understands the rule of reason concerning EIS's to mean that a reasonable
20 level of analysis is taken given the likely environmental impacts and nature of a
21 project. He also agreed that disagreement among experts concerning a particular
22 analysis included in an EIS does not by itself render the EIS inadequate. Mr. Pilcher
23 further agreed that an addendum or a supplemental environmental impact analysis
24 may be performed if warranted during the Master Planned Development ("MPD")
25 process.

Mr. Pilcher testified that Parametrix began working for the City with respect to the
subject EIS's after the original consultant was let go. He further testified that
Parametrix was not bound by prior determinations made by the original consultant
and that Parametrix conducted additional analysis, including an independent traffic
analysis. Mr. Pilcher agreed that it is typical for an Applicant to pay for the City's
costs where the City retains the consultant.

Mr. Pilcher testified that a CD ROM containing a complete EIS was provided to
multiple agencies, including the Department of Fish and Wildlife.

Mr. Pilcher (on cross examination by Mr. Bricklin) testified that the subject EIS's did
not disclose environmental impacts relating to safety, morning congestion issues,
travel time, cyclists, pedestrians, or increased traffic on Green Valley Road. But, he
further testified that his understanding is that traditionally traffic analyses focus on
the worst traffic which is usually in the evening peak because it gives a better
indication of the need for intersection improvements. And, Mr. Pilcher believes that

1 the analysis provided for alternate 3 is sufficient to allow the City council to make an
2 informed judgment between alternate 2 and 3 to the EIS's.

3 Mr. Pilcher testified that he had been in attendance during for the entire hearing
4 proceedings in this matter and that nothing offered during the proceedings altered his
5 opinion that the subject EIS's were adequate. He agreed that it is important that an
6 EIS provide sufficient information to allow the City council to make a reasoned
7 decision based on criteria provided by the applicable City code. But, Mr. Pilcher
8 clarified that an EIS does not include a thorough analysis of everything the City
9 council needs to consider when making their decision on an MPD.

10 Donna Gauthier (32427 6th Ave., Black Diamond). Ms. Gauthier's comments were
11 directed at the Lawson Hills development. Tr. 2826-33.

12 Ms. Gauthier first referenced Jack Sperry's earlier testimony in which he described
13 flooding near his home. Flooding likewise occurred in the basement of her Lawson
14 Hills home, she said. She said the flooding was caused by construction done by the
15 city and was never entirely mitigated. She said such flooding was likely to occur
16 again due to the Lawson Hills development.

17 Kristen Bryant (25100 Roberts Dr., Black Diamond). Ms. Bryant's comments were
18 directed at both developments. Tr. 2833-39.

19 Ms. Bryant testified that, although the YarrowBay has marketed the developments as
20 environmentally conscious, they simply repeat the same unsustainable pattern of
21 growth the U.S. has witnessed over the last 50 years. By improving the developer's
22 plans, she said, the community has a real opportunity to help stop deforestation and
23 the emission of greenhouse gases that are the leading cause of global warming.

24 She added that she supported prior testimony arguing that not enough jobs would be
25 created by the development and that the current road system is inadequate to support
the developments. She also believes that the expansion of the school system will
prove to be a burden for parents in terms of attempting to provide transportation to
distant events over the inadequate roadways.

Ms. Bryant also urged the adoption of waste/gray water recycling systems and an
increased focus on land conservation, reducing the footprint of buildings and leaving
more space for wetlands, buffers, and other open areas.

She made reference to the potential for deviations from existing sensitive areas
ordinances. She said she does not support any such deviations as requested by the
developer, or any alteration of wetlands. She also advocated increasing the amount of
land the city reserves for open spaces above the city's current target of 10 percent.

1 On the question of transit, Ms. Bryant requested that the development plans not be
2 approved unless a full evaluation of the effects on current transit as well as plans for
future transit improvements are undertaken.

3 Lori Seaman (22725 SE 321st Place, Kent). Ms. Seaman did not specify whether her
4 comments were directed at a particular development or both. Tr. 2839-43.

5 Ms. Seaman first noted that the developments would add 9600 cars to the area's
6 roads, and that the main route into the area, Auburn-Black Diamond Road, was
7 already clogged with traffic and often blocked by such hazards as downed power
lines, potholes, and flooding. If the road is to be improved, she asked, who will pay
for it?

8 She also expressed concerned about the effect of tree cutting on flooding. She said the
9 basement of her home had already flooded, destroying many items of personal value.
10 She said that tree removal could exacerbate the flooding problem.

11 In sum, she said, she valued the community's rural character and opposed the kind of
12 large-scale development that would erode the quality of life many residents came to
the area to enjoy.

13 Michael Eerang (22505 329th St., Horseshoe Lake). Mr. Eerang's comments were
14 directed at both developments. Tr. 2843-48.

15 Mr. Eerang first noted the thousand of vehicles that the developments would add to
16 the area's major roads such as Kent-Kangley Road and Auburn/Black Diamond Road.
17 These roads have only two lanes, and widening them is improbable or impractical, he
said. With the additional cars the developments would bring, driving them would
become a nightmare.

18 He also voiced concern over the prospect of vehicle waste such as oil and
19 transmission fluid washing off the roads into local wetlands and lakes.

20 He likewise recommended further study of the local mines on area groundwater.
21 Many of the mines are full of water, he said.

22 Another environmental concern he noted was the degree of tree cutting called for in
23 the projects' plans. He said that far less cutting would be necessary if the plans called
for a much lower density of housing, e.g., three homes per acre, than currently
proposed.

24 Mr. Eerang concluded by noting the ugliness of the clearcutting on the Issaquah
25 Highlands. He said he does not want the legacy of the current city council and mayor
to be the creation of similar uglification.

1 Bill Seaman (22725 SE 321st Place, Kent). Mr. Seaman's comments were directed at
2 the Villages development. Tr. 2848-56.

3 Mr. Seaman's testimony focused on water issues. In particular, he said, his primary
4 concern as an engineer was the developments' stormwater-management plans. He
5 noted that the stormwater manual for the Villages addressed runoff into Lake Sawyer
6 but did not mention Covington Creek. Lake Sawyer flows into the creek, he said,
7 which floods near Camp Berachah and on Auburn/Black Diamond road. If, as
8 expected, the developments cause more water to flow into Lake Sawyer, more water
9 will flow into Covington Creek; this will result in more downstream flooding, he said.
10 He also noted that the creek is a salmon spawning stream, and the higher levels of
11 effluents and phosphorous entering Lake Sawyer from the developments would reach
12 the creek and negatively impact the salmon.

13 He said the stormwater manual also made no mention of whether phosphorous from
14 Covington Creek would enter the Green River; it likewise omits mention of water-
15 quality impacts on Horseshoe Lake.

16 He also raised the possibility of contaminants leaking from badly maintained parking
17 lots leaching into the groundwater, then into the local aquifers, and from there into
18 Horseshoe Lake.

19 His final recommendations were to require further environmental studies by
20 YarrowBay and to dramatically reduce the MPD.

21 Rick Bingle (30015 232nd Ave., Black Diamond). Mr. Bingle did not specify whether
22 his comments were directed at a particular development or both. Tr. 2856-59.

23 Mr. Bingle stated that he and his wife had moved to the area in 1994 and fell in love
24 with it because of its rural character. Since then, he said, they have lost trust in the
25 city council. He said they have concerns such as lake flooding at their home and
greater lake pollution, but he does not know who to trust or how to find out who is
responsible if such events occur.

26 Geoff Bowie (26052 Lawson St., Black Diamond). Mr. Bowie did not specify
27 whether his comments were directed at a particular development or both. Tr. 2859-68.

28 Mr. Bowie recounted how the current development plans began with a recognition of
29 the need for growth and the annexation of Lake Sawyer. He said city officials realized
30 what was needed was higher-density growth with urban utilities and with
31 water/sewer/storm/bus service that can support the growth; the city could not survive
32 with only rural tracts. And while some have objected to potential negative wildlife
33 impacts from the project, he said, their movement was inevitable. Finally, on the
34 question of water issues, he said, the existing stormwater manual, the stormwater

1 construction permit process, and the stormwater pollution control plans successfully
2 address people's concerns.

3 Cindy Proctor (32508 236th Ave. SE, Black Diamond). Ms. Proctor's comments were
4 directed at both developments. Tr. 2869-91.

5 Ms. Proctor first discussed a number of her technical concerns related to the MPDs:

- 6 1)TDRs. Ms. Proctor asked the hearing examiner to ensure that the south annexation
7 of the developer's property not be used as part of the TDRs, and to review
8 whether wetlands contribute to the TDR transfers.
- 9 2)The tri-party agreement. She argued that the Lake Sawyer Regional Park Joint Use
10 Agreement, under which a six-acre parcel of Lake Sawyer Park was transferred to
11 the Enumclaw School District for use as sports fields, allows YarrowBay to
12 escape paying the full cost of school site mitigation.
- 13 3)Cash payments. She noted an option in the MPD for the developer to make cash
14 payments to the city in lieu of putting in place recreational open spaces such as
15 soccer fields, play areas, and trails. Such an arrangement might be acceptable for
16 a smaller development, she said, but it is not appropriate for a project of this scale,
17 especially when the developments had been promoted to the community as full of
18 open recreational spaces. She added that the city had only one park staff person,
19 while the expanded open areas planned for the development would require a staff
20 of 10-15.
- 21 4)Tree ordinance. She said the developer was using SAO regulations to justify a
22 blanket waiver of the city's tree ordinance. While YarrowBay claims it is
23 committed to the inclusion of open spaces in the project, she said, most of these
24 spaces are wetlands and sports fields containing few trees. A blanket waiver is not
25 justified, she argued.
- 5)Water resources and surface water management. During the project's construction,
she said, the developers would need to grade and clear away some 4.7 million
cubic yards of dirt. This dirt would temporarily be deposited at the east edge of
the Villages property, very near Ms. Proctor's parents' home. She said she feared
the home would suffer negative impacts from waterflow as the water's direction is
altered by these large dirt deposits.
- 6)Chapter 13. The MPD asks for waivers from all the mitigations promised by the
EIS, Ms. Proctor argued; if granted, these waivers would negate the mitigations'
benefits.
- 7)MPD setbacks. The proposed five-foot minimum setback is too small, she said.
People did not come to Black Diamond to have a five-foot back yard, and homes
placed so close together pose a fire hazard, she added.
- 8)Fiscal and general. She said the fiscal analysis of the FEIS and the MPD show
different results, which she found disturbing. The commercial revenue projections
also require pulling in shoppers from Enumclaw and Maple Valley, which she
said is unrealistic given the existing commercial opportunities present in those
cities. Further, the proposal to begin commercial construction early in the

1 development process makes little sense when business growth comes years behind
2 residential growth, she argued. She noted as well that the developer states that the
3 project will feature a good deal of light-industrial development. This also makes
4 little sense, she said, as light-industrial businesses need access to railways,
5 freeways, and waterways, and the Black Diamond area lacks such access. Even if
6 these jobs come, she said they would offer only low- to moderate pay, whereas
7 houses in the proposed developments were projected to range in price between
8 \$337,000 and \$789,000, far out of the new workers' price range. Who will then
9 live in the new homes? she asked. Would they commute to jobs out of the area?

10 On a more personal note, she said, she and her family had long been residents of
11 Black Diamond and had been very involved in the city's civic life. She noted the
12 efforts she and other citizens had put into informing themselves about the YarrowBay
13 project and in asserting their rights as citizens: while these residents struggled to have
14 their voices heard by the city, the developers had unfettered access to city officials,
15 even encouraging them to lobby the state legislature to approve bills that would allow
16 the formation of capital facility districts, a measure that would be of potential fiscal
17 benefit to the developers, she said. YarrowBay also argued successfully for code and
18 enforcement amendments that would facilitate the developments while giving former
19 city council member Geoff Bowie a construction contract while he was still on the
20 council and voting on the developer's requests, she added. The council has resisted
21 public input, she continued, while many codes, agreements, and moratoriums were
22 made behind closed doors to the developer's benefit.

23 The intent of the city's actions, she said, has been to permit only the minimum public
24 input required by law and to handle information at an individual level rather than at a
25 community level, to keep the council and the citizens separated so that the developer
could control the outcome.

Julie Early (22963 SE 292nd Place, Black Diamond). Ms. Early's comments were
directed at both developments. Tr. 2891-99.

Ms. Early began her testimony by noting that non-expert citizens are not the only
entities concerned about the developer's plans: the King County Department of
Transportation, the City of Auburn, the City of Maple Valley, the Enumclaw School
District, and the Sierra Club also are concerned, along with other experts. She said
she hoped these dissenting voices would cause decision makers such as the city
council to have second thoughts about the project.

She noted that the size of developments would exceed King County growth targets by
75-80 percent. She said the city should hold the MPDs to the standards set in the King
County Comprehensive Plan and by the state Growth Management Act. She added
that the MPDs run counter to the city's own moderate growth vision as articulated on
its website. The city should also acknowledge that other area projects now in the
planning stages might exacerbate the developments' negative impacts.

1 The MPDs fail to protect and preserve the environment, she said. As planned, the
2 developments would harm area wildlife and water quality; there would be more storm
3 damage and flooding, and the rural character of Black Diamond would be eroded, she
4 said.

5 She added that, while mitigations are needed to compensate for the adverse effects of
6 the developments on water quality and local traffic (particularly on SR 169, Kent-
7 Kangley Road, Auburn/Black Diamond Road, Covington/Sawyer Road, and Green
8 Valley Road), the developer has requested many exceptions from protective standards
9 that would undermine the benefits mitigations might provide. Ms. Early said she
10 opposes these exemptions.

11 She also said she opposes the agreement to give part of Lake Sawyer Regional Park
12 to the Enumclaw School District for sports fields. The developer, not the taxpayers,
13 should be responsible for providing this land, she said.

14 She concluded by voicing her suspicions regarding the apparent close relationship
15 between the city council and YarrowBay.

16 Gwynlynn Vukich (15626 SE 352nd St., Auburn). Ms. Vukich's comments were
17 directed at both developments. Tr. 2899-2903.

18 Ms. Vukich began her testimony by recounting her family's history of farming in the
19 area, and King County's designation of the land in the upper Green River Valley as
20 the upper Green Agricultural District. Of its 3,500 acres, she said, 904 are in the
21 Farmland Preservation Program. Land so designated can never be developed or sold
22 for any purpose other than farming. Buildings cannot be built on the land. Many types
23 of farms can currently be found within the district, she added.

24 Ms. Vukich said she questioned whether the FEIS or MPD for the YarrowBay project
25 adequately addressed the transportation problems that will occur on Green Valley
Road as traffic increases and people begin to use the road as an alternative route as
other local roads experience overcrowding. She said protection of the Green Valley
area cannot coexist with the execution of such large developments.

26 Karen Meador (32404 169th Ave., between Auburn/Black Diamond Road and Lake
27 Home Road). Ms. Meador's comments were directed at both developments. Tr. 2903-
28 09.

29 Ms. Meador testified that the developments are the wrong project in the wrong place
30 at the wrong time. They would impact all of southeast King County, she said.

31 Her primary concern was traffic impacts from the developments. Local roads such as
32 SR 169, Kent-Kangley Road, and Black Diamond/Auburn Road were already

1 overcrowded. As narrow, two-lane routes with many blind curves and places with no
2 shoulder, she said these roads cannot handle the projected 400 percent increase in
3 traffic that the developments would bring. Given the area's topography, she added,
4 widening those roads would be extremely costly, and King County seems disinclined
5 to embark on such a massive project. Green Valley Road is a heritage corridor that
she said cannot feasibly be widened. Any large increase in population would
irrevocably alter the historic and scenic character of the area and endanger motorists
and wildlife, she said, adding that the area is ill-suited for high-density development.

6 Cindy Sizemore (35006 257th Ave. SE, Black Diamond). Ms. Sizemore's comments
7 were directed at both developments. Tr. 2909-13.

8 Ms. Sizemore said she opposed the developments for same reasons as the other city
9 residents who had spoken against them. She testified that, as a real estate agent, she is
10 familiar with the workings of the housing market, which she likened to a roller
11 coaster. She said the market is now in a down cycle, and the addition of new homes to
12 the area would negatively impact the property values of existing Black Diamond
homes. She said it could be several years before home prices recover, and noted that
business development usually follows five years behind residential, which raises
questions about YarrowBay's commercial development plans.

13 Ty Peterson (no address given). Mr. Peterson's comments were directed at both
14 developments. Tr. 2913-17.

15 Mr. Peterson is director of community development for the city of Maple Valley. He
spoke on behalf of the city.

16 The city's primary concerns with the developments, he said, dealt with traffic and
17 transportation issues and appropriate levels of mitigation. He said the state Growth
18 Management Act requires planning for population growth and calls for neighborhood
19 jurisdictions to adopt growth plans that are consistent with each other. The
20 YarrowBay developments exceed the GMA's target growth allocations for Black
Diamond by 218%. The GMA target is 1,900, as compared with the 6,000 homes the
developments would add.

21 He said the regional transportation plan did not anticipate this much growth; more
22 specifically, the Washington State Department of Transportation plans do not include
23 funds to improve what would be one of the most heavily impacted roads, SR169.
Such mitigations must be provided by the developer, he said.

24 Kelly McElroy (24417 SE Green Valley Rd., Black Diamond). Ms. McElroy's
25 comments were directed at both developments. Tr. 2928-35.

Ms. McElroy first stated that, while Black Diamond needs to grow, it does not need
the kind of concentrated growth that YarrowBay is proposing. People moved to the

1 area, she said, not for jobs but for a lifestyle; they were tired of dealing with heavy
2 traffic and seeing little but generic, strip-mall-style businesses. The size of the
3 proposed developments would cause the community's rural quality of life to vanish,
4 she said; the developer would profit, but the community would suffer. She added that
5 the size of the development would crowd out individual home construction.

6 In general, she said, her objections to the project were: that the number of housing
7 units planned grossly exceeds county guidelines; that the amount of impervious
8 surfaces the developments would add would further diminish an already limited
9 supply of water; that the use of Green Valley Road would overcrowd it and have an
10 adverse impact on local wildlife such as elk; and that the project deviates dramatically
11 from the community growth vision presented on the city's own website.

12 Marlene Bortelson (23831 SE Green Valley Rd., Black Diamond). Ms. Bortelson's
13 comments were directed at both developments. Tr. 2935-39.

14 Ms. Bortelson testified that the developers have not addressed rural concerns in their
15 plans. Specifically, she said, Green Valley Road is not suited for heavier traffic loads
16 and should be excluded as a potential traffic route. It is a narrow, two-lane, curvy
17 road, often used by bicyclists and farm equipment, that sometimes must be closed due
18 to rock and mud slides as well as flooding. It is also a scenic route that would have
19 some views blocked by the developments, in particular by the schools planned for the
20 area. Those schools also will add impervious surfaces and flat roofs, the runoff from
21 which may have a negative impact on well-water quality and may flow into nearby
22 yards.

23 Cindy Wheeler (30221 234th Ave. SE, Black Diamond). Ms. Wheeler's comments
24 were directed at both developments. Tr. 2940-50.

25 Ms. Wheeler testified that she opposes the developments because they would alter the
rural lifestyle that many residents moved to the area to enjoy. The size and scope of
the MPDs were not in keeping with the agreement the city of Black Diamond made
with Lake Sawyer residents, i.e., that the city would stay rural, when their community
was annexed into the city, she said.

Residents also were promised that future development would pay for itself, she said;
that is not the case with YarrowBay's plans. She said citizens would end up paying a
number of costs. As an example, she pointed to a tri-party agreement that calls for
using six acres of publicly owned lands to construct athletic facilities for the new
schools that the developments would require.

She said she fears the impact the developments would have on the area's natural
resources, such as Lake Sawyer and local wildlife. She opposes the developer's many
requested exemptions from city standards, codes, and ordinances, particularly those
related to environmental protections.

1 Ms. Wheeler also questioned whether area roads could handle the increased traffic the
2 developments would bring as well as whether there would be adverse impacts on
3 schools and a reduction in open spaces.

4 She said it has been difficult to get information on planned wastewater facilities. She
5 questioned how the city could lawfully spend money on these facilities before MPD
6 approval, and how a change in their siting would not require a supplemental
7 environmental impact statement.

8 Finally, she said, it is clear that the extra wastewater improvements/facility planned
9 for Phase II of the developments would not be self-supporting but rather would
10 require public dollars to implement.

11 Cory Olson (25230 SE Green Valley Rd., Black Diamond). Mr. Olson's comments
12 were directed at both developments. Tr. 2950-53.

13 The author of a book on the history of mining in the area, Mr. Olson recalled the story
14 of a mining company that many years ago pulled up stakes and abandoned the
15 community when its mines became unprofitable. He said he expected YarrowBay
16 developments to take a similar course. In this case, he said, the developers
17 circumvented King County's zoning requirements by having the land first annexed
18 into the City of Black Diamond, and then they used their money to overwhelm the
19 city's government and its regulatory abilities. He predicted that, after it has built its
20 massive development and extracted the profits, YarrowBay will wash its hands of the
21 community. He also said that the scale of the expansion in population would tilt
22 political power in the area toward newcomers.

23 Joe May (29611 232nd Ave. SE, Black Diamond). Mr. May's comments were directed
24 at both developments. Tr. 2953-59.

25 Mr. May testified that the size of the proposed developments were not consistent with
the vision of local citizens, citing in particular the city's website, its motto "rural by
design," and its promise to coordinate in making development plans with the city's
citizens. He compared YarrowBay's plans with the size of nearby supermalls and
noted that the developments would be larger in square footage. He also recalled
another development in Pierce County in which the developer went bankrupt. He
questioned whether the impacts from such a financial failure on the part of
YarrowBay could be mitigated. He also voiced concerns over the adequacy of plans
for sewer improvements and the potential damage that added phosphorous from the
developments may do to Lake Sawyer, noting that there were differences of opinion
among the experts who testified on the question.

Beverly Tonda (21680 227th Place SE, Maple Valley). Ms. Tonda did not specify
whether he comments were directed at a specific development or both. Tr. 2960-66.

1 Ms. Tonda began by citing the city's mission statement, which states that economic
2 development must be consistent with the rural character of the community, with an
3 emphasis on farming, forestry, and other rural businesses. She said YarrowBay's
4 plans were inconsistent with this vision.

5 She said that the designation of Green Valley Road as a historical road was likewise
6 inconsistent with the scope of the planned developments and with the shoreline
7 master plan.

8 She pointed to the need for the developments to incorporate low- to moderate-income
9 housing; for joint, region-wide planning; and for "green," sustainable development.
10 Finally, she objected to the prospect of state tax dollars being used for rural
11 developments when the money could be better spent within the cities.

12 Melanie Gauthier (25565 Baker St., Black Diamond). Ms. Gauthier's comments were
13 directed at both developments. Tr. 2966-74.

14 Ms. Gauthier began with a review of statistics on the planned developments' size and
15 an encapsulation of the planning process. She noted that city staff reports enumerate
16 about 270 conditions for MPD approval. She questioned why most of these were not
17 included in the MPD application.

18 She also questioned why the city council had disapproved King County growth
19 targets for the area (1,900 units) well before the MPD hearings took place, and weeks
20 before the council was required to make a decision. She said this and other council
21 actions -- for example, failing to ask King County, an outside party, for assistance in
22 reviewing the application -- had created the appearance of a conflict of interest
23 between city residents and the developer.

24 Laura Iddings (P.O. Box 2, Maple Valley). Ms. Iddings' comments were directed at
25 both developments. Tr. 2975-85.

Ms. Iddings first focused her testimony on the fiscal impacts of the developments.
She noted that the Black Diamond MPD ordinance requires an analysis of the fiscal
impacts and states that there should be no adverse fiscal impacts of an MPD upon the
city. She also pointed to the ordinance's requirement that the fiscal-benefit analysis
include the city's special funds, e.g., street, water, wastewater, criminal justice, etc.
YarrowBay's analysis did not address these funds, she said.

She also questioned whether citizens would see higher rates/taxes or the creation of a
capital improvement district to support the services and infrastructure the
developments would require.

She said the planning process for the developments had ignored the regional planning

1 mechanism, obscuring the true impacts to Black Diamond such as whether the
2 developer would pay for offsite impacts.

3 In terms of the project's phasing, Ms. Iddings questioned what would happen if the
4 developer's "aggressive" build-out projections were wrong, particularly since future
5 city revenue from the developments was linked to these estimates. Again, she said,
6 this is a question that the MPD does not address. She likewise questioned whether the
7 developer's projections regarding retail/commercial revenue were accurate, and what
8 would happen if they were not.

9 Ms. Iddings also voiced concerns about the planned expansion of the city's sewer
10 systems. Specifically, she noted that plans called for the addition of off-site pumping
11 stations. She wondered where and when the city was planning to build them, and who
12 would pay for them. She likewise observed that the plans called for new sewer lines
13 and a storage facility, to be paid for through rate increases and new hookup charges
14 and not by the developer. Odor control also must be addressed, she said. In sum, she
15 argued that short- and long-term financial impacts from wastewater issues had not
16 really been addressed in the MPD, and potential adverse impacts to the city and its
17 residents had been ignored.

18 Sheila Hoefig (23204 SE 312th St., Black Diamond). Ms. Hoefig's comments were
19 directed at both developments. Tr. 2988-92.

20 Ms. Hoefig said that she values area wildlife and wants Black Diamond to stay "rural
21 by design." She does not oppose growth, she said, just the way the YarrowBay
22 project is being done and the way the city council is representing the city's citizens.
23 As a long-time urban California resident, she added, she has come to value greatly the
24 kind of rural environment the Black Diamond area provides, particularly as she raises
25 her children, and she does not want to see it vanish.

Robert Rothchilds (29411 232nd Ave. SE, Black Diamond). Mr. Rothchilds'
comments were directed at the Villages development. Tr. 2992-99.

Mr. Rothchilds began by noting his experience with water-quality issues. He said he
has been involved with the state, the county, the city, and the Lake Sawyer Water
Quality Committee for 18 years, which together have provided him hundreds of hours
of training on water quality issues. He also has a master's degree in mechanical
engineering. On the question of MPD adequacy, he cited the permit conditions of
approval from Black Diamond Municipal Code 18.98.080, in particular such public-
benefit objectives as preservation and enhancement of physical characteristics,
including environmentally sensitive areas, protection of surface water, and protection
of groundwater quality.

He pointed to the 81 percent rise in phosphorous concentrations in local streams
predicted by YarrowBay's water quality expert as a result of the developments.

1 Current lake levels of phosphorus are 10 micrograms per liter, which would rise to 38
2 mpl after development, according the developer's water expert, he noted. Beyond
3 degrading fish habitat in the streams, he said, those streams empty into Lake Sawyer.
4 He said that to wave off these phosphorous impacts without proper analysis runs
5 counter to the city's conditions of approval. While the developer claims that proposed
6 stormwater ponds would reduce project-related phosphorous levels by 50 percent,
7 thereby mitigating the development's impact, Mr. Rothchilds said there is no analysis
8 provided by YarrowBay to support that assurance. He said the 2005 storm manual is
9 outdated and cannot serve as a basis for such an analysis.

10 He concluded that, as painful as the MPD approval process has been, it would be far
11 more painful and expensive to find, five to 20 years in the future, that a wrong
12 decision had been made and Lake Sawyer's water quality had been damaged.

13 Carol Lynn Harp (24430 Morgan St., Black Diamond). Ms. Harp did not specify
14 whether her comments were directed at a particular development or at both. Tr. 2999-
15 3000.

16 Ms. Harp's testimony consisted of an English sonnet concerning the situation.
17 Entitled "Master Plan Development Folly," it read as follows:

18 We've problems with Black Diamond MPDs.
19 They have become too urban by design
20 and with suspicious flexibilities they could turn out to be quite asinine.
21 If just twice target growth we'd feel the strain.
22 King County roads would slow into a crawl,
23 our crowded school could tax us to our pain
24 and all would suffer rural/urban sprawl.
25 Our wildlife would be stressed and runoff might pollute and flood our precious lovely
lake
while other people's wells could soon run dry, environmentally a big mistake.
To let this happen is an awful shame,
Unwise decisions are what we will blame.

March 19, 2010

21 Steve Pilcher Tr. 3266-3324; 3325-56; 3357-90.

22 Mr. Pilcher testified that the CMART document was used by Parametrix to put
23 together responses to comments to the DEIS. Mr. Pilcher was involved in preparing
24 responses and reviewed all the responses prior to publication as the SEPA responsible
25 official. Mr. Pilcher indicated that he was satisfied that the responses were adequate
responses in terms of SEPA requirements. In response to questioning, Mr. Pilcher
then testified regarding particular comments in Appendix R.

1 In Comment 003 on page 217, reference was made to the Green Valley Road
2 connector. Mr. Pilcher acknowledged that subsequent to the time the comment was
3 made, the Green Valley Road connector was abandoned, and the applicant decided
4 not to build it. Instead, the South Connector crosses Highway 169. Mr. Pilcher
5 acknowledged that Comment 003, made by King County, was requesting an
6 assessment of traffic impacts on Green Valley Road, regardless of whether a direct
7 connection to Green Valley Road or the SR 169 was constructed. Mr. Pilcher further
8 acknowledged that no direct response to the request for additional study of the traffic
9 impacts on Green Valley Road was made.

10 With respect to Comment 007, page 218, Mr. Pilcher did not know whether the
11 updated TTR in Appendix B and FEIS included a travel time assessment of the
12 impact on the travel sheds, as King County requested. Mr. Pilcher did not review the
13 TTR himself.

14 With respect to Comment 009, which notes that the comment period was extended to
15 October 9, 2009 to allow for additional public comment, Mr. Pilcher did not know
16 whether the City posted notice of the comment extension on its website or published
17 notification in the newspaper. No notice was mailed to the people who had obtained
18 copies of the DEIS. However, some e-mail notifications to agencies, according to
19 Mr. Pilcher, may have been sent. With respect to notice issues, Mr. Bricklin read
20 some of Mr. Pilcher's testimony at the DEIS public hearing, portions of which were
21 inaudible. Mr. Pilcher agreed that the inaudibility could impair a reader's ability to
22 determine the substance of his comments at the hearing. Mr. Pilcher explained that,
23 when he said at the public hearing that he had everyone's names and addresses and
24 would make sure a mailing list would be used for future significant events, he did not
25 believe an extension of a comment period would qualify as a significant event.

With respect to Comment 010, page 219, King County requested additional analysis
of the short-term impacts of both construction hauling and possible partial road
closures. Mr. Pilcher reviewed the response, which stated that the request for
additional analysis goes beyond the scope of the EIS and does not raise a new issue
with potential significant adverse environmental impacts. Mr. Pilcher stated, in
response to a question regarding what information he reviewed to determine that the
impacts of construction hauling and possible road closures were not significant and
adverse, that he reviewed the noise study. Mr. Pilcher also stated that because the
MPD approval does not permit any construction, it was not timely to analyze hauling
impacts.

With respect to Comment 015 on page 22, Mr. Pilcher testified that he relied on the
transportation technical experts for the opinion that improvements listed in other
planning documents did not need to be considered because the majority lacked
funding.

1 Mr. Pilcher agreed that the response to comments did not include discussion of Green
2 Valley Road's landmark designation as a heritage corridor.

3 Mr. Pilcher also responded to Comment 019, in which King County requested
4 analysis of four additional intersections. Mr. Pilcher stated that the response, which
5 stated that the four additional intersections were beyond the scope of the FEIS, was
6 intended to remind the county that there was a scoping process and that the
7 intersections were not raised during the scoping process. Mr. Pilcher stated that
8 again, because the EIS is programmatic, the analysis was not timely. Mr. Pilcher had
9 to defer to his traffic techs on why the four intersections in question were not
10 analyzed, where as other intersections were analyzed at the programmatic level.

11 Mr. Pilcher stated that, with respect o Comment 020 on page 225, he did not have any
12 knowledge about modifications that may have been made according to "professional
13 engineering judgment" to the King County Black Diamond demand model.

14 Mr. Pilcher recognized that traffic volumes on roads in unincorporated King County
15 were not analyzed in the DEIS, despite the fact that some individual intersections
16 were analyzed. Mr. Pilcher stated that the response to comments of the DEIS did not
17 include a rural character analysis of these roads.

18 Mr. Pilcher further explained the response to Comment 029 on page 232, which
19 requested further description of how the new local waste water infrastructure would
20 connect to the present system. Mr. Pilcher stated that the response to the comment,
21 which stated a response was not required because it was not related to the SEPA
22 process, indicated that the projects are proposed to occur on a sewer system with a
23 waste water conveyance system, not a septic system. However, Mr. Pilcher agreed
24 that King County was requesting more definition about the connection to the King
25 County sewer system, which was not provided.

18 Mr. Pilcher explained that King County raised an issue with the size of the sewage
19 storage facility. Mr. Pilcher acknowledged that Comment 031 by King County,
20 raising concerns that the current level of detail does not allow for an assessment of
21 the configuration of the connection to adequately protect the environment and public
22 health, raised a legitimate SEPA issue. Mr. Pilcher stated that just because someone
23 alleges there is an environment and public health issue does not mean that it exists,
24 though he conceded that the response to the Comment did not assert such a lack of
25 substance.

23 With respect to stormwater, Mr. Pilcher also testified that he did not know whether
24 additional clarifications or corrections were made in response to Comment 047 on
25 page 241. There, King County raised concerns that stormwater impacts to off-site
surface waters, including Lake Sawyer, had to be addressed in more detail. The
response to the comment was only that appropriate clarifications and corrections were
made to the EIS document.

1 With respect to traffic, Mr. Pilcher agreed that he was aware that there were a number
2 of intersections with a volume capacity ratio of greater than 1.0 in both the mitigated
3 and unmitigated condition. However, Mr. Pilcher stated that WSDOT's Comment
4 005 on page 248 was viewed as a statement of the way that WSDOT approaches the
5 issue and was not necessarily requesting additional analysis be done. WSDOT's
6 Comment 006 was also not provided with a response because it was not related to the
7 SEPA process. Mr. Pilcher stated that he would have to rely on previous testimony
8 on traffic queuing.

9 Mr. Pilcher also discussed the response to King County Agricultural Commission's
10 Comment 001, which stated that the City cannot route urban traffic through the
11 agricultural production district. Mr. Pilcher summarized the response to the
12 Comment as essentially indicating that the direct connection to the Green Valley
13 Road was eliminated. Mr. Pilcher stated that while there could be volume increases
14 to Green Valley Road, even if the direct connection were eliminated and SR 169 were
15 used, there were not necessarily significant and adverse impacts because they can
16 always be mitigated. Mr. Pilcher agreed that this was not the substance of the
17 response to the Comment, and he could not recall if discussion of traffic volumes on
18 rural roads in agricultural districts was anywhere in the FEIS or the Transportation
19 Technical Report. Mr. Pilcher could not recall discussing what form mitigation may
20 take to mitigate the impacts to rural roads in agricultural districts. He stated that he
21 believed the traffic mitigation was focused exclusively on intersection impact
22 analysis. Nevertheless, Mr. Pilcher testified that he would argue that eliminating the
23 Green Valley Road connection would address the Agricultural Commission's
24 Comment. Namely, while the development could result in more traffic volume on
25 rural roads, it does not mean that more traffic was routed to that road.

17 With respect to the Department of Fish and Wildlife, Mr. Pilcher stated the EIS for
18 the Villages did not list a Hydraulic Project Approval in the permit listing. Mr.
19 Pilcher was aware that the Department of Fish and Wildlife was concerned that it had
20 not reviewed the EIS in detail because they were not alerted by the permit listing that
21 a Hydraulic Project Approval may be required. Mr. Pilcher did not recall whether the
22 City had send an FEIS to the Department.

21 Mr. Pilcher testified that there would be additional environmental review if the
22 stormwater facility is moved on site and that the current EIS does not include any
23 environmental evaluation of that scenario. Mr. Pilcher acknowledged that the
24 stormwater facility would be several times larger than surrounding lakes and that the
25 EIS did not analyze the possibility that the facility could be divided into several parts.

24 With respect to reviewing the technical reports and draft and FEIS, Mr. Pilcher
25 testified that the documents addressed protecting water quality in Lake Sawyer. He
agreed the city's comprehensive plan identifies protecting Lake Sawyer water quality

1 as a key issue for the city. Mr. Pilcher could not recall whether there was
2 independent analysis in the EIS of the phosphorus loading impacts to Lake Sawyer.

3 With respect to focusing attention on the portions of the documents that dealt with
4 protecting Lake Sawyer's water quality, Mr. Pilcher didn't understand what was
5 meant by focus. He testified that he did not give more scrutiny to sections dealing
6 with protecting Lake Sawyer water quality than other sections, as an independent
7 person. He was relying upon the experts in that area.

8 Regarding an Appendix to the EIS, Parametrix Technical Memo 10/13/08 to Susan
9 Graham and Austin Fisher from Jenna Friebe, Mr. Pilcher testified that it was a peer
10 review memorandum analysis done by Parametrix, dealing with the original
11 documentation prepared by Kindig & Associates on 5/5/08. He stated that on the first
12 page under "Phosphorus" it says that "The Lake Sawyer Management Plan, which
13 was addressed in the document" meant Kindig's document. Although the report
14 stated that "future development can be accommodated without impacting the trophic
15 state of the lake if phosphorus loading is limited to a 36% increase, it is not clear from
16 the report that the proposed projects are consistent," as it was a year and a half ago
17 that he saw the memorandum he does not recall exactly what occurred at the time.
18 He does not recall focusing on the key issue for the city - phosphorus loading in Lake
19 Sawyer.

20 Mr. Pilcher did not recall if the memorandum was shared between Parametrix and
21 Mr. Kindig, although there were conversations about the peer review results.
22 Regarding his understanding that after reading this memorandum the proposed
23 phosphorus loads to Lake Sawyer were going to increase significantly, Mr. Pilcher
24 testified he didn't know if the memorandum necessarily tied it to Lake Sawyer.

25 Mr. Pilcher testified having had conversations with Susan Graham, at Parametrix,
regarding adequate attention being addressed to the Lake Sawyer phosphorus loading
issue in the EIS, but does not recall having conversations with Mr. Kindig. He does
not know if any changes were made in Mr. Kindig's document.

Mr. Pilcher testified that he utilized information regarding "current LID techniques,
such as bioretention, dispersion, infiltration, that meet the necessary detention
standards but avoid using large retention/detention ponds" in assessing the
reasonableness of the mitigation on stormwater issues included in the EIS. His
recollection is that the large pond does not drain directly towards Lake Sawyer. It's
in a different drainage basin.

Mr. Pilcher agreed that he needs to refresh his memory regarding the EIS analysis of
impacts to fish in Lake Sawyer, based on Mr. Kindig's assessment that the
stormwater would not adversely impact Lake Sawyer's water quality.

1 Mr. Pilcher reiterated that part of the process of developing the EIS was getting peer
2 review analysis of expert reports. He was shown a technical memorandum, 2/2/09,
3 from David Sherrard, Senior Environmental Planner, to Susan Graham at Parametrix,
before the draft EIS came out. He agreed that in terms of figuring out what he was
going to put in the draft EIS, this was part of the process that led up to it.

4 With respect to noise impacts, if Environs did not have expertise then it could be
5 performed by Parametrix land use and wildlife specialists. When Parametrix said it
6 recommended the analysis be expanded, Mr. Pilcher understood that to be a concern
7 about wildlife being impacted by the noise, at least during the construction phase.
8 Mr. Pilcher did not recall if they had the wildlife assessment expanded to include that
9 impact or analysis of that impact. He does not recall if there were any discussions
10 about whether to do it or not. He did recall discussions about the usefulness of a
wildlife corridor running through the middle of a development project of this scope.
It was a primary issue in the city development of sensitive areas regulations. Mr.
Pilcher had that discussion without recalling having a discussion about the noise
impacts.

11 Mr. Pilcher was shown another technical memorandum from Parametrix dated
12 1/30/09 from David Sherrard to Susan Graham, regarding air quality. He recognized
13 this as another peer review memorandum. In terms of greenhouse gas emissions, it
14 was Mr. Pilcher's understanding that the worst-case cumulative analysis indicated no
15 greenhouse gas emission impacts. He testified that he is not sure what, without
16 asking Mr. Sherrard, what he meant by no impact, because there's an impact from
17 any change in the environment. When Mr. Pilcher was asked if it was his
understanding that the greenhouse gas emissions analysis indicated no significant
adverse gas emissions associated with this project, he testified that he had to reread
that part of the EIS to refresh his memory. Mr. Pilcher stated his recollection of the
greenhouse gas emissions analysis was that there was no significant adverse impact.

18 Mr. Pilcher stated he did not know the methodology of how the assessment of
19 greenhouse gases took into account the fact that the 6,000 homes were to be built
20 relatively distant from major employment centers. Mr. Pilcher testified that
greenhouse gas emissions of a project are affected by the vehicle miles traveled to
and from the project.

21 Mr. Pilcher testified that based upon his limited knowledge as a land use planner, it
22 would depend on where people choose to reside in this project, where they might be
23 employed, as to how much greenhouse gas emissions there would be.

24 Mr. Pilcher testified he did not feel qualified to answer questions regarding the
25 project being built some distance from employment centers and the amount of
greenhouse gas emissions.

1 Mr. Pilcher testified that he did receive a revised application package at the end of
2 December from the applicant after the FEIS came out. He testified that the EIS was
3 adequate for both applications, before and after the EIS came out. He testified there
4 is a chapter entitled "Functionally Equivalent Standards" in the applications regarding
5 standards that exist today in the city code the applicant wants to have modified. Mr.
6 Pilcher would have to compare the documents to know if the entire chapter revised in
7 the application came in after the EIS.

8 With respect to the application, in the revised application the applicant proposed for
9 the first time not to have the development subject to the tree preservation ordinance.
10 There had been discussions with the applicant regarding that issue.

11 Steve Pilcher (on cross examination by David A. Bricklin) testified that the EIS
12 contains a list of mitigation measures and that before those measures are put in place
13 he believes they are used in a modeling process to determine if they will perform as
14 expected. He also agreed that the EIS lists additional mitigation beyond that provided
15 in the comprehensive plan and that these measures are all in addition to the base case
16 2025 improvements. But, he noted that certain conditions listed in his staff reports
17 are not part of the list of mitigation measures found in the EIS and that the staff
18 reports recommend requiring the mitigation projects identified in the FEIS.

19 Mr. Pilcher (on redirect examination by Mr. Sterbank) agreed that when the EIS
20 traffic analysis was conducted it assumed that the north/south linkage between
21 Abrams Avenue and the South Connector and the Southeast Connector into Lawson
22 Hills to 169 linkage would be constructed. And, based on that analysis, the final
23 FEIS identified certain mitigation projects which were listed in the EIS. Mr. Pilcher
24 further agreed that the applicant later indicated a desire not to construct these two
25 linkage projects. As a result, Mr. Pilcher testified that additional analysis was
conducted to determine the possible outcomes from this action and possible
additional mitigation that may be needed. However, the additional mitigation listed
in the staff report was no longer necessary after the request to not build the two
linkage projects was withdrawn. Mr. Pilcher noted that this made the additional
mitigation identified in the staff report unnecessary, and did not affect the mitigation
identified in the FEIS.

Mr. Pilcher testified that comments relating to potential impacts from construction
hauling should be addressed at the project implementation phase rather than at the
programmatic EIS stage. Similarly, he testified that comments addressing the
specific configuration of a sewer system from an environmental review perspective
should be analyzed at the project specific phase. And, Mr. Pilcher agreed that
comments outside of the SEPA process should be addressed as part of the MPD
process.

Mr. Pilcher testified that Larry Fisher of the Washington Department of Fish and
Wildlife ("WDFW") was invited to the Black Diamond EIS Agency Scoping

1 Meeting, but did not attend. He further testified that a draft EIS was sent to Mr.
2 Fisher at the WDFW and that for ease of reference the FEIS was sent in CD ROM
3 form to all agencies, including the WDFW, that commented on the EIS. Mr. Pilcher
4 testified that Mr. Fisher did not provide comments during the defined comment
5 period but later submitted comments on the draft EIS after the closure of the comment
6 period. Mr. Pilcher (on recross examination by Mr. Bricklin) further testified that he
7 did not disclose to WDFW that there would be wetland bills and/or road crossings
8 that would require a hydraulics permit from the WDFW. But, (on further redirect
9 examination by Mr. Sterbank) he noted that he was not aware of any proposed
10 construction within a stream, which is a trigger mechanism for hydraulic project
11 approvals.

12 Mr. Pilcher testified that whether or not any additional environmental documentation
13 was necessary if there was a change in the location of a stormwater detention pond
14 would be determined based on the proposal and review, but that any additional
15 documentation was not necessarily required.

16 Mr. Pilcher (on redirect examination by Ms. Rogers) testified that the SR 169
17 improvements relating to widening to four lanes from Southeast 288th Street to
18 Roberts Drive is currently programmed by the City for future development and is
19 consistent with the City's comprehensive plan.

20 Mr. Pilcher (on recross examination by Mr. Bricklin) confirmed that it is not typical
21 to look at construction impacts in relation to a programmatic EIS. But, he further
22 testified that he has never been involved in a programmatic review concerning a
23 project that involves 15 years of construction. But, (on further redirect examination
24 by Mr. Sterbank) Mr. Pilcher testified that when he is attempting to perform a
25 reasonably thorough analysis he relies on the expertise of transportation engineers
and other experts concerning design analysis of sewage treatment facilities and
greenhouse gas emissions with respect to the FEIS.

Mr. Pilcher testified that he did not recall a public disclosure request for geologic files
or whether such files were attached to EIS as appendices before being provided to the
public. However, he further testified that a copy of the EIS was given to King County
and that if it needed copies of technical appendices they could have requested them.
Mr. Pilcher noted that the City's website was never held out as the exclusive source
for technical appendices.

Cindy Wheeler (30221 234th Ave. SE, Black Diamond). Ms. Wheeler's comments
were directed at both developments. Tr. 3643-67.

Ms. Wheeler divided her comments between concerns about Lake Sawyer water
quality and deficiencies in the DEIS transcript and the City of Black Diamond's
notification procedures.

1 As a nearby resident, Ms. Wheeler said she recalled the last environmental problem at
2 Lake Sawyer, at which time it was overrun by the growth of thick algae caused by
3 sewage dumped into the water. This event, which severely hindered lake recreation,
4 has made her aware of potential impacts that could destroy the lake, she said.

5 On the question of DEIS transcript deficiencies, she noted that the written record of
6 the hearing included some 300 notations of "inaudible," connoting that the testimony
7 could not be heard on the hearing tape, and that several testimonies given late in the
8 hearing were entirely missing from the record. She said she was never contacted by
9 the City of Black Diamond about these gaps, although her testimony had been
10 affected.

11 She also said the city had done a poor job of giving citizens notice, as required,
12 regarding key events in the planning process. She said SEPA official Steve Pilcher
13 had granted the minimum extension possible under RCW for comments on the DEIS.
14 She said the code allowed longer extensions for large projects, and she attempted to
15 find out why Mr. Pilcher only allotted the minimum time. She said Mr. Pilcher did
16 not respond to these requests.

17 When the FEIS was released, she said, it did not satisfy her concerns about the
18 project's environmental impacts. She said she purchased a copy of the FEIS from the
19 city and hired a water specialist to review the document. He was unable to do so, she
20 said, because her copy of the FEIS was missing key appendices. She then made an
21 attempt to obtain the missing documents from the city using a public disclosure
22 request; she said this second copy was still missing information. She finally received
23 the information she was seeking, she added, only 24 hours before the deadline for
24 exhibits to be submitted to the city. These difficulties were representative of the
25 roadblocks she believed the city erected to discourage citizens' participation in the
planning process, she said.

18 **B. Expert Testimony**

19 **1. Rural Character**

20 **Witness Mr. Paul Reitenbach (transcript pages 503-532)**

21 Mr. Paul Reitenbach works for the King County Department of Development and
22 Environmental Services out of the director's office. He stated that the address is 900
23 Oaksdale Avenue Southwest in Renton, Washington 98055. He was hired by King
24 County in June 1979 and formally supervised the community planning section
25 through the mid 1990's when the County did large land use plans, including the one
for this area called Tuttle [inaudible] Heights. He now works in the director's office
and manages annual updates, the King County Comprehensive Plan, and the
countywide planning policies that are reviewed and approved by Growth
Management and planning council.

1 Mr. Reitenbach (on cross examination by Ms. Rogers) stated that there are a variety
2 of land use issues in the project including page 9 of the appeal which refers to the
3 1996 Black Diamond Urban Growth Area Agreement, as well as other references on
4 that page to protecting small town atmosphere, forested areas, open space,
exceptional natural setting and developing in a way that is consistent with the rural
design handbook.

5 Mr. Reitenbach (on direct examination by Mr. Bricklin) stated that he normally does
6 not get involved in the review of projects in the cities within King County, but that
7 this one raised some concern about the surrounding rural area that is unincorporated,
8 which is why King County decided to weigh in on those concerns. He further stated
9 that he drafted the September 30 letter signed by Executive Triplett with three
10 attachments, which are some of the specifics of the concerns. He further stated that
Attachment No. 1 relates to transportation, Attachment No. 2 relates to
environmental/natural resources concerns, and that other concerns are in the cover
letter.

11 Mr. Reitenbach stated that King County's number one concern was about the south
12 access road, which is difficult to find on the maps, but the proponent has agreed to
13 take out and the access was redirected to the east to Highway 169, so this concern
14 was responded to appropriately. He further acknowledged that this comment has
been labeled as 001 access by Glenn Valley Road and that they had responded
satisfactorily to his concern.

15 Mr. Reitenbach stated that the potential adverse impact of the urban development on
16 the rural area did not appear to be adequately addressed initially, including broad
17 traffic issues and environmental concerns in Attachment No. 2. He further stated that
18 the gist of the countywide planning policies and the County Comprehensive Plan
policy is that we are supposed to identify and minimize, as best we can, impacts to
rural areas. He further stated that he expected they would flesh that out in the Final
EIS but that this concern was not responded to.

19 Mr. Reitenbach stated that King County's final comment was that they thought the
20 EIS was silent on the Black Diamond Urban Growth Area Agreement. He further
21 stated that this was a supporting comment to just discuss this Black Diamond Urban
22 Growth Area Agreement, and that King County did not think it was an issue but only
for information purposes and for everybody's understanding it should have been
talked about. He further stated that this concern was responded to.

23 Mr. Reitenbach also stated that there were concerns about a drainage facility that
24 looked like a pond or small lake that was designed to serve the urban development,
25 but it is on adjacent rural land, which is mentioned in their comments. He further
stated that they sent a second letter on November 19, which was outside the comment
period, as he was learning more about the development, regarding concerns with the

1 three schools related or associated with the urban development proposed for the
2 adjacent rural land.

3 Mr. Reitenbach confirmed that Mr. Miles is the acting director of the department, and
4 the new director is John Starbard, who has been on the job for one week.

5 Mr. Reitenbach confirmed that King County still has concerns about the analysis in
6 the EIS, particularly relating to the drainage pond and the three schools. He stated
7 that the King County code specifically states that you cannot have a drainage pond for
8 urban development on rural land. He further stated that the County is concerned
9 about putting necessary services, especially the one that would requires sewer
10 extensions, adjacent to the urban growth boundary but in the less expensive rural area
11 rather than in the urban growth area on land that is probably more suitable for other
12 development. He further stated that in previous large developments he has worked on
13 this has been a point of negotiation in the development, and that the County policy is
14 that whenever possible, these be located in the urban growth area, knowing this is not
15 always possible.

16 Mr. Reitenbach further stated that the County code allows elementary schools
17 outright, and a secondary or junior high school is allowed with a conditional use
18 permit. He stated that there is not a conflict between the County policy and code, and
19 differentiated between children growing up in rural areas who need schools versus a
20 school in a rural area close to an urban growth area where a large development is
21 proposed. He further stated that just because schools are allowed in the rural area, the
22 County does not assume that tracts of land in the rural areas are appropriate for school
23 zones serving urban students.

24 Mr. Reitenbach stated that the most recent example of an urban facilities located
25 outside the urban area on the later expansion of the Urban Growth Area is in Issaquah
where large drainage facilities were built in the rural area. He stated that there were
technical corrections and they moved them into the urban area so they could be
annexed and maintained by the City. He further stated that the tendency is that with
drainage facilities, the urban growth boundary line is just bumped out so they can be
in the jurisdiction that is maintaining them. He further stated that schools are
different because they can occur in both urban and rural areas and the County does
not maintain schools. The code allows sewers to be put in, so you can have a certain
amount of land in the rural area where sewers can be extended, and they serve both
urban and rural areas, but he stated that he does not know in what proportion.

Mr. Reitenbach (on direct examination by Mr. Clifford) stated that if they had been
aware of the schools proposed in the rural area at the time of the September letter,
they would have made comments to that effect in that letter.

1 Mr. Reitenbach (on cross examination by Ms. Rogers) confirmed that the Black
2 Diamond Urban Growth Area Agreement, or BDUGAA was signed in 1996 by King
3 County and the City of Black Diamond, and it expressly anticipated master planned
4 developments just like The Villages project and Lawson Hills project that are
5 proposed by Yarrow Bay. He further confirmed that the BDUGAA anticipated that
6 those MPD projects would be applied for and at some time close to 2,000 acres of
7 open space would be provided, both inside the City of Black Diamond and in King
8 County, and that open space has, in fact, been provided.

9 Mr. Reitenbach stated that King County Code section 21A.08.060 and the A footnote
10 under it specifically prohibits stormwater facilities serving urban land from being
11 located in rural land, and that he is not familiar with alternate code provisions that
12 might allow permitting other usual stormwater facility in rural areas. He further
13 confirmed that he has not seen the actual MPD application and has not read the
14 conceptual stormwater plan, but did review the draft EIS.

15 Mr. Reitenbach stated that an urban level of development could not be developed
16 over a stormwater pond, and that the Issaquah Highlands urban drainage ponds
17 constructed in a rural area that was ultimately annexed to the City would remain
18 stormwater ponds. He further stated that there is no issue of additional urban growth
19 occurring in that area.

20 Mr. Reitenbach stated that he would expect an Impact Statement to identify
21 significant adverse impacts and whether they can or cannot be mitigated, and that
22 those that cannot be mitigated were the ones that eventually were the focus.

23 Mr. Reitenbach stated that he was familiar with the draft Comprehensive School
24 Mitigation Agreement that has been negotiated between the Enumclaw School
25 District, the City and the applicant only to the extent that he had looked it over on
their webpage. He stated that it seems logical that the draft agreement would contain
provisions in the event the County denies permits for rural schools that assures sites
for schools within the City of Black Diamond. He further stated that it would make
sense to set up a phased SEPA review and that he has seen it happen before.

Mr. Reitenbach (on redirect from Mr. Bricklin) stated that in his opinion the two
attachments raised fundamental issue about the development and that it seemed
reasonable to get those out on the table at the outset. He further stated that the
County is raising policy concerns about something that may eventually wind up as a
permit application, so he is trying to state those policy concerns without indicating
any prejudice to further review of permits. He further stated that the County wanted
to hear back from the City what the rationale was for the schools and drainage pond
to be in those locations.

1 Mr. Reitenbach (on redirect from Mr. Clifford) stated that there is a very elaborate
2 three-party agreement between the City, County and the property owner, and a
3 separate two-party agreement regarding the Issaquah Highlands drainage facilities he
4 previously talked about. He further stated that in that case the UGA boundary was a
5 dotted line that depended on where engineering would find out the road should be,
6 and when it was done and built it was discovered that the necessary drainage facility
7 wound up fully or partially in the rural area, so we had to clean up the urban growth
8 boundary. He further stated that part of the thinking was that the County should not
9 have maintenance responsibility for a facility that was clearly serving the urban
10 development so that is why it was put into the UJ and the County let it be annexed by
11 the City.

12 **2. Traffic**

13 **Witness for Mr. Bricklin, Mr. Matt Nolan (transcript pages 382-401 and 417-503)**

14 Mr. Nolan is the King County Traffic Engineer. He has been a traffic engineer for 17
15 years, the 6 last the County Traffic Engineer. His department is responsible for traffic
16 safety in unincorporated King County and for contract cities. His department
17 performs lane striping, installs coordinated signal systems through intelligent
18 transportation systems, monitors collisions, produces the six year capital
19 improvement plan for traffic for unincorporated King County and the 20 year
20 transportation needs report and performs level of service analysis. Mr. Nolan noted
21 that in the case of the CIP, funding must be committed within two years of plan
22 adoption. The unfunded 20 year plan projects are not within the foreseeable current
23 revenue streams. Mr. Nolan noted the Level of service (LOS) is a measure of delay at
24 an intersection or corridor. LOS is measured by grade level. For example, an LOS of
25 D is equal to an 80 second delay.

19 Mr. Nolan testified transportation engineers in his department commented on the
20 MPD and reviewed DEIS for both proposals (Villages DEIS, Appendix R,
21 Attachment 1, 9/30/09). Mr. Nolan noted one of the county's concerns was the
22 potential impacts to Green Valley Road. He noted the DEIS showed a connector
23 directly from the City to Green Valley Road and that the southern access to the
24 project would be unincorporated King County. He stated the County was worried
25 about the volume of traffic being added to Green Valley Road. He noted King
County has classified this road as a Heritage Corridor. The County wishes to
maintain the rural look and feel. He also stated the Heritage Corridor designation is
a new program with only a few roads characterized this way. Mr. Nolan testified the
County is concerned about traffic volume and safety on Green Valley Road with or
without a direct connection. He stated in either case, a separate analysis of traffic
should be provided. He noted his staff has read the DEIS but could not determine if
either provided this analysis because the graphics and text did not match. He also

1 noted he could not affirm the FEIS had provided the additional analysis. He testified
2 the FEIS did not provide a direct response to the County's concerns about impacts to
Green Valley Road.

3 Mr. Nolan testified the County had expressed concerns about the projected project
4 growth in that it exceeded the Black Diamond Comprehensive Plan targets and was
5 well over the city's allocation of regional population growth. He noted the Puget
6 Sound Regional Council (PSRC) plan concentrates growth in metropolitan areas and
7 core cities. The allocation for small cities combined was only 8% of projected
regional growth. He noted the County asked for Alternative 3 to have more detailed
analysis because that alternative is consistent with the Comprehensive Plan. He also
8 stated the DEIS authors did not respond to this issue.

9 Mr. Nolan testified the County had expressed concerns regarding the short term
10 impacts of construction and hauling. He noted the County had expressed these
11 concerns as part of DEIS comment, but that those concerns were not reflected in the
FEIS. He stated he was not aware of any studies that came out after the DEIS other
than the FEIS.

12 Mr. Nolan stated the County was concerned about the FEIS assumption regarding
13 internal trip capture, the number of trips that start within the project and end within
14 the project such as a resident leaving home and driving to a job within the project
15 boundaries. He noted the applicant used Institute of Traffic Engineers (ITE) trip
16 internalization rates. He stated the County's experience with Redmond Ridge
17 suggested the applicant was aggressive with those assumptions. Redmond Ridge and
Issaquah Highlands proved different from ITE. He testified that the ITE data is
overly optimistic for large master plan projects and does not cover this project
adequately. He stated he felt the project should have used internal trip capture rates
from more local, recent master planned developments.

18 Mr. Nolan noted trip distribution is a matching of types of trips such as home to
19 shopping, home to school, home to work and then distributing them out to the
20 capacity of the roads in an iterative process. The idea is to minimize trip time. He
21 stated the FEIS traffic model only included funded projects rather than the full
22 transportation plan projects from surrounding jurisdictions. He noted the omission of
23 these projects from the transportation network in the model would change the trip
distribution by assuming trips only went on currently constructed roads. He noted the
omission of planned roadway improvements might affect impacts to intersections and
change the analysis. Mr. Nolan stated the County had requested the analysis of more
intersections than covered in the EIS.

24 Mr. Nolan testified the County had requested further analysis of safety issues on King
25 County roads with respect to the physical geometry of the roads (site distances,
curves, horizontal and vertical realignment, lighting, widening, turn lanes, guard rails,

1 etc). He noted the FEIS authors stated they had met the requirements of the
2 Washington Administrative Code (WAC). He noted king County discourages
3 urbanization of the rural areas. King County does this by avoiding capacity
improvements (additional lanes) in favor of providing only safety improvements.

4 Mr. Nolan testified the EIS should address the County's concerns regarding the
5 effectiveness of mitigation measures for LOS at intersections, rather than postpone
those issues for the master plan permit process.

6 In response to Mr. Clifford, Mr. Nolan stated that Auburn Black Diamond Road is a
7 rural road. He noted this road will have increased trips associated with this
8 development. He also noted King County's Comprehensive Plan discourages
9 increases in capacity on this road. Mr. Nolan testified he was not aware that there
10 would be a high school in place of residential uses and that the two uses would
11 generate different traffic patterns. Mr. Nolan also testified he knew Green Valley
12 Road was a bike route, though he didn't have numbers associated with the use.

13 In response to Ms. Rogers, Mr. Nolan testified he did not know if the County was
14 invited to the EIS scoping session. He also testified that a programmatic EIS is for
15 larger projects than a project specific EIS. He also testified that there is a measure of
16 professional judgment involved with an EIS.

17 In response to Ms. Rogers, Mr. Nolan noted that Green Valley Road would not be
18 overcapacity due to the project traffic and that Heritage Corridor designation has no
19 regulatory significance. He acknowledged the EIS proposed mitigation measures to
20 intersections on Green Valley Road. Mr. Nolan also acknowledged that if the total
21 dirt hauling during the construction phases and proposed a balanced project such that
22 dirt was simply moved around internally on site, then construction impacts could be
23 addressed through a programmatic rather than project specific EIS.

24 Also in response to Ms. Rogers, Mr. Nolan stated that using ITE numbers for trip
25 generation was one valid methodology. He also acknowledged that he was not aware
of another published and peer reviewed analysis that would establish a different thing
to site for master planned developments. Mr. Nolan stated he was not aware that
King county had requested lower internal trip capture assumptions while Maple
Valley had asked for higher assumptions.

26 Mr. Nolan stated that when the County performs an EIS analysis, they run models
27 with both funded and unfunded projects. Mr. Nolan stated that while only CIP
28 projects are funded, the transportation needs report goes out beyond the build out of
29 this project. He stated his team would use professional judgment to decide which of
30 the unfunded projects are likely to be funded by 2025 and therefore include them in
31 an EIS analysis. He acknowledged that other mitigation measures might be found
32 during subsequent environmental review during the permit phase. He also

1 acknowledged that the County does not do everything requested by all comment
2 letters on a draft EIS, but that they attempt to be responsive to all comments. Mr.
Nolan stated that King County did not appeal the adequacy of the EIS.

3 In response to Mr. Sterbank, Mr. Nolan testified he had reviewed between 20 and 30
4 EIS for transportation impacts with about half of those being private proponents. He
5 noted in each case, they ask for an analysis of both funded and unfunded projects.
6 Mr. Nolan also testified the FEIS is the document that sets the framework for setting
7 permit decisions in the future because this is where global impacts are disclosed. He
8 noted King County expects specificity in this document for transportation in a
9 programmatic EIS. He acknowledged a programmatic EIS involves less detail than a
10 project EIS.

11 Mr. Nolan stated assumptions about the scope of the project are made in the scoping
12 process and is iterative with additional information from public comment and
13 modeling. He agreed there must be a baseline set of assumptions. He acknowledged
14 that neither he nor any member of his staff participated in the scoping process for the
15 EIS transportation analysis.

16 In response to Mr. Sterbank, Mr. Nolan agreed that Green Valley Road is a collector
17 arterial servicing between 800 and 1,100 cars per hour. He noted the classification
18 will not fully represent the road capacity without knowing the specifics of the
19 roadway. He further noted that both Green Valley Road and the intersection of
20 Green Valley Road with 218th are projected to be below the maximum capacity but
21 will experience significant increases in traffic of 300-400%. He noted the King
22 County Comprehensive Plan majorly discourages capacity increases on Green Valley
23 Road and that the mitigation proposed for the project is not a major capacity
24 improvement. He also noted that an increase in traffic on this road would exasperate
25 existing traffic safety issues but that the EIS did not analyze traffic safety.

**Witness for Mr. Bricklin, Mr. Ross Tilghman (transcript pages 575-637, 958-
1,040 and 3,393-3,469)**

20 Mr. Tilghman is a transportation planner. He has been a transportation planning
21 consultant for 26 years and is the principle of Tilghman Group Transportation
22 Planning. He has experience preparing and reviewing EIS throughout his career
23 including Master Planned Developments and the programmatic EIS for Snoqualmie
24 Ridge. Mr. Tilghman has worked throughout Puget Sound and nationally.

25 Mr. Tilghman testified he read the transportation sections of the EIS and the
transportation technical reports for both projects. Mr. Tilghman outlined the basic
steps employed in doing transportation analysis including examining and defining a
study area; incorporating existing traffic volumes; looking at future background
conditions; forecasting traffic volumes and the resulting LOS for intersections;

1 estimating traffic for the proposed projects; looking at the resultant LOS at
2 intersections and making a recommendation for improvements to the road system to
3 carry that volume.

4 In response to Mr. Bricklin, Mr. Tilghman noted that to determine traffic generation
5 from projects, the first step is to look at the individual land uses and use the ITE trip
6 generation estimates. The total of all traffic from all project uses are summed. He
7 noted in the case of this project, adjustments to the trip generation were made to
8 reflect the internal trip capture and to account for diverted link trips. An example of a
9 diverted link trip is where someone comes from work and rather than going straight
10 home, goes to a restaurant or grocery store and then returns to their normal path and
11 goes home. Mr. Tilghman stated in each case, the EIS analysis modified the ITE
12 assessments. He noted the EIS used the same methodology for each project, but
13 applied them differently. He noted that the EIS used a higher internal capture rate on
14 the Lawson Hills project without explaining why. He stated there are other published
15 measures available and you could use a Transportation Demand Model if well
16 calibrated.

17 Mr. Tilghman stated the diverted links adjustment is important. Diverted link
18 reductions account for people making multiple trip purposes. Mr. Tilghman noted
19 that in the case of diverted link trips, rather than passing through an intersection once,
20 a vehicle passes through twice. This portion of the analysis is very location sensitive.
21 Mr. Tilghman stated the only diverted link trip analysis in the EIS is a table in the
22 appendix in the technical report that does not explain where the trips come from or go
23 to.

24 Mr. Tilghman noted that a change in location for a school site would change trip
25 distribution patterns. He also noted the EIS failed to show any offsite school
locations.

18 Mr. Tilghman explained the peak hour factor (PHF) is the hour in the a.m. or p.m.
19 which has the highest volume of traffic. He noted this is the hour traffic studies focus
20 on. Peak hour factor recognizes the unevenness of traffic within that hour. Traffic
21 comes episodically. Traffic studies are broken into 15 minutes increments. Mr.
22 Tilghman stated the peak hour factor is the total hour's volume of traffic divided by
23 the peak 15 minute volume times 4. He noted in the case of even traffic flow, the
24 PHF would end up with a ratio of 1. He further noted a 15 minute increment with
25 really traffic would create a lower ratio. Mr. Tilghman stated typical ratios for urban
and near urban situations have peak hour ratios of 0.85 -0.92. He noted the lower
peak hour ratio indicates a greater intensity of traffic which means more delay so the
LOS rating is lower.

25 Mr. Tilghman noted the PHF used here in the EIS was uniformly 0.97 or 0.98. He
stated that factor is really too high and skews the result to look better. He noted this

1 was a significant difference because the use of a factor that approaches one suggests
2 that traffic is uniformly flowing and that means severe congestion or gridlock. He
3 stated it was extremely unusual to use such a high factor and that in practice such a
4 high PHF would only be used to reflect an existing condition rather than in a
5 projection of traffic delay. Mr. Tilghman noted the default PHF value is 0.92 which
6 has been validated by the National Highway Research Program). Mr. Tilghman
7 stated the use of a high PHF impacts the LOS assessment. He noted as volumes
8 increase that factor has an ever greater influence and can result in one grade
9 degradation in the LOS factor. For example an intersection with LOS D would go to
10 LOS F.

11 Mr. Tilghman stated there were some existing intersections with a peak hour factor
12 (PHF) of 0.97. He noted PHF change over time and that a PHF approaching 1 is an
13 inappropriate assumption for all intersections in the future. He noted drivers can
14 discern the difference in delay between a LOS D and an LOS E because the ranges
15 for these classifications are broad. He noted the standard urban area PHF range from
16 0.84 to 0.94. He stated many of the study intersections are rural and rarely used now,
17 therefore even a few cars changes the ratio significantly. He testified a uniform PHF
18 of 0.97 is not reasonable. He noted, as congestion increases, the PHF goes up. He
19 stated as the PHF approaches 1, either traffic is coming in uniformly or is very
20 congested. He stated the analysis is very sensitive to the choice of PHF because the
21 PHF has a multiplying effect. He noted a very high PHF assumption has a very
22 profound effect on service volumes. He stated a high PHF is planning for congestion
23 outside the Black Diamond LOS standard. He testified he had re-run the EIS model
24 but adjusted the PHF to 0.92 and 0.95 in two modeling runs. He also corrected the
25 speed limit on SR 169 in the model from 25 mph to the existing speed limits. He
noted that in his run of the model with a PHF of 0.95, three intersections fell below
the LOS D standard for SR 169. In response to Ms. Rogers, Mr. Tilghman
acknowledged he had not re-optimized the signal timing in the Synchro model when
he made the other changes and that if he had, there might have been less predicted
impact.

19 Mr. Tilghman stated the EIS assumed all projects in the Black Diamond CIP were
20 assumed to be constructed by 2025. He noted the EIS did not contain a discussion of
21 funding mechanisms for currently unfunded projects or provide modeling of the
22 effects of project impacts if those projects are not constructed.

23 Mr. Tilghman explained that transportation modeling requires an input of cycle time.
24 The traffic signal cycle services each leg of an intersection in one complete cycle. He
25 noted the signal cycle length could be entered manually into a model or be calculated
within the model to optimize the signal cycle length. He further noted that the EIS
used the model to optimize signal cycle length. Mr. Tilghman stated the EIS model
resulted in signal cycles ranging from 90 to 150 seconds, often at adjacent
intersections. He also noted there was some variation in the signal cycles from the
EIS and that, in the case of variation, he would ask if the corridor was properly

1 sequenced. He noted the EIS did not address this issue in the text but that it was
2 addressed in the technical report.

3 Mr. Tilghman noted the traffic model LOS allows the input of pedestrian phases for
4 signals and the coding of pedestrian movement across the street which causes lanes to
5 yield. In urban areas with pedestrians those need to be accounted for. He noted in
6 the EIS, pedestrians had been allocated in the signals timing but no actual pedestrian
7 activity was factored in.

8 Mr. Tilghman noted the LOS procedures allow for heavy vehicles. He further noted
9 the EIS had percentages allocated for heavy vehicles, but did not account for heavy
10 truck traffic from mining trucks. He stated, when fully loaded, those trucks use up a
11 larger share of capacity than a regular truck or passenger car.

12 Mr. Tilghman testified one methodology the EIS should have considered was a queue
13 length analysis. He explained a queue length analysis looks at whether queues build
14 up and block driveways increasing waits at intersections on rural roads and causing
15 noise and traffic safety issues. Mr. Tilghman stated there are safety issues associated
16 with queuing because drivers may not expect to have to stop so far from the
17 intersection. There is the potential for an increase in rear end accidents. He noted
18 intersection spacing can cause gridlock if the queue is too long given the intersection
19 spacing, LOS and signal timing. He noted the study doesn't report the queue lengths
20 in the narrative, though some analysis is done at the graphical level in the technical
21 report. He further noted the information about queue length isn't in the EIS or
22 narrative of the technical report. Mr. Tilghman stated the Washington State
23 Department of Transportation (WSDOT) has asked for a queuing analysis, but none
24 was provided in the EIS. He further stated he was able to determine queue lengths by
25 analyzing an electronic copy of the EIS transportation model.

Mr. Tilghman stated the EIS did not provide much information on the impact to local
Black Diamond streets. He noted this information could only be gleaned by careful
examination of the technical report for turning motions. He stated the EIS gives a
sense of LOS for intersections, but does not discuss local street volume, character or
whether volume can be accommodated by existing roads. For example, to determine
the effect on Railroad Avenue, a decision maker would have use the technical report
to sum up turning movements and compare them to the baseline 2025 traffic
movements. He noted this example is important because it shows there will be four
times the existing PM peak hour traffic on Railroad Avenue. He stated the EIS does
not identify the magnitude of growth or compare the future volumes with the capacity
of local roads to carry those volumes. He noted that Railroad Avenue was being
reconfigured for head in angle parking and will function more like a parking lot than
a collector street. He testified the EIS does not discuss this impact. Mr. Tilghman
stated he felt Railroad Avenue is a low capacity street due to the recent parking
improvement. He stated he felt the maximum capacity this road could handle during
the PM Peak was 300 cars/hour, volumes significantly less than the projected volume

1 with trip traffic. He noted towns of 30,000 or less have very few streets with 5,000 or
2 more vehicles per day except when the main street is a state highway or is a
3 commercial district. He stated it is very rare to have high volumes on secondary
streets.

4 Mr. Tilghman explained the difference between the intersection average LOS and
5 those of the individual legs of the intersection. He noted the average sums up the
6 total delay incurred by all vehicles at the intersection. An average could be LOS D
7 while some of the individual legs might be LOS E or F. Mr. Tilghman stated the EIS
8 used intersection LOS averages without talking about individual legs. He noted the
transportation technical report had LOS worksheets for both projects that
cumulatively look at individual legs, but this information is not presented in the body
of the EIS.

9 With respect to the EIS analysis of the interchange of SR 18 and 231st Avenue north
10 of Maple Valley, Mr. Tilghman stated the EIS reviewed the eastbound ramps of the
11 interchange but not the westbound lanes. He stated, there are a number of project
12 trips that use the westbound lanes, but there is no analysis there or north of SR 18.
He noted there are over 400 PM Peak Hour project trips that are expected to go north
of those points that aren't analyzed past SR 18.

13 Mr. Tilghman stated the EIS failed to look at existing or proposed safety impacts at
14 all. He stated the EIS only narrowly accounts for the non-motorized system including
15 pedestrians, bikes and off-road vehicles. He noted that the proposal may not alter
16 existing facilities, but that in many locations no non-motorized facilities exist. He
17 stated in terms of users, impacts can be significant. He noted the EIS provided no
evaluation of whether those places are safe for walking or cycling with additional
traffic and that the adequacy of describing the existing system isn't there.

18 Mr. Tilghman also noted the EIS provided no assessment of impacts of project
19 construction on traffic mobility. He noted this would be an appropriate consideration
even at a programmatic level.

20 Mr. Tilghman stated the EIS doesn't demonstrate to what extent the proposed
21 mitigation measures will cure or partially cure the problems or whether these
measures are fiscally feasible.

22 In response to Ms. Rogers, Mr. Tilghman stated the back to back intersections were
23 Baker and Lawson in Black Diamond and a number of other places.

1 He also acknowledged that some gravel mines to not send trucks out during the PM
2 Peak Hour traffic. He noted many overlap with the AM Peak Hour, but it depends on
the distance they travel. Late return trips could affect the PM Peak Hour.

3 In response to Ms. Rogers, Mr. Tilghman stated the EIS shows increases in traffic
4 volume and delay without describing the magnitude of those changes. He stated
5 Black Diamond's LOS standard is for intersections rather than road links and that
6 intersections are analyzed as a whole, rather than by the leg of intersections. He also
acknowledged this method and the LOS of C per the Black Diamond Comprehensive
Plan is standard practice.

7 In response to Ms. Rogers, Mr. Tilghman stated more than one car waiting constitutes
8 a queue. He noted queuing should be analyzed if design is being done. He noted he
9 had examined the Synchro results for intersections within the study area and did
10 additional analysis on the intersections in Black Diamond itself. He stated the best
tool for queue analysis is SIM Traffic because it looks at intersection interactions
systemically.

11 Mr. Tilghman testified his understanding of the projected growth rate used in the EIS
12 was 30% by 2025, a figure he characterized as bold for a rural area, particularly since
13 the adopted regional housing and populations allocations are lower. He noted that if
14 this assumption had been lower, it would have resulted in lower total future volumes.
15 He stated extrapolating from recent traffic is not appropriate without looking at
16 regional land use and by assuming a bold rate of growth for background it shifts the
blame onto background traffic and makes the project trips seem smaller as a relative
percentage. He agreed with Ms. Rogers that a mitigation condition might be to
monitor regional growth over time.

17 In response to Mr. Sterbank, Mr. Tilghman agreed that an adequate EIS must be
18 reasonably thorough and does not address 100% of all possible impacts. He noted it
19 also means covering the important topics. He acknowledged a programmatic EIS
20 would not typically provide a construction design for mitigation but it would provide
21 the type of improvements that would be needed to mitigate impacts. He noted the
purpose of the EIS is to identify the appropriate type of mitigation to mitigate
impacts.

22 In response to Mr. Sterbank, Mr. Tilghman stated the city is responsible for setting
23 the scope of the EIS. He noted the consultant might participate. He agreed there
24 might be reasonable professional judgment in each stage. He stated professional
25 judgment would be used to determine which intersections should be included in the
analysis. He noted the EIS does not make choices about mitigation measures but
instead identifies impacts and then identifies mitigation needed for those impacts.

1 Mr. Tilghman noted the standard intersection delay is 90-180 seconds but they vary a
2 lot depending on the type of area. He stated there is a general relationship between
3 cycle timing and congestion and that traffic and delay are not the same. He
4 acknowledged that a signal of 90 seconds may be sufficient to give pedestrians
5 enough time to cross an intersection.

6 Mr. Tilghman testified the cumulative impacts of the project need to be analyzed at
7 the time of the programmatic EIS phase. He noted he expected to see the basis for
8 assumptions based on professional judgment.

9 In response to Mr. Bricklin's rebuttal question, Mr. Tilghman stated in the case of a
10 very large project or a very large area where the study area is many miles from one
11 end to the other and so long corridors of travel could be affected by the project, travel
12 time does become a useful indicator for the public to see in an EIS. He noted this
13 analysis is simple to perform. He noted his analysis projected a doubling of the travel
14 time to travel southbound on SR 169 in the PM Peak Hour. In response to Mr.
15 Sterbank, he acknowledged a travel time analysis was not performed for his work on
16 Snoqualmie Ridge. He noted that travel times averaging 20 mph on SR 169 would
17 reflect an urban rather than rural or suburban condition.

18 **Witness for Mr. Bricklin, Dr. Natarajan Janarthanan (transcript pages 1,350-**
19 **1,439 and 1,882-1,895)**

20 Dr. Natarajan Janarthanan works for Fehr and Peers as a transportation planning
21 engineer. He has worked in this field for 28 years. His main areas of work travel
22 demand forecasting, traffic engineering, development reviews, impact fees and
23 corridor planning. Dr. Janarthanan has a master's degree and a PhD in transportation
24 engineering from the University of Washington. He is a certified professional
25 transportation planner. He has worked for the City of Bellevue for 10 years and still
provides on-call services to Redmond, Maple Valley, Federal Way and others. His
work includes developing traffic models for many cities and analyzing impacts for
EIS. He was retained by Maple Valley to assist them with development reviews and
travel demand forecasting.

Dr. Janarthanan testified to having reviewed both MPD projects including both DEIS
and FEIS and the transportation technical reports. He stated he had also reviewed the
FEIS authors' response to the Maple Valley comment letter. Dr. Janarthanan
described a traffic demand model as a global model while a traffic operations model
is fine scale. He noted the forecasting of future background growth should use a
traffic demand model for larger projects with long build outs. He stated the use of
annual growth rates as a predictor of future growth is only appropriate for a short
term project. He noted 15-20 years means regional growth influences the local
traffic growth rate. Dr. Janarthanan testified he was concerned about the projects'
use of an annual growth percentage rather than employing land use projections to

1 determine future background growth. He stated the use of percentages for annual
2 growth based on past growth is not necessarily accurate in the long term. He stated
3 the most appropriate means for determining future background growth is a model. He
4 noted this model would have to have land use and roadway network inputs.

5 Dr. Janarthanan stated, in terms of trip generation and distribution the authors used
6 the Black Diamond model within the city and outside they used the PSRC regional
7 model. The Black Diamond model is a model that depicts roadway and land use in
8 Black Diamond. He noted the PSRC regional model differs from the city model in
9 that PSRC is very large in scale out here. Small collector arterial and residential
10 streets are not included. Dr. Janarthanan stated PSRC looks at highways and
11 freeways when they code the model. Black Diamond mostly has collector roads and
12 SR 169.

13 Dr. Janarthanan noted the Black Diamond model has more detail within the city. He
14 testified the regional model is larger with much less detail in the roadway network.
15 He noted the transportation analysis zones used in the PSRC model are the size of a
16 census tract. The Black Diamond model splits the same census tract into 5-10
17 different zones to analyze effect of different land uses more finely. He stated the
18 Black Diamond model is more specific to the local land use and road network.

19 Dr. Janarthanan stated for assessing Maple Valley impacts, the FEIS used the PSRC
20 model and not the Maple Valley model. He stated he was concerned about this
21 because of the zone system and trip distribution pattern the FEIS used from the PSRC
22 model. He contended, if Maple Valley modeling information had been used,
23 different forecasts would have resulted on Maple Valley roadways. He testified he
24 had used the Maple Valley model to simulate where project trips would go and found
25 a different result than that of the FEIS.

Dr. Janarthanan stated his run of the Maple Valley model showed a significantly
higher number of trips on SR 169 than the FEIS. He noted several locations where
use of the Maple Valley model resulted in much higher traffic than demonstrated in
the FEIS (Exhibit H3). He stated the use of the PSRC model underestimated trips on
SR 169 equivalent to the impacts of a 550 household subdivision.

Dr. Janarthanan testified the City of Maple Valley transportation model was
developed for their Comprehensive Plan process in 2005. He has been working with
the model since 2007. He testified the Maple Valley model has been refined with
updated land uses and re-validated to simulate existing conditions with the 2007
traffic counts. He noted a validated model should be able to simulate the same
number of trips on the roadways as the actual traffic counts. He noted if the model
doesn't match existing counts, his firm calibrates it to find the reason the model isn't
accurate. For example they may not have coded all the street capacities or there is

1 land use information missing. He noted, once the model matches existing conditions,
2 we can be confident in our predictions.

3 Dr. Janarthanan noted the Maple Valley model covers an area all the way to south of
4 Black Diamond, to Kent close to I-5 on the west side, to the north and the east of the
5 Maple Valley city limits another mile or more. He noted this model was available to
6 the authors of the EIS, if they'd asked for it. He acknowledged the City of Maple
7 Valley comment letter on the DEIS did not suggest the modelers of the EIS use the
8 Maple Valley model (Maple Valley Comment Letter, Villages FEIS, Appendix R and
9 Page 249). He testified the FEIS should have used the City of Maple Valley model
10 rather than the PSRC model because it better represents the actual land uses and
11 roadway network and therefore, better captures local impacts than a regional model.
12 In response to Mr. Sterbank, Dr. Janarthanan stated the PSRC model has been
13 calibrated and validated for major freeways and arterials. It's approved for use by
14 federal agencies for transit and highway work but only after re-validation at the local
15 level.

16 Dr. Janarthanan stated he had found some the parameters assumed in the FEIS
17 Synchro model were incorrect. He noted he found no analysis of queues and that this
18 information should be important for decision makers to reasonably assess impacts.
19 He also noted that while the standard practice is to show the average LOS for an
20 intersection, it is important to show significant delays on individual legs of the
21 intersection. He also noted the analysis didn't extend north of SR 18 on SR when a
22 significant amount of project trips go in that direction.

23 In response to Mr. Sterbank, Dr. Janarthanan testified his analysis was different
24 because of the number of trips he found were different. He noted with a project of
25 this size, the difference of a few percentages in the distribution of trips can makes a
huge impact on the roadways.

26 Dr. Janarthanan stated he created the model for the Black Diamond Comprehensive
27 Plan. He noted at the time he had suggested a higher internal capture than assumed in
28 the FEIS, but the project is very different now than when he did the model for the
29 Comprehensive Plan.

30 Dr. Janarthanan testified the zone structure and roadway structure is finer in the
31 Maple Valley model than the PSRC model. For example, all of Black Diamond is
32 one census tract. On the PSRC model there is only one center so all the internal trips
33 in Black Diamond are lost or not counted in PSRC model. He noted if the same zone
34 is broken into 10 smaller zones you can capture all the trips on the roadway much
35 better than having one huge zone. He further noted smaller units have local land
uses. A large unit model like the PSRC model doesn't show the trips within a single
unit. He stated in transportation modeling, trips are only captured between zones. He
noted the Villages and Lawson Hills are each one census tracts and any internal trips

1 within those tracts would be lost with a large scale model. He also noted bigger zone
2 systems differ in where they send the trips and by what route. He stated this area is
3 not well validated by PSRC. He noted EIS used the Black Diamond model to
4 distribute trips within the city limits and treated anything outside as an external trip.
Dr. Janarthanan stated he thought one single model should be used to look at all of
these trips.

5 Dr. Janarthanan discussed the Maple Valley model and the assumptions and inputs he
6 used. He also provided a lengthy list of impacts and required mitigations from the
7 project in Maple Valley. He noted Maple Valley's request was to have Yarrow Bay
8 pay the pro-rata share of the required mitigation for the project build out in 2025 to
meet the City of Maple Valley's LOS standard, not above that standard regardless of
how the intersection currently functions.

9 **Witness for Mr. Bricklin, Mr. Ramin Pazooki (transcript pages 1,439-1,471)**

10 Mr. Pazooki has worked for WSDOT for 24 years. He is the Local Agency and Local
11 Services Manager. He has experience in permitting, transportation and building
12 process at the DOT. He holds a civil engineering degree and a MBA. He is in
13 charge of a unit that reviews all local agency projects in King County. Mr. Pazooki's
14 role in this project was to reassign the project and route it internally within the DOT.
He collected comments and send letters for comment as part of the DEIS agency
comment period (Villages DEIS, WSDOT comment letter and Page 247-8).

15 Mr. Pazooki stated WSDOT had commented on the volume/capacity and required a
16 V/C ration of 1 or less be met. He noted the standard report for LOS is the average
17 for intersections, not for each movement. He stated the intersection average doesn't
18 reveal problem at individual legs but the V/C ratio does. He testified WSDOT had
19 requested the EIS expand the analysis to include that information from a SIM Traffic
20 output for each leg of each intersection in the study area. He noted WSDOT typically
21 requests, and receives, this type of information for this type of project EIS. Mr.
22 Pazooki stated the FEIS author response to this request was that this is not a SEPA
23 process comment, but rather an issue for the MPD permit process. Mr. Pazooki stated
24 WSDOT disagreed and felt that this issue is properly handled in the EIS. He
25 acknowledged that some things should be postponed to the MPD such as details of
design and mitigation but the EIS should have the correct analysis and correct
assumptions. He noted basic analysis and assumptions should be done to reveal any
problems.

Mr. Pazooki stated a traffic queuing analysis must be added to the reports
demonstrating the worst of leg of the intersection. He also stated the 95th queue
length must be reported because it is essential for intersections. He noted the
interaction of closely spaced intersections means you could have overlap of queues
such as on Roberts and Auburn-Black Diamond Road. He further noted the analysis

1 could show back to back left turns that each needs 400 feet of lane length. He stated
2 the analysis assumes the 400 feet for each of them is there, but if there is overlap then
3 it stops the thru lane. He noted you can't get that information by just looking at
4 overall average intersection LOS. He stated the EIS is missing an essential queue
analysis. He noted the authors responded by saying it isn't a SEPA issue, but he
believes this is important information for the EIS document itself.

5 Mr. Pazooki testified the EIS talks about a monitoring plan for different phases of the
6 project. He noted WSDOT wants to know who pays for mitigation, what type it is
7 and how often the monitoring plan will be conducted. He stated WSDOT didn't
appeal FEIS and weren't aware the appeal period was running. He testified WSDOT
only became aware of the appeal period after it expired.

8 Mr. Pazooki stated WSDOT was concerned that mitigation would lag impact. He
9 also noted the FEIS assumed that SR 169 would be 4 lanes without elaborating who's
10 going to do it. SR 169 is a state road. He state the monitoring plan doesn't address
11 these basic assumptions. He stated WSDOT doesn't have funding for some of the
12 things that the FEIS assumes will be built. In response to Mr. Sterbank, Mr. Pazooki
13 acknowledged WSDOT understands that mitigation and clarification will happen in
14 the MPD permit process and that any impact will be mitigated per law. He also noted
15 WSDOT participated in the scoping process and provided input on what study should
16 look like. He stated he understood that with a programmatic EIS there will be
17 subsequent environmental impact analysis with each phase of the project. He noted
MPD approval looks at whether information has been provided. He stated WSDOT
wanted to see more accurate assumptions and analysis like V/C and queuing in EIS
before we get to MPD. He noted these issues needed to deal with first rather than
later. Mr. Pazooki stated this is more than just an issue of professional judgment,
WSDOT felt the EIS information was incomplete for a thorough analysis and they
asked for more information.

18 **Witness for the City, Mr. John Perlic (transcript pages 1,472-1,522, 1,526-1,603,**
19 **2,467-2,548 and 2,664-2,741)**

20 Mr. Perlic is the transportation division manager in the Bellevue office of Parametrix.
21 He has worked in this position or as a project manager for the last 16 years. Mr.
22 Perlic holds a professional engineers license in the State of Washington and has a
23 master's degree in civil engineering with an emphasis on transportation. Prior to
24 joining Parametrix, Mr. Perlic worked in transportation planning and engineering for
25 26 years. He worked with traffic consulting firms and the New Jersey DOT. At
Parametrix, Mr. Perlic manages a division of about 30 staff that practice in
transportation design, transportation planning and traffic engineering, landscape
architecture with streetscapes, and environmental planning. Mr. Perlic has prepared
EIS throughout his career for large mixed use development projects including Port
Blakely and West Park in Bremerton. He has worked on projects that combine
residential, retail and employment as well as regional shopping malls such as the

1 Auburn Supermall and the Redmond Town Center. Mr. Perlic managed the
2 programmatic EIS for the Sound Transit Regional Plan and the EIS for Puget Sound
3 Regional Council's Transportation 2040. He has worked on both plan level and
4 project level environmental analyses.

5 Mr. Perlic testified programmatic level EIS are prepared at a level of detail that is
6 lesser than project level EIS. He noted programmatic level EIS involve planning
7 decisions that are to be made later such as in long range plans, comprehensive plans
8 or master plans. He noted for a project level EIS, his team gets into greater detail,
9 such as looking at turning movements to be sure turn lanes are sized appropriately
10 and to mitigate impacts on site and off. He stated the Planned Action EIS was added
11 to the state code several years ago for a subarea or small area of the city to evaluate
12 impacts of an area rather than a specific project. A Planned Action EIS subsequently
13 allows development to occur that complies with conditions. He testified his
14 understanding was that this was a programmatic non- project EIS. He stated he
15 understood that site specific analysis are not generally required for a programmatic
16 EIS and that there is some leeway in the scope of the analysis but that, in general,
17 programmatic EIS do not analyze site specific impacts.

18 Mr. Perlic noted the Washington Administrative Code for the SEPA code as
19 administered by the Department of Ecology discusses the length, readability and
20 format of an EIS. WAC 197-11-400 (3) states an EIS shall be concise, clear, to the
21 point and supported by technical reports. The EIS should be a short document
22 containing summaries of the technical reports. EIS for Villages and LH have
23 references to being reader friendly. Mr. Perlic noted the WSDOT reader friendly
24 guidebook for EIS was started by a Parametrix EIS for the Alaska Way Viaduct. He
25 noted that document won several awards. He stated for this project, Parametrix used
the WSDOT template. He noted the EIS document was set up to purposely highlight
impacts and mitigation and to keep it as clear and concise as possible. He stated the
document brings out important information for decision makers in the EIS narrative
and provides technical information in the appendices. Mr. Perlic stated he believed
the FEIS provided decision makers with the information the needed to understand the
traffic impacts of the project.

Mr. Perlic stated that legal standard for EIS adequacy is to evaluate existing
conditions, determine the impacts of project and identify mitigation measures to
mitigate significant impacts from the project. He noted this does not require an
exhaustive study of all impacts. He noted the standard is a reasonably thorough
analysis of probable adverse environmental impacts based on professional judgment
and discretion. He stated the word 'probable' suggests a more narrow range of
impacts and that 'significant' requires professional discretion.

Mr. Perlic noted Parametrix was retained by the City of Black Diamond as an
independent third party consulting firm to write the EIS. He stated they started by
performing a scoping process for all environmental elements. He testified Parametrix

1 held two scoping meetings with surrounding jurisdictions include WSDOT, Black
2 Diamond, Maple Valley, Covington, Enumclaw and Auburn. He stated King County
3 was invited but didn't attend. Mr. Perlic stated the purpose of the scoping meetings
4 was to discuss the extent of study area and define the assumptions for the traffic
5 analysis. He noted the meetings were an open conversation about the project. He
6 noted attendees to the transportation study meeting included representatives from
7 WSDOT and staff from the City of Maple Valley.

8 Mr. Perlic noted that after the two scoping meetings, Parametrix spoke with each
9 jurisdiction to talk about which intersections should be included in the transportation
10 analysis. He stated they had not yet put their model together at that point. He
11 testified Parametrix had individual meetings with WSDOT, Maple Valley, Covington
12 and Auburn and made several attempted to meet with Enumclaw. Enumclaw
13 eventually declined to meet. Mr. Perlic stated at each of three city meetings, they
14 talked about intersections locations for analysis and accepted proposed intersections
15 for study from the jurisdictions. He noted they also discussed assumptions for trip
16 generation, pass-by trips, trip distribution and traffic assignment at subsequent
17 individual meetings with the cities and WSDOT. He noted the goal of the scoping
18 meetings was to walk away with a clear scope for the analysis. He stated after these
19 scoping meetings, Parametrix felt they had concurrence on the scope, number of
20 intersections for analysis and the modeling assumptions. Mr. Perlic noted the
21 scoping process was both extensive and unprecedented, even for a large project. He
22 stated the normal process is to have one agency scoping meeting covering all of the
23 project impact areas, rather than to have multiple meetings focusing on one subject.

24 Mr. Perlic stated after the scoping meetings, they had completed the modeling of trip
25 distribution assignments. They had existing traffic volume at intersections in Black
Diamond and the others requested by city. He noted it is standard practice to hire
someone to get peak hour turning movement traffic counts and intersection turning
movement counts. He stated Parametric obtained the information for all 48
intersections and/or used recent counts from Covington. He noted in all cases, all the
traffic counts were 2007 or 2008 existing base counts. He testified, when Parametrix
met with Maple Valley, they shared with them that 20% of trip distribution would go
to Maple Valley and 20% would go west. He noted Parametrix received no criticism
or concern from Maple Valley regarding trip distribution at that time.

Mr. Perlic testified his team used Synchro to calculate the existing LOS in order to
determine the existing baseline. His team then calculated the future background
traffic in 2025 without the projects' contributions. He stated his team used a 1.5%
annual growth rate except for on SR 516, where they used 1%. He noted his team
looked at the actual historical growth rates of traffic on primarily state highways. He
further noted a growth rate of 1-1.5% is generally consistent with growth they've seen
on the highways. He stated they used 5 years of data to determine the historical
trends. He also stated Parametrix looked at the PSRC traffic forecasts for the study
area on the study area highways. He stated Parametrix used the PSRC forecasts to

1 look backward and forward in time to arrive at a reasonable growth rate for future
2 background traffic growth projections. He noted this is a common approach for
development projects.

3 Mr. Perlic stated Parametrix annualized the PSRC growth because the model goes to
4 2030. He noted they lowered the projected growth rate on SR 516 because historical
5 data and the PSRC projection seemed lower than the roads. He noted he felt the
6 growth rates Parametrix used were in the range of growth rates they could reasonably
7 use. He stated Parametrix knew they might be criticized for setting the growth rate
too high because of the effects on the proportional background traffic compared to the
project impact. He noted Parametrix tried for a reasonable average supported by
historical growth and the PSRC model.

8 Mr. Perlic noted his team analyzed LOS at all intersections to establish a baseline.
9 Then they did traffic demand modeling. He noted they performed a cumulative
10 analysis that combines the existing intersection LOS with the traffic demand
11 modeling. Mr. Perlic stated Parametrix performed trip generation modeling based on
the ITE trip generation manual that is standard in industry. He noted every
jurisdiction relies on the ITE manual except when there is unusual use. He noted in
12 the case of a non-standard project, the analysis must be an independent study. He
noted the ITE handbook contained no specified internal trip capture rate schools so
13 Parametrix used a 30% internal trip capture for that use. He noted they assumed 30%
of school trips come from residential dwellings inside project and that he feels this is
14 a very conservative use. He noted the model assumed the schools were inside the
project and trips start and end there. Mr. Perlic testified the analysis assumed an
15 internal trip capture rate of 11% for the Villages and 22% for Lawson Hills. He
noted the figures are different because there is a different mix of uses in each project.
16 He noted the FEIS predicts a conservatively high trip generation. He stated these
assumptions are conservatively low and based on the accepted field practice of using
17 the ITE handbook.

18
19 Mr. Perlic stated Parametric tried to be conservatively low on pass-by trips because
they lower the total trips. He noted Parametrix didn't want to underestimate trips and
20 impacts on the street and intersection network. He stated Parametrix assumed 10% of
trips would be diverted or pass-by trips for each category of retail uses. He testified
21 this assumption is conservatively low for that type of use.

22 Mr. Perlic stated the analysis used the PSRC model for trip distribution. He stated the
23 PSRC model is the most appropriate modeling source because it's a regional model.
Mr. Perlic agreed the transportation analysis zones weren't as detailed as a local
24 model, but noted this model is the full regional model that would better capture the
more regional nature of the trips. He noted at the project level of analysis, the
25 applicant might change the scale of the model. Mr. Perlic stated Maple Valley never
mentioned using their model and they had not received any comment from anyone the

1 use of the PSRC model. He noted that even with comments, he would likely have
2 used the PSRC model anyway.

3 Mr. Perlic stated that when Dr. Janarthanan ran his model, he had changed the trip
4 distribution figures from 20% going to Maple Valley to 25% going to Maple Valley.
5 He also noted figures from Dr. Janarthanan's testimony that he felt were inaccurate.
6 Mr. Perlic noted the difference in trips going to Maple Valley from the FEIS analysis
7 versus the Maple Valley analysis was in the order of 5% of the total trip distribution
8 which resulted in Maple Valley calculating 25% more project trips coming to Maple
9 Valley. He stated he believed the FEIS trip distribution is very reasonable. Mr.
10 Perlic noted the Maple Valley model cuts off external trips outside of Maple Valley
11 and that those external links feeding the model can be a source of significant error.
12 He acknowledged the regional model is at a grosser scale than the Maple Valley
13 model but stated he did not believe a finer grained analysis was necessary.

14 Mr. Perlic noted the final step in the model is to perform trip assignment. He noted
15 the models give trip assignment, factoring in congestion. Trips are assigned such that
16 they minimize travel time. Mr. Perlic stated his team has performed travel time runs
17 in the field by driving from Point A to Point B via various routes and noting how
18 much time each route took. He noted his team drove the roads and checked drive
19 times including speed limits and signals. He stated often times there was only one
20 viable route. Mr. Perlic stated the next step was to track project trips through each
21 route and an engineer then hand assigned intersection volumes for each movement of
22 each study area intersection. He noted the analysis then runs the with-projects trips
23 to arrive at with-project PM Peak Hour LOS at each intersection.

24 Mr. Perlic testified that once they had the PM Peak Hour LOS by intersection for
25 background plus with-project trips, they compared those to the LOS standards in each
jurisdiction. He noted the LOS analysis was based on the overall intersections LOS,
not the individual leg in all cases. Each jurisdiction has its own LOS standard. Mr.
Perlic noted in the case where the projected LOS fell below the overall intersections
LOS standard, Parametrix performed a mitigation analysis. This analysis looked at
reasonable mitigation scenarios such as adding turn lanes and through lanes in an
iterative process that added mitigation measures until the intersection was projected
to meet the LOS standard.

Mr. Perlic noted 28 of 46 intersections require mitigation in the cumulative analysis.
He noted his firm analyzed the average intersections LOS because of this is the
jurisdictions each have an overall LOS standards rather than one based on individual
legs or movements and because this level of detail is all that's necessary during a
programmatic EIS. He stated to his knowledge no jurisdictions require an analysis of
individual intersection leg LOS as part of a concurrency or SEPA analysis. He noted
that issues such as queue lengths might be addressed during the project level
environmental review. He stated some mitigation measures make no sense to design
this early. He noted when an intersection with project traffic is identified as

1 requiring mitigation, they look at which movements or individual legs are operating
2 at lower LOS and then design mitigation to bring the whole intersection back to an
3 acceptable LOS. In response to Mr. Bricklin, Mr. Perlic agreed that a failing leg of
4 an intersection that did not result in the entire intersection failure might be shown in
the technical report, but was not discussed in either the main body of the EIS or in the
narrative of the technical report.

5 Mr. Perlic noted the volume over capacity ratios and the queue information by
6 movement are represented in the LOS calculation sheets and in the technical report.
7 He stated he was not aware of any queue that might cause a problem at a particular
intersections or roadway segment.

8 Mr. Perlic testified the FEIS used a standard format to show mitigation measures and
9 indicated information such as where signals or other intersection improvements are
10 needed. He noted again that it is premature to provide specific design for mitigation
11 measures at the programmatic EIS phase. He stated the mitigation information in the
EIS does note if the improvements are already listed in an agencies plans. He noted
a programmatic EIS does not address who is responsible for funding these mitigation
improvements.

12 In response to the Peak Hour Factor (PHF) testimony from Mr. Tilghman, Mr. Perlic
13 noted he put together a rebuttal exhibit (Exhibit H4) showing the existing PHF at all
14 current intersections. He noted 6 of the 39 intersections have an existing PHF of 0.92
15 or higher. He also noted another 7 of the study area intersections are not yet built.
16 He further stated 85% of the existing intersections are at 0.92 or higher right now. He
17 stated congested urban intersections are almost always above a PHF of 0.90-0.98. He
stated a PHF this high indicates almost continuous traffic flow that is reflective of
congestion. He noted the PHF adjustment is the peak 15 minute LOS.

18 Mr. Perlic testified that for projecting long term traffic growth, a rule of thumb is to
19 increase the PHF by 0.05. For short term traffic growth, the adjustment could be a
20 0.05 to 0.1. He noted that PHF is variable, but they had used a 0.97 PHF across the
board as a planning assumption. He stated the assumed increase of 0.05 of peak hour
factor is consistent with standard practice and it was reasonable to use a PHF of 0.97.

21 In response to Mr. Tilghman's testimony that the signal cycle length was too long,
22 Mr. Perlic stated he disagreed and that the signal cycle timing was very reasonable.
23 He noted as traffic volumes increase, so do signal cycle lengths in order to move
24 traffic through most efficiently. He noted Synchro optimizes for the most efficient
25 cycle length. In many cases, Mr. Perlic stated, the FEIS analysis resulted in a signal
cycle of 90-150 seconds. He stated this signal cycle length is very typical. Mr. Perlic
further noted many of the signals in the study area currently have cycle lengths in or
above that range.

1 In response to Mr. Tilghman's testimony regarding the inability of Railroad Avenue
2 to carry the proposed traffic, Mr. Perlic stated he disagreed and that any two lane
3 street has a capacity that can carry 10,000-18,000 cars/day. Mr. Perlic testified that
4 even with the on-street parking, Railroad Avenue should be able carry a get daily
5 capacity of 10,000 cars. He stated Railroad Avenue will easily handle the projected
6 PM peak hour traffic and that the projected daily traffic is in the low end of what
7 would be expected on a collector street. Railroad Avenue is a designated collector in
8 the Black Diamond Comprehensive Plan. He also noted that there are many other
9 examples of small towns with similar traffic situations that still have a high quality
10 look and feel. In response to Mr. Bricklin, Mr. Perlic stated he felt in the future,
11 Railroad Avenue would function more like a main street such as Main Street in
12 Sumner or SR 202 in North Bend.

13 In response to Mr. Tilghman's testimony regarding pedestrian crossing, Mr. Perlic
14 stated the expected low level of entering pedestrian volumes would not affect the
15 LOS service analysis whatsoever. He stated pedestrians could go at the existing
16 green signal and have enough time to cross. He noted the only time where pedestrian
17 volumes affect the LOS is when there are 200-300 pedestrians crossing in
18 intersections in an hour such as in a big city or a college campus. He also noted there
19 was a discussion of pedestrian and bicycle needs in the Villages EIS. He stated the
20 project design calls for pedestrian and bicycle routes and connection to reduce the
21 need for vehicular traffic within the projects. He suggested later environmental
22 review provide more specific non-motorized analysis outside of the MPD boundaries
23 at important intersection for bicycles and pedestrians.

24 Mr. Perlic noted in the scoping meetings pedestrians and bicycle impacts never came
25 up. He also stated this impact is better addressed at the project level. And, he stated
there is no standard bicycle or pedestrian trip generation resource to consult. Mr.
Perlic noted accidents between vehicles and pedestrians or bicycles are unfortunate
but random. He stated in most cities there is not a consistent pattern of locations
where they occur, so it's hard to find solutions. He stated this type of accident is hard
to predict and therefore, it's hard to establish any mitigation to address them. Mr.
Perlic stated these types of accidents could have been studied in the FEIS, but that the
information would not lead to any specific mitigation strategies to deal with them.

21 Mr. Perlic stated he felt the analysis at SR 18 was adequate, but that later project level
22 review might find there is more mitigation was needed for the ramp at 231st. He
23 stated the FEIS never considered a direct connection to Green Valley Road from the
24 project. He noted a small amount of project trips do go to SE Green Valley Road,
25 though he did not see these as constituting a significant impact. He also stated he did
not think that project trips would use Plass Road because it is a narrow, gravel road
with pot holes and a very low speed limit paralleling a 50 mph highway.

In response to Mr. Pazooki's testimony, Mr. Perlic stated the updated language in the
FEIS in response to the WSDOT comments on the DEIS addressed Mr. Pazooki's

1 concerns. He noted mitigation would trigger at one letter grade higher than the
2 existing LOS to mitigate impacts before they were reached.

3 Mr. Perlic stated he believed the FEIS is reasonable and conservative analysis based
4 on solid regional model. He noted during this EIS Parametrix did extensive
5 quantitative analysis and scoping way beyond anything they've ever done for a
6 programmatic EIS before.

7 In response to Mr. Bricklin's cross examination, Mr. Perlic stated the EIS ended up
8 primarily using the PSRC model but not exclusively. He stated they had needed more
9 detailed information in the Black Diamond model for localized trip distribution,
10 attractors and roadways. He stated the use of the Black Diamond didn't stop them
11 from using the PSRC model. He acknowledged they could have included the Maple
12 Valley model as well.

13 Mr. Perlic stated the safety impacts are somewhat mitigated by all of the required
14 improvements. He stated information about safety was not critically important for
15 decision makers to rely upon. He further stated safety and accident history
16 information would be more appropriately addressed at a project level review. He
17 noted as a result of traffic increases from the project one would expect that vehicle to
18 vehicle accidents would increase at a commensurate rate to traffic growth. He
19 acknowledged there could also be less predictably accidents to pedestrian and
20 bicycles. He further acknowledged there may be safety impacts before mitigation and
21 that there was no discussion of safety issues in the main body of the EIS, nor a
22 discussion of the effect of the proposed mitigation improvements on safety.

23 In response to Mr. Bricklin's question regarding queue lengths, Mr. Perlic stated he
24 can't say that Parametrix did an exhaustive look at queues at every intersections, but
25 they did look at them in Covington because that came up at a scoping meeting. He
noted the environmental review process is a long one from the scoping to the FEIS
and sometimes new information that's relevant to the analysis comes out during the
process. He noted the FEIS analysis can consider comments and new info received
in relation to the technical report or DEIS.

In response to Mr. Bricklin, Mr. Perlic stated that the proposed schools were included
in the trip generation portion of the analysis and that the schools were assumed to be
within the project site. He acknowledged the FEIS transportation analysis did not
evaluate off site school locations. He further acknowledged he was not aware the
City and the Enumclaw School District were engaged in long negotiations to site the
schools off site.

In response to Mr. Bricklin, Mr. Perlic stated he had evaluated the overall
reasonableness of the trip distributions from the use of the PSRC model. He
acknowledged that he did not know for sure if the PSRC model had been validated

1 for use in this kind of specific project and in this area. He noted the PSRC model is
2 validated regionally rather than area by area. He acknowledged Parametrix had not
3 gone through any independent validation because they had no reason to believe the
4 model given to them by the PSRC was not already validated. He stated this is a
5 regional application of a regional model. Mr. Perlic stated they made sure the
6 projections looked reasonable with the PRSC model but did not validate the actual
7 traffic flow to compare with current conditions. He also stated Parametrix did not
8 perform a check to see if the PM peak hour traffic flow in 2025 flows south on SR
9 169, though he acknowledged around 60-70% of traffic would be expected to be
10 flowing southbound at that time of day.

11 Mr. Perlic acknowledged that the FEIS did not include an analysis or disclosure of
12 how much longer it would take to get from Black Diamond to Maple Valley or Black
13 Diamond to Kent with the project trips. He noted that type of analysis is not usually
14 reported in a review of this kind. He did agree this could be more meaningful
15 information to the lay person than the level of service analysis.

16 Mr. Perlic noted that the specific design considerations and right of way acquisition
17 details were not examined as part of the FEIS and stated those issues would be more
18 appropriately handled as part of a project level EIS.

19 3. Schools

20 Witness for Mr. Clifford, Mike Nelson (transcript pages 849-894)

21 Mike Nelson is currently the superintendent of the Enumclaw School District and has
22 been for just over 3 years. He started his career as a teacher, then advanced through
23 the positions of principal and director of curriculum. He served as the school district's
24 assistant superintendent for 7½ years before becoming superintendent. Mr. Nelson
25 stated that the Enumclaw School District has been working on a schools mitigation
agreement with the city and the applicant, negotiations for which began in August
2006 with an informal conversation and meeting that also included former
superintendent Jarvis. Mr. Nelson recalled that the school district commented on the
draft environmental impact statement, but he didn't remember the due date for the
comments nor the period of extension. He indicated that the district's comments were
submitted in written form but that he has not personally seen the comments in the
DEIS.

Mr. Nelson recalled that he made a presentation on October 26 to the Enumclaw
school board during a meeting of the Black Diamond city council and the school
board held at Black Diamond Elementary School. In response to a comment from a
member of the public at that meeting, the applicant spoke about a particular project.
After being asked about the notice prepared by the city in which there is a statement
that there would be no public testimony at the October 26 meeting, Mr. Nelson

1 indicated he was not aware of the city's public comment or notice. He stated that the
2 school district published a notice regarding a joint meeting of the city council and
3 school board on October 26. Mr. Nelson noted that the school district held two
4 additional public meetings on November 5 and 12. The district provided the public
with handouts that included maps on which sites of schools were identified for the
project area.

5 Mr. Nelson was asked to review Exhibit 2-4, a map which appeared between pages
6 2-19 and 2-11 in the DEIS. He identified four school sites on the DEIS map — two
7 are adjacent. On FEIS Exhibit 2-3, page 2-7 in the Villages Master Plan, in the middle
8 of the page, he pointed out one school site that in the DEIS appeared to be two sites
with a dividing road. Mr. Nelson stated that to his knowledge even though the map
shows the site as one piece, it represents two schools.

9 Mr. Nelson reviewed a public handout from one of the school board meetings, which
10 is identified as Exhibit 30 (Wheeler), an attachment to the city's tri-party agreement
11 (city exhibit), and Bortleson 15. In comparing the map provided by the school district,
12 which includes The Villages and Lawson Hills, to the map in the DEIS, Mr. Nelson
13 noted a difference in the number of school sites. He stated that the map presented in
14 the school district's meetings showed seven school sites — one high school, two
15 middle schools, and four elementary schools — while the DEIS showed four schools
16 on three sites. Mr. Nelson indicated that the two-school site is larger on the school
17 district map than on the DEIS map and that the school district map shows a different
18 parcel than is shown in the DEIS. However, he contends that the parcels on the Black
19 Diamond school sites map is the same as was exhibited to the public in October,
20 wherein the school district represented to the public that they had 37 usable acres. On
21 the map, middle school Site B has 20 acres. Mr. Nelson stated that he read the FEIS,
22 not the DEIS, but that the Site B middle school is not mentioned in either FEIS (for
23 The Villages or Lawson Hills). Mr. Nelson confirmed that the 35-acre high school
24 site is shown on the district's maps as being in the northwest portion of The Villages
25 complex, but again this site is not included in the two FEIS documents. He stated that
the district is planning for 1200 to 1300 students at the high school, along with a
baseball field and other facilities, but he doesn't know exactly what without the
design process taking place. Although lighting for a high school is more intense than
for a middle school, high school lighting isn't in the FEIS for either project.

Per Mr. Nelson, the Enumclaw School District was planning for seven school sites
during the negotiation process. The district looks at numbers and generation rates to
determine the number of schools needed and combines that information with
information designed into the district's capital facilities plan, thus arriving at the 421
model of seven [schools]. He pointed out that locating school facilities, particularly
for athletics, at the regional park was a joint use possibility, but he doesn't remember
seeing a discussion of that option in the FEIS or the DEIS.

1 Mr. Nelson stated that the school district had a basic understanding of the school sites
2 in 2009, with K-8 sites identified in April/May 2009 and the high school site in the
3 upper northwest section of The Villages identified in August/September 2009. The
4 school district identified to the public 92 acres of siting for schools that were not fully
5 represented in the FEIS and DEIS. Mr. Nelson indicated that the sites of the proposed
6 four elementary schools were not on the DEIS maps. District-prepared maps were
7 displayed on boards at the October 26 meeting and were available individually on the
8 district's website thereafter and at the public meeting held November 5. Mr. Nelson
9 confirmed that packets are prepared for board members in advance of meetings, with
10 maps of school sites provided to board members in advance of the October 26
11 meeting.

12 Mr. Nelson said that as is the case when negotiations are in process, the mitigation
13 agreement was discussed in executive session with the school board, probably for the
14 first time in late August/September. The school district didn't make maps available to
15 the public prior to October 8, but did during the public rollout of the entire agreement
16 on October 26.

17 On middle school Site B, Mr. Nelson expressed his awareness of the location of the
18 site in relation to the urban growth boundary, as well as the location of two middle
19 schools and one elementary school which are outside that boundary. Middle school
20 Site A includes unusable acreage, which may be designated for a retention pond or a
21 wetland, but there has been no discussion of how or if that might be used.

22 On page 2-3 of Exhibit 17, email from September 25, Mr. Nelson identified that the
23 Enumclaw attorney was an addressee with subject matter referencing edits to the
24 comprehensive school mitigation agreement. Mr. Nelson explained that there were a
25 lot of editing processes and the district was not ready to go public and firm up the
final sites until late August, early September 2009. He stated that the last time a
school site was moved was the high school in August 2009; none of the parties
moved any of the proposed school sites after August 28, 2009. On the map
constituting Exhibit 3-25, The Villages DEIS, page 3-64, Mr. Nelson identified a
pond somewhere near the eastern border of middle school Site B, but he was unsure
of the map's scale and the distance from the middle school site to The Villages. He
stated that he did not know the location of the road that would access middle school
Site B, nor did he know whether the information was contained in the EIS documents.

26 In answering whether he remembered the November 5 meeting when this map was
27 first produced, Mr. Nelson answered in the affirmative that individual maps were
28 provided. He recalled that at the November 5 meeting a question was asked about the
29 setbacks on the sites. During the meeting, an attorney for the applicant answered that
30 the school's front on Southeast Green Valley Road was set back 30 feet from the
31 road.

1 Mr. Nelson stated that he had discussed with Yarrow Bay the desire not to have direct
2 access to Green Valley Road and that it is his understanding that the plan is to never
have any direct access to that road.

3 Mr. Nelson commented that the Enumclaw School District held two public meetings
4 regarding the school mitigation agreement following the joint agreement. The district
5 invited the public to share their views and ask questions. He stated that all school sites
6 are subject to later due diligence and could therefore change. Mr. Nelson indicated
7 that the district does not build schools until sufficient numbers of students have
8 moved into the district, at which time the school district has to pursue permits and
funding must be available to build. The Enumclaw School District, not Yarrow Bay,
has the schools, and the district has an agreement that school sites will be available in
the city if not in the county.

9 Mr. Nelson confirmed his familiarity with the student generation analysis in the DEIS
10 and his belief that the analysis was adequate. When asked if schools would even be
11 considered if there were no Yarrow Bay projects, Mr. Nelson answered that if there
were no demand, there would be no schools built. He indicated that schools cannot be
built without bonds and state match money.

12 Mr. Nelson confirmed that there was no public comment taken the October 26
13 meeting, but that there were two public hearings held in November, with no
14 scheduled meeting canceled. There was anticipated action by the school board that
was subsequently canceled.

15 **4. Water**

16 **Witness for Mr. Bricklin, Rob Zisette (transcript pages 69-112 and 3,591-3,642)**

17 Mr. Zisette has worked for Herrera Environmental Consultants for 30 years. He is a
18 water quality specialist, storm water scientist and limnologist. Limnology is the study
19 of lakes. Mr. Zisette started studying lakes in 1979. He attended graduate school at
20 the University of Washington. His thesis was on lakes. Mr. Zisette has prepared
21 environmental impact statements, master planned development permits, and has
22 monitored water quality baseline conditions and impacts. He worked on the Issaquah
23 Highlands master planned development. He was the principle in charge of the EIS
for Issaquah Highlands. He also worked on Timberland, Lakeland Ridge and
Redmond Ridge.

24 Mr. Zisette noted Lake Sawyer behaves and responds to perturbations in very similar
25 ways to other lakes. Mr. Zisette stated most of his work is how to manage water
quality to limit algae growth due to phosphorus. He noted phosphorus stratifies
annual during the summer. He also noted summer algae and microbes use nutrients
from the winter cycle. When that happens, there is limited oxygen at the bottom of

1 the lake. This triggers a chemical reaction in the sediments releasing more
2 phosphorus. Algae feed on phosphorus. With fall temperatures, the lake layers mix.
3 This causes an algae bloom from internal eroding of phosphorus. These
4 cyanobacteria – algae blooms – release toxins and result in closures of lakes for
5 public health protection. Mr. Zisette noted phosphorus has been an issue in Lake
6 Sawyer. Algae need carbon, nitrogen and phosphorus. Both carbon and nitrogen
7 come from the air. The most limiting factor for algae growth is phosphorus.

8 Mr. Zisette noted a sewage treatment plant used to outfall to Lake Sawyer from Rock
9 Creek. A 1990 Department of Ecology study established that too much phosphorus
10 was in the lake. Therefore, the state set a Total Maximum Daily Load (TMDL) to
11 meet water quality standards. TMDL is part of the federal Clean Water Act (CWA).
12 The State has the regulatory authority to comply with the CWA. The state sets
13 standards. Lake Sawyer exceeds those standards and is on a list of impaired waters.
14 Actions must be taken to bring the lake into compliance. The TMDL is a mass
15 measured in kilograms per year (kg/year). In this case, total mass more important
16 than concentration. The mass is the concentration multiplied by the volume.

17 Mr. Zisette noted in 1994-1995, the King county hired the firm Entranco to study
18 mass balance to determine the phosphorus source. This was subsequent to a 1989
19 Department of Ecology study. In 2000 King County published a lake management
20 plan using both studies to establish existing conditions and analyze future build out of
21 watershed.

22 Mr. Zisette stated he had read the EIS and technical reports and that the EIS did
23 disclose the TMDL amount with respect to concentration. Mr. Zisette noted the EIS
24 referred to the summer phosphorus concentration but not the daily load. The EIS also
25 noted the phosphorus level in the lake already exceeds the TMDL. The EIS did not
discuss the percentage of the load, the current state or the future development. The
EIS discussed the concentration but not the load.

Mr. Zisette noted that phosphorus comes from rainfall, groundwater and urban
sources. The majority of all phosphorus in urban environments is from storm water
runoff. In the EIS there is a general menu of Low Impact Development (LID) storm
water techniques for reducing concentration of phosphorus in developments. Mr.
Zisette noted the EIS did not discuss quantification or location of employment. He
further noted, the technical appendix provides more detail and gives some tentative
location and types of uses but it mostly relies on the Department of Ecology 2005
Storm Water Manual for Western Washington (2005 Manual) as adopted by the City
of Black Diamond. Mr. Zisette contended the EIS didn't provide the level of detail
to be able to quantify how much storm water will be treated, at what percentage and
at what time. He noted the 2005 Manual gives general methods without specifics to
where and which application. He also noted the technical reports to the EIS list the
specific requirements of the Lake Sawyer Management Plan. Mr. Zisette also noted
the EIS described methods for permanent on-site management of storm water but,

1 didn't say where and how. Mr. Zisette contended LID is open to interpretation and
2 the EIS documents aren't sufficient to quantify what methods might be necessary.

3 Mr. Zisette noted the EIS did not what phosphorus would be in untreated or treated
4 storm water flowing off site. The technical appendix did discuss by-pass treatment
5 systems. He noted the applicant used some examples from limited sampling. The
6 EIS reported an average concentration of phosphorus of 40 mg/liter on Snoqualmie
7 Ridge without stating the number of samples. Mr. Zisette stated he surmised the
8 information was from the outfall of one development but did not know from the
9 document what the source was.

10 Mr. Zisette noted there are standard published examples or databases of storm water
11 concentrations. The standard is 300 mg/liter of phosphorus in untreated storm
12 water. He noted this figure is well above the 40 mg/liter figure in the EIS.

13 Mr. Zisette noted the technical appendix weighted the volume of outfall concentration
14 from different land uses. The appendix gave an end of pipe outfall at 50 mg/liter.
15 The EIS predicted a 50% reduction in the phosphorus from treatment using the King
16 County Storm Water Manual. The treatment will be a wet pond which will let
17 phosphorus settle out. Mr. Zisette noted the efficiency of a wet pond is dependent on
18 its design and the influent concentration. The percent of phosphorus removal is
19 calculated on a load basis because of complex concentrations. In terms of the 50%
20 assumption, Mr. Zisette noted 52% is the median removal of phosphorus in wet
21 ponds. He noted that figure only works for water that goes through the ponds. He
22 further noted, in the technical appendix, much of water entering the storm water
23 facility in a high rainfall event bypasses the ponds. Bypass water was not accounted
24 for in EIS or the technical appendix. Therefore, Mr. Zisette contended the 50%
25 removal assumption is not realistic based on the assumption of initial inflow. The
lower concentration of phosphorus in the volume of heavy rain storm water going in
will mean lower removal of phosphorus. The percentage of removal of phosphorus
could be zero if the inflow is very low in phosphorus.

19 Mr. Zisette noted there is no disclosure of the total phosphorus loading from the
20 project in the EIS. There is also no analysis of how additional phosphorus would
21 create algae blooms or of the impacts on lake usability by humans within the EIS.
22 Mr. Zisette contended that if the applicant used the menu in the Lake Sawyer
23 Management Plan to build out, there would be a 36% increase in phosphorus loading
24 to the lake. Mr. Zisette noted the EIS states the developments will not result in a
25 build up to full build out and therefore the phosphorus increase will be less than 36%.
Mr. Zisette contended this is alright as no model shows 36% is in fact a threshold.

Mr. Zisette noted that any additional phosphorus loading will impair beneficial use.
Mr. Zisette further noted the EIS stated there might be need for monitoring without
saying what that monitoring would be or how it would be used.

1 Mr. Zisette discussed the King County model on lake impacts as a classic model that
2 starts with hydrology, concentration of runoff and the timing of runoff which is then
3 calibrated for monitoring the lake. Mr. Zisette noted most of his work is balancing
4 mass from input and outfall. The King County model incorporates mass balance to
accommodate seasonal cycling. The model predicts algal concentrations. Mr. Zisette
contended this model should have been used in this case.

5 Mr. Zisette contended that Lake Sawyer is very close to eutrophication wherein there
6 would be low levels of oxygen at the bottom of the lake and promote algal blooms.
7 He further contended a 36% increase in phosphorus concentration would be too
much. This will have a negative effect on fish because of the lack of dissolved
oxygen in the water and the increase in water temperature.

8 Mr. Zisette (under cross examination from City Attorney Bob Sterbank) reported he
9 has worked on 10 or more EIS. He agreed that each analysis requires assumptions
10 and that not every detail is analyzed. He contended critical issues must be analyzed
11 and that resources must be allocated to the most specific issues at hand. He further
12 agreed the EIS covered the standard parameters. Mr. Zisette did not agree that the
13 EIS was adequate to allow the decision makers to make an informed decision. He
14 contended that a very simple hydrologic model could have provided better
information. Mr. Zisette stated an EIS analysis must look at worst case and ask for
more specifics. He contended he performed a few simple models in a couple of hours
using published data to find better information than in the EIS. Mr. Zisette agreed the
EIS had referenced the King County Storm Water Manual and the 2005 Manual.

15 Mr. Zisette (on redirect from Mr. Bricklin) stated he was unaware that the applicant
16 had requested a deviation from the Department of Ecology standards (2005 Manual).
17 In reference to Exhibit 20, Mr. Zisette cited a table (Table 1, Page 2, Exhibit 20) that
18 he had prepared to demonstrate phosphorus loading in Lake Sawyer. Prior to
19 diversion of the wastewater plant, there was 1,117 kg phosphorus/year in the lake.
20 After diversion of the wastewater plan, a 1991 study found the average condition was
21 715 kg phosphorus/year in the lake. The TMDL set a limit of no more than 715 kg
22 phosphorus/year. Mr. Zisette noted the model of future development determined
there would be about 1,800 kg of phosphorus/year entering the lake. He further noted
a 1995 study found that without diversion of the wastewater plant, there was 1,300 kg
of phosphorus/year entering the lake, much higher than the 1991 study results. The
new study showed the lake as being about 600 kg of phosphorus/year over the TMDL
without the sewage treatment plant.

23 Mr. Zisette noted it took about 6 years after the treatment plant was diverted for the
24 lake to return to normal phosphorus levels. The 2000 Lake Sawyer Management Plan
25 predicted an increase 2,255 kg of phosphorus/year which is still 1,540 kg of
phosphorus/year over the TMDL. Mr. Zisette analyzed the predicted future
phosphorus levels with both the Lawson Hills and Villages projects. He proportioned
the phosphorus load with areas of residential land use. His analysis predicted that the

1 combined developments would mean 1,500-1,700 kg of phosphorus entering the lake
2 each year. He noted his analysis determined the developments will bring more
3 phosphorus to the lake than sewage treatment plant did. Mr. Zisette said he assumed
4 phosphorus would come from rain water, ground water, streams and the watershed.
5 Phosphorus could come from urban uses and the forest. He predicted the
6 development would provide 10 times more phosphorus than rain fall along. He also
7 acknowledged that most of the phosphorus entering the lake today comes from
8 existing urban sources without storm water facilities.

9 In response to Mr. Bricklin's question regarding the assertion from the applicant that
10 compliance with the Lake Sawyer Management Plan (LSMP) for 2000 would assure
11 that there's not going to be an increase in phosphorus loading or any adverse impact
12 to the lake, Mr. Zisette testified that the management plan clearly states there's a
13 likely chance that the lake will not be able to meet its water quality objectives with
14 complete implementation of the recommended mitigation measures (Lake Sawyer
15 Management Plan, page 6-2). Mr. Zisette noted the LSMP predicted an uncontrolled
16 storm water inflow would result in a total phosphorus concentration in the lake of 38
17 mg/L, while the appendix of that document demonstrated that with all the expected
18 storm water controls called for in the plan, the level of total phosphorus in the lake
19 would be reduced to 31 mg/L (LSMP, Appendix, Table 6-3).

20 Mr. Zisette noted the LSMP had been updated with new data through 2008 and
21 incorporated as part of the Department of Ecology (DOE) Total Maximum Daily
22 Load (TMDL) limit for phosphorus. Mr. Zisette testified the new information did not
23 change his assertion that the applicant had failed to provide total phosphorus
24 calculations for Lake Sawyer. He noted the FEIS acknowledged the new plan and the
25 changing conditions in the lake since the removal of the waste water treatment plant
without analyzing the impacts of future development. He further stated the
development will cause increases in the phosphorus level of Lake Sawyer, but the
FEIS does not provide an analysis of the impacts to total phosphorus in the lake. Mr.
Zisette said the FEIS did calculate loading to nearby streams but he disagreed with
the FEIS conclusion that the impact would be insignificant. He cited the case of
Ravensdale Creek where total phosphorus loading would go from a background of 12
mg/L to a post-development scenario of 55 mg/L.

Mr. Zisette stated he felt the outfall concentrations of phosphorus cited in the FEIS
were inaccurate and poorly sourced. Mr. Zisette noted national data and data from
several local developments including Lakemont, Issaquah Highlands and Timberland
Ridge over a period of years each demonstrated significantly higher phosphorus
concentration in outfalls than those used in the FEIS. Mr. Zisette also noted that
while the 50% of phosphorus removal required by the 2005 DOE Stormwater Manual
(2005 Manual) was standard practice for a wet pond, to analyze the impact on Lake
Sawyer, he would have calculated a range of treatment efficiencies based on the post
development condition.

1 In response to Ms. Rogers, Mr. Zisette said that the use of phosphorus free fertilizers
2 was not an effective removal method because most phosphorus comes from the soil
3 itself and that the most effective removal method was a large pond. Mr. Zisette
4 acknowledged he was not aware the applicant had proposed a monitoring condition to
5 ensure a 50% phosphorus removal rate. He noted the 50% removal is different than
6 protecting the receiving water source. Mr. Zisette acknowledged he was aware of the
7 city and state erosion control standards during construction but stated he felt these
8 standards were ineffective for dealing with dissolved phosphorus.

9 He further noted there was nothing in the FEIS that demonstrated how many acres of
10 development would drain to Lake Sawyer. In response to Ms. Rogers, Mr. Zisette
11 acknowledged the LSMP overstates the size of the basin that drains to Lake Sawyer.
12 He further acknowledged the lake is currently meeting its TMDL for phosphorus. He
13 also noted he was not aware the Villages site had been a former tree farm and agreed
14 that the contribution of phosphorus for a disturbed tree farm would be greater than an
15 undisturbed tree farm due to soil erosion. Mr. Zisette testified he did not believe the
16 FEIS analysis relied upon a model but simply agreed to follow the best management
17 practices laid out in the LSMP.

18 In response to the Examiner, Mr. Zisette stated there were differences in phosphorus
19 impacts to streams than to standing water bodies, though ultimately all the
20 phosphorus captured in streams will end up in the downstream lake. Mr. Zisette also
21 stated his results from the analysis of the phosphorus impact based on the King
22 County model and a model based on grams per acre were very comparable.

23 In response to Mr. Bricklin, Mr. Zisette stated the FEIS had not analyzed the higher
24 phosphorus outfalls occurring during the construction phase of the project. He stated
25 the FEIS only reviewed the project post development. Mr. Zisette testified that the
FEIS should have looked at construction impacts because the construction phase of
this project will be on-going for 15 years. He further noted that the increased loading
of phosphorus in Lake Sawyer from construction activities would take many years to
be absorbed by the lake. Mr. Zisette stated lakes in a mesotrophic state, such as Lake
Sawyer, are very sensitive to phosphorus inputs and any significant phosphorus input
would be of a concern to the lake. He stated a 5% increase in phosphorus loading may
be significant to this lake.

Witness for Mr. Bricklin, Robert Rothschilds (transcript pages 112-116)

Mr. Rothschilds is a resident of Black Diamond since 1991-1992. He has a master's
degree in mechanical engineering. Mr. Rothschilds has been involved in water
quality sampling in the field. He has been involved in reviewing technical reports
since 1991. He stated he was involved in the original grant request for the work that
created some of the water quality models discussed by Mr. Zisette.

1 Mr. Rothschild stated he wanted to make sure hearing examiner understands the
2 inadequate definition of impact of storms is very significant. He stated the impact of
3 storms had not been analyzed in the EIS. Mr. Rothschild's contended up to 50% of
4 the kg of phosphorus/year in the lake comes in from a few big storm events. He
5 stated water can flow through treatment system in these events, even per the 2005
6 Manual. He contended this is a significant oversight. He noted the goal of 50% of
7 reduction of phosphorus cited in the 2005 Manual isn't a target that is required or met
8 during a storm event. He stated storm event water doesn't have time to settle out in
9 the treatment system. He contended the EIS fails to analyze how this affects Lake
10 Sawyer. Mr. Rothschild's stated he is concerned about reduced habitat and less
11 beneficial use for recreation.

12 Mr. Rothschild's also contended the use of the 2005 Manual is not pertinent to
13 whether the EIS adequately describes impact. He contended this is a separate issue
14 and that the EIS does not adequately define the impacts to Lake Sawyer

15 **Witness for Mr. Clifford, Gil Bortleson (transcript pages 125-155)**

16 Mr. Bortleson is a resident of SE Green Valley Road. He holds a PhD in Water
17 Chemistry from the University of Wisconsin. He has worked on a broad array of
18 estuaries, lakes, streams and storm water. He worked for the US Geological Survey
19 Water Division in Tacoma for more than 30 years. His work was mainly in
20 Washington and Oregon, predominantly Washington. He's a water chemist and
21 water quality expert working on ground water, surface water and small streams.

22 Mr. Bortleson read the EIS. Mr. Bortleson stated he felt the EIS were inadequate in
23 terms of rural concerns and off site water issues as well as in relation to wells and
24 springs. He contended there are wells offsite that will be impacted by the projects.
25 He contended the EIS failed to examine the impact of the proposed offsite school
location in the Urban Growth Area (UGA) that would have a direct impact on four
households that have wells from a shared spring. He also noted the three-party
agreement that placed these schools on a map was first available for public review
after the publication of the DEIS. He contended knowledge of these school sites
would have altered his DEIS testimony. He stated the negotiations for the three-party
agreement began in 2007.

Mr. Bortleson stated the schools might have a negative impact on wells or springs due
to lost infiltration capacity of ground water from the school sites and compacted soils
from grading, particularly to the 4 households that share the short flow path spring
fed well near the school site. Mr. Bortleson stated there is a high risk of the drying
out of the short flow path wells that has not been addressed in the EIS.

Mr. Bortleson noted the EIS does not discuss suspended sediment including fine
sediments generated during construction which are an integral part of water quality.

1 He also noted impervious surfaces lessen the infiltration of ground water and
2 maximizes runoff which can, when uncontrolled, create septic tank flooding.

3 Mr. Bortleson (under cross examination from the applicant's attorney Nancy Rogers)
4 stated he is familiar with the legal requirements protecting existing wells including
5 the King County Comprehensive Plan and the Growth Management Act which
6 protect rural resources. He is also familiar with the National Pollution Discharge and
7 Elimination System permit requirements for point discharge systems.

8 Mr. Bortelson stated his analysis had included potential inflation at the southwest
9 corner of the site where there is very porous gravelly terrain. He further stated his
10 analysis had included 8 wells with low yields and 2 more shallow wells with low
11 yield and moderate yield. He concluded all 10 wells were at risk and need further
12 study.

13 **Witness for Mr. Bricklin, Sally Bartley Abella (transcript pages 548-575)**

14 Ms. Abella is the Lead Scientist for the Lakes and Streams Division of the King
15 County Water Resources Division. She has worked in that capacity since 2001. Prior
16 to her current work, Ms. Abella performed a longitudinal study of Lake Washington
17 for the University of Washington. She is a limnologist, freshwater ecologist and
18 phytoplankton expert. She also runs the lake stewardship and monitoring program in
19 King County including for Lake Sawyer. The Lake Sawyer studies go back to the
20 1970's with a volunteer monitoring program. As of 2006, the City of Black Diamond
21 has coordinated the volunteers. Ms. Abella operates an accredited lab and follows a
22 chain of custody. Her work on Lake Sawyer is continuous since 1994. The data
23 actually goes back as far as 1985. Her predecessor wrote the Lake Sawyer
24 Management Plan in 2000. Ms. Abella has performed water quality and inlet
25 monitoring of Lake Sawyer. She stated she was fairly familiar with the 2000 Lake
Sawyer Management Plan.

Ms. Abella noted that on page 6-26 of the Lake Sawyer Management Plan, the
document states that if management techniques are used, the phosphorus loading
would be reduced to an increase in 36% after development. She further noted this
statement was true based on the data and techniques available in 1985. Ms. Abella
noted that 36% increase of phosphorus load in the lake would mean moderate
productivity. In 1994, the amount of phosphorus in the lake in the summer was
higher than it is now. In 1998, there was a significant drop in the amount of
phosphorus in the summer. Ms. Abella contended this is because the wetlands finally
recovered from the sewage treatment outfall. She noted a 36% increase is probably a
larger percentage because the base amount of phosphorus is lower now. She
contended an assumed 36% increase is a minimum now.

1 Ms. Abella noted the kind of algae that grows is not only dependent on the
2 phosphorus but the ratio of nitrogen and phosphorus. Blue green algae like low
3 entropy ratios. Ms. Abella noted on Lake Sawyer, there is a regular presence of
4 nuisance algae in the fall now. The level is still below a public health threat. In
1994, blue green algae were in the lake year round. Ms. Abella contended with more
phosphorus, the blue green algae might come back.

5 Ms. Abella noted blue green algae are cyanobacteria. They produce nuisance scum.
6 They can get nitrogen from the air so phosphorus is the limiting factor. They make a
7 scum that is nuisance for public use and aesthetics. They also produce toxins that are
8 liver toxins and neurotoxins. Ms. Abella noted cyanobacteria also affect fish. She
9 stated this is because the decomposers that eat algae use up the oxygen at the bottom
10 of the lakes. The lake becomes anoxic and uninhabitable for fish. Ms. Abella stated
the County is seeing more pet deaths and human illness due to cyanobacteria. Ms.
Abella noted Lake Sawyer is not there yet. Lake Sawyer has the toxin but cannot
produce the health threat yet. She further noted a nearby lake in Maple Valley is
already there.

11 Ms. Abella did not get involved in reviewing the EIS for this project. Ms. Abella
12 noted the studies that formed the basis for the Lake Sawyer Management Plan is 15
13 years old. Some things are significantly different now. The studies were based in the
14 1994 King County Comprehensive Plan and the 1992 Department of Ecology Storm
15 water Manual. At that time, there were only five categories of phosphorus. The 1992
16 Manual used one category for grass that would include lawns, pastures, golf courses
and open space. The 1992 Manual also didn't know how to characterize a quarry, so
in the study it was characterized as grass. Ms. Abella contended the impacts of these
uses are very different.

17 Ms. Abella contended the 36% minimum increase may be too high but we don't
18 know because the study is out of date. Ms. Abella noted the techniques have improved.
19 Now there are categories for residential lawns and pasturage, which are treated
20 differently as you don't fertilize pasturage. Ms. Abella noted that if there was a ban
on phosphorus from lawn fertilizer, phosphorus in creeks would go down by 12-28%.

21 Ms. Abella (under cross examination from Ms. Rogers) noted the removal of sewage
22 from Lake Washington was very important. She further noted the circumstance is
23 different for Lake Sawyer in that the Total Maximum Daily Load (TMDL) for Lake
24 Sawyer already accounted for the removal of sewage. Ms. Abella acknowledged that
25 Lake Sawyer is not currently being managed for blue green algae (cyanobacteria) but
that the issue is under study. Ms. Abella noted cyanobacteria could be an issue in
Lake Sawyer even though the lake is mesotrophic rather than eutrophic. This is
because of lake cycling. The cyanobacteria have a biochemical oxygen demand
throughout the water column. There is more oxygen at the top of the column and
decreases as the lake gets deeper on a seasonal basis every summer. The County has
data from 1995 and some testing is done on the lake twice a year. The County also

1 measures the level of ammonium, a compound that only occurs in anoxic lakes. The
2 data for Lake Sawyer is by proxy using the ammonium levels.

3 Ms. Abella noted she had familiarity with the King County Storm Water Manual and
4 cited its superiority over the Department of Ecology 2005 Storm Water Manual for
5 Western Washington. She noted more study is needed to determine the effects of
6 changes in the lake phosphorus level and loading in the last 15 years.

7 Ms. Abella (under cross examination from Mr. Sterbank) noted the Lake Sawyer
8 Management Plan addressed phosphorus loading from septic tanks. The plan
9 estimated 10-15% of septic tanks were failing based on age. The average age of
10 homes in the watershed was used. There is no current estimate of the number of
11 homes around the lake that have septic tanks. Sewering homes reduces phosphorus
12 loading. Ms. Abella noted that grass from homes that drain into the lake at any
13 distance would have the same impact unless water was treated in transit. She also
14 noted there are different landscape treatments. She contended implementing best
15 management practices for the regulation of fertilizer would be good. She also noted
16 the runoff coefficients for calculating phosphorus load have changed over the years as
17 has the refinement in the way we use that data.

18 Ms. Abella (under re-direct from Mr. Bricklin) noted in 1993, a TMDL was set for
19 Lake Sawyer in response to algae productivity due to the sewage treatment plan. She
20 stated the TMDL was set to require the utility to re-route the plant effluent. The plan
21 allocated a zero waste load (effluent) for Rock Creek leading into Lake Sawyer. Ms.
22 Abella acknowledged the County didn't know if a compliant project that resulted in
23 the increase of the phosphorus load by 36% would violate the TMDL. She stated the
24 standards are not clear and there is more study needed.

25 Ms. Abella (under re-cross examination from Mr. Sterbank) noted there were better
studies and better categorizations of the outfall from residential lawns because of
recent cumulative studies. She did not know what the exact change in percentage of
phosphorus from residential lawns was found to be in the newer studies.

Witness for Mr. Bricklin, Steve Foley (transcript pages 814-824)

Mr. Foley is a Senior Engineer in the King County Water and Land Resources
Division. He coordinates SEPA Review for storm water issues. Mr. Foley has
worked at the County for 17 years. For 10 years prior, he was a geotechnician. Mr.
Foley has a Professional Engineers license in Washington and Arizona. He holds a
graduate degree in geophysics. Mr. Foley was involved in drafting the County's
comments on the DEIS. He pulled together his department's comments on the DEIS
and reviewed the response to those comments in FEIS.

1 Mr. Foley contended he reviewed the applicant's response to comments in last
2 appendix of FEIS. He compared the responses to the DEIS, but could not identify
3 changes in the document from the DEIS to the FEIS. Appendix R of FEIS, page 241,
4 is the King County comment letter. This letter is identified in the FEIS as comment
5 letter 004-047. Within that letter, the County commented on the offsite surface water
6 in the DEIS for the Villages. The letter noted that impacts to water bodies from storm
7 water were discussed in only a general way and should be discussed in more detail.
8 Mr. Foley noted the FEIS response comment was 'thanks we made changes'. Mr.
9 Foley contended he never could find those changes in the FEIS and the FEIS
10 appeared to contain no more detailed analysis of these specific water bodies.

11 Mr. Foley contended his concerns about needing more details were motivated by the
12 size of the projects. Mr. Foley stated his office spent most of their review effort the
13 Villages. Mr. Foley noted big projects like that have a potential for much larger off
14 site impacts. Mr. Foley reported in projects he has reviewed, the County requires
15 significant analysis to both on-site and off-site impacts. He noted he would have
16 expected the EIS to reflect that. Mr. Foley reports being involved in Grand Ridge,
17 Issaquah Highlands, Redmond Ridge and other projects. As an example, Mr. Foley
18 noted he would have expected a quantitative analysis of impacts to Lake Sawyer
19 because of the phosphorus issue. Quantitative analyses were described in the other
20 EIS for similar large projects he's worked on.

21 Mr. Foley (under cross examination from Ms. Rogers) agreed King County was not
22 an appellant to this EIS. He stated he was not subpoenaed but came to testify when
23 Mr. Bricklin requested a representative from the County. He also acknowledged that
24 he had not reviewed the technical report due to a lack of sufficient time and ready
25 access to the document. He noted he had looked at earlier documents from these two
projects. He stated the County had reviewed the DEIS in October 2009 or earlier.
He also reported he has been involved in the review and response to comments for
quite a few large project EIS. Mr. Foley agreed the County doesn't respond to every
comment they receive on an EIS.

Mr. Foley (under re-direct from Mr. Bricklin) noted in the other projects he had
referenced he had been involved in the scoping and review of the EIS and in those
cases had always had access to those documents. Mr. Foley stated the FEIS
responses to the County's comments were inadequate in his opinion.

Witness for the applicant, Al Fure (transcript pages 1,930-1,980)

Mr. Al Fure is a Professional Engineer licensed in Washington, Oregon and
California. Mr. Fure works for Triad Associates. Mr. Fure graduated from the
University of Washington's Civil Engineering program in 1976. He has worked in
storm drainage for 33 years. Mr. Fure is the Senior Project Manager coordinating in

1 house staff of civil engineers and designers and sub consultants in geology, wetlands,
2 etc.

3 Mr. Fure presented information regarding storm water design. Mr. Fure began his
4 presentation with a map of the Black Diamond vicinity. Mr. Fure discussed the
5 geology of the area using the technical report produced by Associated Earth Sciences
6 (Figure 11A). He referred to the geology of the area as a layer cake starting with
7 Puget Sound bedrock which emerges on the east side of town. He also noted periods
8 of glaciations including the Vashon glacier that came from the north and laid down
9 an unconsolidated mix of sediments. The glacier went south. Thousands of feet of
10 ice overrode this area and made the sediments dense. When the glaciers retreated,
11 clean sands and gravels were deposited between impermeable valleys. These areas
12 are good for infiltration. This is the Quaternary age of Vashon till. There are older
13 units below this in another pre-Olympia glaciations and outwash unit. Mr. Fure noted
14 it's important that this is a lower aquifer. Some of the infiltration facilities for the
15 project will go to this lower unit.

16 Mr. Fure noted in terms of the drainage analysis, it's important to discuss the geology
17 of the site because it determines drainage patterns and basins. He noted in the case of
18 the till ridge, water drains off and infiltrates in recessional wetlands and disappears.
19 The water then flows along the impermeable till contact and then heads in different
20 directions. There are areas where till ridges are joining wetlands and streams. In that
21 case, it goes through an inner flow zone, a wetter till above the harder till, and
22 disperses into the wetlands and eventually into the streams. Mr. Fure noted the
23 analysis treats these areas differently. In the recessional area, the development has a
24 much greater opportunity for Low Impact Development practices.

25 Mr. Fure pointed to Figure 9 from the technical report. The view is a plan view that
shows the location of the bedrock as it emerges from under thick sediment to come to
the surface of the ground. This is where the coal mining activity took place. Mr.
Fure demonstrated the water drainage flow path for the site.

Mr. Fure then discussed drainage basins which he noted comes from a discussion of
geology. He discussed Figure 30 of the ASI report. In terms of drainage basins, Mr.
Fure demonstrated Basin 5 and Basin 6 as those till ridge basins where there's
existing flow that heads off the till into the Rock Creek wetland complex. He also
discussed Basin 4, Black Diamond Lake and an internal area that drains into Black
Diamond Creek and down into Rock Creek. The rest of the site is predominately
governed by the recessional materials. Mr. Fure noted the project will have direct
infiltration of the water into the soil at that location. In Basin 3, there is an existing
till ridge that drains northerly but then enters that same recessional unit. Basin 4 is
very much able to be infiltrated.

1 Mr. Fure noted for Parcel B, a northerly portion is Basin 7. There's a till ridge that
2 drains by surface at the property lines and after that enters an outwash unit. Mr. Fure
3 noted that because it's after the property line, they dealt with it differently. The
4 Lawson Hills main property is a really thin mantle of weathered bedrock and till, six
5 or seven feet, above the bedrock. This area acts as a till and runs off four basic
6 basins. Lawson Creek runs through the central part of Lawson down through town
and enters Jones Lake as Central Basin A. Basin B drains towards Mud Lake. Mud
Lake is kind of a wetlands lake. It doesn't have standing water in it generally. Mud
Lake Creek exits there and heads down to Ginder Creek. Basin D is a tributary to
Ginder Creek. Basin C is south flowing and is a tributary to Jones Lake Creek.

7 Mr. Fure presented an analysis where he compared the Lake Sawyer Management
8 Plan map to his findings regarding drainage patterns in the area (Rebuttal Exhibit H-
9 7). This analysis was in rebuttal to Ms. Abella's testimony. The exhibit shows the
10 Villages and Lawson hills scale on Figure 2-4 of the Lake Sawyer Management Plan
11 main booklet. It also shows those drainage basin boundaries on the applicant's basin
12 map. Mr. Fure noted there are two aspects to it. Mr. Fure contended much of the
13 basin credited to draining to Lake Sawyer in the Lake Sawyer Management Plan does
14 not, in fact, drain to Lake Sawyer. For the portion that does drain to Lake Sawyer,
15 Mr. Fure noted the project will only be draining non-phosphorus contributing rooftop
16 drainage to this basin. Basin 4 is complex hydrologically and portions of it do not
17 drain to Lake Sawyer. Mr. Fure noted in terms of the Villages, the only phosphorus
18 contributors to Lake Sawyer are proposed to be Basins 5, 6 and 7 (Exhibit 3-24 on
19 page 3-54 and Exhibit 3-23 on page 3-51 of the Villages FEIS). Mr. Fure contended
20 there is less area going to Lake Sawyer than was originally assumed in the Lake
21 Sawyer Management Plan.

22 Mr. Fure entered a new exhibit entitled the 'Lake Sawyer Tributary Basin Exhibit.'
23 This exhibit is a side by side comparison from Lake Sawyer Management Plan next to
24 the calculation of area within the boundary of the basin as we understand it today.
25 Mr. Fure's analysis also added the subsurface drainage that wasn't in the Lake
Sawyer Management Plan. Mr. Fure noted the Lake Sawyer Management Plan was a
topographical analysis without subsurface hydrology. The subsurface hydrology
came from the applicant's geotechnical studies. Mr. Fure stated his analysis refined
the basin boundaries from the Lake Sawyer Management Plan.

Mr. Fure submitted Exhibit H8, a table showing total acres within the drainage basin
derived from maps in the Lake Sawyer Management Plan and total acreages for the
project sites derived from the MPD exhibits (12/31/09) which is identical to that
described in the EIS. Mr. Fure noted in the comparison between his analysis and the
Lake Sawyer Management Plan, most categories were similar except the Lake
Sawyer Management Plan assumed there were extra existing households that drain to
Lake Sawyer that actually don't.

1 Mr. Fure then discussed the applicant's storm water and storm drainage management
2 plan. Mr. Fure pointed to Exhibit 3-25 from Page 355 of The Villages FEIS. Mr.
3 Fure noted a storm water management zone is an area within the site that has certain
4 prescriptive management practices that are required for any development within that
5 zone. He further noted for any identified impacts, the proposed mitigation will be
6 implemented by following the 2005 Department of Ecology Storm Water Manual for
7 Western Washington each of the storm water management zones. Different impacts
8 were identified within each zone. Mr. Fure noted the EIS presents a menu of best
9 management practices that are appropriate and applicable to mitigate those impacts.
10 Mr. Fure contended within the realm of storm drainage, there are three primary areas
11 of impact – flow rate, water quality (phosphorus for example), and storm water
12 volume. He noted Horseshoe Lake is sensitive to volume to water that reaches is.

13 Mr. Fure stated in each of the storm water management zones, by following the
14 guidelines of the 2005 Ecology Manual, the project identifies impacts that can be
15 adequately mitigated. Storm water management zones 2 and 3 and rooftops only
16 from zones 3A and 3D drain to Lake Sawyer.

17 Mr. Fure testified that if the offsite storm water facility can't be built; there is an in-
18 city option (Figure 30 of the AESI report dated 9/26/08, pond 4A). The offsite
19 facility is denoted 4B on the same Figure. The figure noted both a regional storm
20 water facility (4B) and an associated infiltration facility (4B dot). Storm water would
21 be stored in the regional facility and then infiltrated into the Qpog aquifer. The in-
22 city option includes a storm water facility (4A) and an infiltration facility (4A dot).

23 Mr. Fure noted the storm water management plan addresses the issue of flooding at
24 101 Pines. Within storm water management zones 1A and 1B volume matching is
25 being proposed. The applicant proposes to determine the predevelopment volume
and then allow infiltration of that predevelopment volume. The remaining water will
go to storm water management zone 1C. Mr. Fure contended this method will assure
storm water balance in this area.

Mr. Fure discussed the concept of low impact development. Low impact
development (LID) means land use strategies (such as narrow streets, sidewalks,
pervious pavement, etc.) and infiltration strategies (such as rain gardens, bioretention
swales or direct infiltration of rooftops). Mr. Fure contended the applicant's storm
water design uses LID where feasible.

Mr. Fure testified that he'd been involved in these two EIS primarily and have
reviewed a few others. He had also been involved in many Mitigated Determination
of Non-Significance style environmental reviews. He contended that he believed
both FEIS adequately disclosed and mitigated impacts associated with storm water.

1 Mr. Fure (under cross examination from Mr. Bricklin) noted that regulations have an
2 impact on design. He stated he felt the 2005 Ecology Manual was very good. Mr.
3 Fure acknowledged Mr. Bricklin's comment that the proposed regional storm water
4 facility is larger than Black Diamond Lake, Horseshoe Lake and Jones Lake and said
5 it's referred to as a pond because it is manmade. He also noted that the pond might
6 be smaller if it was the in-city option but the size would depend on the soil and
7 infiltration characteristics. Mr. Fure stated his company had done an assessment of
8 the probable size of an in-city storm water option but that the information was
9 prepared after the FEIS and submitted to the city recently. He stated he believed the
10 report may have been peer reviewed. He also noted the existence of a map depicting
11 the in-city location but was unsure if that map had been made available for public
12 review. Mr. Fure reported that he had not seen a map of proposed land uses for the
13 site that depicted an in-site location for storm water drainage.

9 Mr. Fure noted on Figure 30 that the injection facility was unlikely to be a well
10 because the conditions of the soil are such that direct infiltration to the aquifer is
11 possible. He noted one method of access might be trenches with pipes. Mr. Fure
12 stated water would be likely be piped from storm water ponds to the infiltration
13 gallery. He also noted environmental implications haven't been examined. Mr. Fure
14 noted the storm water facility and associated injection well labeled 4B was located in
15 rural King County. The storm water facility and associated injection well labeled 4A
16 was located within the City of Black Diamond. Mr. Fure noted an in-city option was
17 necessary because they are not sure King County will grant a permit for the off-site
18 facility. Mr. Fure noted the in-city location was placed as far north as possible
19 because of the lay of the land and the proximity to infiltration points. The northern
20 location provided better hydraulics. He noted the facility in Basin 3 was smaller and
21 represented drainage from a smaller, separate and functionally distinct basin from
22 Basin 4.

18 Mr. Fure responded to Mr. Bricklin's question regarding land uses proposed in the
19 MPD application versus those shown in the EIS storm water section. He
20 acknowledged that the proposed land use in the area of the Basin 3 storm water
21 facility was medium and low density residential development (Villages FEIS Alt. 2-3,
22 page 2-7). He further acknowledged the proposed storm water facilities were not
23 present on the land use maps.

22 Mr. Fure stated he developed the storm water system and acknowledged he had not
23 provided an analysis of the impacts of that system on Lake Sawyer.

23 In response to Ms. Rogers', Mr. Fure noted the maps (Figure 3-25, Villages FEIS,
24 page 3-55) were representational and not to scale. He further noted the off-site
25 regional storm water pond would not always contain open water across the entire
area. He stated the idea was to make an aesthetic water feature with a potential
passive park to provide public benefits to the rural area. He noted the map in the
FEIS depicted the outer boundaries of the facility and that the facility was not

1 designed to ever be completely filled with water to those outer limits. There will be
2 water present year round. He noted the engineering reason for the pond location is
3 the proximity in term of window of infiltration gallery. He stated it was a practical
4 and functional design.

5 Mr. Fure stated the MPD proposal is for the offsite facility, not on site facility. He
6 noted if necessary, an onsite facility could be a number of smaller facilities or one
7 large onsite facility. In either case, infiltration will be the same in terms of aquifer
8 recharge. Mr. Fure noted his familiarity with the City of Black Diamond Sensitive
9 Areas Ordinance and stated he felt the code adequately addressed storm water
10 concerns and allowed the type of proposed storm water facilities. In response to Mr.
11 Bricklin, Mr. Fure acknowledged he did not know whether the conveyance of storm
12 water from the project site to infiltration sites in the unincorporated King County area
13 would be permitted by the County's Critical Areas Ordinance.

14 Mr. Fure also noted if the pond is moved onsite, it could be designed as smaller units.
15 He acknowledged he had not evaluated that possibility because of the design at this
16 point is only conceptual.

17 **Witness for the applicant, Dr. Andy Kendig (transcript pages 1,980-2,092)**

18 Dr. Andy Kendig is the principle for A.C. Kendig and Company in Winthrop, WA.
19 Dr. Kendig has a PhD from the University of Washington in aquatic ecology. He has
20 worked in consulting in water quality for 20 years on large and small projects, port,
21 resorts and master plans. Dr. Kendig's specialty is water quality. He was retained by
22 the applicant to scope out and to provide water quality analysis for the appendices to
23 EIS, specifically appendix M for both project EIS.

24 Dr. Kendig started his testimony with a discussion of the hydrologic setting. He
25 stated his firm starts with other people's reports. Dr. Kendig noted, in the case of the
Villages, they looked at the Associated Earth Sciences reports to figure out where the
water drainages basins are located. They determined on-site streams and wetland
locations from the TRIAD Conceptual Stormwater Management Plan. The TRIAD
report describes conceptual storm water drainage and facilities and where and how
the storm water is going. Dr. Kendig's firm combined this information to understand
the above and below ground plumbing. Dr. Kendig then noted his firm water quality
study boundaries. Dr. Kendig stated his firm was looking for the discharge points
from the project and whether the discharge will be to an infiltration basin and into the
groundwater or as surface discharge to a stream.

Dr. Kendig noted in terms of surface water discharge, the Villages study needed to
look down at Lake Sawyer for phosphorus. It also needed to look at Rock Creek,
which was the cumulative point for a lot of the discharges on the surface in terms of
the water quality parameters important to the creek. He also stated his analysis had to

1 understand the aquifers for those that will be infiltrated. The study needed to know
2 how aquifers are being used beneficially now and how infiltration would be
3 accomplished. Dr. Kendig noted during the analysis, the boundaries were malleable
as new information became available.

4 Dr. Kendig noted his team then laid out the applicable water quality regulations
5 including surface and groundwater quality standards from the Department of Ecology
6 in the Washington Administrative Code. He noted they also dealt with the Clean
7 Water Act Section 303D to understand existing impaired water bodies in the area and
8 to describe what they found approximate to and downstream of the project within
9 reasonable distance. Dr. Kendig also stated his team looked at the Department of
10 Ecology (DOE) Lake Sawyer Management Plan (LSMP) and the Environmental
11 Protection Agency (EPA) approved Total Maximum Daily Load (TMDL) for
phosphorus. He noted they also reviewed the National Pollution Discharge and
Elimination System (NPDES) permit from the Department of Ecology and the 2005
Department of Ecology Stormwater Manual for Western Washington (2005 Manual);
the approved storm water standard for Black Diamond. Dr. Kendig noted that with
all of this information in place, they set forth the hydrologic setting. He further noted
they used the same methodology for both projects.

12 Dr. Kendig testified his team then looked at the historic record for water courses to
13 lay out existing conditions and performed on-site water quality monitoring studies.
14 He noted they performed supplemental tests when there was not site-specific
15 historical data. Dr. Kendig then stated his team put together tables comparing their
16 results with historical information and current water quality regulations. This
information comprised the existing affected environmental section of his report.

17 Dr. Kendig testified the next step was to assess the impacts of the projects. The first
18 section of the impacts analysis was construction impacts and assessments and the
19 mitigation necessary for construction related water quality impacts. The section of
20 the construction impact analysis starts with a description of how construction runoff
21 would be conceptually handled to prevent what the Department of Ecology would
22 require under the NPDES permit, which is an increase in turbidity of anything more
23 than 5 nephelometric turbidity units (NTUs) over the background turbidity. Dr.
24 Kendig testified that humans can see a difference that small. He stated the analysis
also looked at phosphorus because of the DOE TMDL. Dr. Kendig noted the typical
requirement is monitoring to prove the project is meeting the standards. He referred
to Exhibit 30 in the Associated Earth Sciences report for the Villages and noted his
team had recommended the construction discharge created in Basin 5 be taken out of
this basin and pooled in Basin 3 where it could be treated for sediment and infiltrated.
The purpose of this was to remove the associated phosphorus in the sediment.

25 Dr. Kendig also testified that his team had recommended several of the same
construction discharge treatment methods as the TRIAD report including several the
creations of several temporary basins of varying sizes. Dr. Kendig noted his report

1 followed the 2005 Manual Best Management Practices (BMP) for construction
2 impacts. He noted his report discusses when each method is useful for the project
3 with a discussion of applicability of each BMP. He further noted his report discussed
4 spill prevention, concrete work management, off site construction, the likely scale of
5 construction annually and mitigating measures that apply to those. He also stated the
6 DOE has schema for conditionally using developing technologies during
7 construction. His report discusses possible new or emerging technologies as
8 appropriate.

9 While construction drainage from Basin 5 will temporarily be redirected to Basin 3,
10 post construction, Basin 5 will have its own storm water facilities. He stated, with or
11 without Lake Sawyer, infiltration is the best option in any case. The temporary
12 sedimentation and infiltration in Basin 3 will be under-excavated to remove the
13 construction sediment before it becomes operational.

14 Dr. Kendig then discussed the second stage of impact assessment, the analysis of full
15 build-out development impacts. He noted the first step is to describe the conceptual
16 storm water management plan. Dr. Kendig pointed to Appendix M, Villages FIES,
17 Page 3-17, and Table 3-3 to describe how the layout of the conceptual plan. He noted
18 Basins 1-3 come to a common discharge point and that the conceptual plan defines a
19 storm water catchment behind each discharge point. He noted the table demonstrates
20 where the analysis was looking at receiving waters for sensitivities and defining the
21 associated land uses. Combining the receiving waters with the land uses, the analysis
22 sets treatment standards designed to meet the 2005 Manual. He noted there are three
23 categories of treatment design standards, each with a variety of prescribed designs to
24 meet the 2005 Manual treatment standard. There are a number of different ways to
25 meet the basic treatment standard.

Dr. Kendig noted the basic water quality treatment is used for single family
developments discharging to a stream or infiltration. The presence of Lake Sawyer
means the application of different standards, specifically the phosphorus protection
standard. This standard would, in the example of a wet pond, prescribe a certain size
or range of depths. The required volume of the wet pond will increased due to
phosphorus. Under the 2005 Manual, the water quality volume is designed to treat
90-91% of all average annual storm water that flows through it. A phosphorus
treatment pond must be bigger and treat 95% of the volume of runoff that comes
through the pond. Dr. Kendig noted within a range of about 100-500 mg phosphorus
per liter as input to the pond, the goal is to reduce the phosphorus leaving the pond by
about 50%.

Dr. Kendig then testified the term 'enhanced treatment' is very specific term of art in
the 2005 Manual that amounts to stream protection standards. These treatment
methods are designed to remove medals, with Zinc as an indicator. These standards
are also used when more than half of the drainage is from sources other than single
family, and when discharging to fish bearing streams like Rock Creek. In the case of

1 multiple land use types draining into the same catchment, Dr. Kendig stated the
2 practice is to use a suite of facilities to meet enhanced (metal) as well as phosphorus
treatment standards.

3 Dr. Kendig noted, in his team's analysis, they performed literature searches and
4 surveys to describe the amount of treatment they expect each facility to produce for
5 various land types and for various parameters such as nitrogen, phosphorus, metals,
6 total suspended solids, etc. He testified they then set up scenarios to simulate the
7 actual storm water coming from the project. Dr. Kendig stated the team used local
8 data from the Trilogy project in Redmond, some condos in Bellevue, Snoqualmie
9 Ridge, light industrial projects in Seattle, North Bay, Bellingham, Tukwila, East Gate
10 and Sammamish and a road arterial in Renton to determine run off by land use type.
11 He noted in each case, there were multiple sampling data available including 5 years
12 from Snoqualmie Ridge with 5-7 samplings that contained storm events. The team
13 used 3 years' worth of this data. Dr. Kendig noted the use of local data is preferable
because of the unique weather conditions here and how that affects the treatment
residents place on their lawns and the affect of road runoff. The runoff characteristics
in Western Washington are different from other places. Car washing and lawn
fertilization happen most often in the dry summers. Phosphorus becomes
immobilized on dry land as it binds to aluminum and iron in the soils. Dr. Kendig
testified, to remove the complicating factor of rainfall and get back to what ends up in
storm water catchments, the team prefers local data that are more predictive.

14 Dr. Kendig noted that once the team had determined the assumed concentration of
15 pollutants coming from each land use, they then compared their projected treated
16 discharge numbers with water quality standards and with background existing
17 concentrations in surface and ground waters. Dr. Kendig stated his team used
conservatively high estimates in the cases of infiltration. He noted the team was
careful to look at water quality impairment at point of infiltration and downstream
from there.

18
19 Dr. Kendig stated his team reviewed storm discharges to determine what impacts they
20 might have to receiving waters, including phosphorus load into Lake Sawyer. He
21 also stated they reviewed cumulative phosphorus loading over time. They also
22 reviewed water balancing in each basin to ensure bogs in the area are protected. He
23 noted the storm water plan discharges only roof top drainage to Lake Sawyer, which
has very little associated phosphorus. Dr. Kendig testified the conceptual storm water
plan removes as many potential phosphorus sources as feasible based on the
underlying geography.

24 Dr. Kendig testified the next step was to describe the phosphorus loading in Lake
25 Sawyer. He stated the important thing here is not to characterize just the contribution
from one or other projects, but for both MPD and the entire contributing basin. The
Lake Sawyer Management Plan (LSMP) developed for King County by Entranco
created a phosphorus budget for lake. The goals of the plan were to project growth in

1 the basin and determine if outfall from that growth could comply with the 16 mg/L
2 total phosphorus standard in the Total Maximum Daily Load (TMDL) set by the
3 Department of Ecology. Dr. Kendig stated his team concluded the best plan to use
4 was the LSMP and its model for the basin.

5 Dr. Kendig noted his team looked at whether the basin plan anticipated the growth
6 from the two MPD projects. He further testified the LSMP anticipated there would
7 be 30% more of the MPD acreage in the basin than there actually is based on
8 underground hydrology. The LSMP assumed both sites drained entirely into Lake
9 Sawyer. Dr. Kendig noted the hydrology studies indicate the existence of more than
10 one drainage basin in the area draining to other places than Lake Sawyer.

11 Dr. Kendig stated, in terms of developed areas, the LSMP assumed 25% more
12 developed area than will occur under the MPD proposals. Dr. Kendig testified his
13 team knew the projects fit well in the LSMP model. Dr. Kendig noted the MPD
14 projects represent only about 4% of the developed area in the LSMP basin. He stated
15 he felt it was important to look at the overall development assumptions for the entire
16 basin in the LSMP.

17 Dr. Kendig noted his team had not applied the low level of phosphorus in other MPD
18 projects as an inflow concentration. He noted his team used studies and he believes
19 this project can achieve at least the same or better levels of phosphorus reduction as
20 the projects in the studies. Dr. Kendig stated his analysis fits well within the umbrella
21 of the LSMP, and that his team used a higher outfall concentration of phosphorus in
22 their model to be conservative. He noted the phosphorus model in the FEIS is the
23 LSMP model.

24 Dr. Kendig noted the methodology used for the Villages and Lawson Hills was the
25 same. The differences between the two projects' storm water plans relate to where
they drain and the underground hydrological characteristics. Some of the Villages
areas and Lawson Hills have drainage basins in commons, and in others they are
separate.

In response to Mr. Rogers' question, Dr. Kendig stated in his professional opinion,
the EIS adequately disclosed the impacts of construction and post development as
well the impacts to phosphorus in Lake Sawyer. Also in response to Ms. Rogers, Dr.
Kendig stated the team had used the LSMP model and believed that model to be an
adequate, conservative demonstration.

Dr. Kendig testified both FEIS have a section on Low Impact Development for storm
water (LID) and that LID techniques can be used in both projects, though more so in
the Villages. He stated the more infiltration the project can accomplish, the better.
He noted the 2005 Manual encourages LID. LID reduces phosphorus discharge
because it treats it at the source. LID also features evaporation of water to reduce

1 volume that flows off. For example, porous pavers can make a difference in
2 beginning or light storms, even over till, reducing street widths lowers impervious
surface and run off and street landscaping intercepts rain falling on the ground.

3 Dr. Kendig testified his company routinely works on technical reports that go into
4 EIS. He further testified a basin wide model is a reasonable proxy as long as it
5 includes the specific project, especially for a large regional model. He noted the
6 MPD projects do not represent a large percentage of the total basin land area. He
7 stated the LSMP is an adequate plan that the DOE still references. He further noted
8 the FEIS reference the best management practices (BMP) in the LSMP and reviews
9 where each one is applicable to the projects. He further noted the LSMP based its
10 regulations on the 1998 King County Surface Water Design Manual. He stated the
11 storm water plan for the MPD was based on compliance with the 2005 DOE Manual,
a more rigorous and effective model based on newer science. Dr. Kendig also noted
the MPD would comply with Black Diamond requirements related to native growth
protection easements, sensitive area protection and the critical areas ordinance. He
further noted there will be homeowner BMP to comply with Black Diamond lake
protection standards.

12 Dr. Kendig noted the DOE created an implementation plan as an update to the LSMP
13 in June 2009 and continued the protection of the total phosphorus load of 16 mg/L
14 TMDL (Exhibit H9). This implementation plan accounted for the removal of the
15 waste water treatment plant out-falling to Lake Sawyer and anticipated growth in the
16 basin. The implementation plans outlines steps each stakeholder can take to ensure
BMP are applied to meet the TMDL. He noted Black Diamond is required to enforce
the removal of phosphorus consistent with the 2005 Manual and implement a water
quality monitoring program. Dr. Kendig testified, as designed, the MPD meet the
TMDL by the DOE definition in the updated LSMP.

17 In response to Ms. Rogers' question regarding the effectiveness of the proposed storm
18 water facilities during storm events, Dr. Kendig stated the large wet pond is designed
19 to treat about 95% of phosphorus in the average annual runoff. He further stated the
20 remaining 5% is very hard to catch during very large storms because bigger storms
21 created rapid flow rates into the facility and runoff flows through untreated. Dr.
22 Kendig noted this volume of water is very dilute with respect to pollutants. He stated
the loading model looks at total annual flow to determine the fraction that must be
treated. He further stated in his opinion, the 5% of untreated runoff does not pose a
significant impact.

23 Dr. Kendig again reiterated his preference for a local model because of the unique
24 climate conditions, vehicle type and age and lawn configurations of this area. He
25 testified that with each new development, the sampling data shows an improvement
in the pollutant concentration in runoff. Dr. Kendig stated he preferred the DOE
model to use of a national database and that a 50% removal of phosphorus is possible
given 100-500 mg/L. He noted Snoqualmie Ridge has areas where untreated water is

1 better than that. He noted the project inflows to ponds are projected to be about 75-
2 100 mg/L total phosphorus.

3 Dr. Kendig noted the LSMP assumed 65% of the Villages drainage goes to Lake
4 Sawyer when his team found it really is less than 23%. He also reiterated the LSMP
5 assumed about 300% more developed land in the project site than is proposed. Dr.
6 Kendig testified the amount of runoff and loading are greatly overstated in the LSMP
7 because the hydrology wasn't known at that point. He also testified the phosphorus
8 in the model based on the new hydrology information and the reduced developed area
9 would result in an outfall of phosphorus to 118 kg/year. Dr. Kendig stated the LSMP
10 was very conservative in that it overstated development and was based on an outdated
11 storm water manual without considering LID and improved pollutant outfall trends.

12 Dr. Kendig testified he was asked to prepare a monitoring plan for each MPD phase
13 for phosphorus. He stated the monitoring plan would test outfall at each catchment
14 for each occupied phase of development. This test data would be checked against the
15 assumed phosphorus levels for each catchment in the storm water facility plan. He
16 noted that rectifying action would be taken if a catchment measured above predicted
17 phosphorus levels over multiple testing events in a prescribed period of time. He
18 noted the monitoring plan set the bar lower than the LSMP to be very conservative.
19 Dr. Kendig also stated he felt the LSMP was still a good regional model that did not
20 need to be redone.

21 In response to Mr. Bricklin, Dr. Kendig stated the LSMP contemplated a basin of
22 8,300 acres. He noted the MPD developed areas amount to 4% of the basin and the
23 total MPD acreage with protected open space amounts to 10% of the basin. He
24 further noted that every acre in the Lake Sawyer basin contributes phosphorus to the
25 lake and that the important factor here is the amount of acres the projects would alter.
Dr. Kendig acknowledged that it is important to consider total phosphorus load in the
lake and that the DOE TMDL in part established the total phosphorus load for Lake
Sawyer. He further acknowledged that the amount of algae that grows in the lake is a
function of the lake's total phosphorus load. In response to Mr. Bricklin, Dr. Kendig
agreed that his firm did not calculate how much more phosphorus would reach the
lake from MPD or how much more phosphorus would be available to lake. He stated
they did not calculate the total phosphorus load that would leave the site because the
concern was meeting the TMDL in the LSMP.

Mr. Bricklin pointed to the LSMP (page 4-39, Table 4-10) and noted the plan sets
forth a classification of a eutrophic versus mesotrophic lake. He noted the plan gave
a breaking point of 24 mg/L of phosphorus as the point at which a lake reaches a
eutrophic state. He further noted that at the time of the study, the average phosphorus
load per year in the lake was 23 mg/L and that if build out occurred with no storm
water controls, the phosphorus load would be 38 mg/L (LSMP, page 5-15, Table 5-2).
Dr. Kendig acknowledged these figures and pointed out the phosphorus load in the
lake was calculated with the presence of the waste water plant outfall and that the

1 project outfall would be treated to meet the TMDL and keep the lake in a mesotrophic
2 state.

3 In response to Mr. Bricklin, Dr. Kendig noted the type of pond proposed for the MPD
4 were first used in 1998, so no long term efficacy studies are available. He further
5 noted the management plan for the MPD prescribes long term maintenance of the
6 ponds to meet 2005 Manual standards.

7 Dr. Kendig noted his team had not changed their analysis after the DEIS, but did send
8 a supplemental memorandum with additional information for temperature data and a
9 couple of drainage pond scenarios.

10 In response to Ms. Rogers, Dr. Kendig stated that irreducible concentrations of
11 phosphorus in project discharge did not relate to phosphorus loading in the way his
12 team handled it in their analysis. He further stated they did not to calculate that figure
13 to establish potential impacts or appropriate mitigation measures. He testified the
14 FIES had adequately disclosed, and in fact, overestimated project impacts to Lake
15 Sawyer. Dr. Kendig stated that through use of the LSMP best management practices
16 and by applying the requirements of the 2005 Manual, the project will be in
17 compliance with the TMDL. In response to Mr. Bricklin, Dr. Kendig stated his team
18 does not know what the ultimate phosphorus level will be in Lake Sawyer.

19 **Witness for the applicant, Mr. Curtis Koger (transcript pages 2,636-2,663 and
20 2,742-2,752)**

21 Mr. Koger works for Associated Earth Sciences in Kirkland. He holds bachelors and
22 masters degrees in geology and has worked as professional geologist for 30 years. He
23 is licensed in Washington as a geologist, a hydrogeologist, and an engineering
24 geologist. Mr. Koger has worked on a number of master planned developments
25 including Lakeland Hills, Beaverdam, Trilogy, Cascadia, Suncadia, Redmond Ridge
and Snoqualmie Ridge. Mr. Koger was the principle in charge for the geology
portion of the Villages EIS.

Mr. Koger testified his role was to evaluate geology, ground water and geologic
hazards. Mr. Koger introduced figures and maps from AESI Technical Report for the
Villages EIS, Appendix D (Exhibit H23 A-M). Mr. Koger described the geology and
hydrogeology of the Villages site relative to storm water management. He testified
his team reviewed United States Geological Service, Department of Natural
Resources NRCS or SCS maps, King County documents, Maple Valley documents,
the Seattle-King County Health Department water well records and water rights
information from Department of Ecology for wells, springs and surface water. He
also stated his team conducted field investigations, including exploration pits, borings
and geologic reconnaissance of sites on and off site. He testified his team excavated
around 110 pits. Figure #7 of the AESI technical report demonstrates the distribution

1 of the exploration wells, infiltration test locations and exploration borings for on and
2 off site locations. Mr. Koger testified his team used an extensive database which
3 included another 55 pits excavated by other firms for a total of 165 test pits.
4 Additionally, Mr. Koger noted 23 exploration wells drilled under observation of
5 AESI personnel. He stated that additional borings amounted to 38 total test wells.

6 Mr. Koger noted his team performed field infiltration testing in 8 locations to evaluate
7 potential for storm water infiltration. His team also performed reconnaissance
8 mapping and ravine crawls along tributaries. Mr. Koger stated his team monitored
9 water levels in a number of wells and that some of the data now date back some 3-4
10 years. His team also performed aquifer testing of some 11 wells to help characterize
11 the hydro geologic condition. Mr. Koger stated the team had mapped many available
12 existing water supply wells, many located at the parcel level. He stated this
13 information was very useful for getting a sense of where wells sit relative to surface
14 water and topography (AESI technical report, maps H 23A and H23J).

15 Mr. Koger then explained the surface geology of the region and project sites. He
16 noted the glaciations periods in the Puget lowland are extremely important to
17 understanding surface geology, topography, morphology and the sub surface
18 plumbing system. He stated the most recent glaciations period is the Fraser
19 Glaciation. He noted ice in the area was 2,500 feet thick while ice at the Canadian
20 border was 5,000 feet thick tapering down to Tenino south of Olympia. Ice filled all
21 the Puget lowland from the Cascades to the Olympics. Mr. Koger testified this
22 context is important because many subsurface characteristics are derived from
23 glaciations. He noted there were many glaciations periods during Pleistocene epoch 2
24 million years ago to the present Holocene period until about 15,000 years ago. There
25 were intervening non-glacial period, like right now. Mr. Koger noted on the maps
from the AESI technical report and on LIDAR images that the appearance of the
surface morphology is the effect of post-glacial processes. Mr. Koger stated in the
aftermath of the ice maximum, the retreat of ice was rapid. Melt water streams
formed and created gigantic pro-glacial lakes. The lakes were bounded to the north
by the ice sheet and were cut off from the Strait of Juan de Fuca. The lake runoff
went south to the Chehalis River and out to Puget Sound. The runoff eroded lower
and lower elevation spillways. Mr. Koger noted the elevations are easy to see in map
view over an extensive area. He stated at the Villages there is evidence of melt water
features, near ice features and ice contact features. He noted on the southern side of
the Villages main property there is a kettled topography where stagnant ice wasted
away and was surrounded by sediment. The kettled topography is undulated. Mr.
Koger noted the ice melt spillway base level kept dropping until the Green River
incised a deep gorge that today is 300 feet below the present surface level today
(Exhibit H23B, Figure 9).

Mr. Koger also described two bedrock units, both predating the Pleistocene deposits.
He noted the bedrock is seen in offsite locations with no direct opening at the site.
Mr. Koger testified his team found the bedrock units under the project from test

1 borings. Mr. Koger noted the next unit is pre-Olympia glacial deposits. He noted the
2 primary units from the Pleistocene on the project site are the QVT (Quaternary
3 Vashon Till) and QVR (Vashon recessional deposits as ice retreated). There is also
4 QVIC kettled topography at the margins of the site. Mr. Koger stated as ice came
5 from north to south it deposited lodgment till. This till has low permeability with the
6 character of concrete. Lodgment till has no permeability and is used to create earth
7 dams. He noted a remnant is visible at the sheer base of the ice sheet. This unit is
8 present beneath a blank of recessional material at the ground surface. Mr. Koger
9 noted there are windows in that till that affect distribution of water and flow patterns.
10 Water moves thru this type of till at 1-2" per month. Mr. Koger noted that storm
11 water facilities need permeability in the range of inches per hour.

12 Mr. Koger pointed to a couple of other on site units on the map to indicate that off
13 site to the south, the Green River incised immediately post ice. He noted the incision
14 depth is in part controlled by the location of bedrock units and is where fracturing or
15 faulting of bedrock was there under the ice.

16 Mr. Koger then turned to subsurface geology (Exhibit H23C-D). He testified his
17 team created a map of the subsurface conditions across three miles (Figure 7, cross-
18 sections A to A') that goes offsite through a sequence of exploration wells and pits.
19 He noted on the maps, the lines of stick figures illustrate the exploration borings,
20 completion intervals for wells, water evaluations and where the water level ended up
21 stabilizing after the well was completed. He stated his team had monitored water
22 levels for several years.

23 Mr. Koger noted the QVT (Vashon lodgment till) drapes over much of the landscape,
24 but it is covered or mantled in part by the QVR unit. QVR is permeable; QVT is not.
25 The QVR is a layer where storm water can be infiltrated easily. Mr. Koger noted the
maps also illustrate older geologic units including the QPOG (quaternary pre-
Olympia glacial deposit). Immediately under the QPOG is the QPON (quaternary
pre-Olympia non-glacial). He noted the most important piece is the relationship
between geologic units and where groundwater is encountered. Mr. Koger noted his
team discovered water wherever in all wells drilled into the QPOG and QPON. The
QPON is the major aquifer bearing intervals and is characterized as a pre-Olympia
aquifer sequence.

Mr. Koger noted the eastern margin of the project site has an older sequence of
geologic units. This unit is the QOR (quaternary Orting). He noted this unit is the
oldest glaciations identified in literature to date. Portions of the QPOG are younger
or equivalent to Orting. Mr. Koger stated the primary point is the QVT has poor
infiltration and controls the groundwater flow, the QVR and QVIC are both highly
permeable and the QPOG is important because it forms the aquifer intervals for water
supply wells, springs and streams. Mr. Koger stated Interflow is formed on very low
permeability units. It's the very shallow seasonal groundwater that forms in the
weathered horizon on top of the lodgment till units. He noted the infiltration rate is

1 so low that precipitation follows the interflow zone and goes down slope to a spring
2 or wetland.

3 Mr. Koger stated the shallow aquifer system underlies the northern portion of the
4 Villages main property under the QVIC unit. He noted his team found groundwater
5 flows in a multitude of directions (Exhibit H23L). He noted his team could
6 discriminate flow directions because of the high number of borings and wells. Mr.
7 Koger testified his exploration data indicated locations where the till is missing. In
8 these areas, there is direct contact with the QVR unit and the underlying pre-Olympia
9 glacial deposits (QPOG). This forms a direct connection from the shallow ground
10 water to deeper ground water without any intervening horizontal flow.

11 Mr. Koger noted Exhibit H23K is a map depicting the distribution of wells. These
12 wells provide information on the ground water elevation and show where water
13 flows, which is primarily west south west. He noted the QPOG aquifer system
14 ultimately provides base flow to springs off site at Crisp creek and the Green River
15 Valley. He stated the interflow zone provides hydrology to the internal drainage
16 system at the project site.

17 In response to Ms. Rogers', Mr. Koger agreed existing conditions south of the
18 Villages site results in some slides. Mr. Koger noted slides are combination of
19 topography, geology and hydrology. He further noted the incising of Green River
20 occurred in the last 12-15,000 years. He stated this is a significant change in a short
21 geologic time period resulting in unstable slope conditions. He noted Exhibit H23B
22 which demonstrates landslides from QMW or quaternary mass wasting where
23 existing landslides have been mapped and identified. Mr. Koger testified his team
24 had spent a lot of time looking at landslide risk. He noted this topic is central to
25 storm water management and cited the need to avoid off site landslide hazards. He
stated his recommendation was within those shallower units, particularly the QVIC in
the southern end of project, the storm water management facilities must be careful in
terms of trying to match pre and post construction ground water recharge. He
testified his team had performed a water balance analysis. He noted their
recommendation was that excess storm water produced by the project may not be
conveyed into near slope areas. He further stated he felt the projects as designed
produced no hazard to off-site properties.

Mr. Koger testified his report had evaluated risks to offsite wells. He noted his team
had reviewed a lot of well data including 198 of the known 297 groundwater wells in
the area. The 198 wells had logs. Additionally, he noted his team had reviewed 30
groundwater springs and 33 surface water locations that had a claim or were known to
be water supplies (Exhibit H23J and Villages FEIS technical report, Appendix 9).
The water supply systems are grouped by size with Group A serves up to 200,000
users and Group B representing 4-10 users. Mr. Koger testified the FIES addressed
the risk of project development on these off site wells and springs in the storm water
management plan. He noted the objective is to maintain a balance of recharge in

1 areas of geologic hazard. Therefore, excess storm water will be infiltrated into the
2 QPOG unit that allows for additional groundwater recharge into a major aquifer
3 system that recharges more distant off site water supply users. He further noted the
4 projects provide additional recharge by design to maintain water levels in aquifers
and off site locations. Mr. Koger stated he sees no risk of drying up offsite wells and
springs.

5 In response to Ms. Rogers, Mr. Koger acknowledged his analysis did not include
6 development of the two off site school sites because they were not part of the MPD
7 proposal. He stated he has been involved in a number of school projects including
8 permitting and mitigating school projects from the perspective of evaluating for storm
water related effects. He further stated he felt if schools were to be sited there, they
could be sited and designed to protect off site wells.

9 In response to Ms. Rogers, Mr. Koger stated he had evaluated the impacts of the
10 proposed offsite regional storm water facility (Figure 30, Exhibit H23A) and
11 concluded the pond is in a good location to avoid offsite adverse impacts. He
testified the EIS adequately addressed the impact on and provided mitigation for
offsite wells and springs and potential landslide hazards.

12 In response to Mr. Bricklin, Mr. Koger stated his team analyzed an alternative site for
13 the regional storm water facility located partially on-site and partially within the
14 UGA. He further stated his team a water balance analysis on the alternate location to
15 determine impacts on the QPOG aquifer (Villages FEIS, Appendix D, Chapter 7 and
16 Exhibits H23A-M). Mr. Koger acknowledged he was unaware of whether these
17 figures were available to the public and agencies. He further acknowledged a project
18 of this size has risks to wells and springs if not adequately managed. He also noted
19 there are a variety of aquifer intervals for the well supply. He testified his team
20 performed a water balance across the site that included the shallow aquifer systems in
21 the QPOG, QVIC and QVR (Exhibit H23B). Mr. Koger stated his team had
22 performed an analysis of the water balance of the project area that provides water to
23 the shallow system for offsite wells. He noted the offsite wells near Green River
24 Road could be part of a shallow system from the Orting sequence and in other places
25 in unit QT in very specific locations. QT is a younger unit than the QOR unit. Mr.
Koger stated his team examined the recharge area in the entire system but performed
a detailed water balance for only the project area specifically. He noted, the shallow
aquifer providing offsite wells near Green River Road is either in or resting above the
QVT materials. He stated they did not study any materials above the QVT because
there is no shallow aquifer above the QVT on the project property. He acknowledged
he did not know if that is true for the school site at this point.

Mr. Koger stated as part of his team's process for developing their report, they
consulted documents and reports from many agencies with expertise in surface and
ground water issues. They did not consult the Department of Fish and Wildlife
(DFW) because they were looking at ground water issues primarily. He noted they

1 did address ground water/surface water interaction in their report, but did not contact
2 DFW regarding potential impacts to surface water.

3 **5. Noise**

4 **Witness for Mr. Bricklin, Mr. Jerry Lilly (transcript pages 791-809)**

5 Mr. Jerry Lilly has been an acoustical consultant since 1975 and has provided
6 acoustical consulting services to public, developers and government through his own
7 firm since 1983. He holds a master's degree in Engineering Acoustics from
8 Pennsylvania State University.

9 Mr. Lilly stated the adequacy of the noise assessment part of the FEIS was
10 insufficient in that it doesn't disclose the construction noise impacts of the project.
11 Mr. Lilly spoke of his client whose home is located near the proposed construction.
12 He stated there was not site-specific analysis in the FEIS with regard to construction
13 noise. Mr. Lilly stated that ambient noise measurements were taken in several
14 locations and that three lasted more than twenty-four hours. He testified that the one
15 done closest to his client's home was right next to the highway and that noise
16 measurements shouldn't be done adjacent to the highway as the highway noise skews
17 the test results. His client's home is located approximately one thousand feet from
18 Roberts Road. Mr. Lilly stated only one test site was set back from the road and that
19 it was placed near a neighborhood on a lake which didn't accurately represent his
20 clients' residence. He testified that he would expect the noise to be approximately
21 3dB lower at his client's residence with the current conditions. Mr. Lilly stated that
22 construction noise was the only type of noise affecting his client. He noted
23 construction noise is always a significant issue.

24 Mr. Lilly stated that construction equipment is inherently noisy. He testified that the
25 maximum noise level at a property close to the project may be as high as 90 dB and
noted this noise level is as loud as a fire alarm or a train whistle at 100 feet.
Furthermore, he stated that the EIS didn't say how long the noise would last and that
the duration would make a big difference. Mr. Lilly stated that the EIS didn't
describe how large an area would be affected and that it didn't disclose geographic
extent or duration of construction noise. He stated that construction noise is excluded
from noise ordinances at the state level. Mr. Lilly stated that Seattle has a noise
ordinance for construction which allows contractors to be louder than the noise
ordinance but limits how burdensome they can be and limits their hours of
construction from 7am to 7pm. He testified that while Seattle's noise ordinance
limits construction noise based on distance from receiver, Black Diamond has to rely
on an EIS to assess noise impacts and that the EIS doesn't describe the distance
between his client's residence and the construction.

1 Mr. Lilly testified that noise impacts are associated with health impacts. He stated
2 that the World Health Organization has new guidelines for environmental noise levels
3 in order to avoid adverse health impacts to humans. Mr. Lilly testified these
4 guidelines called for a decibel level of no more than 55dB over a 16 hour average
5 outside. The inside noise level should be below 35 dB. The World Health
6 Organization doesn't identify specific health impacts – illness, loss of sleep, stress
7 (See Exhibit 21). Mr. Lilly testified that he reviewed a letter from his client's doctor,
8 Dr. Magley, which expressed concern for stress levels in his client. Mr. Lilly stated
9 there are methods to mitigate construction noise impacts in order to avoid impacts to
10 residents. He stated that while the EIS listed several methods that could be done, it
11 didn't say what would be done. He stated that the EIS didn't assess the likely
12 effectiveness of the noise level mitigation and there were no site specifics for
13 mitigation. Mr. Lilly testified that the EIS did mention local roads and proximity of
14 houses but most of the text was boilerplate.

15 **Witness for the applicant, Richard Steffel (transcript pages 2,753-2,769)**

16 Mr. Richard Steffel is the principle consultant with Environ. He holds a master's
17 degree in environmental studies, has 30 years experience in air quality and 20 years in
18 environmental noise. While he did not prepare the noise impact and environmental
19 review, he worked on the EIS technical report and contributed to the analysis that was
20 used in those documents. He has prepared noise impact studies for many other
21 environmental reviews as well as 300 such studies for SEPA review.

22 Mr. Steffel conducted evaluation of noise due to the proposed construction. He stated
23 that he has found construction noise on rare occasion to represent a significant
24 adverse impact under the special circumstances of construction being very close to
25 a residence or of a very long duration. He testified that in terms of near residences his
team analyzed impacts in terms of hundreds of feet. He noted a noise source is
typically considered a potential significant impact if it is fifty feet to the receiver. He
stated that it was important to keep the affected people in the loop and minimize the
effects as much as possible. He testified that his group did noise analysis for
Brightwater Conveyance Project where heavy equipment was working for years on
the same location performing tunneling work.

26 With respect to the Villages, Mr. Steffel specifically referenced a finger shaped areas
27 that comes down into the project. He noted in this area the noise analysis indicated
28 peak noise levels potentially affecting several residences. Mr. Steffel stated that the
29 impacts are most likely overstated and that peak noise usually means short-term and
30 while potentially loud, it is not persistent. He stated that the DEIS overstated the
potential for impacts and had incited a few people in that area to become
unnecessarily concerned. He testified that the construction noise impacts are likely to
be loud construction equipment and stated that when you are close to construction
equipment, the noise levels are high. Mr. Steffel stated that noise may be intrusive
for a short period of time and may bother residents during those times. He stated that

1 there is also potential for some noise to affect on-site residences and that the project
2 applicants had to be cognizant of noise impacts and deal with them.

3 Mr. Steffel testified that the project applicant has committed to employing the best
4 management practices and using temporary measures like noise barriers to mitigate
5 excess short-term construction noise as well as simple things like turning off idling or
6 unnecessary equipment. He stated that the applicant would also move generators to
7 as far away as possible from existing residences and could surround them with
8 temporary noise barriers thereby reducing the source and transmission of noise. He
9 testified that he felt the EIS adequately addressed the impact of noise for a
10 programmatic EIS.

11 In response to Mr. Bricklin, Mr. Steffel stated the EIS disclosed typical noise and
12 noise levels for those activities. He noted the FEIS spoke to some non-specific
13 location in the general of where the Harts live.

14 Mr. Steffel stated he thought the EIS overstates the noise impacts because it assumes
15 persistent noise at a high level. He noted the EIS is at the programmatic level and
16 that noise impacts at specific locations have not yet been analyzed.

17 6. Wildlife

18 Witness for Mr. Bricklin, Bruce Richards (transcript pages 45-69)

19 Mr. Bruce Richards is an Official Wildlife Officer for the Washington of Department
20 of Fish and Wildlife. He has 37 years in the field. He holds a degree in Fisheries
21 Biology from the University of Washington. He has worked his entire career in the
22 South King County and Eastern Pierce County districts including Black Diamond.

23 Mr. Richards felt the EIS was well written and professionally done but doesn't speak
24 to what's really going to happen here. Mr. Richards spoke of the two different elk
25 herds on the two projects. Both herds are residential, non-migratory living here 365
26 days per year. Mr. Richards stated all species are of concern and that anything that
27 effects wildlife negatively affects all of us. He contended any development of any
28 kind affects wildlife with negative significant impacts forever. Mr. Richards
29 contended there is no way to mitigate project impacts unless the development
30 provides the same amount of property by buying the same size land elsewhere that is
31 not currently serving wildlife or by enhancing land and keeping it for forever in
32 conservation. He noted there is no way to enhance the land to serve all terrestrial and
33 avian species.

34 Mr. Richards noted the FEIS doesn't look at long term impacts by species. He stated
35 for example that the property will never have a chance to be suitable for bald eagle.
36 In terms of the wildlife corridors, Mr. Richards contended the FEIS discussion was

1 inadequate. He noted the corridors are in existence now and nothing new is proposed.
2 He contended there will be problems with corridors as the animals interact with
3 humans. He noted some elk will leave the area while others will stay in the area and
4 become irritating to people. He further noted this is the last place that's wild this side
5 of SR 169. He stated state taxpayers are already paying for elk damage in the lower
6 Green River including browsing of crops. He also stated there will be an increase in
7 elk/vehicle collisions.

8 Mr. Richards discussed band tailed pigeons in the area. He noted they don't nest in
9 the area. He also noted bald eagle sightings in the area but was not aware of any
10 nests. He noted the FEIS stated the scientists had walked the area but found no
11 protected raptor nests. There are requirements for buffers around bald eagle nests
12 under state law. Mr. Richards stated that developers sometimes cut down nests
13 illegally. Mr. Richards contended there will be negative interaction between resident
14 elk, bear and mountain lion populations. He stated much of the wildlife will be lost.
15 He contended there is no way to fully mitigate the impacts.

16 Mr. Richards (on cross examination from Nancy Rogers) stated he had read the DEIS
17 but was unfamiliar with the Black Diamond Urban Growth Area Agreement
18 (BDUGAA) or the practice of Transfer of Development Rights (TDR).

19 **Witness for Mr. Clifford, Chris Clifford (transcript pages 157-191)**

20 Mr. Clifford is a SEPA appellant testifying as an expert witness in the field of
21 wildlife. Mr. Clifford holds a master's from the University of Puget Sound with 25-
22 30 credit hours in biology, chemistry and geology. He is a certified teacher. He has
23 taught biology and nature systems to high school students. He also holds an
24 experienced falconers license and has held a game bird breeders license. Mr. Clifford
25 collects species for a museum. He has completed work on about 15 EIS including the
EIS for Lake Tapps as well as written a brochure for the World Wildlife Fund about
attracting wild species to people's backyards. For that EIS, he collected and reviewed
wildlife data. He maintains species life lists and has bred endangered species. He
has direct experience with the project sites. He is a lifelong resident in this area. He
also maintains a very large bird species list and is an Audubon bird spotter.

Mr. Clifford contended the EIS has a number of errors and is inadequate. He noted it
is very superficial with regard to wildlife and lacks specificity. He also contended
the EIS wildlife sections are nearly identical for the two projects. Mr. Clifford noted
the lack of specific information on band tailed pigeons and disagrees with the EIS
determination that they are not on or do not use the site. Mr. Clifford contended
surveys of wildlife in this area are far more expansive than the EIS probable species
list. He contended many species of bird are missing or others erroneously included.
He also noted the EIS Technical Appendix N has some life species lists but do not
discuss field survey dates or times for the five field surveys WRI conducted. He

1 contended these field surveys never occurred. He also noted the EIS failed to
2 recognize state law for species protection of raptor nests. Mr. Clifford contended the
3 EIS should include site visits to identify wildlife even if the amount of developable
4 land would be adversely affected. Mr. Clifford noted there were no changes to the
5 wildlife technical appendix from the DEIS to the FEIS even though roads had moved,
6 the proposed connector road will now interrupt the wildlife corridor and other scope
7 changes have occurred in the interim.

8 **Witness for the Applicant, Jason Knight (transcript pages 2,405-2,466)**

9 Mr. Knight is a wildlife biologist with Wetland Resources. He holds a bachelor of
10 science in wildlife ecology and environmental education. He's worked at Wetland
11 Resources since 2005 and has worked with the Department of Fish and Wildlife on
12 cougar and bear research projects. Mr. Knight prepared the EID technical reports
13 (Appendix N) for wildlife as well as the plant section.

14 Mr. Knight noted his company visited the site on numerous occasions in 2005, 2007
15 and 2008. His company spent around a month worth of days on the two sites
16 performing investigations and surveying the site for evidence of wildlife. He and
17 staff from his company walked the site, conducted point count surveys where they
18 observed birds and listened for birds, and looked for tracks and sign and for live
19 sightings of wildlife. He contended the company performed thorough site
20 investigations. He noted the FEIS had summaries of species with more extensive lists
21 in the technical report. He also stated he'd reviewed the species list and found that all
22 the species listed by other experts as missing were, in fact, present in the technical
23 appendix with the exception of peregrine falcon because the projects are not the
24 proper habitat for that species. He also noted the western pond turtle was absent as it
25 has largely been eradicated from the state.

With regard to the band tailed pigeon, Mr. Knight acknowledged the birds might be
feeding on the project sites but do not nest there because of lack of adequate habitat.
Mr. Knight contended the habitat necessary for nesting sites for raptors will still be
available at Black Diamond Lake and also in the project as trees mature over time.
Mr. Knight noted they found no evidence of endangered species on the project site
either through direct observation or included on species lists prepared by the
Department of Fish and Wildlife. Mr. Knight noted they had followed the standard
methodology for this type of report and consulted with state agencies. He also noted
the state law requires protection for endangered or threatened species through a
construction management plan.

With respect to the Villages MPD specifically, Mr. Knight described the proposed
wildlife corridor. He noted there were wetlands, uplands and stream habitats within
the wildlife corridor. He also noted road crossings of the corridor and stated he
believed they would pose no barrier to wildlife because the road crossing and the

1 wildlife corridor would be at the same grade. He noted his conclusion was equally
2 applicable to the Lawson Hills site.

3 Mr. Knight contended both project sites provide limited elk habitat. He noted the elk
4 are residential and live in the lowland areas primarily. He noted the elk population
5 move around the local area and down to the Green River Valley. The elk
6 occasionally use the project site as a corridor of travel between their bedding and
7 feeding sites which are not on the project property. He contended the development
8 will result in more feeding opportunities for elk, because elk need grass to feed on as
9 well as smaller shrubs. Mr. Knight contended a lot of the current habitat right now is
10 a really dense coniferous tree farm with evenly aged stands that don't allow much
11 light down to the forest floor. He noted this habitat is less conducive to elk than
12 pastures and meadows, old farm fields and riparian zones along rivers. He contended
13 site development with more grasses and landscape planting will result in improved
14 foraging for elk which could increase elk populations.

15 Mr. Knight contended the EIS adequately disclosed impacts to wildlife and proposed
16 appropriate mitigation. Mr. Knight noted the proposed mitigation was to retain
17 habitat in contiguous blocks where possible, to retain corridors to link up habitat off
18 site, to reduce roads in those corridors, to reduce the road widths through the
19 corridors, reduce speed limits and provide signs for wildlife crossing. He further
20 noted other potential mitigation would be to install nesting boxes to improve the
21 habitat for cavity nesters and to install landscape plantings with native plants to
22 provide foods for wildlife.

23 Mr. Knight contended the style of the master plan development is better for wildlife
24 than a lot by lot development style. He noted there's the opportunity to evaluate the
25 habitat on a large landscape view, protect habitat in contiguous blocks and retain
corridors that connect to large areas of habitat that are off site. In a piecemeal
development where there are individual land owners and smaller parcels being
developed, there wouldn't be any requirement to create wildlife corridors and it would
be unlikely the habitat would get protected in large contiguous blocks. They'd be
broken down into much smaller fragments. He noted with these projects, over 2,000
acres will be set aside.

21 Mr. Knight (under cross examination from Mr. Bricklin) said he had been directly
22 involved in the preparation of this EIS and one other. He wrote Technical Appendix
23 N and the cover section for wildlife in the EIS. He noted the remainder of the
24 wildlife section in the EIS was written by Parametrix. Mr. Knight acknowledged he
25 did not prepare a second draft of the technical report subsequent to the DEIS or in
response to public comment. Mr. Knight did not participate in the response to the
public comment.

1 With respect to the analysis of elk impacts, Mr. Knight acknowledged the analysis did
2 not determine to what extent the elk have other ways to connect to their bedding and
3 feeding areas, other than using this property nor did his company survey other lands
4 to determine what other routes are available to elk. He also acknowledged they had
5 not studied the seasonal migration patterns of this elk species. The analysis did not
6 go into that depth. Mr. Knight noted the wildlife corridor was proposed to maintain
7 the elk's ability to make those seasonal movements.

8 Mr. Knight noted the proposed wildlife corridor will be 300-800 feet wide surrounded
9 mainly by residential areas. He contended a 300 foot wide corridor is sufficient for
10 wildlife regardless of the intensity of the surrounding uses. Mr. Knight conceded the
11 analysis did not review the surrounding development patterns but did take into
12 account two road crossings. The Villages EIS stated the road crossings would be a
13 barrier to wildlife movements (Villages FEIS, page 4-80) if those crossings were at
14 grade. Mr. Knight disagreed with that conclusion and stated he believed the at-grade
15 crossing would not serve as a barrier. Mr. Knight conceded that he has not shared his
16 disapproval of this statement with the final drafters of the FEIS at Parametrix.

17 Mr. Knight noted that elk might be concentrated in the wildlife corridor and could
18 begin to feed on the landscaping of the development. If that happened, they might
19 start to use the property for bedding. Mr. Knight noted that much of the proposed
20 corridor is existing seasonal wetlands. This habitat is suitable to elk for travel,
21 feeding and bedding. There are also uplands throughout. Mr. Knight noted in the
22 less suitable areas, there will be a 225 foot buffer that will be available for use by elk.
23 Mr. Knight acknowledged he knew of no studies to demonstrate the effectiveness of
24 the proposed corridor and buffer for use by elk. Mr. Knight also acknowledged that
25 while he did consult with the Department of Fish and Wildlife, he did not provide
them with any information that indicated whether there would be roads crossing of
any streams.

Mr. Knight (under cross examination from Mr. Clifford) acknowledged that he had
read the wildlife section of the FEIS but that he had not been given an opportunity to
comment on it. He noted if he had been given an opportunity to comment, he would
have attempted to fix any mistakes he saw within the document. Mr. Knight noted
there were no open mines found on the site and therefore the presence of Thompson's
big eared bats was unlikely. Mr. Knight noted the FEIS listed species that are likely
to use the habitat without delineating which species are physically on the project site.
That list appears in Appendix N. Mr. Knight reiterated his use of the most current
Department of Fish and Wildlife data and his own observations in the preparation of
species lists. He noted he did not visit the local museum because that is not a typical
part of a wildlife study.

In response to Mr. Clifford, Mr. Knight said there will be more deleterious non-native
species coming into the area because of the presence of humans. This would have an
effect on elk. There will be a change in the mix of population on the site. This

1 information was discussed in Appendix N of the FEIS. Mr. Knight noted the
2 improved foraging due to landscaping might bring more elk to the area.

3 Mr. Knight (under re-direct from Ms. Rogers) stated he was aware of the King
4 County designated wildlife corridor in the vicinity of the Villages site and extending
5 to the north and south of the site. The Villages corridor is part of an overall corridor.
6 Mr. Knight noted he had discussed the corridor with the King County Wildlife
7 Network Biologist, Jennifer Vanderhoof. Mr. Knight reported Ms. Vanderhoof had
8 told him the corridor should be an average 300 feet wide as a minimum but could in
9 places be reduced to 150 feet in width. Mr. Knight noted he has also spoken with
10 Washington State Department of Fish and Wildlife Biologist Russell Lake who had
11 also approved the corridor. Mr. Knight reported Mr. Lake had expressed concern
12 about the potential increase in number of elk on the site after development. Mr.
13 Knight contended the EIS adequately addressed adverse impacts on wildlife.

14 Mr. Knight (under re-cross examination by Mr. Bricklin) acknowledged he did not
15 know if Ms. Vanderhoof or Mr. Lake read the FEIS.

16 Mr. Knight (under re-direct examination by Ms. Rogers) noted that there are road
17 crossings in the King County wildlife corridor including Green Valley Road and that
18 elk cross that road. Mr. Knight (in response to a re-cross examination by Mr.
19 Bricklin) acknowledged that he did not know the expected traffic counts on the
20 project roads that cross the wildlife corridor. He also did not know how the internal
21 project road traffic count compared to Green Valley Road. Mr. Knight (under re-
22 cross examination from Mr. Clifford) noted there was the potential for increased
23 vehicle/elk collisions with increased traffic.

24 7. Wetlands

25 Witness for the Applicant, Scott Brainard (transcript pages 2770-2777)

19 Scott Brainard is principal ecologist from Wetlands Resources. He has a bachelor of
20 science in environmental science, is a certified professional wetland scientist, and has
21 been doing wetland analysis in Washington State for 16 years.

22 Mr. Brainard stated that the EIS analyzed the wetland impact of the south connector
23 road, as identified in figure 7E of Appendix O. The south connector is shown on the
24 east side of the map near the central portion of the site crossing what is identified as
25 wetland S18, S19, and S20. It extends further to the west all the way across the parcel
north of what's depicted on the MPD application. The figure does not include the
actual square footage of wetland impacts, but analysis is included in Appendix O as
1825 square feet of actual wetland impact. Mr. Brainard confirmed that both the
DEIS and FEIS disclosed that some wetland fill would be associated with the road
crossing.

1 Mr. Brainard indicated that the exhibit he was using was dated July 17, 2008, prior to
2 the publication of the DEIS. He stated that he did review the DEIS, but he could not
3 recall the specific nature of the south connector in this section. After reviewing the
4 exhibit associated with The Villages FEIS 2- 7, alternative 2 provided by Mr.
5 Bricklin, Mr. Brainard stated that there is no road extending across the wetlands in
that exhibit. He suggested that Appendix O includes a map clearly depicting that road
extending across. He confirmed that he had had no discussions with any of the
agencies since publication of the Final EIS related to the road.

6 Mr. Bricklin provided Mr. Brainard with Wheeler Exhibit Number 6, a letter from the
7 Department of Fish and Wildlife to the City of Black Diamond, dated February 25,
8 2010, in which the department states that the DEIS for the development may be
9 deficient as to the adequacy of review related to fish and wildlife resources. Mr.
10 Brainard indicated that he believes the letter states there is a lack of disclosure in the
11 DEIS as to the need for an HPA permit. Upon reviewing his copy of the FEIS, Mr.
12 Brainard read that in the State of Washington, the Department of Ecology has
13 authority over wetlands and the US Army Corps of Engineers has authority to
regulate wetlands at the federal level. His interpretation was that they are clearly
identifying that the state and federal government have authority to regulate wetlands.
He stated that the Department of Fish and Wildlife does not regulate wetland impacts,
but confirmed that he did not see any reference in the FEIS to the Department of Fish
and Wildlife.

14 Mr. Brainard indicated he was aware that the department regulates crossing of
15 streams. However, he stated that he was not aware that a required EIS element is a
16 sheet listing basic information as well as disclosure of permits and approvals
17 associated with the project. He agreed that on the page being shown to him by Mr.
Bricklin, Final EIS, a reference to an HPA permit from the Department of Fish and
Wildlife is not listed.

18 III. EXHIBITS

19 The exhibits of the Villages FEIS are incorporated by this reference as if set forth in
20 full.

21 IV. FINDINGS OF FACT

22 Procedural:

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

25 2. Hearing. The hearing on the Villages MPD exceeded 50 hours in length. The
hearings were continued day to day, starting on March 6, 2010, and verbal testimony

1 concluded on March 22, 2010. The Examiner left the record open for written
2 comment on traffic impacts through April 12, 2010. The Examiner also left the
3 record open until March 29, 2010, to provide the City and the Applicant an
4 opportunity to respond to public testimony submitted between March 19 and 22,
5 2010. Additional time for traffic impacts was necessary to accommodate subpoena
6 requests from the City of Black Diamond and Maple Valley. Each city subpoenaed
7 information on the traffic modeling of the other and time was given for each City to
8 comment on the results of those subpoenas.

9 The hearing consolidated three appeals on the adequacy of the Villages FINAL
10 Environmental Impact Statement ("TV FEIS") from testimony on the Villages MPD
11 application. The Examiner separated testimony on the MPD from testimony on the
12 FEIS appeals. MPD testimony was provided on March 11, 12, 15 and 17. Written
13 comments on the MPD were accepted through the close of the verbal portion of the
14 hearing on March 22, 2010. Over 200 written MPD exhibits were submitted, mostly
15 letters from concerned citizens. Only one document was submitted after the close of
16 the hearing, from Jason Paulsen.³ The Examiner did not admit the email into the
17 record because it was untimely.

18 3. Environmental Review. Three appeals were filed challenging the adequacy of
19 the TV FEIS. The Hearing Examiner issued a decision on April 15, 2010, holding
20 that the TV FEIS is adequate. That decision is incorporated into this decision as if set
21 forth in full.

22 **Substantive:**

23 4. Proposal Description. BD Village Partners is requesting approval of a Master
24 Planned Development (MPD) pursuant to Black Diamond Municipal Code 18.98, for
25 The Villages MPD. Proposed uses include low, medium and high density residential;
retail, commercial, office; light industrial; educational, recreational and open space.
The application is for 4,800 dwelling units and 775,000 square feet of retail, offices
and light industrial on 1,196 acres. If approved, the request will result in the rezoning
of portions of the property from the current R6 Single Family Residential and CC
Community Commercial zones to MPD.

The Villages project consists of two subareas, the Main Property and the North
Property (also known as Parcel B). The "Main Property" is located primarily south of
Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2
miles south and eventually east to SR-169 along the southern city limits. A portion of
the Main Property (a.k.a. Parcel C) is located on the north side of Auburn-Black

³ A second document was also submitted after the close of the record, but unbeknownst to the submitter
a copy of the document had already been submitted while the record was open.

1 Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is
2 located to the west of SR 169, approximately two miles north of the Main Property
3 and north of SE 312th Street (if extended). The North Property is south of and
4 adjacent to the North Triangle property that is part of the proposed Lawson Hills
5 MPD project.

6
7 The details of the Villages MPD are outlined in the Master Planned Development
8 application, dated 5/11/09. A significant feature of the project is that 33.5% of the
9 project area will be devoted to open space.

10 Subsequent to the issuance of the Villages TV FEIS, the Applicant revised its
11 application on 12/31/09. The Villages EIS includes a 12/31/09 proposal to connect
12 the "South Connector" directly to SR 169 instead of Green Valley Road as proposed
13 in the 5/11/09 application. Beyond this there is no information in the record as to
14 whether the Villages EIS addresses the other 12/31/09 modifications. As noted in the
15 Villages FEIS decision, the Examiner makes no determination as to whether all
16 12/31/09 revisions are covered by the TV EIS. Whether the revisions trigger any
17 additional environmental review is a decision to be made by the SEPA Responsible
18 Official. The Examiner has no authority to determine whether the SEPA Responsible
19 Official should have undertaken additional environmental review.

20 5. Project Impacts. An MPD the size of the Villages has dozens of significant
21 impacts that cannot all be addressed efficiently in the Findings of Fact. The impacts
22 below are those raised by citizens during the MPD portion of the hearing. Citizen
23 concerns are quantified and summarized so that the Council may readily ascertain
24 what issues are of greatest concern to their constituents. Impacts addressed in the
25 SEPA appeals are also referenced. The SEPA Appellants identified several ways that
the mitigation recommended by the FEIS can be improved, and those enhanced
mitigation requirements will be discussed below. Conclusions of Law are mixed into
the factual findings below in order to prevent splitting the discussion of impacts in a
confusing manner.

19 A. Rural Character. Opposition largely centered on the size of the planned
20 developments and their impact on the Black Diamond area's quality of life. Twenty-
21 seven speakers and 37 residents in written testimony objected specifically to major
22 changes to the area's rural character, often contrasting the city's current population of
23 4,000 with the projects' plan to add 6,000 additional households (i.e., an
24 approximately 400 percent increase in population). Many of these residents stated
25 that they had moved to Black Diamond to escape such urban problems as congestion,
sprawl and heavy traffic. They expressed concern that the proposed developments
would bring many of these same problems to an area whose motto is "rural by
design." Several residents noted that this motto appears on the city's website, which
conveyed to them the message that city officials were dedicated to a vision of Black
Diamond as a rural community.

1 While there was agreement among several residents that some development was
2 inevitable and perhaps good, these residents also agreed that the scope of these
3 projects was inappropriate for the area. In particular, several residents questioned
4 whether the size of the project was consistent with the growth restrictions specified
5 by the King County Comprehensive Plan and the Washington State Growth
6 Management Act. Another cited an agreement between the City of Black Diamond
7 and Lake Sawyer residents, made when the lake area was annexed into the city, to
8 maintain the rural quality of the area. Several residents, at the hearings and in written
9 testimony, argued that the developer had requested too many potential exemptions
10 from city standards and ordinances.

11
12 In written testimony, one resident discussed the inappropriateness of placing large
13 multi-family housing units directly adjacent to existing rural-style homes. Areas of
14 comparable density should be located adjacent to one another and should include
15 adequate buffer zones, she wrote. She and a second resident added that the proposed
16 setback size of five feet is too small in relation to existing properties and would create
17 housing densities inappropriate for the area. Six others objected to the prospect of
18 increased light and noise pollution the projects would create.

19
20 Jim Jacobson of the Horseshoe Lake HOA wrote that the organization would support
21 the MPD if a number of mitigations were incorporated regarding density of the
22 developments; preserving the rural character of the community; traffic (particularly
23 where Horseshoe Lake Road meets the 101 Pines neighborhood); noise; obstructed
24 views on Auburn-Black Diamond Road near Horseshoe Lake; privacy concerns; and
25 the planned location of a high school near Lake Sawyer, which would generate
additional traffic problems in the area. He also noted the need to monitor the
effectiveness of mitigations on Horseshoe Lake.

RESPONSE: It comes as little surprise that rural character stands out as the largest
concern of Black Diamond residents. The MPD will more quadruple the population
of the City and residents are validly concerned that the project could transform the
character of the community from a pastoral rural setting to a suburban community.
For the most part, however, the die has already been cast on this issue. The state
legislature and the Black Diamond City Council have adopted legislation that
authorizes projects the size and density of the Villages MPD if specified criteria are
met. The Growth Management Act, Chapter 36.70A RCW, requires cities to
encourage urban densities in order to promote efficient use of infrastructure and
contain urban sprawl⁴. See RCW 36.70A.110, 36.70A.020. The City Council has

⁴ Until recently, the Puget Sound Growth Management Hearings Board required minimum densities of
four units per acre in order to meet the GMA objectives of providing for urban growth within cities.
The courts have since ruled that a "bright line" rule of four units per acre is not appropriate and that
allowable densities should be addressed on a case by case basis. See, *Gold Star Resorts, Inc. v.*
Futurewise, 167 Wn.2d 723 (2009); *Viking Properties, Inc. v Holm*, 155 Wn.2d 112 (2005). It should
be noted that even under the "bright line" rule that has been tossed by the courts, the Hearings Board

1 implemented this mandate by imposing a minimum MPD density of four dwelling
units per acre. See BDMC 18.98.120(E); BD Comp Plan, pp. 5-13.

2 Due to the legislative actions above, the Council is not in a position to deny the MPD
3 applications solely because of their densities⁵. However, the impacts created by those
4 densities can be addressed through the MPD criteria. Caution must be exercised,
5 however, because rural character is a highly subjective impact to assess. See,
6 *Anderson v. Issaquah*, 70 Wn. App. 64 (1993) (a statute violates due process if its
7 terms are so vague that persons of common intelligence must necessarily guess at its
8 meaning and differ as to its application). Under the "void for vagueness" standard
enunciated in the *Issaquah* decision, conditions implementing rural character should
be based upon code requirements that are clear and specific. The Council cannot
impose conditions upon the MPDs on some vague "feeling" that they are necessary to
protect rural character.

9 Fortunately the City has adopted several standards that are designed to clearly and
specifically preserve rural character. These standards include design standards,
10 perimeter buffers, policies encouraging diversity in housing, expansive open space
11 requirements and so on. These policies and regulations give the Council highly
12 effective tools in promoting rural character within the parameters of the densities that
are required for the MPD regulations. Consistency with these standards will be
addressed in the Conclusions of Law, below.

13 The City also has several comprehensive plan policies that some have argued
14 mandate low density development. Exhibit 161, prepared by Dave Bricklin, identifies
several comprehensive plan policies that require protection and/or consistency of
15 "community character", "existing character of the historic villages", "natural setting",
16 "rural community", "traditional village community", "small town character" and
"existing historical development". See Black Diamond Comprehensive Plan, pp. 2-5,
17 4-1, 5-7, 5-8, 5-33, 5-38, 5-49, 5-50, 7-49. Another policy provides that design
18 guidelines are required to provide methods and examples of how to achieve design
continuity and to reinforce the identity of the City as a rural community. *Id.* at 5-10.

19
20 was willing to allow densities lower than four units per acre in special circumstances, such as when
lower densities would provide enhanced protection of critical areas. See, e.g., *Litowitz, et al v. City of*
21 *Federal Way*, Final Decision and Order, 96-3-0005, Puget Sound Growth Management Hearings
22 Board. Although there are obstacles (DOE's TMDL position; the amount of open space required), the
City could have allowed lower densities in its comprehensive plan for the MPDs on the basis that low
density development is necessary to protect Lake Sawyer water quality.

23 ⁵ BDMC 18.98.195(A) provides that vesting occurs upon approval. If this provision is valid and
24 interpreted as delaying vesting until the MPD is approved, the City Council could conceivably amend
its comprehensive plan policies and regulations prior to approval to require a lower density. Of
25 course, this would probably create some delays in permitting review and the Council takes the risk of
assuming some permitting delay liability. However, it is technically an option if the Council is
concerned with the densities required by the comprehensive plan and implementing development
regulations.

1 All of the policies referenced above reflect a strong preference to retain small town
2 character. None require rural densities or suggest that they supersede the more
3 specific comprehensive plan policies and state mandates requiring urban densities.
4 The MPD regulatory framework must and can be applied in a manner that harmonizes
5 the requirement for urban densities with the objective of maintaining small town
6 character. The MPD regulations provide many examples of how this is to be
7 accomplished. Perhaps the most direct synthesis of the urban density/small town
8 character concept is BDMC 18.98.010(L), which reference the book "Rural by
Design" in requiring that an MPD "incorporate and/or adapt the planning and design
principles regarding mix of uses, compact form, coordinated open space,
opportunities for casual socializing, accessible civic spaces, and sense of
community."

9 On the issue of consistency of MPD population with King County GMA growth
10 allocations, cities are not bound by County adopted growth targets unless specifically
11 required by county-wide planning policies. *See West Seattle Defense Fund v. City of*
12 *Seattle*, CPSGMHB 94-3-0016, Final Decision and Order (4/4/95), p. 55. It is also
13 worthy of note that even if the GMA growth targets were designed to limit growth in
14 Black Diamond, it is too late to raise that issue now. The same reasoning applies to
15 the applicability of any other county-wide planning policies. Black Diamond's
16 comprehensive plan and development regulations allow master plan developments
17 with the densities and population proposed in the Lawson Hills and Villages MPDs.
If King County or any other party had wanted to challenge those regulations and
policies as inconsistent with growth targets, that should have been done via an appeal
to the Growth Management Hearings Board within sixty days of adoption of the
comprehensive plan and development regulations that required the densities proposed
for the MPDs⁶. RCW 36.70A.290(2); *Wenatchee Sportsmen Ass'n v. Chelan County*,
153 Wn. App. 394 (2009).

18 On the issue of perimeters, the MPD Framework Design Standards and Guidelines,
19 Section G, provide significantly more protection than the five-foot perimeter setbacks
20 referenced in public testimony and require compatibility with adjoining densities.
Through these guidelines the project will be conditioned to provide for 50 foot

21
22 ⁶ Some of the Villages and Lawson Hills property are zoned R4, R6, MDR8 and community
23 commercial, and these designations will have to be amended to Master Plan if the Master Plans are
24 approved. However, the R4 – MDR8 designation already allows 4 to 8 dwelling units per acre,
25 respectively, and community commercial densities are only limited by floor/area ratios, height, parking
and other site requirements. Consequently, all approved zoning already allows the population
proposed in the MPD applications. If any of the necessary zoning classification amendments are
considered area-wide they can be challenged to the Hearing Boards as noncompliant with King County
growth targets, but such a challenge would be difficult given the *West Seattle Defense Fund* case, the
GMA requirement for urban densities within cities and the fact that existing Black Diamond
development regulations already allow urban densities.

1 buffers along the most sensitive project interfaces on the northern part of the main
2 property, where some of the highest densities are proposed. The guidelines require a
3 minimum 25 foot buffer for multi-family and non-residential land uses and perimeter
4 lots for single-family development may be no less than 75% the size of the abutting
residential zone or 7200 square feet, whichever is less. These standards help assure
compatibility along perimeter areas.

5 B. Traffic and Parking. Thirty speakers expressed concern on the
6 capacity of local roads to bear the increased traffic. They noted that these roads, e.g.,
7 SR 169, SR 516 and SR 18, are already congested during peak travel hours. In
8 addition, two speakers said that the amount of parking planned for commercial areas
9 was inadequate. Several other speakers raised the prospect of slower emergency
10 response times due to an increase in accidents and road congestion greater traffic
11 would bring.

12 In written testimony, one resident argued that the use of incompatible models (Black
13 Diamond's vs. Maple Valley's) in the MPD's traffic analysis, coupled with the
14 flawed methodology used in combining them, likely renders the results of that
15 analysis meaningless. The citizens were not the only persons concerned about traffic.
16 The Cities of Maple Valley and Auburn, King County, WSDOT and the SEPA
17 Appellants also had serious concerns about traffic impacts and the modeling used by
18 Black Diamond, in particular the choice of a regional model to predict local impacts
19 and the existence of several methodological inconsistencies in the assumptions
20 employed to arrive at a description of project impacts.

21 As background to this discussion, Parametrix (the City's traffic engineer for the
22 FEIS) used the regional transportation model prepared by the Puget Sound Regional
23 Council (PSRC) along with a version of the Black Diamond local transportation
24 model updated to include projects in the City's 2025 Transportation Plan. John
25 Perlic, who lead the Parametrix traffic analysis, testified that Parametrix used the
PSRC model because it would demonstrate regional impacts better than the local
Black Diamond model. His firm used the local Black Diamond model because many
new roads will be constructed as part of this project and local project impacts within
Black Diamond could not be assessed without using the local model.

21 The City of Maple Valley challenged the use of the PSRC model noting it had several
22 deficiencies for use as an indicator of the local impacts in Maple Valley, the nearest
23 city to Black Diamond. Maple Valley's representative, Dr. Janarthanan, noted the
24 PSRC model is calibrated to predict regional traffic on major facilities such as I-5 and
25 SR 167. It is not meant for use at the local level. Dr. Janarthanan noted Parametrix
did not validate the model for use in the Black Diamond area or prove that the PRSC
model could be used to accurately predict existing traffic. Dr. Janarthanan testified
the transportation analysis zones in the PSRC model are not sufficiently detailed in
this area and do not include all local roads and land uses. He also noted the use of the
PSRC failed to identify any regional impacts outside of Maple Valley.

1 The City of Maple Valley argued that the Maple Valley model is a finer grained,
2 locally comprehensive model that has been calibrated for use in the entire study area.
3 They argued the project should have used the Maple Valley model to predict the local
project impacts and required mitigation measures.

4 Mr. Perlic testified the Maple Valley model had many deficiencies for use including
5 its assumptions about external trips and its inconsistent impact and mitigation trends.
6 The Maple Valley model understated project impacts in some places and overstated
7 them in others compared to the PRSC model. He also noted Maple Valley's impacts
8 and mitigation assumptions were based on an inconsistent methodology that blended
the PSRC model's trip generation with the Maple Valley trip distribution and
assignment phases.

9 Throughout the testimony, experts described inconsistent methodological
10 assumptions in each of the two models. Maple Valley and Mr. Tilghman both
11 testified that Parametrix had used an inappropriate straight line projection to
12 determine future background traffic growth. Both argued local land use assumptions
13 should have been considered. Mr. Nolan from King County and Maple Valley
14 testified that both funded and unfunded transportation projects should have been
15 considered. Mr. Nolan, Mr. Pazooki and Mr. Tilghman all testified that safety
concerns and queuing issues should have been considered in greater detail. Mr.
Dixon and Mr. Tilghman both expressed the need for an expanded mode split
analysis. Mr. Tilghman testified that a project of this size should have its own
transportation model, not a hybrid of other models.

16 RESPONSE: Black Diamond and Maple Valley each made very compelling
17 arguments that the traffic model of the other was deficient. The record is clear that
18 neither model is optimally suited to predict traffic impacts for the Black Diamond
19 community. The MPD, when completed, will have the effect of introducing the
20 traffic of a new, small city to south King County. This scale of development justifies
21 the creation of a project specific transportation demand model that accounts for all
22 existing and planned local land uses, is validated for local traffic, contains an
23 appropriately fine grained transportation analysis zone network, considers existing
24 peak hour factors, considers both funded and unfunded transportation improvements
that coincide with the build out timeframe for the project, considers safety concerns,
attempts to preserve the rural Heritage Corridor, provides a realistic mode split
analysis for both transit and non-motorized uses and determines a reasonably accurate
internal trip capture rate. Therefore, the project applicant will be required to create a
new transportation model that incorporates all the controls identified above and
subject that model to peer review and periodic updates.

25 For both traffic and noise, the Examiner recommends that added mitigation be added
to the project either through the development agreement or processed as a major
amendment to the MPD. Traffic and noise mitigation should go through one of those

1 processes to provide the public an opportunity to comment on the new mitigation.
2 Although mandating an MPD amendment might arguably violate the one hearing rule
3 of the Regulatory Reform Act, Chapter 36.70B RCW, the Applicant⁷ and other
4 parties may find this to be the best option to avoid further litigation. If the new
5 mitigation is processed through a development agreement, Maple Valley and other
interested parties may feel compelled to file a judicial appeal to the MPD because
their appeal rights may not be entirely preserved by waiting for the results of the
MPD process.

6 C. Green Valley Road. Ten residents (four in written testimony) objected
7 to the prospect of increased traffic on Green Valley Road, which is not amenable to
8 heavy traffic due to its narrowness, winding route, propensity for closure due to slides
9 and flooding, and its designation as a protected Heritage Corridor. It is also an
10 agricultural road, one resident noted; she said she had witnessed several near-
11 accidents involving speeding traffic and farm equipment. She said she also had had
several close encounters of her own with vehicles while walking her horse along the
road. This resident also voiced concerns about constructing schools in the area,
noting potential problems with increased traffic and water runoff from the schools'
parking lot, sidewalks and flat-roofed buildings.

12 Finding of Fact ("FOF") No. 14 of the TV FEIS contains additional information on
13 Green Valley Road impacts.

14 RESPONSE: As noted in the discussion on rural character, care must be taken when
15 imposing conditions to mitigate impacts that are subjective in nature. The record is
16 fairly clear, however, that Green Valley Road is a unique transportation facility that
17 could potentially be severely impacted by increased traffic. MPD Ex. 108 contains a
18 detailed discussion on the historical and aesthetic significance of this community
19 resource. The combination of a narrow, windy road with its heavy use by bicyclists
20 and farm animals and equipment does not make it amenable to significant increases in
21 traffic both from a safety and a user standpoint. Safety concerns were not just raised
22 by lay people, but by the traffic experts of King County government as well. King
County's designation of the road as a Heritage Corridor supports the conclusion that
the road has aesthetic and cultural significance that can be impaired by additional
traffic. These factors justify a study of traffic impacts and recommended mitigation
to provide for safety and compatibility between the varied uses of Green Valley Road.
The study should include an analysis of measures designed to discourage and/or

23
24 ⁷ Chapter 36.70B RCW requires local land use codes to provide for only one hearing
25 per application. Although this requirement has benefits to all parties in the land use
process, it is primarily designed to protect the Applicant from the delays and expense
of multiple hearings. This is why the Applicant is specifically mentioned as a party
who should buy off on the concept.

1 prevent MPD traffic from utilizing the road, such as the installation of traffic calming
2 devices.

3 D. Schools. Two representatives from the Enumclaw School District, as
4 well as an attorney representing the District, a PTA representative, and three local
5 residents testified on the need for the MPDs to account for the construction of enough
6 new schools and related facilities. The District's schools are already at or over
7 capacity, the school officials said. In written testimony, two Green Valley Road-area
8 residents pointed to the negative impacts of locating new schools along the road,
9 including increased traffic, vandalism and water runoff. This runoff may exacerbate
10 the road's already frequent mudslide blockages, they said. Also in written testimony,
11 one resident noted an admonition from King County to keep schools inside the Black
12 Diamond city limits, contrasting it with what he termed a "trial balloon" to move
13 some schools to the Green Valley Road area, outside city limits. He said such a move
14 would be a way for YarrowBay to increase the amount of developable land within the
15 city, thereby boosting profits and creating more crowding. Others questioned
16 whether the costs of school-district growth would fall on the backs of Enumclaw
17 School District residents. Finally, one resident wrote that the proposed location of a
18 new high school near Lake Sawyer Regional Park was too close to existing schools
19 and would result in significant traffic problems in the area, and another noted that
20 some schools were not within walking distance of the students they would serve,
21 exacerbating traffic problems and violating existing school siting standards.

22 The Enumclaw School District also submitted a letter, MPD Exhibit 14, detailing the
23 District's interest in adequate school mitigation. Overall the written comments
24 supported the analysis and mitigation of the FEIS. The District expressed
25 disagreement with DEIS comments submitted by the Applicant that asserted that the
land requirements for schools should be set by state minimum standards and that
projected enrollment methodology was not suited to the long term development of the
MPD projects. The Applicant did not provide a written rebuttal to these comments.
The District and the Applicant have been involved in extensive negotiations on a
school mitigation agreement. According to FOF 18 of the staff report, the latest draft
is satisfactory to the District.

The TV FEIS has additional comments on school impacts, mostly related to impacts
associated with construction and operation of the schools.

RESPONSE: As noted in the TV FEIS, impacts associated with school construction
and operation (beyond those already addressed in the TV FEIS) are more
appropriately deferred to the time of development permit review. Only at that time
will there be sufficient information to accurately assess and mitigate impacts. As
further elaborated in the TV FEIS, deferral of this analysis will not result in less
effective mitigation or deprive the decision makers of the opportunity to make a
reasoned choice amongst alternatives, given that some traffic and other pertinent
impacts of schools are addressed in the TV FEIS.

1 The District is correct that its capital facilities plan ("CFP") identifies acreage
2 requirements⁸ for new schools. See, Ex. 14, attached Ex. A, p. 15. However, the
3 CFP, at least as appended to Ex. 14, fails to identify an explanation/justification for
4 the acreage requirements. Without more information, the acreage requirements set by
5 Enumclaw may not satisfy due process requirements, which require some reasonable
6 justification for the amount of mitigation requested. See, *Isla Verde Intern Holdings,*
7 *Inc. v City of Camas*, 146 Wn.2d 740 (2002). It is also recognized that the acreage
8 requirements in the CFP are used to calculate school impact fees and are not
9 necessarily intended to serve as minimum site standards for the construction of all
10 schools. For this reason, the acreage standard can be applied in a flexible manner.

11 Although the District's acreage standard may still require some justification, it is the
12 most suitable standard provided in the record because it is incorporated into the City's
13 comprehensive plan. FOF 17 of the staff report notes that the CFP has been adopted
14 into the City's comprehensive plan. BDMC 18.98.010(M) provides that a purpose of
15 the master plan regulations is to implement the City's comprehensive plan. BDMC
16 18.98.080(A)(19) requires that

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

21 Interestingly, the size of the "school" must be based upon adopted District standards
22 but not expressly the size of the "site." However, the regulations must be read to
23 implement the City's comprehensive plan, which adopts the District's acreage
24 requirements. The District's acreage requirements should be applied to the project,
25 unless the District is unable to provide the justification required by the *Isla Verde*
case or it can be shown that a smaller site will meet the District's needs.

Even though, as previously stated, the District approves of the latest draft of the
school mitigation agreement, MPD Ex. 194, the acreages proposed by the agreement
are less than that specified in the District's CFP. The agreement assigns 10 usable
acres for the elementary schools, 15 for the middle schools and 40 for the high
school. MPD Ex. 194, p. 3. The District's CFP provides that elementary schools
need 15 acres, middle schools 25 and high schools 40. The record does not contain

⁸ It may be more appropriate to identify the acreage amounts as "needs" as opposed to "requirements." The acreage requirements are specified in a table identifying the cost basis for school impact fees. Presumably the acreage amounts were based upon what the District determined to be necessary to accommodate its schools needs, since impact fees must only be used for facilities that are needed to serve new growth. See RCW 82.02.050(1)(b). If the District can reasonably justify this need, it can impose it as a minimum standard for mitigation as contemplated in the *Isla Verde* case, discussed *infra*.

1 an explanation for the disparities between the City's acreage standards and those
2 contained within the agreement.

3 On the issue of the accuracy of enrollment projections, the District provides a
4 reasonable justification for the methodology employed, pointing out that the
5 methodology is consistent with recognized practice. The District provides examples
6 in the Marysville and Mount Vernon school districts where the methodology was
7 used for 15-year enrollment projection studies. *See*, Ex. 14, p. 4.

8 On the issue of the location of schools, it is correct that the schools must be located
9 within "walkable" distances of residential areas. BDMC 18.98.080(1)(14) provides
10 that school sites "must meet the walkable school standard set forth in the
11 comprehensive plan." There is no specific "walkable" standard expressed in the
12 comprehensive plan. However, pp. 1-10 of the comprehensive plan provides as
13 follows:

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

19 The half-mile distance is consistent with the maximum distance one would expect a
20 child to walk to school. The proximity of schools to residential areas is not just
21 driven by the need to accommodate school children. Comprehensive Plan CF-14,
22 under School Objectives and Policies, encourages the use of joint-use agreements for
23 school facilities. This recognizes that school facilities can be used by the surrounding
24 community for recreational and other activities. Of all the facilities that would be
25 subject to the City's "ten-minute walk" goal, schools would certainly on the short list
of facilities subject to the standard.

Synthesizing the information above, the MPDs should be conditioned to provide that
the Applicant will pay its proportionate share of school mitigation, based upon the
acreage requirements and population projections of the District's CFP. All schools
shall also be located within a half-mile walk of residential areas. The acreages
identified in the CFP may be reduced to the extent they are not necessary to
accommodate projected school needs.

E. Use of Lake Sawyer Park for School Mitigation. Four residents objected
to the use of Lake Sawyer Regional Park for high school athletic fields, as proposed
in the school mitigation agreement, Ex. 194. They presented a petition with over 300
signatures opposing the joint use. Ex. 112. This agreement comes at an effective cost
to taxpayers, they said, while allowing YarrowBay to escape the full costs of
development and adding to traffic problems in the Green Valley Road area; it is also

1 unfair to members of the public (who have paid for the park) to give the schools
2 priority use of the property, one speaker noted.

3 RESPONSE: A school mitigation agreement has not yet been signed. How the City
4 of Black Diamond chooses to manage the use of its parks is also arguably outside the
5 scope of the MPD applications. Ultimately, the conditions of approval recommended
6 for school mitigation adequately address school impacts at this stage of review and
7 the contents of an unsigned school mitigation agreement is not ripe or germane to this
8 review. Further, since Comprehensive Plan Policy CF-14 encourages joint use of
9 school facilities, it is reasonably possible that the construction of schools will actually
10 create a net increase in recreational facilities by the public use of the new school
11 facilities. Since approval of the agreement is a Council action that is separate from
12 the MPD process, the Council and citizens are free to discuss the use of Lake Sawyer
13 Park for school purposes outside of the MPD hearing process. *See* RCW 42.36.020.
14 Concerned citizens should make sure their petition gets to the Council before the
15 agreement is signed and that their issues are addressed.

16 F. Fiscal impacts. Sixteen residents (five in written testimony) raised the
17 prospect that additional taxes may be imposed to support infrastructure needs that
18 they say the developers would not pay for, such as road improvements, added school
19 costs, the need for an increase in police and fire personnel/facilities, sewer services
20 and wastewater management facilities. Several noted provisions in the city code that
21 requires new development to pay for itself and that there be no adverse fiscal impacts
22 from developments to the city. A few residents addressed the potential economic
23 failure of the projects, particularly the planned retail component, raising the specter of
24 unsold homes and empty storefronts. In written testimony, one resident noted that the
25 MPD's fiscal analysis fails to incorporate impacts on the city's special funds
(police/fire, water/sewer, roads/parks), asking how these impacts will be funded: what
happens if future levies, assumed to pass in the analysis, do not succeed; and if that
occurs what would be the impact on the city's general fund. She said the analysis
also overstates initial tax revenues. She also urged special attention be given the
project's phasing, noting that early construction of high-density, multi-family housing
units would front-load demands on city police and fire services and the schools.

Mike Whipple, the Applicant's fiscal expert, provided written comment regarding the
divergent results reached by the Applicant's fiscal impact analysis ("FIA") and that
adopted into the TV FEIS. *See* MPD Ex. 124. The FEIS FIAs determined that the
Lawson Hills MPD would have a positive fiscal impact and the Villages a negative
fiscal impact, with the Villages MPD reaching a million dollar annual deficit by 2030.
Id. at p. 4, TV FEIS, pp. 3-95. Mr. Whipple's analysis found that the fiscal impacts
for both MPDs would be positive. MPD Ex. 124, p. 4. As reflected in the TV FEIS,
pp. 3-96, Mr. Whipple noted that slight changes in assumptions can lead to differing
results in the fiscal impact analysis. The primary differences in assumptions appear
to concern retail sales and housing values. The EIS fiscal impact analysis ("FIA")
assumes \$152 retail sales per square foot, which Mr. Whipple wrote is significantly

1 below the average for retail sales and is not supported by any market study. Mr.
2 Whipple based his retail sales estimates upon the lower end of estimates prepared
3 utilizing the Urban Land Institutes' "Dollars and Cents of Shopping Centers, 2002"
4 and "2007 Retail Taxable Sales Estimates" prepared by HDL Companies.

5 For housing values, Mr. Whipple assumed that single-family homes would sell for
6 \$420,000 and multi-family homes for \$150,000. Mr. Whipple stated these housing
7 values were based upon current market studies, although he did not mention whether
8 these studies were conducted before the recent downturn in real estate sales. The EIS
9 FIA assumes a \$354,000 value for single-family homes and a \$125,000 value for
10 multi-family units, based upon house sales in Black Diamond four to five years ago.

11 It is interesting to note that even though the City commissioned its own FIA for the
12 EIS, it also subjected that FIA to peer review by Parametrix in a "sensitivity
13 analysis." Parametrix employed the methodology of both Mr. Whipple and the FEIS
14 FIA to determine what would happen under four scenarios: (1) adjusting housing
15 values; (2) assuming all parks maintained by an HOA; (3) assuming all streets
16 maintained by an HOA; and (4) reducing police costs (the DEIS incorrectly
17 calculated the number of new police officers needed; it is unclear if this error was
18 remedied for the FEIS). Parametrix made these changes to assess both short- and
19 long-term impacts on each MPD individually and cumulatively. Under each scenario,
20 Parametrix found a net positive fiscal impact, although the amount of the change in
21 anticipated housing values was not identified.

22 RESPONSE: The primary difference in the models used by the Applicant and for the
23 FEIS are the assumptions made about future housing values and commercial activity
24 for the City of Black Diamond over the next 15 years. In having to choose between
25 one FIA over another, the Council essentially is asked to determine which FIA more
accurately predicts the performance of the economy for Black Diamond during that
time. It's fair to conclude that predicting the economy is an impossible task, or at least
beyond the capabilities of current economic science. Neither study makes any
assumptions or employs any methodology that could be considered unreasonable or
excessively self-serving. The FIAs only serve as a general guide to economic impacts,
and those impacts must be considered inconclusive given the limitations of predicting
economic performance fifteen years in advance.

Although the FIAs cannot provide a high degree of accuracy on economic impacts,
there are a couple factors that put the City in a good position to assure fiscal neutrality.

First, the Applicant has agreed to a condition that will make it responsible for any
fiscal shortfalls projected after each phase of development. The Applicant proposes
the following condition:

The applicant shall be responsible for addressing any projected city
fiscal shortfall that a fiscal analysis, prepared at each phase, shows is a

1 result of the Villages MPD. The exact terms and process for
2 performing the fiscal analysis and evaluating fiscal impacts shall be
3 outlined in the Development Agreement, and shall include a specific
4 "MPD Funding Agreement," which shall replace the existing City of
5 Black Diamond Staff and Facilities Funding Agreement.

6 Given that the TV FEIS predicts an annual yearly shortfall of one million dollars per
7 year, it will be interesting to see how the Applicant would address the shortfall if it is
8 projected to occur for perpetuity. The Applicant is a limited liability corporation, and
9 if it were indeed "stuck with the bill," there would be little incentive for it to continue
10 its existence. The same will probably hold true for any "Master Developer" made
11 responsible for the project. It is also of concern that both the Villages and Lawson
12 Hills MPD proposals may only build residences in the first phases of development.
13 See Villages and Lawson Hills MPD Applications, Chapter 9. As noted in the ECS
14 11/16/09 memo (Ex. J to the TV FEIS), single-family residential developments
15 typically produce deficits. It's likely that the first phases of MPD development will
16 produce deficits if those phases are limited to residential development.

17 The second factor that helps assure fiscal neutrality is the sensitivity analysis
18 conducted by Parametrix. As previously discussed, Parametrix determined under both
19 FIAs that measures such as HOA ownership and maintenance of roads and/or parks
20 would result in a net positive fiscal impact. Consequently, it is reasonable to conclude
21 that any long term projected shortfalls could be addressed by privatizing
22 infrastructure. Combining Applicant responsibility with the options of privatization
23 provides reasonable assurance that the projects will not have an adverse fiscal impact
24 upon the current residents of Black Diamond.

25 The Applicant's recommended condition will be combined with that of the staff's. As
recommended by staff a fiscal analysis will be required five years into the project
when it is likely that the Applicant's development is mostly residential and hence
impacts may be most severe. In order to ensure that the MPD does not lower staffing
levels of service as required by BDMC 18.98.050(A)(5), the fiscal impacts condition
will also require that the projects generate sufficient revenues to maintain required
staffing levels.

21 G. Water. Most of the concerns cited the potential negative effects of the
22 developments on 1) water availability (several residents were concerned that the wells
23 and springs that supply their property would become unusable during the summer); 2)
24 water quality, including the potential pollution of local wells and particularly the
25 negative impacts of added runoff and pollutants to nearby Rock Creek and Lake
Sawyer (a concern specifically mentioned by 17 residents at the hearings and 18
others in written testimony; frequently at issue was the potential eutrophication of the
lake resulting from increased phosphorous levels); 3) the potential failure of septic
systems; and 4) the potential for flooding of properties, already a problem at times,
caused by the increase in impervious surfaces to the area. In written testimony,

1 several residents questioned the adequacy of stormwater and wastewater facilities
2 identified in the MPD.

3 RESPONSE: As discussed at length in the FEIS adequacy decisions, Lake Sawyer
4 water quality issues were the biggest area of concern regarding MPD impacts.
5 Phosphorous from the stormwater runoff of development can result in blue-green
6 algae blooms, which in turn can result in the release of toxins, closure of beaches,
7 aesthetic blight through production of a green surface scum and harm to endangered
8 fish. The saving grace for the MPDs was a Washington State Department of Ecology
9 determination that development will not violate water quality standards if they are
10 subjected to the 2005 DOE Stormwater Manual *and the City continues to implement a*
11 *water quality monitoring program in conjunction with implementation projects within*
12 *the Lake Sawyer watershed.* The DOE Lake Sawyer Water Quality Implementation
13 Plan, Ex. H-9, identifies the measures that the City and other organizations should be
14 implementing to protect water quality. In negotiation of the development agreement,
15 the City Council may wish to consider requiring the Applicant to participate, in a
16 proportionate manner, in some of the watershed-wide implementation measures and,
17 in particular, in the monitoring of Lake Sawyer water quality. The Applicant has also
18 proposed a condition requiring HOA covenants to prohibit car washing on driveways
19 and use of phosphorous fertilizers in common areas. This condition has been
20 included in the recommended conditions of approval.

21 Mr. Rothschilds, one of the members of the public who testified on water quality
22 issues, has been intimately involved with Lake Sawyer water quality issues for
23 eighteen years and has a master's degree in mechanical engineering. He raised some
24 compelling concerns over phosphorous impacts to Rock Creek that had not been
25 discussed during the SEPA appeals. Mr. Rothschilds' testimony prompted the
Applicant's to file a rebuttal declaration by Dr. Kindig, which detailed that Mr.
Rothschilds had not considered the impacts of additional flows from development in
his estimates of Rock Creek phosphorous concentrations. In the declaration, Ex. 121,
Dr. Kindig established that the resulting phosphorous concentrations after the build
out of both MPDs would be 0.026 milligrams/L. There is no evidence in the record to
suggest that these concentrations would be adverse to Rock Creek.

Another issue related to water impacts concerned the flooding of Lake Sawyer. Jack
Sperry shared photos and others shared concern over past flood events. Alan Fure
submitted a declaration in response to these concerns, Ex. 123. Mr. Fure provided a
compelling analysis that the added stormwater generated by the MPDs would not
make a significant difference in the quantity of water that reaches Lake Sawyer
during storm events. As noted in his declaration, the developed areas of the MPDs
only take up 4% of the Lake Sawyer watershed. A little more than a third (326/922
acres) of the MPD developments are within the Lake Sawyer watershed. Using the
volumes generated by the January 7, 2009, flooding events, the MPDs would add an
additional depth of 1.85 inches to the storm event. As noted by Mr. Fure, in actual
practice it would take several days for all of the water from a storm event to reach

1 Lake Sawyer from the MPDs. The MPD does not serve as a significant flood threat
2 to Lake Sawyer properties.

3 As to concerns about whether stormwater in general will be properly controlled by
4 the MPDs, the MPDs will be governed by the 2005 DOE stormwater manual. This is
5 the standard for stormwater control legislatively adopted by the City Council, and
6 there is no evidence to suggest that this manual is inadequate. Low-impact
7 development techniques are also proposed and are recommended conditions of
8 approval, which will also significantly mitigate stormwater impacts. As noted in the
9 staff report, the MPD project site contains permeable soils that are amenable to low-
10 impact development techniques.

11 As to water availability, the Water Supply and Facilities Funding Agreement
12 (WSFFA) (Exhibit 9) dated August 11, 2003, provides for water supply through
13 major property owner upgrades of the Black Diamond water system, including
14 upgrades to the city springs and delivery of city spring water to Black Diamond and
15 the purchase of new water supply from the City of Tacoma with a requirement for
16 reimbursement by credits on future capital facility charges. The project has also
17 been designed, generally through infiltration systems and circumvention of wetlands,
18 to avoid any risk of adverse impact to private wells and springs that could be affected
19 by the Villages MPD, as established in the AESI reports in Appendix D to the TV
20 FEIS. There is no evidence to suggest that the use of these water sources will impact
21 or impair existing water rights of other residents.

22 H. Tree Removal. Seven speakers and six writers objected to the prospect of
23 large-scale tree removal, noting that local trees both serve as a windbreak during
24 severe weather events, affect the water table, and have great aesthetic value. One
25 person testified that removal of too many trees would attract tornados.

RESPONSE: Many of the comments on tree retention were prompted from the
Applicant's request for waivers to the City's tree preservation ordinance, Chapter
19.30 BDMC. However, the Applicant has now agreed to comply with the ordinance.
See MPD Ex. 114, p. 21. The tree preservation ordinance has a comprehensive
replacement program for trees that are removed, excepting properties that have 40%
open space. See BDMC 19.30.070. The City's tree preservation ordinance sets the
standard for tree protection in Black Diamond and is sufficient to protect the
community from the removal of trees.

I. Construction Noise. The construction noise issue was of particular
concern to residents living near the proposed construction areas; they noted that
mitigations were essential given the prospect of sustained noise levels in excess of 90
dB. These residents also requested limitations on construction hours, e.g., 8 a.m. to 5
p.m. Monday through Friday with no work on weekends. Six persons raised
concerns about noise. Noise was addressed in detail in the FEIS, where expert
testimony was assessed.

1 RESPONSE: As discussed in the TV FEIS, the issue of noise was only addressed in
2 one of the SEPA appeals and was limited to three properties. There are no such
3 constraints on noise impacts under the MPD criteria and noise impacts can be
4 assessed project wide. As identified in the FEIS, the duration of construction noise is
5 something that has not been adequately addressed for the MPDs. Noise standards,
6 such as DOE regulations, typically exempt construction activities from noise
7 requirements. However, the build out for the MPDs is anticipated to be 15 years.
8 Given the length of this build out, it is likely that there is nothing temporary about
9 construction noise impacts in some areas. As discussed in the TV FEIS, of particular
10 concern is the extensive grading proposed by the Applicant, which could conceivably
11 result in years of truck traffic on some roads.

12 For the reasons above, additional noise study will be required to identify long term
13 noise impacts. Long term noises will be subject to the noise standards of Chapter
14 173-60 WAC where they will not qualify for the construction noise exemption.
15 Mitigations may include rerouting truck traffic, sound barriers and/or soundproof
16 windows. The additional noise study shall identify the minimum duration for "long
17 term" noises by reference to professionally accepted standards or regulations from
18 other agencies. The Examiner anticipates that any period exceeding a few months
19 will qualify as "long term." The noise study consultant shall be hired and report to
20 the City at the expense of the Applicant. As with traffic impacts, the resulting
21 analysis and mitigation shall be processed as an MPD amendment or integrated into
22 the development agreement so that the public will have further opportunity to
23 comment and the parties will have an opportunity to appeal.

24 J. Wildlife. Seventeen speakers and 16 others in written testimony
25 expressed concern about the effect on local wildlife and their migration routes.
Several of these testimonies listed a variety of species seen from the speakers' own
homes. Nearly all expressed fears that the developments would diminish the
creatures' food sources, their protective cover, their general well being, and the size
or presence of local populations. Others noted that when natural corridors of travel for
the animals are disrupted, some might create their own routes through yards or more
highly populated areas, creating hazards for the animals and for vehicles.

RESPONSE: Wildlife impacts are addressed at length in the FEIS. As testified by
the SEPA Appellants' wildlife expert, wildlife impacts are an inevitable impact of
development and the only way to completely mitigate them is to provide for a one to
one replacement of lost habitat with new habitat. Of course, most development could
not proceed under these conditions and it's unlikely that any such requirement would
be considered reasonable by a reviewing court. The Villages MPD proposes to retain
33.5% of the project area in open space, a large portion of which will serve as a
wildlife corridor. This open space retention is a relatively large set-aside for any
development project. The Applicant's wildlife expert testified that these corridors
are of sufficient width to provide for wildlife migration and the Examiner agrees with

1 that analysis. Significantly, the record also establishes that there is no threatened,
2 endangered or otherwise protected species that has habitat within the project area.

3 K. Trails and Parks. Seven residents expressed the need for the developments
4 to include adequate open spaces, parks and trails. Several noted the vision articulated
5 in YarrowBay's promotional materials and on the city's own website of a growth plan
6 centered around these features. Another speaker voiced concerns about the option for
7 the developer to make cash payments to the City in lieu of soccer fields, play areas
8 and trails. Such an arrangement would not work for a project of this size, she said.

9 RESPONSE: The Villages MPD exceeds the amount of parks required by the 2008
10 Black Diamond Parks, Recreation and Open Space Plan. Double the neighborhood
11 and community parks are provided and the number of pocket parks meets the
12 standard. The phasing plan proposed by the Applicant requires park construction at
13 various stages of specified occupancy. See TV and LH MPD App. p. 9-10. This
14 timing is contrary to BDMC 18.98.080(A)(4)(a), which requires that all park
15 improvements be completed prior to any occupancy or final site or plat approval,
16 whichever occurs first. The timing of on-site trails and other recreational facilities
17 other than parks is governed by p. 9-3 of the MPD applications, which generally
18 require that they must be built prior to occupancy. This requirement does not apply to
19 off-site trails. The project will be conditioned to clarify that off-site trails and
20 recreational facilities may be required as a condition of phased development as
21 authorized by law to mitigate the impacts of a particular phase. This condition will
22 enable the City to require off-site trail improvements and connections to facilitate the
23 immediate integration of each phase into an area-wide trail network. The project will
24 also be conditioned to require that parks that serve new development will be
25 constructed prior to any occupancy or final site or plat approval as required by
BDMC 18.98.080(A)(4)(a). The project is also conditioned to allow the City to make
the determination of when cash in lieu of improvements will be accepted.

18 L. Wetlands. Three speakers noted the potential threats the developments
19 might pose to area wetlands. Dan Streiffert, president of the King County Sierra Club,
20 said that there are a number of wetlands within the boundaries of the two
21 developments. Many of these areas, he said, would be negatively impacted by
22 changes in water infiltration and water runoff. He added that wetlands are a vital part
23 of the ecosystem of the Green River watershed, its fish and its wildlife. The impacts
24 on this watershed from the developments could be irreversible, he argued.

25 RESPONSE: Chapter 19.10 BDMC comprehensively and adequately addresses all
impacts to wetlands. The AESI reports in Appendix D to the FEIS of both MPD
applications establishes that the MPDs have been designed to avoid disrupting
infiltration to wetlands.

M. Greenhouse Gases. Four speakers raised concerns about the potential
increase in greenhouse gases that the developments may create through increased

1 traffic and tree removal. According to Dan Streiffert, president of the King County
2 Sierra Club, massive amounts of additional traffic will impinge upon the already
3 clogged major roads. He questioned how such an increase could meet the intent of the
4 transportation concurrency requirements of the Washington State Growth
5 Management Act. The greenhouse gas emissions calculations use tables supplied by
6 King County, he said, but grossly underestimate the amount of emissions by using an
7 average vehicle miles traveled, VMTs, as input to the spreads, noting that commuters
8 from Black Diamond to major employers in King and Pierce counties will likely have
9 round trip distances that will exceed greatly exceed the Washington state average of
10 EISs. The YarrowBay MPDs alone will have a significant impact on King County
11 greenhouse gas emissions, he asserted.

12 Two other speakers argued that the amount of tree removal called for in the MPDs
13 would reduce the local ecosystem's ability to scrub the air of the gases that cause
14 global warming. One noted that while, in her opinion, most of the figures offered by
15 the developer for both public and Council consideration grossly underestimate the
16 amount of greenhouse gases the developments would generate, even they offer up the
17 figure of 11 metric tons of gas emissions at full build-out. This does not take into
18 account the developer's request for an exemption from the City of Black Diamond's
19 tree ordinance. She added that proposed limits on greenhouse gas emissions would
20 likely be enacted in King County, if not statewide, before the YarrowBay project is
21 complete. It is important that consideration to following such proposed guidelines be
22 given now, she said, not once the trees are gone and the pollution is here.

23 RESPONSE: Impacts and mitigation of greenhouse gases was addressed in the
24 Lawson Hills FEIS. The Lawson Hills FEIS discussion on greenhouse gases is
25 incorporated by this reference as if set forth in full.

26 N. Mine Hazards. Two speakers cited the danger of building on top of
27 the area's many abandoned mines, with their potential to create sinkholes and to
28 release poisonous gases. One speaker raised the question of whether developers
29 would be required to disclose to future homebuyers that their properties were located
30 above abandoned mines, and whether all of these mines had been charted. Another
31 speaker noted the danger of locating a school over the mine area, as called for in
32 development plans.

33 Jim Johnson of Golder Associates, on behalf of the Applicant, testified in writing
34 regarding area mine hazards. His conclusions were: that a proposed school site is
35 located adjacent to rather than within a mine hazard area; that there are no known
36 unmitigated mine openings on the Lawson Hills or Villages sites; that no explosive
37 gas was detected during tests on five of six locations in Lawson Hills and only a
38 minimal level was found at one other test site, and consequently there was no risk of
39 explosion from methane gas associated with the coal seam that lies under Lawson
40 Hills; and that the sinkholes that presently exist in the Lawson Hills area either have
41 been or, in two cases, must be adequately mitigated under the Black Diamond SAO.

1 He also noted that trails and passive recreational areas are planned within severe mine
2 hazard areas in Lawson Hills. These planned uses are appropriate, he said, and risks
3 to recreational users can be mitigated by careful planning of recreational uses to avoid
4 the most severe hazard areas (directly over the surface crop of a coal seam) or by
mitigating the area by filling or bridging potential near-surface voids detected by
exploration.

5 RESPONSE: Mining hazards were addressed at length in the Lawson Hills FEIS
6 decision and that discussion is incorporated in this recommendation as if set forth in
7 full. The Lawson Hills MPD included low, moderate and severe mine hazard areas.
8 By contrast, the Villages MPD only includes a small number of low-hazard mine
9 areas. See TV FEIS, pp. 4-15. As with the Lawson Hills mine hazard areas, the
10 City's Sensitive Areas Ordinance will ensure that these hazards will be sufficiently
addressed. A recommended condition of approval will require that buyers of property
sold in mine hazard areas execute a liability waiver to the City, accomplishing the
disclosure requested by one of the persons who commented on this issue.

11 O. Relationship between Council and Applicant. Five speakers and three
12 writers raised concerns about the apparent close relationship between the developer,
13 YarrowBay, and some members of the Black Diamond city council. They noted that
14 YarrowBay had been paying the salaries of some city staff in relation to the
15 development, and that the decision-making process surrounding the project had often
16 not been open. One resident testified that, while citizens struggled to have their
17 voices heard by the city, the developers had unfettered access to city officials, even
18 encouraging them to lobby the state legislature to approve bills that would allow the
19 formation of capital facility districts, a measure that would be of potential fiscal
20 benefit to the developers. YarrowBay also argued successfully for code and
21 enforcement amendments that would facilitate the developments while giving former
22 city council member Geoff Bowie a construction contract while he was still on the
23 council and voting on the developer's requests, she said. The council has resisted
24 public input, she continued, while many codes, agreements and moratoriums were
25 made behind closed doors to the developer's benefit. In written testimony, she added
that many residents did not receive notification of meeting times and places, contrary
to city officials' claims. She also said SEPA official Steve Pilcher did not inform
citizens that they could appeal the FEIS if their environmental concerns went
unaddressed. The intent of the city's actions, she said, has been to permit only the
minimum public input required by law and to handle information at an individual
level rather than at a community level, to keep the council and the citizens separated
so that the developer could control the outcome. This lack of input was noted by four
other residents in their written testimonies.

RESPONSE: This issue is beyond the authority of the Examiner. However, several
people did comment on this issue so the Examiner wants to ensure that the Council
was made aware of it.

1 P. Regional Participation. Several residents argued, orally and in writing,
2 that the planning process has not taken into account the impact of the developments
3 on surrounding areas, particularly in regard to increased traffic, nor had it included
4 the input of many regional stakeholders.

5 RESPONSE: As noted in the 4/12/10 hearing by John Perlic, the traffic analysis of
6 the EIS was subject to several scoping meetings, including individual meetings with
7 affected agencies. These scoping meetings were attended by several regional
8 stakeholders, including adjoining jurisdictions and state agencies. On the full range
9 of project impacts, comments on the DEIS and the comments submitted for the MPD
10 hearings evidence participation of several cities and agencies, including King County,
11 Auburn, Maple Valley, several state agencies and the Enumclaw School District. The
12 MPDs have had a full airing of impacts to all regional stakeholders.

13 V. CONCLUSIONS OF LAW

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

18 2. Entitlement. In MPD Ex. 161, Dave Bricklin, attorney for the SEPA
19 appellants, argues that master plan approval is not an entitlement. In other words,
20 even if the MPDs satisfy all the permitting criteria, the Council is not mandated to
21 approve the application. The Examiner leaves it up to the City Attorney to advise the
22 Council as to whether the MPD process creates an entitlement. The Hearing
23 Examiner's recommendation for approval is solely based upon the determination that
24 the MPD applications meet applicable review criteria. Any recommendation beyond
25 that would just be based upon personal values and philosophy, which is solely within
the province of the elected representatives of Black Diamond.

3. Review Criteria. BDMC 18.98.060(6) requires the Examiner to base his
recommendation on the MPD on the approval criteria set forth in BDMC 18.98.080.
However, BDMC 18.98.080(A)(1) requires compliance with all applicable
regulations. Consequently, the Examiner will assess compliance with all the
provisions of Chapter 18.98 BDMC as well as some fire code provisions that need to
be addressed at this stage of review. In numerous parts of the analysis reference will
be made to staff recommendations and determinations. These should be construed as
Examiner recommendations and determinations as well. The Examiner has retained
the reference to staff recommendations to ensure that credit for this extensive work is
given where it is due. Applicable criteria are quoted in bold italics with
corresponding Conclusions of Law assessing compliance. Factual findings within the
conclusions may also be made in the furtherance of avoiding duplication and
preventing the separation of important information in a confusing manner.

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

3 1. The MPDs have been subject to multiple environmental appeals, over 50 hours of
4 hearings and hundreds of written comments have been submitted. Members of the
5 public were given ten minutes each to testify. Although there were issues with the
6 compressed review period as discussed in the FEIS decisions, the public otherwise
7 was given ample opportunity to comment on the MPDs.

8
9 **BDMC 18.98.010(B): *Establish a comprehensive review process for development***
10 ***projects occurring on parcels or combined parcels greater than eighty acres in size;***

11 2. The project comprises 1,196 acres and is, therefore, subject to the MPD review
12 process. The North Property (aka Parcel B), although approximately 80 acres in size
13 (and thus potentially eligible to be an MPD unto itself), is considered part of the
14 overall MPD. The MPD code allows a commercial area to be geographically
15 separated from the residential component via Section 18.98.030(C).

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

19 3. The project proposes to preserve amounts of open space as detailed on page 3-21
20 of the MPD application. They include a mix of passive and usable areas comprised of
21 sensitive areas such as wetlands and their associated buffers, trails, parks, and utilities
22 such as stormwater ponds. Figure 3-1 of the MPD application shows a majority of
23 the areas dedicated to open space as a coordinated network. The vast majority of open
24 space will be maintained as sensitive areas (primarily wetlands and streams) and their
25 required buffers.

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

4. Chapter 3 of the MPD application requests residential and commercial
development standards that allow for great flexibility in building design and
development layout. In terms of residential development, this includes a variety of
housing types at varying densities; alley-loaded lots; clustered residential centered on
common greens; and live/work units. 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.

1 Live/work units are described on page 3-35 of the application materials, but their
2 potential location is not depicted on the Land Use Plan map contained in the
3 application. In researching other large master planned communities in the Puget
4 Sound (such as Issaquah Highlands), staff has found the viability of live/work units to
5 be limited. A proposed condition of approval is to require identification of specific
6 areas where these can be permitted be done as part of the Development Agreement or
7 through a future minor amendment to the MPD.

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

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

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

21 5. Chapter 3 of the MPD application proposes residential and commercial
22 development standards and uses that allow for flexibility in building design and
23 development layout. The commercial component of the MPD would be located on the
24 North Property (Parcel B) and in the northern portion of the Main Property. The
25 eastern portion of Parcel B is proposed as a high density residential use. The
remaining residential, schools, and parks components would occur on the Main
Property. In some cases, these proposed development standards differ from standards
applicable in the remainder of the City and would therefore be unique to these MPD
properties.

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

1 du/acre category). This would not allow an increase in the overall unit cap of 1,250.
2 The areas proposed for the highest residential densities (18-30 du/ac) have been
3 depicted on the land use plan.

4 Staff finds that if the applicant requests to change the residential category of a
5 development parcel internal to the project, then an administrative process would be
6 appropriate. However, if a request is made to increase a residential category that
7 abuts the perimeter of the MPD, it is recommended that this change require a public
8 hearing process as a Major Amendment to the MPD. Additionally, staff is
9 recommending that a limitation be established to allow reclassification of
10 development parcels no more frequently than once per calendar year (consistent with
11 the allowance for Comprehensive Plan amendments).

12 While the applicant has proposed a wide variety of project-specific development
13 standards, there are several which staff does not support. Some of these areas are
14 identified and discussed under the "Functionally Equivalent Standards" portion of this
15 recommendation.

16 Staff recommends that consideration of a majority of the land use development
17 standards (table of allowed uses, setbacks, etc.) be deferred to the Development
18 Agreement. This will provide the opportunity for further discussions with the
19 applicant. There are several areas in which less stringent standards than required
20 elsewhere in the city are being sought, some of which are requested in the
21 functionally equivalent standards mentioned above. At this time, and until the
22 applicant provides greater certainty and clarity to the actual development proposed
23 for the site, staff does not find all of these requests to be justifiable. The amount of
24 flexibility being requested in the proposed project at this time - while the overall plan
25 is highly conceptual - does not result in a compelling reason to allow these different
standards. There are numerous staff concerns, including uses proposed to be
permitted in open space areas; a minimum 18' front yard setback to residential
garages (20' required by MPD Design Guidelines and in standard zones); inadequate
parking lot landscaping, resulting in less required landscaping than the city's
nonresidential zones; excessive allowance for compact parking stalls (65% vs. 25%
elsewhere in the city); and insufficient required parking for commercial/retail uses (a
particular concern when Parcel B's location means it will be heavily oriented to
automobile trips).

City staff recognizes the advantages of flexibility and provides a mechanism for
exploring alternatives to the City's water, sewer, and storm water comprehensive plan
concepts. Staff and the applicant can resolve the large, overarching design issues and
establish some of the proposed functionally equivalent construction standards as part
of the Development Agreement. In addition to the flexibility of establishing
functionally equivalent standards as part of the Development Agreement, the
Engineering Design and Construction Standards contain an administrative deviation
process (section 1.3 of the standards) that does not require a showing of hardship.

1 Any proposed deviation from standards must show comparable or superior design and
2 quality; address safety and operations; cannot adversely affect maintenance and
3 operation costs; will not adversely affect aesthetic appearance; and will not affect
4 future development or redevelopment. Most of the requested functionally equivalent
standards for streets and utilities can be addressed in the Development Agreement and
through this administrative deviation process.

5 Therefore, given the lack of detail and supporting information, staff cannot either
6 support blanket approval or deny the functionally equivalent standards related to
7 utilities and transportation at this phase of the approval process.

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

10 6. The MPDs have been subject to extensive and intensive environmental review.
11 The FEIS is supported by hundreds of pages of environmental analysis. The bulk of
12 the hearings on the MPDs was comprised of the testimony of numerous experts
13 addressing the appeals of the FEIS. Through this process several areas of
improvement have been identified and additional mitigation will be incorporated into
the conditions of MPD approval. New conditions addressing traffic and noise in
particular will help ensure that all impacts are fully addressed.

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

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

21 Chapter 3 of the MPD application contains design concepts that illustrate the
22 proposed character of development. Ch. 3 also describes a variety of housing types
23 anticipated to be built and proposes development standards that would apply
24 exclusively within the MPD. However, the level of detail of the MPD is basically
25 equivalent to a "subarea" plan, as the proposal does not include typical subdivision or
project layouts. The amount of flexibility requested in the proposed project and the
conceptual level (rather than project level) of detail makes it difficult to determine
what product type will be built where and when. In that regard, certainty about the

1 character of residential development is not greater than otherwise provided through
2 standard zone classifications.

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

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

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

15 8. The MPD application discusses implementation of low impact development (LID)
16 techniques, water conservation, clustering development and preserving open space.
17 Staff finds that given the soils on the Main Property (as described in Ch. 4 of the
18 FEIS) LID should have excellent potential. As a recommended condition of approval,
19 mechanisms shall be identified to integrate LID into the overall design of the MPD
20 for the benefit of these resources. The MPD should be required to comply with codes
21 aimed at environmental protection such as the Sensitive Areas Ordinance and
22 mitigation measures derived from the FEIS designed to prevent the project from
23 having an adverse impact on the environment.

24 The project includes a number of design features (trails and bike lanes, inclusion of
25 schools within walkable distances to residential areas) that will facilitate non-
motorized travel within the Main Property. It is possible that some vehicle trips would
be reduced especially given the proximity of commercial uses to the residential
component of Parcel B and the Main Property's Town Center. Given the distance
between the remainder of the residential to the commercial on the Main Property it
will be necessary for a majority of these individuals to make vehicle trips to meet
most of their daily and weekly needs.

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

28 9. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater,
29 sewer, water and the project phasing plan. The applicant has proposed several cost
30 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

1 the MPD application describes these mechanisms and the timing of improvements in
2 more detail. A traffic monitoring plan is mentioned on page 9-3. Staff is
3 recommending that a proactive rather than reactionary transportation monitoring plan
4 be established as part of the Development Agreement with a list of projects and
5 trigger mechanisms acceptable to the City. This will ensure that needed traffic
6 mitigation measures occur in conjunction with growth, rather than after a decline in
7 level of service. With the proposed phasing plan of supporting regional infrastructure
8 projects, along with various conditions contained herein, various additional studies
9 are completed and responded to and with a satisfactory implementing Development
10 Agreement, The Villages Master Planned Development can meet the requirement of
11 providing services and facilities in an orderly fiscally responsible manner.

12 In summer 2009, the applicant (through YarrowBay Holdings) requested a study of
13 the impact of the removal of the north south link across the Rock Creek wetland
14 connecting Abrams Ave. and the South Connector within The Villages project, and
15 also removing the Southeast Loop Connector in the Lawson Hills project. (Both of
16 these transportation links are depicted in the Transportation Plan element of the
17 Comprehensive Plan). The City hired the consulting firm of Parametrix to determine
18 the impact of the reduced network connections (Exhibit 13) and found that in order to
19 maintain the adopted level of service (LOS) standard, several lanes of travel would
20 have to be added to SR 169. The staff report incorporated these added lane
21 requirements to the conditions of approval. Due in part to the fact that there was no
22 assurance that WSDOT would agree to these improvements, the Applicant agreed to
23 drop the proposal to add lanes to SR 169 and instead more generalized conditions
24 were proposed by the Applicant and fine tuned by the City to require mitigation to be
25 in conformance with the Comprehensive Plan or to provide for functional
equivalency. The Examiner finds these conditions be acceptable, but does not want
to allow functional equivalency to be used to reconnect the Villages MPD to Green
Valley Road. This was a major source of public concern and the public was assured
this would not occur. Any reconnection must be processed as a major amendment to
the MPD.

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

20 10. The project has designated 67 acres for a maximum of 775,000 square feet of
21 commercial/office/industrial use. Chapter 3 of the MPD application describes these in
22 more detail. For clarification, the MPD application describes office uses as a broad
23 category including such things as general office, business support services, light
24 manufacturing, wholesaling and mini-storage. It is unknown what the ultimate mix of
25 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. Appendix J of
the FEIS contains analysis on the amount of retail/office square footage to be
developed along with employment projections.

1 In Table 3.4 of the application, uses are shown, including the proposed requirement of
2 a conditional use permit for locating a high school within certain land use
3 designations. Staff recommends that an updated fiscal analysis be required for any
4 proposal to locate a high school within any lands designated on Figure 3-1 (Land Use
5 Plan) for commercial/office/retail use.

6 The FEIS analysis estimated the number of jobs to be created to not be sufficient to
7 meet the Comprehensive Plan's job creation goals. Their potential earning potential is
8 also unknown. If a significant number of jobs is in the retail and service sector,
9 housing affordability becomes a significant issue. Staff is recommending a condition
10 of approval to require the applicant to provide housing at prices affordable to
11 potential future employees to help provide opportunities for individuals to both work
12 and live in the community.

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

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

24 11. The commercial component of the MPD would be located on the North Property
25 (Parcel B) and in the northern portion of the Main Property. The eastern portion of
Parcel B is proposed as a high density residential use. The remaining residential,
schools, and parks components would occur on the Main Property.

Chapter 3 of the MPD application describes a variety of housing types including
detached single family, duplex, triplex, quadplexes, townhouses, cottages, and
stacked flats. With the exception of stacked flats, which are described as a possible
housing type within the high-density category, all other types could be built within
areas designated for either low or medium density residential uses. However, the
application also indicates that other than approximately 1,200 units of attached
housing, the remaining homes will be "single family detached" (see Page 1-1). In
addition, even constructing at the low end of the high density residential density range
for all parcels so designated will nearly consume the 1,200 planned multifamily units.
In light of this, the potential unit mix is difficult to determine. The application
includes schematic drawings of potential housing types and lot configurations (see
Chapter 3). However, the distribution of these various modes of development is not
defined. To address this problem, the Examiner is recommending that the

1 development agreement set targets for specified housing types for each phase of
2 development.

3 A variety of parks and trails are proposed within the main portion of the project.
4 Other than four school sites (three elementary and one middle school), the land use
5 plan does not identify other public or civic uses. The project narrative on Page 3-17
6 indicates that additional public and civic uses may be located within the project. The
7 predominant character of the southern portion of the Main Property will be that of a
8 large, yet unique, residential development

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

15 12. The MPD application proposes residential and commercial type uses, with
16 development located in clusters separated by sensitive areas and open space. Parks
17 and schools are proposed to be located on site with a road and trail network to link the
18 residential portions of the project. These will provide opportunities for interaction,
19 socializing and a sense of community. Drifts of trees and natural areas are proposed
20 along the main spine road through the project. These natural areas and extensive
21 open space will help preserve rural character.

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

24 13. In June 2009, the City adopted an updated comprehensive plan, zoning code,
25 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
envisioned "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 and the City's development regulations
and policies.

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

1 This recommendation addresses the proposal's consistency (or lack thereof) with
2 other provisions of the Black Diamond Municipal Code in other parts of the
3 recommendation.

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

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

9 14. This objective is satisfied. Chapter 1 of the MPD application discusses clearing
10 and grading for the project. It is estimated that approximately 4,753,000 cubic yards
11 of cut and 1,685,000 cubic yards of fill would be required for the Main Property. Fill
12 is proposed to come from material excavated on site. For Parcel B the estimate is
13 81,000 cubic yards of cut and 81,000 cubic yards of fill would be necessary (a
14 "balanced site").

15 The applicant proposes to remove and export approximately 3,000,000 million cubic
16 yards of soil, which is inconsistent with this objective. Specific areas where this
17 might occur are not identified in the application materials, making it difficult to judge
18 how the existing landforms will be impacted. If very much of the top layer of soil is
19 removed in areas where there is a shallow restricting layer, the potential for
20 implementation of Low Impact Development techniques will be adversely impacted.
21 Also, as discussed previously in the FEIS decision, the amount of fill removal would
22 create a perpetual caravan of trucks exporting fill from the site, creating adverse noise
23 impacts on proximate properties.

24 Staff is recommending a condition to balance the cut and fill within the site. Staff
25 recognizes that in order for urban development to occur, the natural undulations and
occasional sharp pitches in the natural grade will need to be graded for street and
urban living compatibility. Allowing initial site grading will provide better, more
consistent utility depths and minimize retaining walls and steps to homes and other
buildings. However, on a site of this size, site grading can be done without having to
export 3,000,000 cubic yards of material.

Staff recommends that, before the approval of the first implementing plat or site
development permit within a phase, the applicant must submit an overall grading plan
that will balance the cut or fill so that the amount of cut or fill does not exceed the
other by more than 20%. This will insure that unnecessary mining of material will
not occur and reuse of existing materials will be maximized. Staff is also
recommending that the applicant employ a majority of native species in the
landscaping, another reason to retain native soils that are compatible with native
species.

1 Given the proposed densities, it is anticipated that the development areas shown on
2 the Figure 3-1 Land Use Plan will be cleared of all vegetation and graded to facilitate
3 development. Other than where stormwater ponds, utilities and future active park
4 sites may be proposed, open space areas will apparently remain untouched, except for
5 trail construction.

6 With the unavoidable exception of several road crossings, it appears that avoidance of
7 sensitive areas was a factor in the overall layout of this project. The land use
8 plan/constraints map overlay (Exhibit 11) shows the relationship between sensitive
9 areas and proposed development parcels.

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

13 15. This objective is satisfied. The City adopted the 2005 Ecology manual in June
14 2009 and it will apply to this project until such time as the city may be required to
15 adopt an updated stormwater manual by state mandate as a requirement of the City's
16 Phase II Municipal Stormwater General Permit.

17 Chapter 6 of the MPD application describes the proposed stormwater management
18 plan including incorporation of low impact development (LID) techniques. Staff
19 finds that, given the soils on the Main Property (as described in Ch. 4 of the FEIS),
20 LID should have excellent potential. As a recommended condition of approval,
21 mechanisms shall be identified to integrate LID into the overall design of the MPD
22 for the benefit of these resources. A project-wide approach to stormwater
23 management is proposed (rather than at an individual development parcel level),
24 meeting the intent of regional stormwater management.

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

- 26 • Provide a proactive, responsive temporary erosion and sediment control
27 plan to prevent erosion and sediment transport and protect receiving waters during the
28 construction phase.
- 29 • Construct a storm water system that does not burden the city with
30 excessive maintenance costs; assist the city with maintenance of landscape features in
31 storm water facilities.
- 32 • Include a tabular list of stormwater monitoring requirements. The list
33 should include the term of the monitoring, the allowable deviation from design

objectives or standards, and the action items necessary as a result of excess deviations. Particular attention should be paid to phosphorous levels in Lake Sawyer.

- 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 the stormwater plan include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

A key element of the applicant's proposed storm water management plan is the large infiltration pond proposed west of the city limits on property also owned by the applicant. Staff agrees that this is the best location for the regional stormwater infiltration pond, as it presents an environmental advantage, with the ability to consolidate the infiltration of the excess runoff to a deep aquifer in one location at the most efficient collection location. However, since this site is not within the City's jurisdiction, staff is recommending as a condition of approval that the applicant be required to obtain all necessary permits from King County for both construction and the City's authority to perform maintenance, subject to prior approval by the City.

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;*

16. 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.

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

3 17. This objective is satisfied. Chapter 3 of the MPD application contains details
4 regarding open space. Pursuant to BDMC Sections 18.98.120.G, 18.98.140.F and G,
5 there are amounts of open space required in prior agreements (BDUGAA and
6 BDAOSPA) in addition to the amount required in the City's MPD regulations. The
BDUGAA requires that 145 acres of open space serve as an offset for the West (63.3
ac) and South Annexation (81.7 ac) areas.

7 The remaining portions of the MPD not subject to prior agreements are required to
8 provide 50% of the land area as open space (336.4 acres) in order to have varied lot
9 dimensions, cluster housing and pursue additional density (see 18.98.140.G). Thus,
10 the overall amount of open space required to be provided within the MPD is 481.4
11 acres. The Figure 3-1 Land Use plan shows that 505 acres of open space, parks and
trails, wetlands and buffers are proposed, while page 1-4 states that a minimum of
481.4 ac will be provided.

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

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

- 19 • Sensitive areas and their required buffers
- 20 • Developed parks and trails
- 21 • Forested areas
- 22 • Stormwater facilities or a water tank designed per City standards

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

25 18. The objective is satisfied. The staff report concludes that the Villages MPD will
not meet the job objectives of the Comprehensive Plan. However, BDMC

1 18.98.020(E) doesn't require that the MPD meet the City's economic development
2 objectives but only to help meet them. Consequently, any significant contribution to
3 available employment would satisfy this requirement. The project has designated 67
4 acres for a maximum of 775,000 square feet of commercial/office/industrial use.
5 Chapter 3 of the MPD application describes these in more detail. The amount of jobs
6 and tax revenues to be generated by this area will be dependent upon the mix of
7 development that occurs, but there is no question that the project will add to the
8 employment base of the City.

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

10 19. The objective is satisfied. The fiscal impacts of the project are addressed in detail
11 in Finding of Fact No. 5(F). As noted in that discussion, a condition proposed by the
12 Applicant requiring repeated reassessment of fiscal impacts and requiring the
13 Applicant to cover any shortfalls is an excellent way to address the objective.

14 On page 12-15 of the application, the applicant notes that "the city will commission
15 new rate studies to accurately adjust revenue collection for the Special Funds such
16 that all Special Fund expenditures will be fully funded to match the appropriate
17 standards identified in the updated comprehensive plan." While this statement could
18 be true for the water, sewer and stormwater utilities, street operation and maintenance
19 is currently inadequately funded by the City's share of the gas tax, with the street
20 maintenance function competing for general fund dollars for the balance of funding.
21 Also, the applicant is proposing the use of higher risk pervious asphalt in some cases
22 and higher landscape intensive improvements (such as rain gardens). In order to
23 balance the impact of the added street maintenance and the proposed street standards
24 with higher maintenance costs, the staff is recommending that all cul-de-sacs and auto
25 courts serving 20 units or less and all alleys be private and maintained by the Master
Developer or future Homeowners Association(s).

**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***

20 20. The objective is satisfied. Chapters 4 and 6 through 9 of the application contain
21 conceptual utility plans and a phasing plan which describes street and utility
22 improvements. These plans assure that infrastructure will be in place at the time and
23 to the extent needed. Details on the proposed timing of improvements are on page 9-
24 3, including the proposed "trigger" for transportation improvements. Page 9-10
25 indicates the proposed "trigger" for park improvements.

The proposed phasing plan of supporting regional infrastructure projects, along with
various conditions contained herein, and a satisfactory implementing Development
Agreement will provide for the required facilities and infrastructure in time to meet
the adopted levels of service.

1 The conditions of approval require modeling of traffic impacts and mitigation to the
2 extent necessary to meet level of service for each phase of development. Mitigation
3 can exceed that anticipated in the FEIS and conditions of approval if necessary to
4 meet level of service standards. The modeling and identification of impacts must be
5 provided prior to the land use applications for each phase. The applicant has also
6 proposed and the Examiner is recommending a mid-point cumulative traffic impact
assessment. At the point where building permits have been issued for 3,000 homes,
the adequacy of the FEIS and MPD projected traffic impacts and required mitigation
will be reassessed and revised as necessary to meet actual conditions.

7 As identified in Finding of Fact 5(B), the traffic modeling proposed by the FEIS is
8 adequate from an environmental review standpoint but may yield more accurate
9 results through a more localized model similar to that employed by Maple Valley.
10 Greater accuracy in anticipated impacts will in turn provide for greater accuracy in
the amount and timing of mitigation. A recommended condition of approval is the
development of a more localized traffic model.

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

14 21. The objective is satisfied. Chapter 5 of the MPD application contains provisions
15 for a trail network which would connect areas of the MPD and provide points at
16 which future extensions to the rest of the City could be made by others or through
public projects. At this time, the City is developing a Trails Plan, but it has yet to be
adopted.

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

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

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

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

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

8
9 23. The criterion is met. The most controversial policies at issue concern preservation
10 of small town character. As discussed at length in Finding of Fact No. 5(A), those
11 policies are met due to the compliance with specific MPD regulations and design
12 requirements as addressed throughout this recommendation.

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

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

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

28 24. The criterion above is satisfied by imposition of the FEIS mitigation measures
29 recommended by this decision in addition to the enhanced mitigation identified in
30 Finding of Fact No. 5.

31 In MPD Exhibit 114, p. 3, the Applicant essentially asserts that the FEIS precludes
32 any further discussion of environmental impacts under the criterion above. This is
33 incorrect. Although not directly addressed in the context of an EIS, the courts have
34 ruled that a mitigated determination of nonsignificance does not preclude an

1 additional finding of significant environmental impacts if relevant to permitting
2 criteria. *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). Even
3 with the issuance of an EIS, an applicant must still comply with all permitting criteria.
4 The review standard for an FEIS is significantly different than that under MPD permit
5 review. As noted in the FEIS decisions, the Examiner must give substantial weight to
6 the determination of the SEPA responsible official in assessing the adequacy of an
7 EIS. By contrast, the factual findings made by the City Council in finding
8 compliance with MPD criteria must be supported by substantial evidence. *See* RCW
9 36.70C.130(c).

10 As discussed in Finding of Fact No. 5, there are some environmental impacts that
11 have been adequately mitigated under the rule of reason standard for the EIS but
12 nonetheless do not provide the most effective or comprehensive mitigation. For the
13 reasons discussed in Finding of Fact No. 5, there is substantial evidence to justify the
14 enhanced mitigation identified in Finding of Fact No. 5, including but not limited to
15 revised traffic modeling, further noise study and mitigation and additional mitigation
16 for protection of Lake Sawyer water quality.⁹

17 Staff recommends that geologically hazardous areas should be designated as open
18 space, with roads and utilities routed to avoid such areas. Where avoidance is
19 impossible, the applicant should utilize the process in BDMC 19.10 (supplied with
20 adequate information as defined in code) and the Engineering Design and
21 Construction Standards to build roads and utilities through these areas.

22 Staff recommends that all houses that are sold in classified or declassified coal mine
23 hazard areas be sold with a liability release from the homeowner to the City. The
24 release must recognize that the City is not liable for actual or perceived damage or
25 impact from the coal mine hazard area. The release form should be developed and
included in the Development Agreement. The Examiner finds that this
recommendation addresses environmental impacts by providing notice to potential

⁹ While the Applicant may point to the FEIS as prohibiting additional environmental mitigation, the SEPA Appellants may point to the necessity for additional mitigation as evidence that the FEIS was not adequate. In addition to the reasons set forth in the FEIS on adequacy, a reviewing court should also consider the policy ramifications of undercutting a determination of adequacy because additional study and mitigation is imposed. Due to the hundreds of hours of legal, examiner and staff time involved in these proceedings, the MPD hearings have cost well into the hundreds of thousands of dollars. A finding of inadequacy would require the City to go through the entire MPD hearings again. As recommended by the Examiner, significant additional mitigation would be treated as an amendment to the MPD applications so that the public would have an opportunity to comment on the new mitigation and a clear avenue of appeal would be available to those opposed to the changes. Using the amendment process avoids going through the entire review process again. Given that the traffic and noise study and mitigation would create discrete and fairly isolated project impacts – traffic changes would be almost entirely exterior to city limits – the segmentation of this review process would not undermine the cumulative nature of SEPA review.

1 homeowners of the hazards and creating a market disincentive for construction in
2 mine hazard areas.

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

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

- 10 • Regional infiltration pond will provide a central low maintenance facility
11 that could also provide multipurpose recreational opportunities.

- 12 • Regional infiltration pond will provide opportunities for storm water reuse
13 that could further conserve potable water.

- 14 • Low impact development proposal with HOA maintenance will provide
15 distributed ES permits issued by the Department of Ecology. Although permit
16 conditions imposed by NPDES permits are not administered by the City, staff
17 reserves the right to enforce the conditions of the NPDES permit. Since the city has a
18 high interest in protecting receiving waters under the city storm water permit, the
19 developer should be required to cover the City's cost of NPDES storm water permit
20 oversight.

21 Staff objects to the developer taking the approval authority away from the City, as
22 detailed on page 6-5 of the application. As the City is the approving authority and
23 will ultimately own and be responsible for most of the proposed storm water
24 facilities, staff does not concur with the terms "without preference." Staff
25 recommends that the City reserve the right to reject higher maintenance cost facilities
when lower maintenance cost options may be available.

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

1 permit. Staff therefore recommends storm ponds for hydraulic sizing purposes vest
2 phase by phase to the extent allowed by the City's storm water discharge permit and
state law.

3 All FEIS mitigation and modifications thereof incorporated into the conditions of
4 MPD approval should be considered as imposed from the separate substantive
5 authority of SEPA as well as through the MPD criterion governing this Conclusion of
Law.

6 **BDMC 18.98.050(A)(3):** *The proposed project will have no adverse financial*
7 *impact upon the city at each phase of development, as well as at full build-out. The*
8 *fiscal analysis shall also include the operation and maintenance costs to the city for*
9 *operating, maintaining and replacing public facilities required to be constructed as*
10 *a condition of MPD approval or any implementing approvals related thereto. This*
11 *shall include conditioning any approval so that the fiscal analysis is updated to*
12 *show continued compliance with this criteria, in accordance with the following*
13 *schedule: [Remainder not listed here; refer to BDMC for complete code text.]*

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

15 **BDMC 18.98.050(A)(4):** *A phasing plan and timeline for the construction of*
16 *improvements and the setting aside of open space so that:*

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

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

26 As modified with the conditions recommended below, the condition is satisfied.

Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer,
water and the project phasing plan. Chapter 9 of the MPD application contains the

1 phasing plan, which also projects which parcels will be developed and associated unit
2 counts. Parks are to be built by phase also. Staff recommends that the above
provisions (4.a and 4.b) be addressed in the Development Agreement.

3 Chapter 9 of the application states that "[t]he facilities that serve the MPDs as well as
4 development in areas outside of the MPD project boundaries will be a shared
5 responsibility between the City and Master Developer, with the Master Developer
6 contributing a proportionate share." Although staff recognizes that other benefiting
7 parties may make use of roads and other infrastructure, it is unrealistic for the
8 applicant to expect full cost recovery for every implementing project. Staff cannot
9 guarantee cost recovery from benefiting non-contributing properties or cost recovery
10 from the City. Absent these developments, there would not be a need to construct the
11 improvements identified in this application. Many new vehicle trips coming from
outside the City may make use of roads and intersection improvements funded by the
developer, but the City has no ability to collect from the growth in background traffic.
Staff recommends that exploration of various means of cost recovery only occur
where the benefiting parcels can be clearly defined and the pro rata share of other
parties is significant. The pro-rata shares and cost recovery can be included in the
Development Agreement.

12 Staff recommends that decisions on what projects will be built by the developer, or
13 the city with traffic impact fees, and what projects for which there will be credits or
14 cost recovery be determined in the Development Agreement.

15 On page 9-3 of the application, the applicant proposes that final design must be
16 approved and constructed, bonded or financially guaranteed prior to occupancy of any
17 structure relying on the facility. Staff does not agree that home construction should
18 be allowed prior to regional supporting infrastructure being constructed, with simply
a financial guarantee. Staff does not recommend approval of the proposal's request to
amend the City's surety requirement established in the Engineering Design and
Construction Standards and municipal code.

19 The timing of the design and alignment of the Pipeline Road will need to be
20 determined as part of the Development Agreement, as other parties in addition to the
21 applicant must be involved and the roadway alignment will need to be resolved so
22 that water and sewer alignments to The Villages will not be held up by these
preliminary road design issues.

23 Staff recommends that before the first implementing project of any one phase is
24 approved, a more detailed implementation schedule of the regional infrastructure
25 projects supporting that phase shall be submitted for approval. The timing of the
projects should be tied to the number of residential units and/or square feet of
commercial projects.

1 On Page 9-3 of the application, the applicant proposes to monitor traffic and then
2 implement mitigation projects six months after a loss of level of service is identified.
3 Staff finds this type of delay to be inappropriate and that mitigation projects should be
4 in place prior to LOS failure. Staff is recommending the applicant be required to
5 model the traffic impact of a pending phase of development before the start of that
6 phase to determine when a street or intersection is likely to drop below the adopted
7 level of service. Transportation mitigation projects should then be implemented to
8 prevent failure. Traffic mitigation projects may change or additional projects be
9 added to address the traffic issues as they actually develop.

10 As discussed in Finding of Fact No. 5(K), the phasing plan for the parks is not
11 consistent with the criterion above and will be modified accordingly. As further
12 discussed in Finding of Fact No. 5(K), off-site trail construction necessary to achieve
13 connectivity will be required prior to occupancy and final plat and site plan approval
14 to the extent allowed by law.

15 **BDMC 18.98.050(A)(5):** *The project, at all phases and at build out, will not result*
16 *in the lowering of established staffing levels of service including those related to*
17 *public safety.*

18 27. As conditioned, the project meets the criterion above. The 2009 Comprehensive
19 Plan contains levels of service related to police and fire and emergency medical
20 services. The fiscal analysis indicates that staffing levels should generally be allowed
21 to increase in accordance with population growth. Currently, this area of the city has
22 a minimal level of fire and EMS protection. Staff is recommending that the
23 Development Agreement include specific provisions for mitigating fire service
24 impacts to ensure protection concurrent with project build out. The 2009 City of
25 Black Diamond Comprehensive Plan should be made an appendix of the
Development Agreement for reference purposes. The conditions regarding fiscal
impacts will include a requirement for maintaining staffing levels of service as
identified in Finding of Fact No. 5(F).

19 **BDMC 18.98.050(A)(6):** *Throughout the project, a mix of housing types is*
20 *provided that contributes to the affordable housing goals of the City.*

21 28. As conditioned the criterion is satisfied. Chapter 3 of the MPD application
22 describes a variety of housing types including detached single family, duplex, triplex,
23 quadplexes, townhouses, cottages, and stacked flats. The Fiscal Analysis (Chapter
24 12) makes some assumptions regarding housing costs for various potential housing
25 types. However, there is nothing in the remainder of the application to indicate
whether all these housing types will be built. As noted previously, there appears to be
conflicting statements in the application concerning how much non-single family
detached housing is being provided.

1 As previously noted, the commercial component of the project will most likely
2 include retail, office and personal service uses. The MPD should provide housing
3 opportunities for individuals anticipated to work at those jobs; this may require a
4 greater mix of multifamily housing and/or the construction of housing types that can
5 meet the affordability goals of the Comprehensive Plan.

6 The staff report proposes a condition that requires the Applicant to meet housing
7 targets for purchasers at specified income levels. The Applicant subsequently
8 proposed a modification that provides more generalized goals for providing
9 affordable housing. The City made no objection to this revision. The modifications
10 proposed by the Applicant are probably the best the City can do absent providing
11 low-income development incentives. The courts are not very receptive to making
12 developers responsible for affordable housing problems, suggesting that developers
13 don't create the problem and therefore can't be made to fix it. *See, Sintra v. Seattle*,
14 119 Wn.2d 1 (1992); *San Telmo v. Seattle*, 108 Wn.2d 20 (1987), *overruled on other*
15 *grounds, Isla Verda v. Camas*, 146 Wn.2d 740 (2008).

16 **BDMC 18.98.050(A)(7):** *If the MPD proposal includes properties that are subject*
17 *to the Black Diamond Urban Growth Area Agreement (December 1996), the*
18 *proposal shall be consistent with the terms and conditions therein.*

19 29. The criterion is satisfied. The Black Diamond Urban Growth Area
20 Agreement (BDUGAA) (Exhibit 7) applies to two portions of the Main property
21 (portions of West Annexation area) and the southeastern portion of the Main Property
22 (South Annexation area). The BDUGAA requires that 145 acres of open space as an
23 offset for the West (63.3 ac) and South Annexation (81.7 ac) areas.

24 The BDUGAA requires that for the West and South Annexation areas a minimum
25 average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac
with the remainder achieved through transfer of development rights (TDR).

As a recommended condition of approval and for the Villages MPD to be consistent
with this agreement, the entire "Pipeline Road" link will need to be constructed.

26 **BDMC 18.98.050(A)(8):** *If the MPD proposal includes properties that were*
27 *annexed into the city by Ordinances 515 and 517, then the proposal must be*
28 *consistent with the terms and conditions therein.*

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

32 **BDMC 18.98.050(A)(9):** *The orientation of public building sites and parks*
33 *preserves and enhances, where possible taking into consideration environmental*
34 *concerns, views of Mt. Rainier and other views identified in the comprehensive*

1 *plan. Major roads shall be designed to take advantage of the bearing lines for*
2 *those views.*

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

12 **BDMC 18.98.050(A)(10):** *The proposed MPD meets or exceeds all of the public*
13 *benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.*

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

16 **BDMC 18.98.050(A)(11):** *If the MPD project is adjacent to property already*
17 *developed, or being developed as an MPD, or adjacent to property which is within*
18 *an MPD zone, then the project is designed so that there is connectivity of trails,*
19 *open spaces and transportation corridors, the design of streetscape and public open*
20 *space amenities are compatible and the project will result in the functional and*
21 *visual appearance of one integrated project with the adjacent properties subject to*
22 *an MPD permit or, if not yet permitted, within an MPD zone.*

23 33. The criterion is satisfied. The North Property (Parcel B) and Main Property are
24 not adjacent to property already developed as an MPD. The North Property is
25 adjacent to property zoned MPD. This property is located to the north, zoned MPD
and is the "North Triangle" portion of the proposed Lawson Hills MPD. A soft
surface trail connection is shown between Parcel B and the North Triangle in Chapter
5 of the MPD application materials. Chapter 4 of the application shows the North
Connector which will connect Parcel B and the North Triangle with SR 169. The
proposed street standards for the two MPD applications are identical, ensuring
consistency between the two projects.

The Main Property is also adjacent to property zoned MPD. These 160 acres are
located between the proposed Community Connector road and the western city limits.
Both hard and soft surface potential trail connections are shown between The Villages
and these 160 acres in Chapter 5 of the MPD application materials. Chapter 4 of the
application shows three potential future road connections between The Villages and
these 160 acres. Any future development will be reviewed against the regulations in
effect at that time regarding connectivity of trails, open spaces and transportation

1 corridors, and the compatibility of streetscape design and public open space
2 amenities.

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

7 34. The criterion is satisfied as conditioned. In the MPD application materials, Figure
8 3-1 Land Use Plan shows the areas intended as open space. Chapter 5 also contains a
9 figure on open space typologies at the MPD project scale. Specific development
10 parcel open space consistency needs to be verified at the permitting stage.

11 As previously discussed, the portions of the MPD not subject to prior agreements are
12 required to provide 50% open space (336.4 acres). The phasing of open space is not
13 included within the MPD Application as required by the criterion above. Phasing of
14 open space (which includes parks and is identified within the MPD application), once
15 acreages have been finalized, should be defined and articulated for timing of final
16 designation within the Development Agreement.

17 **BDMC 18.98.050(A)(13):** *Lot dimensional and building standards shall be*
18 *consistent with the MPD Design Guidelines.*

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

23 **BDMC 18.98.050(A)(14):** *School sites shall be identified so that all school sites*
24 *meet the walkable school standard set for in the comprehensive plan. The number*
25 *and sizes of sites shall be designed to accommodate the total number of children*
26 *that will reside in the MPD through full build-out, using school sizes based upon*
27 *the applicable school district's standard. The requirements of this provision may be*
28 *met by a separate agreement entered into between the applicant, the city and the*
29 *applicable school district, which shall be incorporated into the MPD permit and*
30 *development agreement by reference.*

31 36. Figure 3-1, Land Use Plan, shows four proposed school sites on development
32 parcels V21 (10 ac), V50 (10 ac), V57 (8.4 ac) and V58 (4.1 ac). Alternatively, as
33 shown in Table 3.4 of the application, the applicant is requesting that any
34 development parcel may be used for an institutional use (which could include a
35 school site). Figure 3-2, School Proximity Exhibit, shows the areas of the project
36 intended for residential use, with the exception of the proposed residential on Parcel
37 B, are within 0.5-1.0 mile of the proposed school site. There is no specific walkable
38 school standard in the 2009 City of Black Diamond Comprehensive Plan or the

1 Enumclaw School District Capital Facilities Plan (2009-2014), although a half-mile
2 standard is consistent with more general policies as discussed in Finding of Fact No.
3 5(D).

4 The FEIS contains information regarding the school needs generated by the project
5 (Alternative 2). A recommended condition of approval is to require that a separate
6 agreement entered into between the applicant, the City and the Enumclaw School
7 District be incorporated into the MPD permit and Development Agreement by
8 reference. A draft of that agreement already exists, and staff understands that it is
9 acceptable to the School District.

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

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

23 **BDMC 18.98.050(B):** *So long as to do so would not jeopardize the public health,*
24 *safety, or welfare, the city may, as a condition of MPD permit approval, allow the*
25 *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.

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

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

1 38. The conditions of approval, as revised by the Examiner, will incorporate the
2 requirements of the criterion above.

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

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

9 **BDMC 18.98.110(B)(1): *MPD Permit.* The hearing examiner shall evaluate the**
10 ***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.

11 40. Analysis of the MPD master plan consistency with Master Planned Development
12 Framework Design Standards and Guidelines is discussed in a later section of this
13 report.

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

15 41. The criterion is satisfied. As previously discussed, the MPD proposes residential
16 and commercial uses and the residential uses are proposed at a variety of densities.
17 The development agreement will also be required to provide specific targets for
variety in housing.

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

21 42. The criterion is satisfied. The Comprehensive Plan designation for the North
22 Property is Mixed Use with Master Planned Development Overlay and the Main
23 Property has areas of Low Density Residential and Mixed Use with Master Planned
Development Overlay.

24 The entire project is covered by the MPD Overlay. According to the Comprehensive
25 Plan, "an MPD may include residential and commercial uses clustered around private
and community open space, supported by adequate services and facilities." The
Mixed Use designation identifies a preferable location for mixed use development
within an MPD, in specific areas where the anticipated larger commercial component

1 can also serve the broader community. The potential of mixed uses is permissive, as
2 opposed to being a requirement of development.

3 The Main Property has areas designated for Mixed Use and Low Density Residential
4 uses according to the Comprehensive Plan. The application includes several parcels
5 designated for high density residential uses in accordance with Section 18.98.120(F).
6 Table 3.4 in the application materials lists neighborhood commercial as a permitted
7 use in low-, medium- and high-density residential areas; however, it is not known if
8 this will actually occur, as the application makes no other mention of it.

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

15 43. The Comprehensive Plan includes the City's updated projection for 2,677
16 new jobs by the year 2025. The staff report states that Table 3-8 (actually Table 3-9)
17 indicates a goal of attaining 0.5 jobs per household by the year 2025. Based upon this
18 standard, the staff report concludes that the project should provide approximately
19 2,400 jobs. The Appendix J Fiscal Analysis of the FEIS contains an analysis of the
20 amount of retail/office square footage to be developed along with employment
21 projections of 1,365 employees. Therefore, it appears that the proposal is not
22 compliant with this standard with regard to jobs provided within the MPD boundary.
23 Staff acknowledges that these are projections and that exact numbers will not be
24 known until the project develops, and that jobs may also be provided elsewhere
25 within the city.

The Examiner doesn't agree with the staff's analysis. Table 3-9 doesn't set a jobs per
household standard. The 0.5 jobs per household is a projection of the number of jobs
per household for 2025. This is associated with a projected household number of
6,302 homes, which is far below the total number of households the City would have
in 2025 if the 6,000 homes of the MPDs are constructed. Page 3-10 of the
Comprehensive Plan expressly sets the job standard as follows:

*The City's goal is to ensure that land use planning allows the achievement
of one local job per household for the year 2025 and beyond.*

Under the one job per household standard, the Villages MPD would have to generate
4,800 jobs. However, requiring a developer to be responsible for job creation is of
dubious validity, both because there is no clear nexus between job creation and
mitigation of development impacts and also because placing this type of burden on a
developer can be construed as unreasonable. Despite this, the Examiner has no
authority to invalidate development criterion. Since this is a sensitive legal issue, the

1 Examiner leaves it to the City Attorney to advise the City Council on how to deal
2 with this situation.

3 **BDMC 18.98.120(E):** *Property that is subject to a pre-annexation agreement,*
4 *Development Agreement or annexation ordinance conditions relating to residential*
5 *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.

6 44. The criterion is satisfied. The Black Diamond Urban Growth Area Agreement
7 (BDUGAA) (Ex. CBD-2-7) applies to two portions of the Main property (portions of
8 West Annexation area) and the southeastern portion of the Main Property (South
9 Annexation area). The BDUGAA requires that 145 acres of open space as an offset
10 for the West (63.3 ac) and South Annexation (81.7 ac) areas. The BDUGAA requires
that for the West and South Annexation areas a minimum average density of 4
dwelling units/acre be achieved with a base density of 2 du/ac with the remainder
achieved through transfer of development rights (TDR).

11 The remaining portion of the Main Property primarily has a Comprehensive Plan
12 designation of Low Density Residential, which has a base density of 4-6 dwelling
13 units du/gross ac. The northwest corner of the Main Property has a Comp Plan
14 designation of Mixed Use which does not propose a base density. The MPD Overlay
requires a minimum of 4 du/ac.

15 Planned residential development is to consist of approximately 3,600 single family
16 detached and 1,200 attached dwelling units on the approximately 551 acres of the site
17 that will be developed with residential uses (approximately 8.7 du/ac). The minimum
18 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.

19 **BDMC 18.98.120(F):** *The council may authorize a residential density of up to 12*
20 *dwelling units per acre so long as all of the other criteria of this chapter are met,*
21 *the applicant has elected to meet the open space requirements of section*
22 *18.98.140(G), or otherwise is providing the open space required by section*
23 *18.98.140(F), and the additional density is acquired by participation in the TDR*
24 *program. In any development area within an MPD, for which the applicant has*
25 *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:

1 45. This provision establishes an overall density of 12 du/ac for the entire proposal,
2 and does not set a maximum cap for specific parcels within the project boundaries.
3 The areas proposed for medium density residential range from 7-12 du/ac and high
4 density 13-30 du/ac (with certain areas dedicated to 18-30 units in accordance with
5 the additional criteria below). The MPD is subject to the requirements of both
6 sections 18.98.140(F) and 18.98.140(G) with analysis provided in a later section of
7 the staff report. As detailed under the analysis above for Sections 18.98.010 and
8 18.98.020, as conditioned the proposed MPD satisfies these provisions

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

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

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

16 47. The eight parcels would be located adjacent to proposed shopping/commercial
17 services.

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

20 48. Table 3.8 Residential Development Standards in the MPD application shows 45
21 feet as a maximum height for high-density residential development.

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

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

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

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

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

8 *1-3 [Not listed here; refer to BDMC for complete code text.]*

9 51. The MPD is subject to the requirements of both sections 18.98.140(F) and
10 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.

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

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

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

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

52. Chapter 13 of the MPD application lists the applicant's requests for "functionally
equivalent standards." There are 19 separate requests that seek to deviate from
adopted city codes and standards. 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).

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;
2) a Tree Preservation Ordinance; 3) a Parks and Recreation Plan; 4) an updated

1 comprehensive plan; 5) a new zoning code, including the Gateway Overlay District;
2 6) new design guidelines; and 7) updated public works standards. The proposed
3 “functionally equivalent” standards appear to reflect the applicant’s effort to use the
4 MPD code in order to implement its proposed different development standards. For
5 most of the proposed “functionally equivalent” requests, staff finds that the “public
6 benefit” test is not met. The applicant is one member of the public at this conceptual
7 level of MPD review, and it appears likely to be the only member who could or
8 would benefit from its requests. For example, there is not enough justification for the
9 alternate parking standards to apply anywhere other than the Mixed Use Town
10 Center. A majority of the residential component would be located at a considerable
11 walking/biking distance from commercial uses, and as a result it is unlikely that
12 vehicle trips would be reduced. Staff finds that deviations from the City’s Sensitive
13 Areas Ordinance should be evaluated on a case by case basis with project specifics
14 and in accordance with BDMC Section 19.10, which offers flexibility and a process
15 for these deviations. The Applicant has withdrawn its request for deviation from the
16 Tree Preservation Ordinance (BDMC 19.30), so that does not need to be addressed.

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

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

21 Staff finds the following request is justified and should be approved in part:

22 4) 18.80.030-060; Parking—reduced parking standards for the Mixed Use Town
23 Center only. It is common to have flexible parking standards within mixed use and
24 “downtown” areas.

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

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

5 6) 18.76 Gateway Overlay District—grading, removal of invasive species, and
6 installation of infrastructure within the public right of way is not subject to the
7 overlay (per Section 18.76.020.B). Therefore, staff finds this request to be
8 unnecessary.

9 14, 15 & part of 18) 18.38—Community Commercial (CC) Zone Standards and
10 Allowed Uses; Parcel B will be rezoned to MPD if the MPD is approved.

11 19) 18.30—R4 Zone Standards—None of the property associated with The
12 Villages is currently zoned R4, nor will be zoned R4.

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

25 53. 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 as
well as other required measures would apply and will be evaluated on a case-by-case
basis at the time of implementing project application.

Chapter 5 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

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

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

8 54. Figure 3-1 of the application shows that the dedicated open space areas serve as a
9 coordinated network. In order to enhance this coordination for natural areas, a
10 recommended condition of approval is to require that areas shown as natural open
11 space/areas in the figure on page 5-7 of the application to remain natural, with the
12 possibility for vegetation enhancement. No other land clearing shall be permitted
13 besides trails and storm ponds. As previously noted, the figure on page 5-5 depicts
14 some areas as "natural open space" that are also proposed to include stormwater
15 facilities. Staff is supportive of allowing stormwater facilities to be considered as
16 open space if they are designed as an amenity. Other than trails and stormwater
17 facilities designed as amenities, staff is recommending that areas shown as natural
18 areas in the figure on page 5-7 of the application be required to remain natural with
19 the possibility for vegetation enhancement. The Examiner finds retention in the
20 natural state to be necessary in order to maintain continuous greenbelt areas as
21 required in the criterion above.

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

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

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

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

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

3 56. Chapters 3 and 5 of the MPD application, including tables 3.4 and page 5-6,
4 describe proposed open space uses.

5 As much of the open space has been identified as sensitive areas and their associated
6 buffers, minimal flexibility exists as it relates to uses within these areas. All activities
7 shall be conducted in accordance with BDMC Chapter 19.10. The Development
8 Agreement shall include a tabular list of the types of activities and the characteristics
9 of passive open space and active open space so that future land applications can
10 accurately track the type and character of open space that is provided. The
11 Development Agreement should include language that specifically defines when the
12 various components of permitting and construction must be approved, completed or
13 terminated (e.g., when must open space be dedicated, plats recorded, and utility
14 improvements be accepted by the City).

15 **BDMC 18.98.140(E):** *The approved MPD permit and Development Agreement*
16 *shall establish which open spaces shall be dedicated to the city, which shall be*
17 *protected by conservation easements, and which shall be protected and maintained*
18 *by other mechanisms.*

19 57. Page 5-2 of the MPD application generally describes proposed ownership, but as
20 to sensitive areas only identifies various options and doesn't propose any specific
21 ownership. Staff is recommending that specific details on which open space is to be
22 dedicated to the city, protected by conservation easements or protected and
23 maintained by other mechanisms be established as part of the Development
24 Agreement.

25 Staff is concerned that public access to open space is maintained, as it is a significant
component of the vision of the community. Closed parks and trail segments limit
passive and active recreational opportunities to significant natural resources.

Homeowners Association (HOA) maintained facilities have shown to include both
negative and positive outcomes. These issues include:

No maintenance or repair obligations for these facilities can be a significant cost
savings to the City's budget.

Less ability to ensure that these facilities are maintained at appropriate levels.
Experience has shown that it is difficult for cities to regulate adequate maintenance
even if they are not in compliance with City standards.

Limited access to these facilities to the general public.

1 Staff and the applicant should negotiate language to be included within the
2 Development Agreement that will allow for public access to parks and trails facilities.
3 City ownership of major park and trail facilities may be preferred to ensure the
4 availability of these facilities to the general public and consistency within code
section 18.98.150. Staff recommends that this issue be resolved through the
Development Agreement process.

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

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

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

12 59. The application is seeking to vary lot dimensions, cluster housing and include
13 high-density residential housing (pursuant to Section 18.98.120.F). Therefore the
14 portions of the MPD not subject to prior agreements are required to provide 50%
open space (336.4 ac total). Page 3-21 of the MPD application indicates that the
proposal is to have a minimum of 481.4 acres but will be providing 505 acres of open
space. The MPD proposal satisfies this requirement.

15 The Examiner notes that the Applicant can only meet the 50% requirement if it is
16 limited to areas that are not subject to open space agreements. The agreements
presumably do not place a cap on the amount of open space that the Applicant can
17 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
18 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
19 agreements. The Examiner will defer to the staff's interpretation on this issue, but
20 leaves it to Council to ask staff about this if they have any concerns.

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

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

1 60. Chapter 5 of the MPD application contains information regarding proposed
2 recreation areas and facilities. The proposal meets the adopted levels of service with
3 regard to parks.

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

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

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

18 Additionally, staff is concerned that there is an adequate amount of property suitable
19 for park development outside of the proposed project. Areas designated as "sending
20 areas" within the transfer of development right program are considered sensitive and
21 are limited in what can be constructed. More suitable, developable land will need to
22 be acquired in order to accommodate recreation activities off-site. Other issues
23 including access, parking and maintenance of these facilities need to be evaluated and
24 are more appropriately addressed on a case by case basis. The proposal that the
25 applicant/Master Developer has discretion of when to provide a lump sum payment in
lieu of 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.

Dependant on the availability of land, the adequacy of funds to construct City-
approved recreational facilities and an ability to maintain these facilities, staff

1 recommends that the Development Agreement be required to include a provision that
2 the City, not the applicant, will maintain discretion when and if a lump sum payment
will be accepted in lieu of constructing off-site recreational facilities.

3 **BDMC 18.98.155(A): *The requirements of the Sensitive Areas Ordinance (BDMC***
4 ***19.10) shall be the minimum standards imposed for all sensitive areas.***

5 61. The Applicant has requested a deviation from Sensitive Area Ordinance
6 standards. The Examiner finds the general authority under MPD regulations to vary
7 development standards to be superseded by the more specific requirement above.
The MPD will be made to comply with the Sensitive Areas Ordinance at a minimum
as required by the criterion above.

8 Staff recommends that once the mapped boundaries of sensitive areas have been
9 agreed to between the applicant and staff, the Development Agreement shall include
10 text that identifies that these areas are fixed. If during construction it is discovered
11 that the actual boundary is smaller or larger than what was mapped, the mapped
boundary should prevail. The applicant should neither benefit nor be penalized by
errors or changes in the sensitive area boundaries as the projects are developed.

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

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

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

24 63. The MPD application is consistent with the City's transfer of development rights
25 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.*

64. This has been previously discussed in this recommendation.

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

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

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

15 66. The criterion is satisfied. The application materials indicate that the Community
16 Connector Road and multiple parks are designed to enhance views of Mt. Rainier.
17 There are very limited opportunities for views of Mt. Rainier on The Villages main
18 property. The school site in parcel F may have some views of Mt. Rainier if the areas
19 to the south are cleared. There appears to be reasonable opportunities for views from
20 Parcel B that will be further enhanced if the nearby tailing piles are removed in the
21 future. Staff recommends that these view opportunities be explored and incorporated
22 into the planning process.

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

67. 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.

1 **BDMC 18.98.180(A):** *The stormwater management system shall enhance the*
2 *adopted standards that apply generally within the city, in order to implement the*
3 *concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and*
4 *18.98.180(C). The stormwater detention system shall be publicly owned. Provided,*
5 *in non-residential areas, the use of private vaults and filters may be authorized*
6 *where: 1) the transmission of the stormwater by gravity flow to a regional system is*
7 *not possible and 2) there is imposed a maintenance/replacement condition that*
8 *requires vault filters to be regularly inspected and maintained by the property*
9 *owner.*

10 68. The criterion is met. The AESI reports in Appendix D to the TV FEIS show
11 conclusively that the stormwater system has been designed to locate infiltration ponds
12 in areas that will recharge aquifers as required by BDMC 18.98.180(C). Planning on
13 such a large scale has enabled the applicant to use its land efficiently for stormwater
14 purposes, such as creation of a regional infiltration pond that would otherwise be
15 segmented in several areas and thereby increase the need to encroach and segment
16 natural open space and wildlife corridors. In this respect the regional nature of the
17 facilities further BDMC 18.98.010(C). The Applicant proposes a list of low impact
18 development techniques, maximizing the use of permeable soils, thereby promoting
19 environmentally sustainable development as contemplated in BDMC 18.98.010(H).
20 The efficiencies of using a regional stormwater system also promote compact
21 development as contemplated in BDMC 18.98.010(L). As further required by the
22 criterion above, the Applicant proposes public ownership of the facility as identified
23 in page 6-4 of the Villages application.

24 The City's recommended conditions regarding use of the most recent DOE
25 stormwater manual further serves the objectives of the criterion above by ensuring
that the most up to date standards are employed to maximize the effectiveness and
efficiency of the stormwater system.

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 69. The City's storm water codes apply to both public and private improvements.

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

10 70. The criterion is satisfied. The stormwater management plan proposed as part of
11 The Villages takes advantage of the soil conditions in and around the project for
12 infiltration. The stormwater management plan will incorporate distributed infiltration

1 through Low Impact Development and a regional infiltration pond for the excess
2 volume from the developed site. Opportunities for water reuse are preserved with the
central collection of stormwater.

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

10 71. The criterion is satisfied. A regional storm water system is proposed with
11 sensitivity to existing wetlands and water balance within the basins. Staff
12 recommends that stormwater ponds proposed to be included as "open space" should
be required to be developed as a public amenity (i.e., safe, accessible, and
aesthetically pleasing). 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, provided that future Homeowners' Associations bear the
increased cost of landscape maintenance.

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

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

19 72. See B below in this section.

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

24 73. Staff recognizes that it may be impractical in the early stages of this project to
25 construct the regional sewer pump station within the area identified within the
application as the western expansion parcel. Staff therefore recommends acceptance
of an interim sewer pump station provided that:

- Routing of the gravity sewer mains is consistent with the City's ultimate
plan for routing sewage.

1 • No capital facility charge credit will be considered for interim
2 improvements.

3 For the northern parcel, the application states there will be a point of connection in
4 SR 169. Although that connection point will functionally work, staff recommends
5 requiring the abandonment of the Diamond Glen sewer pump station and connection
6 of the new sewer force main to the existing Diamond Glen sewer force main. Staff is
7 opposed to continued installations of redundant interim sewer pump stations.

8 A pump station may be necessary to serve the easternmost portion of Parcel F.
9 Alternatively, if the property to the north has developed or easements are obtained the
10 eastern area of Parcel F can be served by gravity to the existing King County Jones
11 Lake sewer pump station.

12 King County is in the pre-design phase of an equalization sewer storage project to
13 reduce the peak flow from the Black Diamond sewer service area. Currently, the City
14 and King County have different concepts on where the storage facility should be
15 located. When the final location is determined, the applicant may need to shift the
16 sewer infrastructure project planning to deliver sewage from The Villages to a
17 location upstream of the existing King County pump station G located just southwest
18 of existing downtown Black Diamond.

19 Page 8-1 of the application states, "Since water use can vary significantly...projected
20 water use per ERU will be determined at the preliminary plat, binding site plan or site
21 plan approval stage and confirmed prior to Occupancy." This statement implies that
22 the developer can establish their own capital facility charge rate based on projected
23 water use within The Villages, an idea for which staff is not supportive. The City has
24 always set capital facility charges and the water use per ERU by citywide studies and
25 comprehensive planning based on historic water use patterns. Staff anticipates that
water conservation efforts will, in time, affect the average household consumption
and the water consumption per ERU may be reduced in the future as water use
patterns change. Staff does not recommend treating the developer or future residents
of The Villages differently than other customers or developers in the city.

The planned projects for water service to The Villages are consistent with the City's
Water Comprehensive Plan. The City and developer may opt to investigate new
alternatives to distribute water to The Villages that will meet fire flow requirements,
maintain redundant looping of the water system and perhaps reduce the needed
facilities without compromising the level of service. The water comprehensive plan
may need to be updated if a new water distribution concept is found to be a viable
option. Staff recommends that the applicant be required to cover the cost of a water
comprehensive plan update, if needed, before the next scheduled update.

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*

1 *forth strategies for achieving water conservation at all phases of development and*
2 *at full build out, that results in water usage that is at least ten percent less the*
3 *average water usage in the city for residential purposes at the time the MPD*
4 *application is submitted. For example, if the average water usage is 200 gallons*
5 *per equivalent residential unit per day, then the MPD shall implement a water*
6 *conservation strategy that will result in water use that is 180 gallons per day or less*
7 *per equivalent residential unit.*

8 74. Staff finds the proposed water conservation plan identified in page 8 of the MPD
9 applications to be acceptable, but recommends it be evaluated for its effectiveness in
10 light of the City's available water resources after 500 dwelling units have been
11 constructed. At that time, additional measures may be necessary.

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

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

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

76. Staff recommends the applicant be required to submit a construction waste
management plan as part of the Development Agreement.

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

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

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

78. Staff is recommending the use of native vegetation in street landscaping and in
parks. Staff recommends that the Development Agreement be required to include a

1 water conservation plan with performance measurements; a general landscape plan;
2 and a stormwater management plan.

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

6 79. This will be addressed at the time of future building permit applications.

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

12 80. A high east-west pedestrian demand is expected to develop along Auburn Black
13 Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods
14 to the east. The existing Roberts Drive bridge over Rock Creek is unsafe for
15 pedestrians. Staff recommends that a connecting sidewalk and safe pedestrian
16 connection to the programmed sidewalk in the Morganville area should be required as
17 a condition of approval. Construction timing should be specified in the Development
18 Agreement.

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

22 81. A grading plan has not been proposed at this time, so compliance or
23 noncompliance with this guideline cannot be determined. However, this does not
24 relieve the applicant from the need to comply with this provision in the future.

25 Chapter 1 of the MPD application indicates that the applicant proposes to remove and
export approximately 3 million cubic yards of soil, which is inconsistent with this
objective. Specific areas where this might occur are not identified in the application
materials, making it difficult to judge how the existing landforms will be impacted. If
very much of the top layer of soil is removed in areas where there is a restricting
layer, the potential for implementation of Low Impact Development techniques will
be adversely impacted.

Staff is recommending a condition establish a goal to balance the cut and fill within
the site. Staff recognizes that in order for urban development to occur, the natural
undulations and occasional sharp pitches in the natural grade will need to be graded
for street and urban living compatibility. Allowing initial site grading will provide
better, more consistent utility depths and minimize retaining walls and steps to homes

1 and other buildings. However, on a site of this size, site grading can be done without
2 having to export 3 million cubic yards of material.

3 Staff recommends that, before the approval of the first implementing plat or site
4 development permit within a phase, the applicant must submit an overall grading plan
5 that will balance the cut or fill so that the amount of cut or fill does not exceed the
6 other by more than 20%. This will insure that unnecessary mining of material will
7 not occur and reuse of existing materials will be maximized. Staff is also
8 recommending that the applicant employ a majority of native species in the
9 landscaping, another reason to retain native soils that are compatible with native
10 species.

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.***

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

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

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

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

14 ***Guidelines***

- 15 ***1. Use of conventional, suburban-style subdivision design that provides little***
16 ***common open space shall be avoided.***
- 17 ***2. Groupings of primarily residential development of approximately 400-600 units***
18 ***should be contained generally within a quarter mile radius to support walking,***
19 ***bicycling and future transit service. Development clusters shall be surrounded by a***
20 ***network of open space with a variety of recreational uses (including trails) to***
21 ***provide connections between clusters.***
- 22 ***3. Methodology for Planning Development in clusters.***
 - 23 ***a. environmentally sensitive areas to be protected (including streams, wetlands,***
24 ***steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and***
25 ***used as an organizing element for design;***
 - 26 ***b. areas for development of housing and commercial development shall be***
27 ***indicated;***
 - 28 ***c. streets and public spaces (as well as sites for public facilities such as schools,***
29 ***fire stations and other civic structures) shall be identified;***
 - 30 ***d. lots and groups of lots with various ownerships (i.e. fee simple by occupant,***
31 ***condominium, single ownership apartments, etc) shall be integrated with one***
32 ***another throughout all phases of a project;***
 - 33 ***e. views of Mt Rainier and other desirable territorial views shall be identified***
34 ***and integrated into site planning to maximize viewing from public spaces (streets,***
35 ***trails, parks, plazas, etc.).***

84. 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.

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

3 ***1. Pedestrian Connectivity***

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

8 85. As conditioned, the criterion is satisfied. The MPDs propose an integrated trail
9 network that connects all portions of the development, including up to the
10 commercial portions of the projects. A high east-west pedestrian demand is expected
11 to develop along Auburn Black Diamond Road/Roberts Drive to and from The
12 Villages and existing neighborhoods to the east. The existing Roberts Drive bridge
13 over Rock Creek bridge is unsafe for pedestrians. Staff recommends that a
14 connecting sidewalk and safe pedestrian connection to programmed sidewalk
15 construction in the Morganville area should be required as a condition of approval.
16 Construction timing should be specified in the Development Agreement.

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

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

For clarification, on page 4-26 of the application, a connection point to Green Valley
Road is referenced. This is construed as in error. The connection is not depicted in
the Land Use Plan and the FEIS assesses a direct connection to SR 169.

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

25 87. No cul-de-sacs are proposed at this general level of design. Regulations and
conditions of approval require consistency with the MPDFSG at all stages of

development, and it does not appear that the project design at this stage will prevent compliance in future stages of development.

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

Guidelines

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

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

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

88. As noted previously in this report, 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.*

89. Page 3-30 of the MPD application materials indicates that front loaded single-family homes will, "form the majority of the residential typology" within The Villages MPD. 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 on page 12-15 (City Special Funds) of 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.).*

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

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

91. The proposed Town Center and uses on Parcel B satisfy this provision. Although the proposed allowed uses in the various land use categories indicate the potential for small scale (neighborhood) commercial development occurring in the residential classifications, actual locations are not defined at this time. Staff recommends that commercial areas be identified on the Land Use Plan through a future amendment to the MPD. Proposed parks are located in areas which comply with this guideline.

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

92. Development parcels V11 and V12, with approximately 160 dwelling units, are proposed as a mixed use component of the Town Center.

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

Guidelines

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

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

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

93. Compliance with these standards will be required at the time of implementing projects. In addition, staff finds that the minimum buffer along the eastern border of development parcel V13 should be 50 feet. Existing vegetation should be retained and augmented with native plantings. The minimum buffer along the western border of development parcels V1, V2, V10, V15 and V20 should be 50 feet. These parcels

comprise the northern part of the main property and Figure 3-1 already depicts these areas as open space tracts. Existing vegetation should be retained and augmented, except for construction of the planned regional trail with native plantings. The Applicant does propose trails for the 50 foot western border buffer. See MPD application, p. 5-27.

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.

94. The criterion is satisfied. The new Pipeline Road, the South (Community) Connector and the North Connector through parcel B will provide new efficient transportation links that will avoid having to increase existing roads to 4 or 5 lanes. The network of trails and bike lanes will provide alternate means for local travel. The connection points to surrounding urban zoned properties will provide for future connectivity. Also see previous discussion regarding the extension of the Community Connector to SR 169.

2. Design

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

95. The street design does provide for a neighborhood focal point at the elongated roundabout near The Villages center.

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

96. Application includes a variety of street sections, which can be unified through a landscape theme that emphasizes the use of native plant species.

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

97. Compliance with this standard will be required at the time of implementing projects.

3. Reduced Pavement Widths

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

3 98. The City street standards were just established in June of 2009 and were reduced
4 in width to keep this goal in mind. The Villages proposed streets are very similar to
5 the city standard streets but in some cases are wider. The design standards will be
6 established through the Development Agreement and the design deviation process.

7 **4. Low-Impact Design**

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

11 99. This criterion has been discussed above.

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

- 13 • *Roundabouts*
- 14 • *Traffic Circles*
- 15 • *Chicanes*
- 16 • *Corner bulbs*

17 100. Two roundabouts are proposed along the Community Connector. Staff
18 recommends that traffic calming measures be explored with each implementing
19 development action, at the discretion of the Public Works Director.

20 **6. Lanes and Alleys**

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

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

26 In order to balance the impact of the added street maintenance and the proposed street
27 standards with higher maintenance costs, staff is recommending that all cul-de-sacs
28 and auto courts serving 20 units or less, and all alleys be private and maintained by
29 the Master Developer or future Homeowners Association(s).

30 **7. Non-motorized Circulation**

1 *a. All streets shall include either sidewalks or trails on at least one side of the*
2 *street. Design streets to be "bicycle" friendly.*

3 **8. Street Landscaping**

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

8 102. Compliance with these standards will be required at the time of implementing
9 projects.

10 The details of these design features will be resolved through the Development
11 Agreement and the design deviation process. The City does not have adequate funds
12 to manage street landscaping. The staff is recommending that future Homeowners'
13 Association(s) be required to maintain the street side landscaping.

14 **9. On-Street Parking**

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

17 103. The proposed street standards indicate that parallel parking will be available
18 along residential streets. Compliance with these standards will also be required at
19 the time of implementing projects.

20 **MPDFSG(B)(Sidewalks)(p. 11):**

21 **B. Sidewalks**

22 **Intent**

23 **Guidelines**

24 **1. Width**

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

27 **2. Lighting**

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

30 **3. Furnishings**

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

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

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

104. The Villages proposal provides a good network of trails, sidewalks and bike lanes within the project itself. A safe sidewalk link is needed and will be required from The Villages to Morganville (current west Black Diamond) along the Auburn Black Diamond Road/Roberts Drive. The area of greatest concern is the narrow bridge over Rock Creek. Compliance with these standards will be required at the time of implementing projects.

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.

105. The Villages proposal provides internal safe continuous pedestrian linkages with sidewalks and trails. With the one additional off-site sidewalk pedestrian link along Auburn Black Diamond Road/Roberts Drive, this guideline will be met.

Guidelines

1. Location

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

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

2. Width

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

107. Both 8-foot-wide hard and a 6-foot-wide soft surface trail types are proposed within the project (see page 5-29 of the application). A 5-foot-wide boardwalk trail section is also proposed for limited use. Staff finds that the proposal meets the intent of this guideline, with the exception of the soft-surface trail which is proposed to be 6 feet in width.

3. Materials

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

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

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

1 **MPDFSG(pp. 13-18):**

2 *Text not included.*

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

15 ***International Fire Code, 2006 Edition***

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

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

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

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

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

5 **VI. RECOMMENDATION**

6 The Examiner recommends the requested Master Planned Development be approved,
7 subject to the following conditions:

8 [Conditions are organized into categories; however the categories themselves are not
9 meant to limit the applicability of the condition to the overall project. Track changes
10 have been retained in order to show all alterations to the conditions of approval
11 recommended in the staff report.]

12 **GENERAL**

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

16 2. After approval by the City Council at an open public meeting and after a
17 public hearing as required by law, a Development Agreement shall be signed by the
18 Mayor and all property owners and lien holders within the MPD boundaries, and
19 recorded, before the City shall approve any subsequent implementing permits or
20 approvals. Any requirements deferred to the Development Agreement in this
21 decision shall be integrated into the Agreement prior to any approval of subsequent
22 implementing permits or approvals.

23 3. The Phasing Plan of Chapter 9 of the MPD application is approved, with the
24 exception of the bonding proposal at p. 9-3 and as otherwise noted in these conditions
25 of approval.

26 ~~3.4.~~ The Development Agreement shall specify which infrastructure projects the
27 applicant will build; which projects the City will build; and for which projects the
28 applicant will be eligible for either credits or cost recovery and by what mechanisms
29 this shall occur.

30 ~~4.5.~~ The Development Agreement shall specifically describe when the various
31 components of permitting and construction must be approved, completed or
32 terminated (e.g., when must open space be dedicated, plats recorded, and utility
33 improvements be accepted by the City).

1 5.6. The Development Agreement shall include language that defines and
2 identifies a "Master Developer." A single Master Developer shall be maintained
3 through the life of the Development Agreement. The duties of the Master Developer
4 shall include at least the following: a) function as a single point of contact for City
5 billing purposes; b) function as a single authority for Development Agreement
6 revisions and modifications; c) provide proof of approval of all permit applications
(except building permits) by other parties prior to their submittal to the City; and d)
assume responsibility for distributing Development Agreement entitlements and
obligations and administering such.

7 6.7. The City shall have the ability but not the obligation to administratively
8 approve off-site projects that would otherwise be compromised if they cannot be
9 completed prior to approval and execution of the Development Agreement. In these
10 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.

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

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

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

23 [TRANSPORTATION]

24 ~~10. Over the course of project build out, construct all new roadway alignments as~~
25 ~~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]

11.10. Over the course of project build out, construct any new roadway alignment
or intersection improvement that is: (a) depicted in the 2025 Transportation Element
of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion

1 is (i) necessary to maintain the City's then-applicable, adopted levels of service to the
2 extent that project traffic would cause or contribute to any level of service deficiency
3 as determined by the City's adopted level of service standard, or (ii) to provide access
4 to or circulation within the project; (b) functionally equivalent to any said alignment
5 or improvement; or (c) otherwise necessary to maintain the City's then-applicable,
6 adopted levels of service to the extent that project traffic would cause or contribute to
7 any level of service failure as determined by the City's adopted level of service
8 standard, or to provide access to or circulation within the project, as determined by
9 the City in its reasonable discretion based on the monitoring and modeling provided
10 for in Conditions 6 and 21 below. The Development Agreement shall specify for
11 which projects the applicant will be eligible for either credits or cost recovery and by
12 what mechanisms this shall occur. Any "functionally equivalent" realignment that
13 results in a connection of MPD roads to Green Valley Road shall be processed as a
14 major amendment to the MPD.

15 12-11. The applicant shall create a new transportation model for this project
16 which incorporates, at an appropriately fine level of detail, and at a minimum, the
17 transportation network from the northern boundary of the City of Enumclaw on SR
18 169 through the City of Maple Valley to the northern limits of that city, and west to
19 SR 167 in Auburn. External trips may be captured by any valid methodology
20 including overlaying the new model onto the existing Puget Sound Regional Council
21 transportation model. The new model must be validated for existing traffic.

22 13-12. The new model must consider recent traffic counts, current and proposed
23 land uses as defined in the applicable Comprehensive Plans areas covered in the study
24 area, current peak hour factors and existing speed limits on all project roads. The
25 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.

14-13. 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.

15-14. 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.

16-15. The new model must contain an analysis of varying internal trip capture
rates utilizing currently available ITE methodologies as well as information from

1 local master planned developments with similar land use mixes. The methodology
2 for choosing the final internal trip capture rates must be justified. Any subsequent
3 revisions to the model should include the realized trip capture rates for the project, if
4 available.

5 17.16. The resulting project impacts and mitigations must be integrated into the
6 development agreement or processed as a major amendment to the MPD prior to City
7 approval of any implementing projects.

8 18.17. The intersections needing mitigation as identified in the analysis required
9 above noted in the FEIS shall be monitored under a Transportation Monitoring Plan
10 which shall be incorporated into the Development Agreement for the MPD, with each
11 designated improvement being required at the time defined in the Monitoring Plan.
12 [FEIS Mitigation Measure]-The Monitoring Plan shall require that improvements be
13 constructed with development in order to bring mitigation projects into service before
14 the Level of Service is degraded below the City's standard.

15 19.18. Intersection improvements outside the City limits shall be mitigated through
16 measures acceptable to the applicable agency. [FEIS Mitigation Measure] The
17 developer shall enter into traffic mitigation agreements with impacted agencies
18 outside the city that have projects under their jurisdiction in the list below as part of
19 the Development Agreement. If those mitigation agreements include the construction
20 of a project, those projects shall be added to the regional project list and included as
21 part of the Development Agreement.

22 20.19. The responsibilities and pro-rata shares of the cumulative transportation
23 mitigation projects shall be established in the two Development Agreements, which
24 must cover the complete mitigation list and be consistent with one another. (Traffic
25 impacts were studied based on the cumulative impacts of The Villages and the
26 Lawson Hills MPDs. These various projects have a mutual benefit and need crossing
27 over between them.)

28 **Exhibit--INTERSECTION IMPROVEMENTS**

29 Study Intersection	30 Jurisdiction	31 Mitigation
32 SE 288th 33 Street/216th Avenue 34 SE	35 Black Diamond	36 Signalize. Add NBR turn 37 pocket.
38 SE 288th 39 Street/232nd Avenue 40 SE	41 Black Diamond	42 Add NBR turn pocket and 43 provide a refuge for NBL 44 turning vehicles on EB 45 approach.
46 SR 169/SE 288th 47 Street	48 WSDOT	49 Signalize. Add NBL turn 50 pocket. Add second SBT lane 51 (SBTR).

Exhibit—INTERSECTION IMPROVEMENTS

Study Intersection	Jurisdiction	Mitigation
SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.
SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.
SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.
SE Auburn Black Diamond Road/ Morgan Street	Black Diamond	Roundabout.
SR 169/Roberts Drive	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.
SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/ WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.
SR 169/Baker Street	Black Diamond/ WSDOT	Signalize.
SR 169/Lawson Road	Black Diamond/ WSDOT	Signalize. Add SBL turn pocket.
SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/ WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.
SR 169/SR 516	Maple Valley/ WSDOT	Add second NBL turn pocket.
SR 169/SE 240th Street	Maple Valley/ WSDOT	Add additional SBT lane on SR 169 from north of 231st Street to Witte Road. Add second NBT lane at SR 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.

Exhibit—INTERSECTION IMPROVEMENTS

Study Intersection	Jurisdiction	Mitigation
SR 516/168th Pl SE	Covington/ WSDOT	Add NBL and EBR turn pockets.
SR 516/Covington Way SE	Covington/ WSDOT	Optimize signal timings.
SE 272nd Street/160th Avenue SE	Covington/ WSDOT	Signalize.
SE Kent Kangley Road/ Landsburg Road SE	Maple Valley/King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.
SR 169/SE Green Valley Road	WSDOT	Signalize.
SE Auburn Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.
SR 169/North Connector	Black Diamond/ WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection.
Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.
SE Auburn Black Road/Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.
SR 169/South Connector	Black Diamond/ WSDOT	Signalize. Add SBR and NBL turn pockets.

21. — 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)

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

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

6 ~~_____e. An additional north bound right turn pocket at SR 169 and Lawson~~
7 ~~Street.~~

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

10 22.20. For each potential signal, first consider and present a conceptual design for a
11 roundabout as the City's preferred method of intersection control. [FEIS Mitigation
12 Measure]

13 ~~23.21. A proactive rather than reactionary transportation monitoring plan shall be~~
14 ~~established as part of the Development Agreement with using the projects identified~~
15 ~~in the new traffic analysis required above. a list of projects and including trigger~~
16 ~~mechanisms acceptable to the City.~~

17 24.22. Implementing projects shall be designed to foster the development of a street
18 grid system throughout the project.

19 ~~25.23. In order to balance the impact of the added street maintenance and the~~
20 ~~proposed street standards with higher maintenance costs, all cul-de-sacs and auto~~
21 ~~courts serving 20 units or less, and all alleys shall be private and maintained by the~~
22 ~~applicant or future Homeowners' Association(s).~~

23 26.24. The applicant or future Homeowners' Association(s) shall be required to
24 maintain all street side landscaping.

25 27.25. Traffic calming measures shall be explored with each implementing
development action and implemented at the discretion of the Public Works Director.

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

1 26. The monitoring plan required by these conditions shall require the applicant to
2 model the traffic impacts of a development phase before submitting land use
3 applications for that phase, in order to determine at what point a street or intersection
4 is likely to drop below the City's adopted level of service. The monitoring plan shall
5 provide for the timing of commencement of construction of projects identified from
6 the list contained in Condition 2143, as well as the amendments to the scope of said
7 projects and/or additions to Condition 2143's project list as determined by the City in
8 its reasonable discretion as necessary to maintain the City's adopted levels of service
9 in effect at the time of the modeling, to the extent that project traffic would cause or
10 contribute to any level of service failure as determined by the City's adopted level of
11 service standard. In the event of a disagreement between the applicant and the City
12 about the timing of construction of a transportation project under the monitoring plan,
13 and if the monitoring plan does not already include period modeling, the applicant
14 shall also monitor traffic levels midway through each phase to determine if the traffic
15 generation, trip distribution and assignment patterns are developing as expected.

16 29-27. Reserve a site within the commercial area on either the north or south side of
17 Auburn-Black Diamond Road for a future park and ride lot. [FEIS Mitigation
18 Measure]

19 30-28. No more than 150 residential units shall be permitted with a single point of
20 access. 300 units may be allowed on an interim basis, provided that a secondary
21 point of access is provided.

22 29. The Development Agreement shall define a development parcel(s) beyond
23 which no further development will be allowed without complete construction of the
24 South Connector.

25 31-30. Prior to the first implementing project of any one phase beingis approved, a
26 more detailed implementation schedule of the regional infrastructure projects
27 supporting that phase shall be submitted for approval. The timing of the projects
28 should be tied to the number of residential units and/or square feet of commercial
29 projects.

30 32-31. The applicant shall apply road design speed control and traffic calming
31 measures so that inappropriate speeds are avoided on neighborhood streets.

32 33-32. The timing of the design and alignment of the Pipeline Road shall be included
33 as part of the Development Agreement.

34 33. Provided a study confirms engineering feasibility and reasonable and
35 customary construction costs, Aa connecting sidewalk and safe pedestrian connection
36 to the programmed sidewalk in the Morganville area shall be required along Roberts
37 Drive. Construction timing should be specified in the Development Agreement. The

1 City and applicant shall work in good faith to seek grants and other funding
2 mechanisms to construct the improvement. The applicant shall otherwise be
3 responsible for construction costs to the extent authorized by law.

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

11 34.35. The Development agreement shall address which traffic projects will be built
12 by the developer, which projects will be built by the City and what projects will
13 qualify for cost recovery.

14 [NOISE]

15 35.36. Each implementing development shall include a plan for reducing short term
16 construction noise by employing the best management practices such as minimizing
17 construction noise with properly sized and maintained mufflers, engine intake
18 silencers, engine enclosures, and turning off equipment when not in use. [FEIS
19 Mitigation Measure]

20 36.37. Stationary construction equipment shall be located distant from sensitive
21 receiving properties whenever possible. Where this is infeasible, or where noise
22 impacts would still be likely to occur, portable noise barriers shall be placed around
23 the equipment (pumps, compressors, welding machines, etc.) with the opening
24 directed away from the sensitive receiving property. [FEIS Mitigation Measure]

25 37.38. Ensure that all equipment required to use backup alarms utilizes ambient-
26 sensing alarms that broadcast a warning sound loud enough to be heard over
27 background noise, but without having to use a preset, maximum volume.
28 Alternatively, use broadband backup alarms instead of typical pure tone alarms.
29 [FEIS Mitigation Measure]

30 38.39. Require operators to lift, rather than drag materials wherever feasible. [FEIS
31 Mitigation Measure]

32 39.40. Substitute hydraulic or electric models for impact tools such as jackhammers,
33 rock drills and pavement breakers. [FEIS Mitigation Measure]

34 40.41. Electric pumps shall be specified whenever pumps are required. [FEIS
35 Mitigation Measure]

1 41.42. The developer shall establish a noise control "hotline" to allow neighbors
2 affected by noise to contact the City or the construction contractor to ask questions or
3 to complain about noncompliance with the noise reduction program particularly noisy
4 activities. Failure to comply with the noise reduction program shall result first in a
5 warning and one or more continuing failures may result in cessation of construction
6 activities until the developer provides adequate assurance to the City that there will be
7 no further noncompliance. a solution is found. Noting in this condition shall be
8 construed as limiting or altering the City's authority to enforce its noise regulations.
9 [FEIS Mitigation Measure]

10 42.43. If pile driving becomes necessary, impact pile-driving shall be minimized in
11 favor of less noisy pile installation methods. If impact pile driving is required, the
12 potential for noise impacts shall be minimized by strict adherence to daytime only.
13 [FEIS Mitigation Measure]

14 44. Work hours of operation shall be established and made part of the
15 Development Agreement

16 43.45. The City shall commission a noise study, at Applicant's expense, that
17 identifies long term noise impacts resulting from the 15 year development window.
18 Long term noise impacts shall comply with Chapter 173-60 and not qualify under
19 construction noise exemptions. The noise study shall define the period(s) of time that
20 constitute long term noise, based upon professionally accepted standards or noise
21 regulations from other agencies. If this information is not available, six months shall
22 qualify as long term. Particular attention shall be paid to any truck traffic generated
23 by the large amount of grading proposed by the Applicant. The study shall propose
24 mitigation to mitigate noise within the levels required by Chapter 173-60, which
25 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]

26 44.46. ~~Upgrade Spring Supply source per~~ Comply with the terms of the Water
27 Services Future Funding Agreement (WSFFA). ~~[FEIS Mitigation Measure]~~

28 45.47. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA.
29 [FEIS Mitigation Measure]

30 46.48. Construct an appropriately sized reservoir in 850 Zone or construct an 850
31 Zone loop back to the existing system in the vicinity of Railroad Avenue. [FEIS
32 Mitigation Measure]

47-49. Construct a 750 Zone loop back to the existing system, or propose a functionally equivalent alternative as allowed in the MPD code. [FEIS Mitigation Measure]

48-50. Complete the 850 loop in the North Property and the 850 loop in Pipeline Road with a pressure reducing station to the 750 Zone water main within the North Property. [FEIS Mitigation Measure]

49-51. Construct needed water supply and storage improvements in accordance with the City's Comprehensive Plan and necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD. [FEIS Mitigation Measure]

50-52. Should new water distribution alternatives be desired by the applicant that are not consistent with the recently adopted Water Comprehensive Plan, the applicant shall be responsible for the cost of updating the Plan if needed.

51-53. The Water Conservation Plan included in the Chapter 8 of the MPD Application is approved. The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings, and the impacts if the required savings targets of 10% less than the average water use in the City by residential uses at the time the MPD was submitted are not achieved.

52-54. The proposed water conservation plan shall be evaluated for its effectiveness in light of the City's available water resources after the first 500 units have been constructed. At that time, additional measures may be required if goals are not being achieved.

[PUBLIC UTILITIES – SEWER]

53-55. King County will be constructing a sewer flow equalization storage reservoir in a location to serve the needs of the City. [FEIS Mitigation Measure]

54-56. Construct trunk lines Nos. 1 and 4. [FEIS Mitigation Measure]

55-57. Construct pump station 1 and force main 1 to equalization tank. [FEIS Mitigation Measure]

56-58. Collection of sewage shall occur as presented in City's Comprehensive Plan, consistent with King County sewage storage site selection, and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD in the future if determined appropriate by City staff and consistent with King County's sewage storage site selection process. [FEIS Mitigation Measure]

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2 57.59. An interim sewer pump station is accepted, provided that:

3 a. Routing of the gravity sewer mains is consistent with the City's
ultimate plan for routing sewage.

4 b. No capital facility charge credit will be considered for interim
improvements.

5 **[PUBLIC UTILITIES – STORMWATER AND WATER QUALITY]**

6 58.60. Stormwater runoff that is collected from impervious surfaces shall be
7 mitigated in accordance with the *2005 Stormwater Management Manual for Western
Washington*, and stormwater designs shall include low impact development
8 techniques wherever practical and feasible. [FEIS Mitigation Measure]. Homeowner
9 associations should bear the cost of landscape maintenance associated with the low
10 impact development techniques.

11 59.61. Preserve the volume of stormwater for the groundwater area tributary to Black
Diamond Lake and associated wetlands. [FEIS Mitigation Measure]

12 60.62. Implement the stormwater program described in Appendix D to The Villages
13 FEIS in order to match total runoff volume discharges via surface and subsurface
conveyance routes to Horseshoe Lake. [FEIS Mitigation Measure]

14 61.63. Provide mitigation facilities within the project limits, expansion parcels or
15 provide an agreement with King County for long term City ownership and/or
maintenance of off-site facilities not within City limits. [FEIS Mitigation Measure]

16 62.64. Native plants shall be primarily used as part of the planting palette within the
17 MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation
18 Measure]

19 63.65. Where point discharges to streams must occur, design the outfall to minimize
20 impacts to the stream channel and avoid areas of significant vegetation. [FEIS
Mitigation Measure]

21 64.66. Construct stormwater treatment and storage improvements as presented in
22 City's Comprehensive Plan and as necessary to serve the proposed development.
Alternatively, a functionally equivalent improvement to the facilities above may be
23 approved with the MPD. [FEIS Mitigation Measure]

24 65.67. Mechanisms shall be identified to integrate Low Impact Development
25 technologies into the overall design of the MPD and incorporated into the
Development Agreement. Future Homeowners' Associations shall bear any
increased cost of landscape maintenance.

1 66.68. The Development Agreement shall include restrictions on roof types (no
2 galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure
3 that stormwater discharged from roof downspouts is suitable for direct entry into
4 wetlands and streams without treatment. The applicant shall develop related public
5 education materials that will be readily available to all homeowners and implement a
6 process that can be enforced by future homeowners associations.

7 67.69. Stormwater facilities to be considered as part of required open space shall be
8 designed as an amenity per the Public Works and Natural Resources Directors. If
9 approved, future Homeowners Association(s) shall be required to provide landscape
10 maintenance of these facilities.

11 68.70. The Development Agreement shall include language that binds future
12 developers and contractors to a requirement to comply with any NPDES permits
13 issued by the Washington State Department of Ecology and acknowledge that
14 although permit conditions imposed by NPDES permits are not administered by the
15 City, staff reserves the right to enforce the conditions of the NPDES permit. Since
16 the city has a high interest in protecting receiving waters under the city storm water
17 permit, the developer shall fund necessary costs for training related to inspection
18 services. ~~cover the city's cost of NPDES stormwater permit oversight.~~

19 69.71. Develop a proactive temporary erosion and sediment control plan to prevent
20 erosion and sediment transport and provide a response plan to protect receiving
21 waters during the construction phase.

22 70.72. Construct a storm water system that does not burden the city with excessive
23 maintenance costs; assist the city with maintenance of landscape features in storm
24 water facilities. The City shall have the right to reject higher cost of maintenance
25 facilities when lower cost options may be available.

26 71.73. Include a tabular list of stormwater monitoring requirements. The list should
27 include the term of the monitoring, the allowable deviation from design objectives or
28 standards, and the action items necessary as a result of excess deviations.

29 72.74. The stormwater plan shall include the ability to adaptively manage detention
30 and discharge rates and redirect stormwater overflows when environmental
31 advantages become apparent.

32 73.75. The size of storm ponds for hydraulic purposes shall vest on a phase by phase
33 basis to the extent allowed by the City's DOE discharge permit and state law.

34 74.76. The Development Agreement shall include language to allow deviations from
35 the stormwater facilities listed in the FEIS when justified by a technical analysis and
36 risk assessment.

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77. The applicant shall obtain all necessary permits from King County for both construction, including any necessary approval or agreement providing ~~and~~ the City's ability to perform maintenance of the large regional storm pond proposed to the west of the project, subject to prior approval by the City. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.

75-78. The City shall determine whether the Applicant's reasonable proportionate share participation in any watershed-wide implementation measures identified in Exhibit H-9 would be of significant benefit in protecting Lake Sawyer water quality. If so, those measures shall be incorporated into the Development Agreement. The Development Agreement shall also integrate the phosphorous monitoring plan proposed by the Applicant in Ex. NR-TV-7.

[VISUAL AND AESTHETICS]

76-79. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas at the project perimeter. The intent of this section will be to leave the majority of the perimeter sensitive areas as designated passive open space but to have it appear and function as native forest.

77-80. The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.

[PUBLIC SERVICES – PARKS AND RECREATION]

78-81. If a school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

79-82. The details of the park and recreation facilities to serve the new demand from the MPD shall ~~could~~ be set in the required Development Agreement, and ~~may be~~ including whether such facilities may be constructed on- or off-site. [FEIS Mitigation Measure]

80-83. The cost of such facilities, including a proportionate share of facilities not fully warranted by the MPD build out, could be provided by payment of fees. [FEIS Mitigation Measure]

81-84. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a

1 mechanism to account for inflationary rises in construction costs and potentially, the
2 costs of maintaining these types of facilities in the future. The City shall maintain
3 discretion concerning when and if a lump sum payment will be accepted in lieu of
4 constructing off-site recreational facilities

5 82-85. The details regarding the timing of construction and optional off-site
6 construction or payment of fee in lieu of construction included in contents of Table
7 5.2 of the MPD application (Recreation Facilities) shall be specified resolved in the
8 Development Agreement.

9 83-86. Dependant on the availability of land, the adequacy of funds to construct City-
10 approved recreational facilities and an ability to maintain these facilities, the City
11 shall retain the sole discretion to determine when and if the applicant will be allowed
12 to provide a lump sum payment in lieu of constructing off-site recreational facilities.
13 This condition may be further defined within the Development Agreement.

14 84-87. The Development Agreement shall include language authorizing public access
15 to parks and trails facilities.

16 88. The Development Agreement shall define when trails are required to be
17 constructed. As proposed in the Master Plan Application, on-site trails (i.e. on the site
18 of the implementing project) shall be constructed or bonded prior to occupancy, final
19 site plan or final plat approval, whichever occurs first. Off-site trail connections shall
20 meet the same standard to the extent authorized by law. 7

21 85-89. Parks within each phase of development shall be constructed or bonded prior
22 to occupancy, final site plan or final plat approval of any portion of the phase,
23 whichever occurs first, to the extent necessary to meet park level of service standards
24 for the implementing project.

25 90. 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.

21 [PUBLIC SERVICES – SCHOOLS]

22 86-91. A separate school mitigation agreement shall be entered into between the
23 applicant, the City and the Enumclaw School District which provides adequate
24 mitigation of impacts to school facilities and be incorporated into the MPD permit
25 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

1 enrollment projections. Smaller sites may be used if it can be established that less
2 areas will still meet the needs of the District. All proposed schools shall be located
3 within a half-mile walk or residential areas.

4 87.92. An updated fiscal analysis shall be required for any proposal to locate a high
5 school within any lands designated on Figure 3-1 (Land Use Plan) for
6 commercial/office/retail use.

7 **[PUBLIC SERVICES – PUBLIC SAFETY]**

8 88.93. The Development Agreement shall include specific provisions for providing
9 both fire station sites and funding for future fire facilities and equipment to ensure
10 protection concurrent with project build out. [FEIS Mitigation Measure]

11 89.94. All Fire Department access roads must meet International Fire Code,
12 specifically Section 503 Fire Department Access Roads and Appendix D Fire
13 Department Access Roads, except to the extent modifications or exceptions are
14 approved by the designated official and authorized by applicable regulations

15 90.95. Auto courts shall meet the requirements of the International Fire Code 2006
16 ed. Per IFC Section 503, specifically 503.2.1, except to the extent modifications or
17 exceptions are approved by the designated official and authorized by applicable
18 regulations.

19 91.96. Separation of combustible structures and vegetation shall be provided to
20 prevent wildland fires from the east and south from spreading to buildings. This shall
21 be determined at the time of implementing projects.

22 **[EROSION HAZARDS]**

23 92.97. Major earth moving and grading ~~shall~~ may be limited to the “dry season,”
24 between April and September, to avoid water quality impacts from erosion due to wet
25 soils. Construction during the “wet season” may occur as allowed by the Engineering
Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

93.98. 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]

94.99. 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]

1 95.100. Design stormwater facilities to avoid discharging concentrated stormwater
2 flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS
Mitigation Measure]

3 96.101. Utilize stormwater detention facilities that avoid increases in peak stream
4 flows. [FEIS Mitigation Measure]

5 ~~97.102. The Development Agreement shall identify an appropriate administrative fee~~
6 ~~to cover the costs of staff to deal with construction runoff discharges that exceed~~
7 ~~discharge permit limits. The Applicant developer shall provide submit a Temporary~~
8 Erosion and Sedimentation Control (TESC) plan meeting City standards that will
9 mitigate the potential for construction run-off from the site prior to grading or land
10 clearing activities. The best management practices in the TESC plan shall include
11 standby storage of emergency erosion and sediment control materials; a limit to the
12 amount of property that may be disturbed in the winter months; and guaranteed time
13 frames for the establishment of wet weather erosion and site protection measures.

14 98.103. Prior to approval of the first implementing plat or site development permit
15 within a phase, the applicant shall submit an overall grading plan that will balance the
16 cut or fill so that the amount of cut or fill does not exceed the other by more than
20%.

17 [LANDSLIDE HAZARDS]

18 99.104. Development of landslide hazard areas shall be avoided. Sufficient setbacks
19 shall be required to assure or increase the safety of nearby uses, or where feasible
20 grade out the landslide hazard area to eliminate the hazard in compliance with the
21 city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

22 ~~100.105.~~ Stormwater and groundwater shall be managed to avoid increases in
23 overland flow or infiltration in areas of potential slope failure to avoid water-induced
24 landslides. [FEIS Mitigation Measure]

25 ~~101.106.~~ Geologically hazardous areas shall be designated as open space and roads
and utilities routed to avoid such areas. Where avoidance is impossible, utilize the
process in the Sensitive Areas Ordinance (supplied with adequate information as
defined in code) and Engineering Design and Construction Standards (ED&CS) to
build roads and utilities through these areas.

26 [MINE HAZARDS]

27 ~~102.107.~~ Development within the moderate mine hazard area may require
28 additional mitigation measures, which shall be evaluated with future implementing
29 development proposals.

1 403.108. All proposed development within mine hazard areas shall occur in
2 conformance with BDMC 19.10.

3 404.109. All houses that are sold in classified or declassified coal mine hazard areas
4 shall require a liability release from the homeowner to the City. The release must
5 recognize that the City is not liable for actual or perceived damage or impact from the
6 coal mine hazard area. The release form shall be developed and included in the
7 Development Agreement.

8 [VEGETATION AND WETLANDS]

9 405.110. Structural measures such as silt fences and temporary sediment ponds
10 shall be used to avoid discharging sediment into wetlands and other critical areas.
11 [FEIS Mitigation Measure]

12 406.111. Implementing projects shall provide "on the ground" protection measures
13 such as wetland buffers or root protection zones for significant trees. [FEIS
14 Mitigation Measure]

15 407.112. New stormwater outfalls shall be located to avoid impacts to any stream
16 and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and
17 instream habitat. Where all practical and feasible avoidance measures have been
18 employed, provide mitigation in the form of outfall energy dissipaters and/or
19 vegetation restoration and slope stabilization as necessary. [FEIS Mitigation
20 Measure]

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

23 409.113. A tree inventory shall be required prior to the development of
24 implementing projects so that other opportunities to preserve trees may be realized.

25 410.114. The Development Agreement shall include text that defines when and
26 under what conditions a parcel may be logged for timber revenue, how that parcel
27 must be secured to minimize the impacts on the community and how long the parcel
28 may remain un-worked before it must be reforested.

29 411.115. The Development Agreement shall describe the process and basis for
30 removing selective hazard trees at the project perimeter. The intent of this section
31 will be to leave the majority of the perimeter as designated passive open space, but to
32 have it appear and function as native forest.

33 412.116. The use of native vegetation in street landscaping and in parks shall be
34 required.

1 **[FISH AND WILDLIFE]**

2 ~~113.117.~~ Wildlife forage preferences shall be of primary consideration in plant
3 species selection for enhancement areas. [FEIS Mitigation Measure]

4 ~~114.118.~~ Mast-producing species (such as hazelnut) shall be used to mitigate for
5 reduced food sources resulting from habitat reductions when designing landscape
6 plans for development parcels adjoining wetland buffers, or for wetland buffer
enhancement plantings. [FEIS Mitigation Measure]

7 ~~115.119.~~ Provide a 300-foot-wide wildlife corridor from the western edge of the
8 Core Complex to the City's western boundary. The corridor should be located within
areas of contiguous open space that form a network. [FEIS Mitigation Measure]

9 **[CLIMATE CHANGE]**

10 ~~116.120.~~ Building design guidelines shall allow the use of solar, wind, and other
11 renewable sources. [FEIS Mitigation Measure]

12 ~~117.121.~~ Should a large employer (100+ employees) or a group of similar
13 employers locate in the commercial areas of the MPD, a Transportation Management
Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

14 **[LAND USE]**

15 ~~118.122.~~ Approval of the design concept and land use plan (Chapter 3) shall be
16 limited to the plan map (Figure 3-1); description of categories (beginning on page 3-
17 18); a maximum of 4,800 total residential units and 775,000 square feet of
commercial space; and target densities (Table 3.2), except as modified herein.
18 Commercial uses within residential land use categories shall only be allowed through
amendment of the MPD. All other specifics shall be resolved through the
19 Development Agreement process.

20 ~~119.123.~~ The project shall provide a mix of housing types in conformance with the
21 MPD Design Guidelines. The Development agreement shall set targets for various
types of housing for each phase of development.

22 ~~120.124.~~ Identification of specific areas where live/work units can be permitted
23 shall be done as part of the Development Agreement or through an MPD minor
amendment.

24 ~~121.125.~~ A minimum density of 4 du/ac for residential properties shall be required
25 for implementing projects.

1 122.126. If the applicant requests to increase a residential category that abuts the
2 perimeter of the MPD, it shall be processed as a Major Amendment to the MPD.
3 Residential land use categories can otherwise be adjusted one category up or down
through an administrative approval process provided they also otherwise meet the
requirements for minor amendments outlined in BDMC 18.98.100.

4 123.127. The Development Agreement shall limit the frequency of proposed
5 reclassification of development parcels to no more frequently than once per calendar
6 year.

7 124.128. The Expansion Area process shall be clarified in the Development
8 Agreement.

9 125.129. Project specific design standards shall be incorporated into the
10 Development Agreement. These design guidelines must comply with the Master
11 Planned Development Framework Design Standards and Guidelines. All MPD
construction shall comply with the Master Planned Development Framework Design
Standards and Guidelines, whether or not required by the Development Agreement.

12 126.130. A unit split (percentages of single family and multifamily) and
13 commercial use split (commercial, office and industrial) shall be incorporated into the
14 Development Agreement.

15 127.131. All commercial/office uses (other than home occupations and identified
16 live/work areas) shall only occur on lands so designated. Additional commercial
17 areas shall be identified on the Land Use Plan through a future amendment to the
18 MPD.

19 128.132. 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-
20 by-phase analysis ~~a periodic analysis~~ of affordable housing Citywide to ensure that
21 housing is being provided at affordable prices. Specifications for affordable housing
22 needs within the project shall be determined as a result of the phase-by-phase
23 analysis. ~~shall be required to ensure that housing is being provided at prices that meet
the earning potential of those jobs being created within the project. Exact
specifications shall be included within the Development Agreement.~~

24 129.133. Exact specifications for the housing described in paragraph 122 shall be
25 included within the Development Agreement.

1 ~~130-134.~~ A distinct land use category shall be created to recognize potential light
2 industrial uses or the "office" category shall be renamed to properly indicate the
3 range of potential uses. Areas intended to have light industrial type uses shall be
4 identified on the Land Use Map that is made part of the Development Agreement.

5 ~~131-135.~~ The high density residential (18-30 du/ac) supplemental design standards
6 and guidelines (MPD application Appendix E) shall become part of the Development
7 Agreement.

8 ~~132-136.~~ No more than 25% of non-multifamily housing shall consist of "front-
9 loaded lots."

10 ~~133-137.~~ Homeowners Association conditions, covenants and restrictions (CCRs) or
11 the Architectural Review Committee shall review, but shall not preclude, the use of
12 green technologies such as solar panels.

13 ~~134-138.~~ Front yard setbacks and other specific lot standards shall be determined as
14 part of the Development Agreement.

15 ~~135-139.~~ A FAR standard shall be established through the Development Agreement
16 process.

17 ~~140.~~ No more than two floors of residential uses above ground floor
18 commercial/office uses shall be allowed.

19 ~~141.~~ The orientation of public building sites and parks shall preserve and enhance
20 views of Mt. Rainier and other views identified in the comprehensive plan.
21 Consideration of the removal of the tailing piles in Parcel B shall be taken in order to
22 enhance views of Mt. Rainier.

23 ~~136-142.~~ The Applicant's requests for reduced parking standards in the Mixed Use
24 Town Center as identified at p. 13-4 of the MPD application should be granted. All
25 other requests for deviation in the 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.

26 [SENSITIVE AREAS/OPEN SPACE]

27 ~~137-143.~~ The use of sensitive areas including but not limited to wetlands, landslide
28 and mine hazard areas and their associated buffers for development including trails,
29 stormwater management, etc. shall be regulated by BDMC Chapter 19.10.
Appropriate mitigation, if required, for impacts as well as other required measures

1 shall be evaluated on a case-by-case basis at the time of implementing project
2 application.

3 ~~138-144.~~ Areas shown as natural open space in the figure on Page 5-7 of the
4 application are required to remain natural with the possibility for vegetation
5 enhancement. Modifications to these areas may be approved by the City in its
6 reasonable discretion, on a case-by-case basis, only if necessary for construction of
7 required infrastructure such as roads, trails or stormwater facilities. Any areas
8 disturbed pursuant to such approval shall be replanted with native plants. No other
9 land clearing shall be permitted besides trails and stormwater facilities. Nothing in
10 this condition shall allow grading or modifications in the sensitive areas and buffers,
11 except as provided in the Sensitive Areas Ordinance.

12 ~~139-145.~~ The Development Agreement shall include a tabular list of the types of
13 activities and the characteristics of passive open space and active open space so that
14 future land applications can accurately track the type and character of open space that
15 is provided.

16 ~~140-146.~~ The Development Agreement shall include language that specifically
17 defines when the various components of permitting and construction must be
18 approved, completed or terminated. For example; when must open space be
19 dedicated, plats recorded, and utility improvements be accepted by the City.

20 ~~141-147.~~ Specific details on which open space shall be dedicated to the city,
21 protected by conservation easements or protected and maintained by other
22 mechanisms shall be established as part of the Development Agreement.

23 ~~142-148.~~ Once acreages have been finalized, phasing of open space (which includes
24 parks and is identified within the MPD application) shall be defined and articulated
25 for timing of final designation within the Development Agreement.

1 ~~149.~~ Once the mapped boundaries of sensitive areas have been agreed to, the
2 Development Agreement shall include text that identifies that these areas are fixed. If
3 during construction it is discovered that the actual boundary is smaller or larger than
4 what was mapped, the mapped boundary shall prevail. The applicant shall neither
5 benefit nor be penalized by errors or changes in the sensitive area boundaries as the
6 projects are developed.

7 150. Storm ponds should only be considered as open space if they are developed as
8 an amenity for safe recreational use.

9 ~~143.~~

10 [ADMINISTRATION]

1 144:151. The proposed project shall have no adverse financial impact upon the city,
2 as determined after each phase of development and at full build-out. —The required
3 fiscal analysis shall ~~also~~ include the costs to the city for operating, maintaining and
4 replacing public facilities required to be constructed as a condition of MPD approval
5 or any implementing approvals related thereto. The fiscal analysis shall ensure that
6 revenues from the project are sufficient to maintain the project's proportionate share
7 of adopted City staffing levels of service. The fiscal analysis shall be updated to
8 show continued compliance with this criterion, in accordance with the following
9 schedule:

10 a. Within five years, a new fiscal analysis shall be completed to determine
11 the long-term fiscal impact to the City. If necessary, additional project conditions
12 may be required.

13 b. Prior to commencing a new phase, including the first phase of
14 construction.

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

23 145:152. The Development Agreement shall include language that specifically
24 defines when the various components of permitting and construction must be
25 approved, completed or terminated. For example: when must open space be
dedicated, plats recorded, and utility improvements be accepted by the City.

1 146:153. The Development Agreement shall document a collaborative
2 design/review/permitting process that allows City staff to participate in the conceptual
3 stage of project planning in order to provide input on designs and choices that benefit
4 the City as well as the applicant.

5 147:154. The Development Agreement shall specifically identify which rights and
6 entitlements are vested with each level of permitting, including but not limited to the
7 MPD Application approval, the Development Agreement approval, and Utility Permit
8 approvals.

9 148:155. Reclassification of development parcels shall occur no more frequently
10 than once per calendar year.

1 149.156. Proposed reclassification of development parcels located at the project
2 perimeter to a higher density shall only occur through a Major Amendment to the
MPD.

3 150.157. A process for including lands identified as "Expansion Areas" in the
4 application shall be defined in the Development Agreement.

5 151.158. The Development Agreement shall define the proposed phasing plan for
6 the various matters (utility and street infrastructure, parks, transferred development
rights, etc.) subject to phasing standards.

7 159. Prior to the approval of the first implementing project of a defined phase, a
8 detailed implementation schedule of the regional projects supporting that phase shall
9 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.

10 [MID POINT TRAFFIC ANALYSIS]

11 16057. a. At the point where building permits have been issued for 3,000
12 dwelling units at the Villages and Lawson Hills together, the City shall
13 perform a single comprehensive review of the combined cumulative
14 transportation impacts of the Villages MPD and the Lawson Hills MPD and shall
15 issue findings, conclusions and a recommendation as provided below. This
16 review shall determine whether the cumulative transportation impacts of the two
17 projects are reasonably close to the environmental impacts identified and
18 projected within the SEPA documents; whether such impacts have been
19 adequately mitigated; and whether the projects comply with their respective
20 MPD permit conditions regulating their cumulative transportation impacts.

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

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

Not later than 90 days following receipt of cumulative impact summaries from
the Master Developer(s), the City Director of Community Development shall

1 consult with other affected jurisdictions as to the midpoint review results, shall
2 issue the City's proposed findings, conclusions and recommendation, and at the
3 close of the 90-day period, the City shall meet with the Master Developer(s) to
4 review the proposed findings, conclusions and recommendation and identify
5 what improvements the Master Developer(s) plans to construct. Within 14
6 days of the City meeting with the Master Developer(s), the City shall finalize its
7 findings, conclusions and recommendation and shall provide mailed notice to all
8 Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the
9 midpoint review has been issued.

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

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

20 Review the adequacy of the City's 2025 Transportation Network' and EIS study
21 intersections impacted by the Villages and Lawson Hills MPDs to meet the
22 applicable service standards in effect at the time the EISs were prepared,
23 including consideration of the following specific topics:

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

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

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

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

e. The City review of above-stated cumulative transportation
impacts required herein (the "midpoint review analysis") shall result in written
findings and conclusions plus a recommendation for new future permit
conditions and mitigations for the Villages and/or Lawson Hills, as required.
Proposed conditions and mitigations applicable to future permits and associated

1 mitigation within either or both projects shall be revised if the City finds that the
2 conditions or mitigation measures imposed pursuant to the City's standards in
3 effect at the time of MPD approval have resulted in an unsatisfactory level of
4 mitigation, either because the degree of mitigation is substantially inadequate or
5 the quantity of impact demonstrated to be attributable to MPD development
6 significantly exceeds levels predicted. New permit conditions and mitigations
7 imposed for cumulative impacts through the midpoint review process shall
8 comply with the following standards and limitations:

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

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

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

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

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

f. The Villages Master Developer, the Lawson Hills Master
Developer, or any other party of record may appeal the midpoint review
analysis within 21 days of the date of its issuance by filing an appeal statement
with the Community Development Director, plus a fee in the amount then
applicable to an administrative appeal of a SEPA threshold determination. The
appeal statement shall specify in detail the errors alleged to exist in the

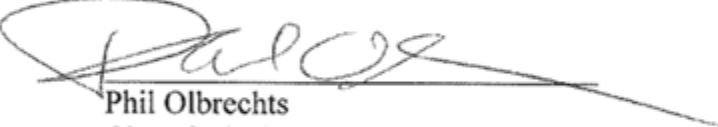
1 midpoint review analysis and any appeal proceedings shall be limited to
2 analysis of such allegations.

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

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

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

21 DATED this 11 Day of May, 2010.

22 
23 Phil Olbrechts
24 City of Black Diamond Hearing Examiner
25