BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER

IN RE: MASTER PLANNED DEVELOPMENT APPLICATION FOR THE VILLAGES, PLN09-0017	**HEARING EXAMINER RECOMMENDATION**

TABLE OF CONTENTS

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 entitlement[1], 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.

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

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

Another significant condition is a requirement for more noise analysis. As noted in the Villages Final Environmental Impact Statement ("FEIS"), construction noise is 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 150,000[2] 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.

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

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

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

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

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

Ms. Taeschner voiced concerns regarding several environmental issues, particularly the negative impacts of excessive tree cutting. She said she moved to the area for its rural character. She noted that trees offer a number of environmental benefits, including scrubbing the air and producing oxygen. She said the requested exemptions by YarrowBay from regulations that limit tree removal were a mistake, and that past civilizations have been destroyed by the over-destruction of trees. Excessive removal by the developer might not only harm local tourism, she said, but local wildlife also would vanish. Some of the animals she can now see or hear from her home include 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

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

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.

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

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

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

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

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

Ms. Graham was responsible for turning the final EISs over to the City's SEPA-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.

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

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

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

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

Ms. Graham testified that her team that prepared the draft and final EISs were sharing internal working drafts as early as July 2009. She indicated that she was aware of the need for seven school facilities during the course of the DEIS. The DEIS for Lawson Hills and the Villages do not identify seven school sites, but according to Ms. Graham, identify the acreage required for seven school sites based on Enumclaw 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

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

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

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

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

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

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

On page 2-7 of the Villages FEIS, the accelerated land use map, Ms. Graham was unable to recall personally the difference between the two high-density residential, 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.

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

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

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

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

Mr. Pilcher said that when the areas were brought into the urban growth area, there is 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 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

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

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

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

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

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

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

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

Mr. Pilcher stated that there are a number of functionally equivalent standards requests in the application, where the applicant is seeking to do some of their 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.

Mr. Pilcher stated that the staff has concerns about adequate access provided to all portions of the property. Mr. Pilcher says that the staff recommends that connection by the main road in the proposal through the property occur before too much 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.

Mr. Pilcher also states that the application mentions quite a bit of site grading activity that could occur but that the staff has not had a chance to review a preliminary grading plan. He states that the staff recommends a conditional approval and that the 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.

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

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

Mr. Pilcher stated that Lawson Hills is the other Master Planned Development proposal in front of the examiner. It is a smaller projects, 371 acres, divided into two separate geographic areas. Mr. Pilcher explained that north portion of the property, 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 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.

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

Mr. Pilcher noted that there are more hills and topography involved with the Lawson 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

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

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

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

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

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

Mr. Pilcher (on direct examination by the Examiner) stated that the north triangle is directly north of the northern parcel of The Villages. He further clarified that in other 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.

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

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

Ms. Rogers testified that the YarrowBay MPD is a guide to future development. The 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.

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

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

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

The MPD contains a mix of housing types that contribute to the city's affordable housing goals, she continued. There is very low-density, single-family housing; medium-density areas with single-family units on smaller lots; and high-density zones 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.

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

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

She said the Lawson Hills site includes an elementary school, a large amount of open spaces such as trails and parks, and low- to medium-density residential development. The commercial area includes commercial development and a substantial open-space 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.

She said YarrowBay supports the staff report recommendation of approval. She noted that the developer has requested revisions to some conditions, to be further discussed with city staff. School mitigations are the same as the Villages'. The developer also recommends changes to some transportation-related conditions: over the course of the buildout, the developer asks the city to allow construction of any roadway alignments 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.

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

Finally, regarding stormwater concerns in Lawson Hills, she noted that there is a 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.

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

Mr. Ross is the CEO of YarrowBay Holdings.

Mr. Ross said his company has been working on the projects since 2005. Since then, it has gone through a rigorous planning process that has included thousands of hours 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,

followed by many meetings with interested groups and individuals. While he agreed 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.

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

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

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

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 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 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, 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 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 they fit in with their surroundings.

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 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, to create enclaves that are framed and separated from each other.

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 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 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 be front loaded.

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 possible.

Many of the design tenets used in the Villages will also be used in Lawson Hills, she said. The north triangle is a sister site to other components in the north property of the Villages; they are intended to work together, she said. The commercial portions of 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.

Land uses in both developments include essentially the same categories, she said, except that there will be no mixed-use area in Lawson Hills. Higher-density areas again offer affordable housing. She noted that the hill area would require flexible planning approaches, including the type and mix of houses, the mix of alley- and standard-loaded homes, the ability to work with the grade, to balance cut and fill, and 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.

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

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

March 11, 2010

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

Mr. Bortleson first raised the question of whether the development was consistent with the rural nature of the community, particularly its designation as a King County agricultural production district. He also had a number of concerns regarding water issues, namely: 1) the effect of the development on the wells and springs north of Flaming Geyser State Park; 2) his belief that current plans do not adequately address the prospect of mudslides and washouts, especially given plans to locate a school 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

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

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

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

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

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

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

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

Mr. McElroy said many of the area's residents came to Black Diamond because of its rural character, because it is a low-traffic, tranquil, placid place to live. These 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.

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

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

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

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

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

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

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

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

Ms. Dahlquist expanded on Ms. Merrill's testimony, noting that if new school construction were not a condition of the developments' approval, then the school 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.

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

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

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

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

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

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

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

He expressed support for the inclusion of new school sites in development plans. 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.

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

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

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

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

Ms. McGann testified that good local schools contribute to an area's quality of life and enhance property values. She wants the city to consider whether the two Master Plan Developments provide adequate school sites and address the developer's contributions to school construction. She does not want a failed school system in 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.

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

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

He also noted the absence of public input into the location of school sites in the plans, and argued many costs that ought to be paid by the developer will be paid for by the 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.

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

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

Mr. Taeschner began his testimony by recounting that he moved from Seattle to 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.

He also addressed the dangers of building over mines. He said his grandfather and great-grandfather had been miners in the area, and that many people were unaware of the existence of abandoned mine shafts under Lake Sawyer and the city. He cited an 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.

He also cited the dangers of tree removal. He noted that the area sometimes 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

It is the district's hope, she concluded, that a reasoned logical approach to schools will 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.

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 Plumb 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.

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

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

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

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

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

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

March 15, 2010

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

Mr. Taylor first stated that Botts Drive must be brought up to code, including full-width right of way, curbing, sidewalks, landscaping, utilities, and buffering of 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 as the secondary access would connect the

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

He also voiced concerns about the development's impact on quality of life at his home, particularly in terms of noise, vibration, and loss of privacy, given that primary access to Lawson Hills will go around two sides of his property. He also noted that the home is located downhill from one of these roads, which may create problems with water runoff, slides, and even out-of-control vehicles intruding on the property. 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.

Mr. Taylor also expressed reservations about the negative effect of growth on fire services. Those services are already below standard for a city of Black Diamond's population, he said, with response times in the seven- to nine-minute range while the national standard is four minutes. The city falls short of its own standard of having a manned fire station within one-and-a-half road miles of all developed property. He noted that it's a ten minute drive from the city's single-man station to the proposed site of the Lawson Hills and to the far end of the Villages, as well as being far outside the one-and-a-half mile road standard. Mr. Taylor said he had found no indication of future fire-services expansion in the project's plans. If left to the city to broaden fire services after development is done and the tax base is expanded, he maintained, it 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.

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

Ms. Taylor first addressed the question of parking at the developments' retail areas. She noted that the amount of parking provided in the plans had been reduced. When 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.

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

potentially unstable ground. She said she had been told that there were many smaller, private coal mines in the area that may not be documented. She noted that a large sinkhole from a mine collapse lies south of her own property; similar sinkholes 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.

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

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

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

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.

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

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

Her said her primary concern was for public safety. The city is not prepared to deal with a project of this size, she argued, as manifested in the need for the developer to pay the salaries of additional city staff members to work on the project. She also cited the question of fire protection: the only mention of the need for increased protection in the project's plans, she said, was for a special levy to cover the costs of expanded service. This course of action raises two problems, she added: levies do not 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.

The city council has the ability to enforce stricter codes than the ones currently 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-

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

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

Mr. McGibbon testified that, as a lifelong resident of the area, he was brokenhearted to hear of the YarrowBay development plans. His first concern was increased traffic. The area's roads are already congested, he said; it sometimes takes him two light cycles to make a left turn onto Kent-Kangley Road. There are many side roads that 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.

In essence, he said, the YarrowBay project creates too much growth too quickly. 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.

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

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

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

She said the city does need new retail growth, but not in the form of generic 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.

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

Clarissa Cross (19102 SE Green Valley Rd., Black Diamond). Ms. Cross' comments 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

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

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

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

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

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

Given these problems, Mr. Dixon said, the City of Auburn requests two conditions of approval for the projects: 1) an updated, more accurate and detailed transportation 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.

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

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

Mr. Rothchilds stated that his primary concern was water quality. When comparing the developer's plans with the city code, he said he found the plans lacking in regard to code section 19.98.01, item F: Identify significant environmental impacts and ensure appropriate mitigation. Specifically, he said, the plans do not identify the 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.

Consequently, he requested that the Hearing Examiner recommend conditions be attached to the MPD requiring that phosphorus loading impacts be identified and appropriately mitigated, which, he said, has yet to be done. He added that language in the city code (18.98.020) also requires preservation and enhancement of the area's physical characteristics. Because "preserving" means keeping things as 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.

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

Mr. Rimbos began his testimony by stating that the ramifications of approving the developments would ripple throughout the region and set a dangerous precedent. In 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.

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

Mr. Rimbos 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.

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

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

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

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

She noted that the Plass/257th/Green Valley Road intersection is only four-tenths of a mile from SR169/Green Valley Road intersection; also, the south connector crosses Stream 54 flowing into Jones Lake. Stream 54 parallels Plass Road. None of these issues are examined for construction, traffic, and safety impacts or effects on the environment, she said, and are not mitigated. One of the possible mitigations to avoid wetland damage, save wildlife habitat, and bypass the intersection with 257th Avenue Southeast/Plass Road, which is narrow and has one blind hill, she said, would be to span the 257th/Plass area with a well-designed overpass using current forested growth 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.

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

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

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

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

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

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

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

He also addressed the question of supporting infrastructure that would be located in 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.

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

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

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

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

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

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

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

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

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

She added that she supported prior testimony arguing that not enough jobs would be 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.

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

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

Ms. Seaman first noted that the developments would add 9600 cars to the area's roads, and that the main route into the area, Auburn-Black Diamond Road, was 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?

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

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

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

Mr. Eerang first noted the thousand of vehicles that the developments would add to the area's major roads such as Kent-Kangley Road and Auburn/Black Diamond Road. 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.

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

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

Another environmental concern he noted was the degree of tree cutting called for in 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.

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

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

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

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

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

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

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

Mr. Bingle stated that he and his wife had moved to the area in 1994 and fell in love with it because of its rural character. Since then, he said, they have lost trust in the 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.

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

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

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

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

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

1)TDRs. Ms. Proctor asked the hearing examiner to ensure that the south annexation of the developer's property not be used as part of the TDRs, and to review whether wetlands contribute to the TDR transfers.

2)The tri-party agreement. She argued that the Lake Sawyer Regional Park Joint Use Agreement, under which a six-acre parcel of Lake Sawyer Park was transferred to the Enumclaw School District for use as sports fields, allows YarrowBay to escape paying the full cost of school site mitigation.

3)Cash payments. She noted an option in the MPD for the developer to make cash payments to the city in lieu of putting in place recreational open spaces such as soccer fields, play areas, and trails. Such an arrangement might be acceptable for a smaller development, she said, but it is not appropriate for a project of this scale, especially when the developments had been promoted to the community as full of open recreational spaces. She added that the city had only one park staff person, while the expanded open areas planned for the development would require a staff of 10-15.

4)Tree ordinance. She said the developer was using SAO regulations to justify a blanket waiver of the city's tree ordinance. While YarrowBay claims it is committed to the inclusion of open spaces in the project, she said, most of these spaces are wetlands and sports fields containing few trees. A blanket waiver is not 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

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

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

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.

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.

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

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

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

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

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

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

Ms. Vukich said she questioned whether the FEIS or MPD for the YarrowBay project 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.

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

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

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

overcrowded. As narrow, two-lane routes with many blind curves and places with no shoulder, she said these roads cannot handle the projected 400 percent increase in traffic that the developments would bring. Given the area's topography, she added, widening those roads would be extremely costly, and King County seems disinclined 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.

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

Ms. Sizemore said she opposed the developments for same reasons as the other city residents who had spoken against them. She testified that, as a real estate agent, she is familiar with the workings of the housing market, which she likened to a roller coaster. She said the market is now in a down cycle, and the addition of new homes to 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.

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

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

The city's primary concerns with the developments, he said, dealt with traffic and transportation issues and appropriate levels of mitigation. He said the state Growth Management Act requires planning for population growth and calls for neighborhood jurisdictions to adopt growth plans that are consistent with each other. The 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.

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

Kelly McElroy (24417 SE Green Valley Rd., Black Diamond). Ms. McElroy's 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

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

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

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

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

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

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.

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

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

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

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

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

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

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.

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

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

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

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

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

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

Laura Iddings (P.O. Box 2, Maple Valley). Ms. Iddings' comments were directed at 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

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

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

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

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

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

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

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

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

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

We've problems with Black Diamond MPDs.
They have become too urban by design
and with suspicious flexibilities they could turn out to be quite asinine.
If just twice target growth we'd feel the strain.
King County roads would slow into a crawl,
our crowded school could tax us to our pain
and all would suffer rural/urban sprawl.
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

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

Mr. Pilcher testified that the CMART document was used by Parametrix to put together responses to comments to the DEIS. Mr. Pilcher was involved in preparing responses and reviewed all the responses prior to publication as the SEPA responsible 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.

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

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

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

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

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

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

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

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

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

With respect to stormwater, Mr. Pilcher also testified that he did not know whether additional clarifications or corrections were made in response to Comment 047 on 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.

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

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

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

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

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

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

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

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

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

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.

Mr. Pilcher reiterated that part of the process of developing the EIS was getting peer review analysis of expert reports. He was shown a technical memorandum, 2/2/09, 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.

With respect to noise impacts, if Environs did not have expertise then it could be performed by Parametrix land use and wildlife specialists. When Parametrix said it recommended the analysis be expanded, Mr. Pilcher understood that to be a concern about wildlife being impacted by the noise, at least during the construction phase. Mr. Pilcher did not recall if they had the wildlife assessment expanded to include that impact or analysis of that impact. He does not recall if there were any discussions 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.

Mr. Pilcher was shown another technical memorandum from Parametrix dated 1/30/09 from David Sherrard to Susan Graham, regarding air quality. He recognized this as another peer review memorandum. In terms of greenhouse gas emissions, it was Mr. Pilcher's understanding that the worst-case cumulative analysis indicated no greenhouse gas emission impacts. He testified that he is not sure what, without asking Mr. Sherrard, what he meant by no impact, because there's an impact from 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.

Mr. Pilcher stated he did not know the methodology of how the assessment of greenhouse gases took into account the fact that the 6,000 homes were to be built 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.

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

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

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

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

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

Mr. Pilcher (on redirect examination by Mr. Sterbank) agreed that when the EIS traffic analysis was conducted it assumed that the north/south linkage between Abrams Avenue and the South Connector and the Southeast Connector into Lawson Hills to 169 linkage would be constructed. And, based on that analysis, the final FEIS identified certain mitigation projects which were listed in the EIS. Mr. Pilcher further agreed that the applicant later indicated a desire not to construct these two 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

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

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

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

Mr. Pilcher (on recross examination by Mr. Bricklin) confirmed that it is not typical to look at construction impacts in relation to a programmatic EIS. But, he further testified that he has never been involved in a programmatic review concerning a project that involves 15 years of construction. But, (on further redirect examination by Mr. Sterbank) Mr. Pilcher testified that when he is attempting to perform a 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.

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

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

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

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

B. Expert Testimony

1. Rural Character

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

Mr. Paul Reitenbach works for the King County Department of Development and Environmental Services out of the director's office. He stated that the address is 900 Oaksdale Avenue Southwest in Renton, Washington 98055. He was hired by King County in June 1979 and formally supervised the community planning section 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.

Mr. Reitenbach (on cross examination by Ms. Rogers) stated that there are a variety of land use issues in the project including page 9 of the appeal which refers to the 1996 Black Diamond Urban Growth Area Agreement, as well as other references on 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.

Mr. Reitenbach (on direct examination by Mr. Bricklin) stated that he normally does not get involved in the review of projects in the cities within King County, but that this one raised some concern about the surrounding rural area that is unincorporated, which is why King County decided to weigh in on those concerns. He further stated that he drafted the September 30 letter signed by Executive Triplett with three 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.

Mr. Reitenbach stated that King County's number one concern was about the south access road, which is difficult to find on the maps, but the proponent has agreed to take out and the access was redirected to the east to Highway 169, so this concern 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.

Mr. Reitenbach stated that the potential adverse impact of the urban development on the rural area did not appear to be adequately addressed initially, including broad traffic issues and environmental concerns in Attachment No. 2. He further stated that 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.

Mr. Reitenbach stated that King County's final comment was that they thought the EIS was silent on the Black Diamond Urban Growth Area Agreement. He further stated that this was a supporting comment to just discuss this Black Diamond Urban 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.

Mr. Reitenbach also stated that there were concerns about a drainage facility that looked like a pond or small lake that was designed to serve the urban development, 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

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

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

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

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

Mr. Reitenbach stated that the most recent example of an urban facilities located 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.

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

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

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

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

Mr. Reitenbach stated that he was familiar with the draft Comprehensive School Mitigation Agreement that has been negotiated between the Enumclaw School 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.

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

2. Traffic

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

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

Mr. Nolan testified transportation engineers in his department commented on the MPD and reviewed DEIS for both proposals (Villages DEIS, Appendix R, Attachment 1, 9/30/09). Mr. Nolan noted one of the county's concerns was the potential impacts to Green Valley Road. He noted the DEIS showed a connector directly from the City to Green Valley Road and that the southern access to the project would be unincorporated King County. He stated the County was worried 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

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

Mr. Nolan testified the County had expressed concerns about the projected project growth in that it exceeded the Black Diamond Comprehensive Plan targets and was well over the city's allocation of regional population growth. He noted the Puget Sound Regional Council (PSRC) plan concentrates growth in metropolitan areas and 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 stated the DEIS authors did not respond to this issue.

Mr. Nolan testified the County had expressed concerns regarding the short term impacts of construction and hauling. He noted the County had expressed these 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.

Mr. Nolan stated the County was concerned about the FEIS assumption regarding internal trip capture, the number of trips that start within the project and end within the project such as a resident leaving home and driving to a job within the project boundaries. He noted the applicant used Institute of Traffic Engineers (ITE) trip internalization rates. He stated the County's experience with Redmond Ridge 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.

Mr. Nolan noted trip distribution is a matching of types of trips such as home to shopping, home to school, home to work and then distributing them out to the capacity of the roads in an iterative process. The idea is to minimize trip time. He stated the FEIS traffic model only included funded projects rather than the full transportation plan projects from surrounding jurisdictions. He noted the omission of 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.

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

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

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

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

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

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

Also in response to Ms. Rogers, Mr. Nolan stated that using ITE numbers for trip 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.

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

acknowledged that the County does not do everything requested by all comment 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.

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

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

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

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

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;

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

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

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

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

Mr. Tilghman explained the peak hour factor (PHF) is the hour in the a.m. or p.m. which has the highest volume of traffic. He noted this is the hour traffic studies focus on. Peak hour factor recognizes the unevenness of traffic within that hour. Traffic comes episodically. Traffic studies are broken into 15 minutes increments. Mr. Tilghman stated the peak hour factor is the total hour's volume of traffic divided by the peak 15 minute volume times 4. He noted in the case of even traffic flow, the PHF would end up with a ratio of 1. He further noted a 15 minute increment with 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.

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

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

Mr. Tilghman stated there were some existing intersections with a peak hour factor (PHF) of 0.97. He noted PHF change over time and that a PHF approaching 1 is an inappropriate assumption for all intersections in the future. He noted drivers can discern the difference in delay between a LOS D and an LOS E because the ranges for these classifications are broad. He noted the standard urban area PHF range from 0 .84 to 0.94. He stated many of the study intersections are rural and rarely used now, therefore even a few cars changes the ratio significantly. He testified a uniform PHF of 0 .97 is not reasonable. He noted, as congestion increases, the PHF goes up. He stated as the PHF approaches 1, either traffic is coming in uniformly or is very congested. He stated the analysis is very sensitive to the choice of PHF because the PHF has a multiplying effect. He noted a very high PHF assumption has a very profound effect on service volumes. He stated a high PHF is planning for congestion outside the Black Diamond LOS standard. He testified he had re-run the EIS model but adjusted the PHF to 0.92 and 0.95 in two modeling runs. He also corrected the 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.

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

Mr. Tilghman explained that transportation modeling requires an input of cycle time. The traffic signal cycle services each leg of an intersection in one complete cycle. He 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

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

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

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

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

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

Mr. Tilghman explained the difference between the intersection average LOS and those of the individual legs of the intersection. He noted the average sums up the total delay incurred by all vehicles at the intersection. An average could be LOS D while some of the individual legs might be LOS E or F. Mr. Tilghman stated the EIS 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.

With respect to the EIS analysis of the interchange of SR 18 and 231st Avenue north of Maple Valley, Mr. Tilghman stated the EIS reviewed the eastbound ramps of the interchange but not the westbound lanes. He stated, there are a number of project 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.

Mr. Tilghman stated the EIS failed to look at existing or proposed safety impacts at all. He stated the EIS only narrowly accounts for the non-motorized system including pedestrians, bikes and off-road vehicles. He noted that the proposal may not alter existing facilities, but that in many locations no non-motorized facilities exist. He 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.

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

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

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

He also acknowledged that some gravel mines to not send trucks out during the PM 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.

In response to Ms. Rogers, Mr. Tilghman stated the EIS shows increases in traffic volume and delay without describing the magnitude of those changes. He stated Black Diamond's LOS standard is for intersections rather than road links and that 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.

In response to Ms. Rogers, Mr. Tilghman stated more than one car waiting constitutes a queue. He noted queuing should be analyzed if design is being done. He noted he had examined the Synchro results for intersections within the study area and did 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.

Mr. Tilghman testified his understanding of the projected growth rate used in the EIS was 30% by 2025, a figure he characterized as bold for a rural area, particularly since the adopted regional housing and populations allocations are lower. He noted that if this assumption had been lower, it would have resulted in lower total future volumes. He stated extrapolating from recent traffic is not appropriate without looking at 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.

In response to Mr. Sterbank, Mr. Tilghman agreed that an adequate EIS must be reasonably thorough and does not address 100% of all possible impacts. He noted it also means covering the important topics. He acknowledged a programmatic EIS would not typically provide a construction design for mitigation but it would provide 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.

In response to Mr. Sterbank, Mr. Tilghman stated the city is responsible for setting the scope of the EIS. He noted the consultant might participate. He agreed there might be reasonable professional judgment in each stage. He stated professional 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.

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

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

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

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

Dr. Natarajan Janarthanan works for Fehr and Peers as a transportation planning engineer. He has worked in this field for 28 years. His main areas of work travel demand forecasting, traffic engineering, development reviews, impact fees and corridor planning. Dr. Janarthanan has a master's degree and a PhD in transportation engineering from the University of Washington. He is a certified professional 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

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

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

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

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

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

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

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

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

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

Dr. Janarthanan testified the zone structure and roadway structure is finer in the Maple Valley model than the PSRC model. For example, all of Black Diamond is one census tract. On the PSRC model there is only one center so all the internal trips in Black Diamond are lost or not counted in PSRC model. He noted if the same zone is broken into 10 smaller zones you can capture all the trips on the roadway much 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

within those tracts would be lost with a large scale model. He also noted bigger zone systems differ in where they send the trips and by what route. He stated this area is not well validated by PSRC. He noted EIS used the Black Diamond model to 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.

Dr. Janarthanan discussed the Maple Valley model and the assumptions and inputs he used. He also provided a lengthy list of impacts and required mitigations from the project in Maple Valley. He noted Maple Valley's request was to have Yarrow Bay 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.

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

Mr. Pazooki has worked for WSDOT for 24 years. He is the Local Agency and Local Services Manager. He has experience in permitting, transportation and building process at the DOT. He holds a civil engineering degree and a MBA. He is in charge of a unit that reviews all local agency projects in King County. Mr. Pazooki's 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).

Mr. Pazooki stated WSDOT had commented on the volume/capacity and required a V/C ration of 1 or less be met. He noted the standard report for LOS is the average for intersections, not for each movement. He stated the intersection average doesn't reveal problem at individual legs but the V/C ratio does. He testified WSDOT had requested the EIS expand the analysis to include that information from a SIM Traffic output for each leg of each intersection in the study area. He noted WSDOT typically requests, and receives, this type of information for this type of project EIS. Mr. Pazooki stated the FEIS author response to this request was that this is not a SEPA process comment, but rather an issue for the MPD permit process. Mr. Pazooki stated WSDOT disagreed and felt that this issue is properly handled in the EIS. He 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

could show back to back left turns that each needs 400 feet of lane length. He stated the analysis assumes the 400 feet for each of them is there, but if there is overlap then it stops the thru lane. He noted you can't get that information by just looking at 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.

Mr. Pazooki testified the EIS talks about a monitoring plan for different phases of the project. He noted WSODT wants to know who pays for mitigation, what type it is 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.

Mr. Pazooki stated WSDOT was concerned that mitigation would lag impact. He also noted the FEIS assumed that SR 169 would be 4 lanes without elaborating who's going to do it. SR 169 is a state road. He state the monitoring plan doesn't address these basic assumptions. He stated WSDOT doesn't have funding for some of the things that the FEIS assumes will be built. In response to Mr. Sterbank, Mr. Pazooki acknowledged WSDOT understands that mitigation and clarification will happen in the MPD permit process and that any impact will be mitigated per law. He also noted WSDOT participated in the scoping process and provided input on what study should look like. He stated he understood that with a programmatic EIS there will be 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.

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

Mr. Perlic is the transportation division manager in the Bellevue office of Parametrix. He has worked in this position or as a project manager for the last 16 years. Mr. Perlic holds a professional engineers license in the State of Washington and has a master's degree in civil engineering with an emphasis on transportation. Prior to joining Parametrix, Mr. Perlic worked in transportation planning and engineering for 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

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

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

Mr. Perlic noted the Washington Administrative Code for the SEPA code as administered by the Department of Ecology discusses the length, readability and format of an EIS. WAC 197-11-400 (3) states an EIS shall be concise, clear, to the point and supported by technical reports. The EIS should be a short document containing summaries of the technical reports. EIS for Villages and LH have references to being reader friendly. Mr. Perlic noted the WSDOT reader friendly guidebook for EIS was started by a Parametrix EIS for the Alaska Way Viaduct. He 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

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

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

Mr. Perlic stated after the scoping meetings, they had completed the modeling of trip 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

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

Mr. Perlic stated Parametrix annualized the PSRC growth because the model goes to 2030. He noted they lowered the projected growth rate on SR 516 because historical data and the PSRC projection seemed lower than the roads. He noted he felt the growth rates Parametrix used were in the range of growth rates they could reasonably 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.

Mr. Perlic noted his team analyzed LOS at all intersections to establish a baseline. Then they did traffic demand modeling. He noted they performed a cumulative analysis that combines the existing intersection LOS with the traffic demand 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 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 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 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 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. 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 the ITE handbook.

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 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 this assumption is conservatively low for that type of use.

Mr. Perlic stated the analysis used the PSRC model for trip distribution. He stated the 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 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 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

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

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

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

Mr. Perlic testified that once they had the PM Peak Hour LOS by intersection for 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

requiring mitigation, they look at which movements or individual legs are operating at lower LOS and then design mitigation to bring the whole intersection back to an acceptable LOS. In response to Mr. Bricklin, Mr. Perlic agreed that a failing leg of 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.

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

Mr. Perlic testified the FEIS used a standard format to show mitigation measures and indicated information such as where signals or other intersection improvements are needed. He noted again that it is premature to provide specific design for mitigation 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.

In response to the Peak Hour Factor (PFH) testimony from Mr. Tilghman, Mr. Perlic noted he put together a rebuttal exhibit (Exhibit H4) showing the existing PHF at all current intersections. He noted 6 of the 39 intersections have an existing PHF of 0.92 or higher. He also noted another 7 of the study area intersections are not yet built. He further stated 85% of the existing intersections are at 0.92 or higher right now. He 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.

Mr. Perlic testified that for projecting long term traffic growth, a rule of thumb is to increase the PFH by 0.05. For short term traffic growth, the adjustment could be a 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.

In response to Mr. Tilghman's testimony that the signal cycle length was too long, Mr. Perlic stated he disagreed and that the signal cycle timing was very reasonable. He noted as traffic volumes increase, so do signal cycle lengths in order to move traffic through most efficiently. He noted Synchro optimizes for the most efficient 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.

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

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

Mr. Perlic noted in the scoping meetings pedestrians and bicycle impacts never came 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.

Mr. Perlic stated he felt the analysis at SR 18 was adequate, but that later project level review might find there is more mitigation was needed for the ramp at 231st. He stated the FEIS never considered a direct connection to Green Valley Road from the project. He noted a small amount of project trips do go to SE Green Valley Road, 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

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

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

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

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

In response to Mr. Bricklin's question regarding queue lengths, Mr. Perlic stated he can't say that Parametrix did an exhaustive look at queues at every intersections, but 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

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

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

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

3. Schools

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

Mike Nelson is currently the superintendent of the Enumclaw School District and has been for just over 3 years. He started his career as a teacher, then advanced through the positions of principal and director of curriculum. He served as the school district's assistant superintendent for 7½ years before becoming superintendent. Mr. Nelson 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

indicated he was not aware of the city's public comment or notice. He stated that the school district published a notice regarding a joint meeting of the city council and school board on October 26. Mr. Nelson noted that the school district held two 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.

Mr. Nelson was asked to review Exhibit 2-4, a map which appeared between pages 2-19 and 2-11 in the DEIS. He identified four school sites on the DEIS map — two are adjacent. On FEIS Exhibit 2-3, page 2-7 in the Villages Master Plan, in the middle 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.

Mr. Nelson reviewed a public handout from one of the school board meetings, which is identified as Exhibit 30 (Wheeler), an attachment to the city's tri-party agreement (city exhibit), and Bortleson 15. In comparing the map provided by the school district, which includes The Villages and Lawson Hills, to the map in the DEIS, Mr. Nelson noted a difference in the number of school sites. He stated that the map presented in the school district's meetings showed seven school sites — one high school, two middle schools, and four elementary schools — while the DEIS showed four schools on three sites. Mr. Nelson indicated that the two-school site is larger on the school district map than on the DEIS map and that the school district map shows a different parcel than is shown in the DEIS. However, he contends that the parcels on the Black Diamond school sites map is the same as was exhibited to the public in October, wherein the school district represented to the public that they had 37 usable acres. On the map, middle school Site B has 20 acres. Mr. Nelson stated that he read the FEIS, not the DEIS, but that the Site B middle school is not mentioned in either FEIS (for The Villages or Lawson Hills). Mr. Nelson confirmed that the 35-acre high school site is shown on the district's maps as being in the northwest portion of The Villages 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.

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

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

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

On page 2-3 of Exhibit 17, email from September 25, Mr. Nelson identified that the Enumclaw attorney was an addressee with subject matter referencing edits to the comprehensive school mitigation agreement. Mr. Nelson explained that there were a 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.

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

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

Mr. Nelson commented that the Enumclaw School District held two public meetings regarding the school mitigation agreement following the joint agreement. The district invited the public to share their views and ask questions. He stated that all school sites are subject to later due diligence and could therefore change. Mr. Nelson indicated that the district does not build schools until sufficient numbers of students have 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.

Mr. Nelson confirmed his familiarity with the student generation analysis in the DEIS and his belief that the analysis was adequate. When asked if schools would even be 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.

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

4. Water

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

Mr. Zisette has worked for Herrera Environmental Consultants for 30 years. He is a water quality specialist, storm water scientist and limnologist. Limnology is the study of lakes. Mr. Zisette started studying lakes in 1979. He attended graduate school at the University of Washington. His thesis was on lakes. Mr. Zisette has prepared environmental impact statements, master planned development permits, and has monitored water quality baseline conditions and impacts. He worked on the Issaquah 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.

Mr. Zisette noted Lake Sawyer behaves and responds to perturbations in very similar 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

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

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

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

Mr. Zisette stated he had read the EIS and technical reports and that the EIS did disclose the TMDL amount with respect to concentration. Mr. Zisette noted the EIS referred to the summer phosphorus concentration but not the daily load. The EIS also 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,

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

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

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

Mr. Zisette noted the technical appendix weighted the volume of outfall concentration from different land uses. The appendix gave an end of pipe outfall at 50 mg/liter. The EIS predicted a 50% reduction in the phosphorus from treatment using the King County Storm Water Manual. The treatment will be a wet pond which will let phosphorus settle out. Mr. Zisette noted the efficiently of a wet pond is dependent on its design and the influent concentration. The percent of phosphorus removal is calculated on a load basis because of complex concentrations. In terms of the 50% assumption, Mr. Zisette noted 52% is the median removal of phosphorus in wet ponds. He noted that figure only works for water that goes through the ponds. He further noted, in the technical appendix, much of water entering the storm water facility in a high rainfall event bypasses the ponds. Bypass water was not accounted for in EIS or the technical appendix. Therefore, Mr. Zisette contended the 50% removal assumption is not realistic based on the assumption of initial infall. 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 infall is very low in phosphorus.

Mr. Zisette noted there is no disclosure of the total phosphorus loading from the project in the EIS. There is also no analysis of how additional phosphorus would create algae blooms or of the impacts on lake usability by humans within the EIS. Mr. Zisette contended that if the applicant used the menu in the Lake Sawyer Management Plan to build out, there would be a 36% increase in phosphorus loading to the lake. Mr. Zisette noted the EIS states the developments will not result in a 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.

Mr. Zisette discussed the King County model on lake impacts as a classic model that starts with hydrology, concentration of runoff and the timing of runoff which is then calibrated for monitoring the lake. Mr. Zisette noted most of his work is balancing 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.

Mr. Zisette contended that Lake Sawyer is very close to eutrophication wherein there would be low levels of oxygen at the bottom of the lake and promote algal blooms. 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.

Mr. Zisette (under cross examination from City Attorney Bob Sterbank) reported he has worked on 10 or more EIS. He agreed that each analysis requires assumptions and that not every detail is analyzed. He contended critical issues must be analyzed and that resources must be allocated to the most specific issues at hand. He further agreed the EIS covered the standard parameters. Mr. Zisette did not agree that the EIS was adequate to allow the decision makers to make an informed decision. He 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.

Mr. Zisette (on redirect from Mr. Bricklin) stated he was unaware that the applicant had requested a deviation from the Department of Ecology standards (2005 Manual). In reference to Exhibit 20, Mr. Zisette cited a table (Table 1, Page 2, Exhibit 20) that he had prepared to demonstrate phosphorus loading in Lake Sawyer. Prior to diversion of the wastewater plant, there was 1,117 kg phosphorus/year in the lake. After diversion of the wastewater plan, a 1991 study found the average condition was 715 kg phosphorus/year in the lake. The TMDL set a limit of no more than 715 kg 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.

Mr. Zisette noted it took about 6 years after the treatment plant was diverted for the lake to return to normal phosphorus levels. The 2000 Lake Sawyer Management Plan 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

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

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

Mr. Zisette noted the LSMP had been updated with new data through 2008 and incorporated as part of the Department of Ecology (DOE) Total Maximum Daily Load (TMDL) limit for phosphorus. Mr. Zisette testified the new information did not change his assertion that the applicant had failed to provide total phosphorus calculations for Lake Sawyer. He noted the FEIS acknowledged the new plan and the 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.

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

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

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

In response to Mr. Bricklin, Mr. Zisette stated the FEIS had not analyzed the higher phosphorus outfalls occurring during the construction phase of the project. He stated 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.

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

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

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

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

Mr. Bortleson read the EIS. Mr. Bortleson stated he felt the EIS were inadequate in terms of rural concerns and off site water issues as well as in relation to wells and springs. He contended there are wells offsite that will be impacted by the projects. 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.

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

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

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

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

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

Ms. Abella noted the kind of algae that grows is not only dependent on the phosphorus but the ratio of nitrogen and phosphorus. Blue green algae like low entropy ratios. Ms. Abella noted on Lake Sawyer, there is a regular presence of 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.

Ms. Abella noted blue green algae are cyanobacteria. They produce nuisance scum. They can get nitrogen from the air so phosphorus is the limiting factor. They make a scum that is nuisance for public use and aesthetics. They also produce toxins that are liver toxins and neurotoxins. Ms. Abella noted cyanobacteria also affect fish. She stated this is because the decomposers that eat algae use up the oxygen at the bottom 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.

Ms. Abella did not get involved in reviewing the EIS for this project. Ms. Abella noted the studies that formed the basis for the Lake Sawyer Management Plan is 15 years old. Some things are significantly different now. The studies were based in the 1994 King County Comprehensive Plan and the 1992 Department of Ecology Storm water Manual. At that time, there were only five categories of phosphorus. The 1992 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 is was characterized as grass. Ms. Abella contended the impacts of these uses are very different.

Ms. Abella contended the 36% minimum increase may be too high but we don't know because the study out of date. Ms. Abella noted the techniques have improved. Now there are categories for residential lawns and pasturage, which are treated 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%.

Ms. Abella (under cross examination from Ms. Rogers) noted the removal of sewage from Lake Washington was very important. She further noted the circumstance is different for Lake Sawyer in that the Total Maximum Daily Load (TMDL) for Lake Sawyer already accounted for the removal of sewage. Ms. Abella acknowledged that 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 late twice a year. The County also

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

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

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

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

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.

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

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

Mr. Foley (under cross examination from Ms. Rogers) agreed King County was not an appellant to this EIS. He stated he was not subpoenaed but came to testify when Mr. Bricklin requested a representative from the County. He also acknowledged that he had not reviewed the technical report due to a lack of sufficient time and ready 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

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

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

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

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.

Mr. Fure noted for Parcel B, a northerly portion is Basin 7. There's a till ridge that drains by surface at the property lines and after that enters an outwash unit. Mr. Fure noted that because it's after the property line, they dealt with it differently. The Lawson Hills main property is a really thin mantle of weathered bedrock and till, six or seven feet, above the bedrock. This area acts as a till and runs off four basic 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.

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

Mr. Fure entered a new exhibit entitled the 'Lake Sawyer Tributary Basin Exhibit.' This exhibit is a side by side comparison from Lake Sawyer Management Plan next to the calculation of area within the boundary of the basin as we understand it today. 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.

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

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

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

Mr. Fure noted the storm water management plan addresses the issue of flooding at 101 Pines. Within storm water management zones 1A and 1B volume matching is 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.

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

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

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

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

In response to Ms. Rogers', Mr. Fure noted the maps (Figure 3-25, Villages FEIS, page 3-55) were representational and not to scale. He further noted the off-site 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

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

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

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

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

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

Dr. Kendig started his testimony with a discussion of the hydrologic setting. He 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

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

Dr. Kendig noted his team then laid out the applicable water quality regulations including surface and groundwater quality standards from the Department of Ecology in the Washington Administrative Code. He noted they also dealt with the Clean Water Act Section 303D to understand existing impaired water bodies in the area and to describe what they found approximate to and downstream of the project within reasonable distance. Dr. Kendig also stated his team looked at the Department of Ecology (DOE) Lake Sawyer Management Plan (LSMP) and the Environmental 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.

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

Dr. Kendig testified the next step was to assess the impacts of the projects. The first section of the impacts analysis was construction impacts and assessments and the mitigation necessary for construction related water quality impacts. The section of the construction impact analysis starts with a description of how construction runoff would be conceptually handled to prevent what the Department of Ecology would require under the NPDES permit, which is an increase in turbidity of anything more than 5 nephelometric turbidity units (NTUs) over the background turbidity. Dr. 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.

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

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

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

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

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

Dr. Kendig noted, in his team's analysis, they performed literature searches and surveys to describe the amount of treatment they expect each facility to produce for various land types and for various parameters such as nitrogen, phosphorus, metals, total suspended solids, etc. He testified they then set up scenarios to simulate the actual storm water coming from the project. Dr. Kendig stated the team used local data from the Trilogy project in Redmond, some condos in Bellevue, Snoqualmie Ridge, light industrial projects in Seattle, North Bay, Bellingham, Tukwila, East Gate and Sammamish and a road arterial in Renton to determine run off by land use type. He noted in each case, there were multiple sampling data available including 5 years from Snoqualmie Ridge with 5-7 samplings that contained storm events. The team 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.

Dr. Kendig noted that once the team had determined the assumed concentration of pollutants coming from each land use, they then compared their projected treated discharge numbers with water quality standards and with background existing 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.

Dr. Kendig stated his team reviewed storm discharges to determine what impacts they might have to receiving waters, including phosphorus load into Lake Sawyer. He also stated they reviewed cumulative phosphorus loading over time. They also reviewed water balancing in each basin to ensure bogs in the area are protected. He 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.

Dr. Kendig testified the next step was to describe the phosphorus loading in Lake 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

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

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

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

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

Dr. Kendig noted the methodology used for the Villages and Lawson Hills was the 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

volume that flows off. For example, porous pavers can make a difference in 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.

Dr. Kendig testified his company routinely works on technical reports that go into EIS. He further testified a basin wide model is a reasonable proxy as long as it includes the specific project, especially for a large regional model. He noted the MPD projects do not represent a large percentage of the total basin land area. He stated the LSMP is an adequate plan that the DOE still references. He further noted the FEIS reference the best management practices (BMP) in the LSMP and reviews where each one is applicable to the projects. He further noted the LSMP based its regulations on the 1998 King County Surface Water Design Manual. He stated the 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.

Dr. Kendig noted the DOE created an implementation plan as an update to the LSMP in June 2009 and continued the protection of the total phosphorus load of 16 mg/L TMDL (Exhibit H9). This implementation plan accounted for the removal of the waste water treatment plant out-falling to Lake Sawyer and anticipated growth in the 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.

In response to Ms. Rogers' question regarding the effectiveness of the proposed storm water facilities during storm events, Dr. Kendig stated the large wet pond is designed to treat about 95% of phosphorus in the average annual runoff. He further stated the remaining 5% is very hard to catch during very large storms because bigger storms created rapid flow rates into the facility and runoff flows through untreated. Dr. 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.

Dr. Kendig again reiterated his preference for a local model because of the unique climate conditions, vehicle type and age and lawn configurations of this area. He 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

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

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

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

In response to Mr. Bricklin, Dr. Kendig stated the LSMP contemplated a basin of 8,300 acres. He noted the MPD developed areas amount to 4% of the basin and the total MPD acreage with protected open space amounts to 10% of the basin. He further noted that every acre in the Lake Sawyer basin contributes phosphorus to the 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

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

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

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

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

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

Mr. Koger works for Associated Earth Sciences in Kirkland. He holds bachelors and masters degrees in geology and has worked as professional geologist for 30 years. He is licensed in Washington as a geologist, a hydrogeologist, and an engineering geologist. Mr. Koger has worked on a number of master planned developments 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

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

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

Mr. Koger then explained the surface geology of the region and project sites. He noted the glaciations periods in the Puget lowland are extremely important to understanding surface geology, topography, morphology and the sub surface plumbing system. He stated the most recent glaciations period is the Fraser Glaciation. He noted ice in the area was 2,500 feet thick while ice at the Canadian border was 5,000 feet thick tapering down to Tenino south of Olympia. Ice filled all the Puget lowland from the Cascades to the Olympics. Mr. Koger testified this context is important because many subsurface characteristics are derived from glaciations. He noted there were many glaciations periods during Pleistocene epoch 2 million years ago to the present Holocene period until about 15,000 years ago. There 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

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

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

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

Mr. Koger noted the QVT (Vashon lodgment till) drapes over much of the landscape, but it is covered or mantled in part by the QVR unit. QVR is permeable; QVT is not. 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

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

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

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

In response to Ms. Rogers', Mr. Koger agreed existing conditions south of the Villages site results in some slides. Mr. Koger noted slides are combination of topography, geology and hydrology. He further noted the incising of Green River occurred in the last 12-15,000 years. He stated this is a significant change in a short geologic time period resulting in unstable slope conditions. He noted Exhibit H23B which demonstrates landslides from QMW or quaternary mass wasting where existing landslides have been mapped and identified. Mr. Koger testified his team had spent a lot of time looking at landslide risk. He noted this topic is central to 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

areas of geologic hazard. Therefore, excess storm water will be infiltrated into the QPOG unit that allows for additional groundwater recharge into a major aquifer system that recharges more distant off site water supply users. He further noted the 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.

In response to Ms. Rogers, Mr. Koger acknowledged his analysis did not include development of the two off site school sites because they were not part of the MPD proposal. He stated he has been involved in a number of school projects including 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.

In response to Ms. Rogers, Mr. Koger stated he had evaluated the impacts of the proposed offsite regional storm water facility (Figure 30, Exhibit H23A) and 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.

In response to Mr. Bricklin, Mr. Koger stated his team analyzed an alternative site for the regional storm water facility located partially on-site and partially within the UGA. He further stated his team a water balance analysis on the alternate location to determine impacts on the QPOG aquifer (Villages FEIS, Appendix D, Chapter 7 and Exhibits H23A-M). Mr. Koger acknowledged he was unaware of whether these figures were available to the public and agencies. He further acknowledged a project of this size has risks to wells and springs if not adequately managed. He also noted there are a variety of aquifer intervals for the well supply. He testified his team performed a water balance across the site that included the shallow aquifer systems in the QPOG, QVIC and QVR (Exhibit H23B). Mr. Koger stated his team had performed an analysis of the water balance of the project area that provides water to the shallow system for offsite wells. He noted the offsite wells near Green River Road could be part of a shallow system from the Orting sequence and in other places 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

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

5. Noise

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

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

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

Mr. Lilly stated that construction equipment is inherently noisy. He testified that the 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.

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

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

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

Mr. Steffel conducted evaluation of noise due to the proposed construction. He stated that he has found construction noise on rare occasion to represent a significant adverse impact under the special circumstantiates of construction being very close to 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.

With respect to the Villages, Mr. Steffel specifically referenced a finger shaped areas that comes down into the project. He noted in this area the noise analysis indicated peak noise levels potentially affecting several residences. Mr. Steffel stated that the impacts are most likely overstated and that peak noise usually means short-term and 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

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

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

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

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

6. Wildlife

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

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

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

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

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

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

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

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

Mr. Clifford is a SEPA appellant testifying as an expert witness in the field of wildlife. Mr. Clifford holds a master's from the University of Puget Sound with 25-30 credit hours in biology, chemistry and geology. He is a certified teacher. He has taught biology and nature systems to high school students. He also holds an experienced falconers license and has held a game bird breeders license. Mr. Clifford 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

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

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

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

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

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

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

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

Mr. Knight contended the style of the master plan development is better for wildlife than a lot by lot development style. He noted there's the opportunity to evaluate the 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.

Mr. Knight (under cross examination from Mr. Bricklin) said he had been directly involved in the preparation of this EIS and one other. He wrote Technical Appendix N and the cover section for wildlife in the EIS. He noted the remainder of the wildlife section in the EIS was written by Parametrix. Mr. Knight acknowledged he 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.

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

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

Mr. Knight noted that elk might be concentrated in the wildlife corridor and could begin to feed on the landscaping of the development. If that happened, they might start to use the property for bedding. Mr. Knight noted that much of the proposed corridor is existing seasonal wetlands. This habitat is suitable to elk for travel, feeding and bedding. There are also uplands throughout. Mr. Knight noted in the less suitable areas, there will be a 225 foot buffer that will be available for use by elk. Mr. Knight acknowledged he knew of no studies to demonstrate the effectiveness of the proposed corridor and buffer for use by elk. Mr. Knight also acknowledged that 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

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

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

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

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

7. Wetlands

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

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

Mr. Brainard stated that the EIS analyzed the wetland impact of the south connector road, as identified in figure 7E of Appendix O. The south connector is shown on the east side of the map near the central portion of the site crossing what is identified as 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.

Mr. Brainard indicated that the exhibit he was using was dated July 17, 2008, prior to the publication of the DEIS. He stated that he did review the DEIS, but he could not recall the specific nature of the south connector in this section. After reviewing the exhibit associated with The Villages FEIS 2¬ 7, alternative 2 provided by Mr. 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.

Mr. Bricklin provided Mr. Brainard with Wheeler Exhibit Number 6, a letter from the Department of Fish and Wildlife to the City of Black Diamond, dated February 25, 2010, in which the department states that the DEIS for the development may be deficient as to the adequacy of review related to fish and wildlife resources. Mr. Brainard indicated that he believes the letter states there is a lack of disclosure in the DEIS as to the need for an HPA permit. Upon reviewing his copy of the FEIS, Mr. Brainard read that in the State of Washington, the Department of Ecology has 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.

Mr. Brainard indicated he was aware that the department regulates crossing of streams. However, he stated that he was not aware that a required EIS element is a sheet listing basic information as well as disclosure of permits and approvals 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.

III. EXHIBITS

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

IV. FINDINGS OF FACT

Procedural:

1. Applicant/Application. The Applicant is BD Village Partners. The 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.

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

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

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

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

Substantive:

4. Proposal Description. BD Village Partners is requesting approval of a Master Planned Development (MPD) pursuant to Black Diamond Municipal Code 18.98, for 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.

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

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

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

5. Project Impacts. An MPD the size of the Villages has dozens of significant impacts that cannot all be addressed efficiently in the Findings of Fact. The impacts below are those raised by citizens during the MPD portion of the hearing. Citizen concerns are quantified and summarized so that the Council may readily ascertain what issues are of greatest concern to their constituents. Impacts addressed in the 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.

A. Rural Character. Opposition largely centered on the size of the planned developments and their impact on the Black Diamond area's quality of life. Twenty-seven speakers and 37 residents in written testimony objected specifically to major changes to the area's rural character, often contrasting the city's current population of 4,000 with the projects' plan to add 6,000 additional households (i.e., an approximately 400 percent increase in population). Many of these residents stated 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.

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

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

Jim Jacobson of the Horseshoe Lake HOA wrote that the organization would support the MPD if a number of mitigations were incorporated regarding density of the developments; preserving the rural character of the community; traffic (particularly where Horseshoe Lake Road meets the 101 Pines neighborhood); noise; obstructed views on Auburn-Black Diamond Road near Horseshoe Lake; privacy concerns; and 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 sprawl[4]. *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

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.

Due to the legislative actions above, the Council is not in a position to deny the MPD applications solely because of their densities[5]. However, the impacts created by those densities can be addressed through the MPD criteria. Caution must be exercised, however, because rural character is a highly subjective impact to assess. *See, Anderson v. Issaquah*, 70 Wn. App. 64 (1993) (a statute violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application). 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.

Fortunately the City has adopted several standards that are designed to clearly and specifically preserve rural character. These standards include design standards, perimeter buffers, policies encouraging diversity in housing, expansive open space requirements and so on. These policies and regulations give the Council highly 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.

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

---

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 Federal Way*, Final Decision and Order, 96-3-0005, Puget Sound Growth Management Hearings 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.

[5] BDMC 18.98.195(A) provides that vesting occurs upon approval. If this provision is valid and 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 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.

All of the policies referenced above reflect a strong preference to retain small town character. None require rural densities or suggest that they supersede the more specific comprehensive plan policies and state mandates requiring urban densities. The MPD regulatory framework must and can be applied in a manner that harmonizes the requirement for urban densities with the objective of maintaining small town character. The MPD regulations provide many examples of how this is to be accomplished. Perhaps the most direct synthesis of the urban density/small town 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."

On the issue of consistency of MPD population with King County GMA growth allocations, cities are not bound by County adopted growth targets unless specifically required by county-wide planning policies. *See West Seattle Defense Fund v. City of Seattle*, CPSGMHB 94-3-0016, Final Decision and Order (4/4/95), p. 55. It is also worthy of note that even if the GMA growth targets were designed to limit growth in Black Diamond, it is too late to raise that issue now. The same reasoning applies to the applicability of any other county-wide planning policies. Black Diamond's comprehensive plan and development regulations allow master plan developments with the densities and population proposed in the Lawson Hills and Villages MPDs. If King County or any other party had wanted to challenge those regulations and policies as inconsistent with growth targets, that should have been done via an appeal to the Growth Management Hearings Board within sixty days of adoption of the comprehensive plan and development regulations that required the densities proposed for the MPDs[6]. RCW 36.70A.290(2); *Wenatchee Sportsmen Ass'n v. Chelan County,* 153 Wn. App. 394 (2009).

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

---

[6] Some of the Villages and Lawson Hills property are zoned R4, R6, MDR8 and community commercial, and these designations will have to be amended to Master Plan if the Master Plans are approved. However, the R4 – MDR8 designation already allows 4 to 8 dwelling units per acre, respectively, and community commercial densities are only limited by floor/area ratios, height, parking and other site requirements. Consequently, all approved zoning already allows the population proposed in the MPD applications. 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.

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

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

In written testimony, one resident argued that the use of incompatible models (Black Diamond's vs. Maple Valley's) in the MPD's traffic analysis, coupled with the flawed methodology used in combining them, likely renders the results of that analysis meaningless. The citizens were not the only persons concerned about traffic. The Cities of Maple Valley and Auburn, King County, WSDOT and the SEPA Appellants also had serious concerns about traffic impacts and the modeling used by Black Diamond, in particular the choice of a regional model to predict local impacts and the existence of several methodological inconsistencies in the assumptions employed to arrive at a description of project impacts.

As background to this discussion, Parametrix (the City's traffic engineer for the FEIS) used the regional transportation model prepared by the Puget Sound Regional Council (PSRC) along with a version of the Black Diamond local transportation model updated to include projects in the City's 2025 Transportation Plan. John 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.

The City of Maple Valley challenged the use of the PSRC model noting it had several deficiencies for use as an indicator of the local impacts in Maple Valley, the nearest city to Black Diamond. Maple Valley's representative, Dr. Janarthanan, noted the PSRC model is calibrated to predict regional traffic on major facilities such as I-5 and 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.

The City of Maple Valley argued that the Maple Valley model is a finer grained, locally comprehensive model that has been calibrated for use in the entire study area. They argued the project should have used the Maple Valley model to predict the local project impacts and required mitigation measures.

Mr. Perlic testified the Maple Valley model had many deficiencies for use including its assumptions about external trips and its inconsistent impact and mitigation trends. The Maple Valley model understated project impacts in some places and overstated them in others compared to the PRSC model. He also noted Maple Valley's impacts 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.

Throughout the testimony, experts described inconsistent methodological assumptions in each of the two models. Maple Valley and Mr. Tilghman both testified that Parametrix had used an inappropriate straight line projection to determine future background traffic growth. Both argued local land use assumptions should have been considered. Mr. Nolan from King County and Maple Valley testified that both funded and unfunded transportation projects should have been 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.

RESPONSE: Black Diamond and Maple Valley each made very compelling arguments that the traffic model of the other was deficient. The record is clear that neither model is optimally suited to predict traffic impacts for the Black Diamond community. The MPD, when completed, will have the effect of introducing the traffic of a new, small city to south King County. This scale of development justifies the creation of a project specific transportation demand model that accounts for all existing and planned local land uses, is validated for local traffic, contains an appropriately fine grained transportation analysis zone network, considers existing 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.

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

processes to provide the public an opportunity to comment on the new mitigation. Although mandating an MPD amendment might arguably violate the one hearing rule of the Regulatory Reform Act, Chapter 36.70B RCW, the Applicant[7] and other parties may find this to be the best option to avoid further litigation. If the new 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.

C. Green Valley Road. Ten residents (four in written testimony) objected to the prospect of increased traffic on Green Valley Road, which is not amenable to heavy traffic due to its narrowness, winding route, propensity for closure due to slides and flooding, and its designation as a protected Heritage Corridor. It is also an agricultural road, one resident noted; she said she had witnessed several near-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.

Finding of Fact ("FOF") No. 14 of the TV FEIS contains additional information on Green Valley Road impacts.

RESPONSE: As noted in the discussion on rural character, care must be taken when imposing conditions to mitigate impacts that are subjective in nature. The record is fairly clear, however, that Green Valley Road is a unique transportation facility that could potentially be severely impacted by increased traffic. MPD Ex. 108 contains a detailed discussion on the historical and aesthetic significance of this community resource. The combination of a narrow, windy road with its heavy use by bicyclists and farm animals and equipment does not make it amenable to significant increases in traffic both from a safety and a user standpoint. Safety concerns were not just raised 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

---

[7] Chapter 36.70B RCW requires local land use codes to provide for only one hearing 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.

prevent MPD traffic from utilizing the road, such as the installation of traffic calming devices.

D. Schools. Two representatives from the Enumclaw School District, as well as an attorney representing the District, a PTA representative, and three local residents testified on the need for the MPDs to account for the construction of enough new schools and related facilities. The District's schools are already at or over capacity, the school officials said. In written testimony, two Green Valley Road-area residents pointed to the negative impacts of locating new schools along the road, including increased traffic, vandalism and water runoff. This runoff may exacerbate the road's already frequent mudslide blockages, they said. Also in written testimony, one resident noted an admonition from King County to keep schools inside the Black Diamond city limits, contrasting it with what he termed a "trial balloon" to move some schools to the Green Valley Road area, outside city limits. He said such a move would be a way for YarrowBay to increase the amount of developable land within the city, thereby boosting profits and creating more crowding. Others questioned whether the costs of school-district growth would fall on the backs of Enumclaw School District residents. Finally, one resident wrote that the proposed location of a new high school near Lake Sawyer Regional Park was too close to existing schools and would result in significant traffic problems in the area, and another noted that some schools were not within walking distance of the students they would serve, exacerbating traffic problems and violating existing school siting standards.

The Enumclaw School District also submitted a letter, MPD Exhibit 14, detailing the District's interest in adequate school mitigation. Overall the written comments supported the analysis and mitigation of the FEIS. The District expressed 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.

The District is correct that its capital facilities plan ("CFP") identifies acreage requirements[8] for new schools. *See,* Ex. 14, attached Ex. A, p. 15. However, the CFP, at least as appended to Ex. 14, fails to identify an explanation/justification for the acreage requirements. Without more information, the acreage requirements set by Enumclaw may not satisfy due process requirements, which require some reasonable justification for the amount of mitigation requested. *See, Isla Verde Intern Holdings, Inc. v City of Camas*, 146 Wn.2d 740 (2002). It is also recognized that the acreage requirements in the CFP are used to calculate school impact fees and are not necessarily intended to serve as minimum site standards for the construction of all schools. For this reason, the acreage standard can be applied in a flexible manner.

Although the District's acreage standard may still require some justification, it is the most suitable standard provided in the record because it is incorporated into the City's comprehensive plan. FOF 17 of the staff report notes that the CFP has been adopted into the City's comprehensive plan. BDMC 18.98.010(M) provides that a purpose of the master plan regulations is to implement the City's comprehensive plan. BDMC 18.98.080(A)(19) requires that

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

Interestingly, the size of the "school" must be based upon adopted District standards but not expressly the size of the "site." However, the regulations must be read to implement the City's comprehensive plan, which adopts the District's acreage requirements. The District's acreage requirements should be applied to the project, 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.*

an explanation for the disparities between the City's acreage standards and those contained within the agreement.

On the issue of the accuracy of enrollment projections, the District provides a reasonable justification for the methodology employed, pointing out that the methodology is consistent with recognized practice. The District provides examples in the Marysville and Mount Vernon school districts where the methodology was used for 15-year enrollment projection studies. *See,* Ex. 14, p. 4.

On the issue of the location of schools, it is correct that the schools must be located within "walkable" distances of residential areas. BDMC 18.98.080(1)(14) provides that school sites "must meet the walkable school standard set forth in the comprehensive plan." There is no specific "walkable" standard expressed in the comprehensive plan. However, pp. 1-10 of the comprehensive plan provides as follows:

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

The half-mile distance is consistent with the maximum distance one would expect a child to walk to school. The proximity of schools to residential areas is not just driven by the need to accommodate school children. Comprehensive Plan CF-14, under School Objectives and Policies, encourages the use of joint-use agreements for school facilities. This recognizes that school facilities can be used by the surrounding community for recreational and other activities. Of all the facilities that would be 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

unfair to members of the public (who have paid for the park) to give the schools priority use of the property, one speaker noted.

RESPONSE: A school mitigation agreement has not yet been signed. How the City of Black Diamond chooses to manage the use of its parks is also arguably outside the scope of the MPD applications. Ultimately, the conditions of approval recommended for school mitigation adequately address school impacts at this stage of review and the contents of an unsigned school mitigation agreement is not ripe or germane to this review. Further, since Comprehensive Plan Policy CF-14 encourages joint use of school facilities, it is reasonably possible that the construction of schools will actually create a net increase in recreational facilities by the public use of the new school facilities. Since approval of the agreement is a Council action that is separate from the MPD process, the Council and citizens are free to discuss the use of Lake Sawyer Park for school purposes outside of the MPD hearing process. *See* RCW 42.36.020. Concerned citizens should make sure their petition gets to the Council before the agreement is signed and that their issues are addressed.

F. Fiscal impacts. Sixteen residents (five in written testimony) raised the prospect that additional taxes may be imposed to support infrastructure needs that they say the developers would not pay for, such as road improvements, added school costs, the need for an increase in police and fire personnel/facilities, sewer services and wastewater management facilities. Several noted provisions in the city code that requires new development to pay for itself and that there be no adverse fiscal impacts from developments to the city. A few residents addressed the potential economic failure of the projects, particularly the planned retail component, raising the specter of unsold homes and empty storefronts. In written testimony, one resident noted that the 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

below the average for retail sales and is not supported by any market study. Mr. Whipple based his retail sales estimates upon the lower end of estimates prepared utilizing the Urban Land Institutes' "Dollars and Cents of Shopping Centers, 2002" and "2007 Retail Taxable Sales Estimates" prepared by HDL Companies.

For housing values, Mr. Whipple assumed that single-family homes would sell for $420,000 and multi-family homes for $150,000. Mr. Whipple stated these housing values were based upon current market studies, although he did not mention whether these studies were conducted before the recent downturn in real estate sales. The EIS FIA assumes a $354,000 value for single-family homes and a $125,000 value for multi-family units, based upon house sales in Black Diamond four to five years ago.

It is interesting to note that even though the City commissioned its own FIA for the EIS, it also subjected that FIA to peer review by Parametrix in a "sensitivity analysis." Parametrix employed the methodology of both Mr. Whipple and the FEIS FIA to determine what would happen under four scenarios: (1) adjusting housing values; (2) assuming all parks maintained by an HOA; (3) assuming all streets maintained by an HOA; and (4) reducing police costs (the DEIS incorrectly calculated the number of new police officers needed; it is unclear if this error was remedied for the FEIS). Parametrix made these changes to assess both short- and long-term impacts on each MPD individually and cumulatively. Under each scenario, Parametrix found a net positive fiscal impact, although the amount of the change in anticipated housing values was not identified.

RESPONSE: The primary difference in the models used by the Applicant and for the FEIS are the assumptions made about future housing values and commercial activity for the City of Black Diamond over the next 15 years. In having to choose between 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

result of the Villages MPD. The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

Given that the TV FEIS predicts an annual yearly shortfall of one million dollars per year, it will be interesting to see how the Applicant would address the shortfall if it is projected to occur for perpetuity. The Applicant is a limited liability corporation, and if it were indeed "stuck with the bill," there would be little incentive for it to continue its existence. The same will probably hold true for any "Master Developer" made responsible for the project. It is also of concern that both the Villages and Lawson Hills MPD proposals may only build residences in the first phases of development. *See* Villages and Lawson Hills MPD Applications, Chapter 9. As noted in the ECS 11/16/09 memo (Ex. J to the TV FEIS), single-family residential developments typically produce deficits. It's likely that the first phases of MPD development will produce deficits if those phases are limited to residential development.

The second factor that helps assure fiscal neutrality is the sensitivity analysis conducted by Parametrix. As previously discussed, Parametrix determined under both FIAs that measures such as HOA ownership and maintenance of roads and/or parks would result in a net positive fiscal impact. Consequently, it is reasonable to conclude that any long term projected shortfalls could be addressed by privatizing infrastructure. Combining Applicant responsibility with the options of privatization provides reasonable assurance that the projects will not have an adverse fiscal impact upon the current residents of Black Diamond.

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.

G. Water. Most of the concerns cited the potential negative effects of the developments on 1) water availability (several residents were concerned that the wells and springs that supply their property would become unusable during the summer); 2) water quality, including the potential pollution of local wells and particularly the 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,

several residents questioned the adequacy of stormwater and wastewater facilities identified in the MPD.

RESPONSE: As discussed at length in the FEIS adequacy decisions, Lake Sawyer water quality issues were the biggest area of concern regarding MPD impacts. Phosphorous from the stormwater runoff of development can result in blue-green algae blooms, which in turn can result in the release of toxins, closure of beaches, aesthetic blight through production of a green surface scum and harm to endangered fish. The saving grace for the MPDs was a Washington State Department of Ecology determination that development will not violate water quality standards if they are subjected to the 2005 DOE Stormwater Manual *and the City continues to implement a water quality monitoring program in conjunction with implementation projects within the Lake Sawyer watershed.* The DOE Lake Sawyer Water Quality Implementation Plan, Ex. H-9, identifies the measures that the City and other organizations should be implementing to protect water quality. In negotiation of the development agreement, the City Council may wish to consider requiring the Applicant to participate, in a proportionate manner, in some of the watershed-wide implementation measures and, in particular, in the monitoring of Lake Sawyer water quality. The Applicant has also proposed a condition requiring HOA covenants to prohibit car washing on driveways and use of phosphorous fertilizers in common areas. This condition has been included in the recommended conditions of approval.

Mr. Rothschilds, one of the members of the public who testified on water quality issues, has been intimately involved with Lake Sawyer water quality issues for eighteen years and has a master's degree in mechanical engineering. He raised some compelling concerns over phosphorous impacts to Rock Creek that had not been discussed during the SEPA appeals. Mr. Rothschilds' testimony prompted the Applicant's to file a rebuttal declaration by Dr. Kindig, which detailed that Mr. Rothchilds 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

Lake Sawyer from the MPDs. The MPD does not serve as a significant flood threat to Lake Sawyer properties.

As to concerns about whether stormwater in general will be properly controlled by the MPDs, the MPDs will be governed by the 2005 DOE stormwater manual. This is the standard for stormwater control legislatively adopted by the City Council, and there is no evidence to suggest that this manual is inadequate. Low-impact development techniques are also proposed and are recommended conditions of approval, which will also significantly mitigate stormwater impacts. As noted in the staff report, the MPD project site contains permeable soils that are amenable to low-impact development techniques.

As to water availability, the Water Supply and Facilities Funding Agreement (WSFFA) (Exhibit 9) dated August 11, 2003, provides for water supply through major property owner upgrades of the Black Diamond water system, including upgrades to the city springs and delivery of city spring water to Black Diamond and the purchase of new water supply from the City of Tacoma with a requirement for reimbursement by credits on future capital facility charges. The project has also been designed, generally through infiltration systems and circumvention of wetlands, to avoid any risk of adverse impact to private wells and springs that could be affected by the Villages MPD, as established in the AESI reports in Appendix D to the TV FEIS. There is no evidence to suggest that the use of these water sources will impact or impair existing water rights of other residents.

H. Tree Removal. Seven speakers and six writers objected to the prospect of large-scale tree removal, noting that local trees both serve as a windbreak during severe weather events, affect the water table, and have great aesthetic value. One 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.

RESPONSE: As discussed in the TV FEIS, the issue of noise was only addressed in one of the SEPA appeals and was limited to three properties. There are no such constraints on noise impacts under the MPD criteria and noise impacts can be assessed project wide. As identified in the FEIS, the duration of construction noise is something that has not been adequately addressed for the MPDs. Noise standards, such as DOE regulations, typically exempt construction activities from noise requirements. However, the build out for the MPDs is anticipated to be 15 years. Given the length of this build out, it is likely that there is nothing temporary about construction noise impacts in some areas. As discussed in the TV FEIS, of particular concern is the extensive grading proposed by the Applicant, which could conceivably result in years of truck traffic on some roads.

For the reasons above, additional noise study will be required to identify long term noise impacts. Long term noises will be subject to the noise standards of Chapter 173-60 WAC where they will not qualify for the construction noise exemption. Mitigations may include rerouting truck traffic, sound barriers and/or soundproof windows. The additional noise study shall identify the minimum duration for "long term" noises by reference to professionally accepted standards or regulations from other agencies. The Examiner anticipates that any period exceeding a few months will qualify as "long term." The noise study consultant shall be hired and report to the City at the expense of the Applicant. As with traffic impacts, the resulting analysis and mitigation shall be processed as an MPD amendment or integrated into the development agreement so that the public will have further opportunity to comment and the parties will have an opportunity to appeal.

J. Wildlife. Seventeen speakers and 16 others in written testimony 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

that analysis. Significantly, the record also establishes that there is no threatened, endangered or otherwise protected species that has habitat within the project area.

K. Trails and Parks. Seven residents expressed the need for the developments to include adequate open spaces, parks and trails. Several noted the vision articulated in YarrowBay's promotional materials and on the city's own website of a growth plan centered around these features. Another speaker voiced concerns about the option for the developer to make cash payments to the City in lieu of soccer fields, play areas and trails. Such an arrangement would not work for a project of this size, she said.

RESPONSE: The Villages MPD exceeds the amount of parks required by the 2008 Black Diamond Parks, Recreation and Open Space Plan. Double the neighborhood and community parks are provided and the number of packet parks meets the standard. The phasing plan proposed by the Applicant requires park construction at various stages of specified occupancy. *See* TV and LH MPD App. p. 9-10. This timing is contrary to BDMC 18.98.080(A)(4)(a), which requires that all park improvements be completed prior to any occupancy or final site or plat approval, whichever occurs first. The timing of on-site trails and other recreational facilities other than parks is governed by p. 9-3 of the MPD applications, which generally require that they must be built prior to occupancy. This requirement does not apply to off-site trails. The project will be conditioned to clarify that off-site trails and recreational facilities may be required as a condition of phased development as authorized by law to mitigate the impacts of a particular phase. This condition will enable the City to require off-site trail improvements and connections to facilitate the immediate integration of each phase into an area-wide trail network. The project will also be conditioned to require that parks that serve new development will be 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.

L. Wetlands. Three speakers noted the potential threats the developments might pose to area wetlands. Dan Streiffert, president of the King County Sierra Club, said that there are a number of wetlands within the boundaries of the two developments. Many of these areas, he said, would be negatively impacted by changes in water infiltration and water runoff. He added that wetlands are a vital part of the ecosystem of the Green River watershed, its fish and its wildlife. The impacts on this watershed from the developments could be irreversible, he argued.

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

traffic and tree removal. According to Dan Streiffert, president of the King County Sierra Club, massive amounts of additional traffic will impinge upon the already clogged major roads. He questioned how such an increase could meet the intent of the transportation concurrency requirements of the Washington State Growth Management Act. The greenhouse gas emissions calculations use tables supplied by King County, he said, but grossly underestimate the amount of emissions by using an average vehicle miles traveled, VMTs, as input to the spreads, noting that commuters from Black Diamond to major employers in King and Pierce counties will likely have round trip distances that will exceed greatly exceed the Washington state average of EISs. The YarrowBay MPDs alone will have a significant impact on King County greenhouse gas emissions, he asserted.

Two other speakers argued that the amount of tree removal called for in the MPDs would reduce the local ecosystem's ability to scrub the air of the gases that cause global warming. One noted that while, in her opinion, most of the figures offered by the developer for both public and Council consideration grossly underestimate the amount of greenhouse gases the developments would generate, even they offer up the figure of 11 metric tons of gas emissions at full build-out. This does not take into account the developer's request for an exemption from the City of Black Diamond's tree ordinance. She added that proposed limits on greenhouse gas emissions would likely be enacted in King County, if not statewide, before the YarrowBay project is complete. It is important that consideration to following such proposed guidelines be given now, she said, not once the trees are gone and the pollution is here.

RESPONSE: Impacts and mitigation of greenhouse gases was addressed in the Lawson Hills FEIS. The Lawson Hills FEIS discussion on greenhouse gases is incorporated by this reference as if set forth in full.

N. Mine Hazards. Two speakers cited the danger of building on top of the area's many abandoned mines, with their potential to create sinkholes and to release poisonous gases. One speaker raised the question of whether developers would be required to disclose to future homebuyers that their properties were located above abandoned mines, and whether all of these mines had been charted. Another speaker noted the danger of locating a school over the mine area, as called for in development plans.

Jim Johnson of Golder Associates, on behalf of the Applicant, testified in writing regarding area mine hazards. His conclusions were: that a proposed school site is located adjacent to rather than within a mine hazard area: that there are no known unmitigated mine openings on the Lawson Hills or Villages sites; that no explosive gas was detected during tests on five of six locations in Lawson Hills and only a minimal level was found at one other test site, and consequently there was no risk of explosion from methane gas associated with the coal seam that lies under Lawson Hills; and that the sinkholes that presently exist in the Lawson Hills area either have been or, in two cases, must be adequately mitigated under the Black Diamond SAO.

He also noted that trails and passive recreational areas are planned within severe mine hazard areas in Lawson Hills. These planned uses are appropriate, he said, and risks to recreational users can be mitigated by careful planning of recreational uses to avoid 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.

RESPONSE: Mining hazards were addressed at length in the Lawson Hills FEIS decision and that discussion is incorporated in this recommendation as if set forth in full. The Lawson Hills MPD included low, moderate and severe mine hazard areas. By contrast, the Villages MPD only includes a small number of low-hazard mine areas. *See* TV FEIS, pp. 4-15. As with the Lawson Hills mine hazard areas, the 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.

O. Relationship between Council and Applicant. Five speakers and three writers raised concerns about the apparent close relationship between the developer, YarrowBay, and some members of the Black Diamond city council. They noted that YarrowBay had been paying the salaries of some city staff in relation to the development, and that the decision-making process surrounding the project had often not been open. One resident testified that, while citizens struggled to have their voices heard by the city, the developers had unfettered access to city officials, even encouraging them to lobby the state legislature to approve bills that would allow the formation of capital facility districts, a measure that would be of potential fiscal benefit to the developers. YarrowBay also argued successfully for code and enforcement amendments that would facilitate the developments while giving former city council member Geoff Bowie a construction contract while he was still on the council and voting on the developer's requests, she said. The council has resisted public input, she continued, while many codes, agreements and moratoriums were 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.

P. Regional Participation. Several residents argued, orally and in writing, that the planning process has not taken into account the impact of the developments on surrounding areas, particularly in regard to increased traffic, nor had it included the input of many regional stakeholders.

RESPONSE: As noted in the 4/12/10 hearing by John Perlic, the traffic analysis of the EIS was subject to several scoping meetings, including individual meetings with affected agencies. These scoping meetings were attended by several regional stakeholders, including adjoining jurisdictions and state agencies. On the full range of project impacts, comments on the DEIS and the comments submitted for the MPD hearings evidence participation of several cities and agencies, including King County, Auburn, Maple Valley, several state agencies and the Enumclaw School District. The MPDs have had a full airing of impacts to all regional stakeholders.

V. CONCLUSIONS OF LAW

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

2. Entitlement. In MPD Ex. 161, Dave Bricklin, attorney for the SEPA appellants, argues that master plan approval is not an entitlement. In other words, even if the MPDs satisfy all the permitting criteria, the Council is not mandated to approve the application. The Examiner leaves it up to the City Attorney to advise the Council as to whether the MPD process creates an entitlement. The Hearing Examiner's recommendation for approval is solely based upon the determination that the MPD applications meet applicable review criteria. Any recommendation beyond 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.

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

1. The MPDs have been subject to multiple environmental appeals, over 50 hours of hearings and hundreds of written comments have been submitted. Members of the public were given ten minutes each to testify. Although there were issues with the compressed review period as discussed in the FEIS decisions, the public otherwise was given ample opportunity to comment on the MPDs.

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

2. The project comprises 1,196 acres and is, therefore, subject to the MPD review process. The North Property (aka Parcel B), although approximately 80 acres in size (and thus potentially eligible to be an MPD unto itself), is considered part of the overall MPD. The MPD code allows a commercial area to be geographically separated from the residential component via Section 18.98.030(C).

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

3. The project proposes to preserve amounts of open space as detailed on page 3-21 of the MPD application. They include a mix of passive and usable areas comprised of sensitive areas such as wetlands and their associated buffers, trails, parks, and utilities such as stormwater ponds. Figure 3-1 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 (primarily wetlands and streams) and their 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.

Live/work units are described on page 3-35 of the application materials, but their potential location is not depicted on the Land Use Plan map contained in the application. In researching other large master planned communities in the Puget Sound (such as Issaquah Highlands), staff has found the viability of live/work units to be limited. A proposed condition of approval is to require identification of specific areas where these can be permitted be done as part of the Development Agreement or through a future minor amendment to the MPD.

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

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

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

5. Chapter 3 of the MPD application proposes residential and commercial development standards and uses that allow for flexibility in building design and development layout. The commercial component of the MPD would be located on the North Property (Parcel B) and in the northern portion of the Main Property. The eastern portion of Parcel B is proposed as a high density residential use. The remaining residential, schools, and parks components would occur on the Main Property. In some cases, these proposed 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

du/acre category). This would not allow an increase in the overall unit cap of 1,250. The areas proposed for the highest residential densities (18-30 du/ac) have been depicted on the land use plan.

Staff finds that if the applicant requests to change the residential category of a development parcel internal to the project, then an administrative process would be appropriate. However, if a request is made to increase a residential category that abuts the perimeter of the MPD, it is recommended that this change require a public hearing process as a Major Amendment to the MPD. Additionally, staff is recommending that a limitation be established to allow reclassification of development parcels no more frequently than once per calendar year (consistent with the allowance for Comprehensive Plan amendments).

While the applicant has proposed a wide variety of project-specific development standards, there are several which staff does not support. Some of these areas are identified and discussed under the "Functionally Equivalent Standards" portion of this recommendation.

Staff recommends that consideration of a majority of the land use development standards (table of allowed uses, setbacks, etc.) be deferred to the Development Agreement. This will provide the opportunity for further discussions with the applicant. There are several areas in which less stringent standards than required elsewhere in the city are being sought, some of which are requested in the functionally equivalent standards mentioned above. At this time, and until the applicant provides greater certainty and clarity to the actual development proposed for the site, staff does not find all of these requests to be justifiable. The amount of flexibility being requested in the proposed project at this time - while the overall plan is highly conceptual - does not result in a compelling reason to allow these different standards. There are numerous 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.

Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through this administrative deviation process.

Therefore, given the lack of detail and supporting information, staff cannot either support blanket approval or deny the functionally equivalent standards related to utilities and transportation at this phase of the approval process.

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

6. The MPDs have been subject to extensive and intensive environmental review. The FEIS is supported by hundreds of pages of environmental analysis. The bulk of the hearings on the MPDs was comprised of the testimony of numerous experts addressing the appeals of the FEIS. Through this process several areas of improvement 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.

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

7. The project proposes a maximum of 4,800 units and 775,000 square feet of office and commercial uses to be built out in three phases over a period of approximately 15 years. (It should be noted that the application includes several uses which are typically considered to be industrial uses under the definition of "office"). Chapter 9 of the MPD application indicates the 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.

Chapter 3 of the MPD application contains design concepts that illustrate the proposed character of development. Ch. 3 also describes a variety of housing types anticipated to be built and proposes development standards that would apply exclusively within the MPD. However, the level of detail of the MPD is basically 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

character of residential development is not greater than otherwise provided through standard zone classifications.

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

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

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

8. The MPD application discusses implementation of low impact development (LID) techniques, water conservation, clustering development and preserving open space. Staff finds that given the soils on the Main Property (as described in Ch. 4 of the FEIS) LID should have excellent potential. As a recommended condition of approval, mechanisms shall be identified to integrate LID into the overall design of the MPD for the benefit of these resources. The MPD should be required to comply with codes aimed at environmental protection such as the Sensitive Areas Ordinance and mitigation measures derived from the FEIS designed to prevent the project from having an adverse impact on the environment.

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

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

9. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer, water and the project phasing plan. The applicant has proposed several cost recovery mechanisms related to construction of improvements including local improvement districts, latecomer agreements and other financing mechanisms such as community facility districts (if authorized by proposed changes to State law). Ch. 9 of

the MPD application describes these mechanisms and the timing of improvements in more detail. A traffic monitoring plan is mentioned on page 9-3. Staff is recommending that a proactive rather than reactionary transportation monitoring plan be established as part of the Development Agreement with a list of projects and trigger mechanisms acceptable to the City. This will ensure that needed traffic mitigation measures occur in conjunction with growth, rather than after a decline in level of service. With the proposed phasing plan of supporting regional infrastructure projects, along with various conditions contained herein, various additional studies are completed and responded to and with a satisfactory implementing Development Agreement, The Villages Master Planned Development can meet the requirement of providing services and facilities in an orderly fiscally responsible manner.

In summer 2009, the applicant (through YarrowBay Holdings) requested a study of the impact of the removal of the north south link across the Rock Creek wetland connecting Abrams Ave. and the South Connector within The Villages project, and also removing the Southeast Loop Connector in the Lawson Hills project. (Both of these transportation links are depicted in the Transportation Plan element of the Comprehensive Plan). The City hired the consulting firm of Parametrix to determine the impact of the reduced network connections (Exhibit 13) and found that in order to maintain the adopted level of service (LOS) standard, several lanes of travel would have to be added to SR 169. The staff report incorporated these added lane requirements to the conditions of approval. Due in part to the fact that there was no assurance that WSDOT would agree to these improvements, the Applicant agreed to drop the proposal to add lanes to SR 169 and instead more generalized conditions were proposed by the Applicant and fine tuned by the City to require mitigation to be 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.

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

10. The project has designated 67 acres for a maximum of 775,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. For clarification, the MPD application describes office uses as a broad category including such things as general office, business support services, light manufacturing, wholesaling and mini-storage. It is unknown what the ultimate mix of uses may be. The Fiscal Analysis prepared for the project (Chapter 12 of the application) appears to be predicated upon retail and office uses only. Appendix J of the FEIS contains analysis on the amount of retail/office square footage to be developed along with employment projections.

In Table 3.4 of the application, uses are shown, including the proposed requirement of a conditional use permit for locating a high school within certain land use designations. Staff recommends that an updated fiscal analysis be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

The FEIS analysis estimated the number of jobs to be created to not be sufficient to meet the Comprehensive Plan's job creation goals. Their potential earning potential is also unknown. If a significant number of jobs is in the retail and service sector, housing affordability becomes a significant issue. Staff is recommending a condition of approval to require the applicant to provide housing at prices affordable to potential future employees to help provide opportunities for individuals to both work and live in the community.

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

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

11. The commercial component of the MPD would be located on the North Property (Parcel B) and in the northern portion of the Main Property. The eastern portion of Parcel B is proposed as a high density residential use. The remaining residential, schools, and parks components would occur on the Main Property.

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

development agreement set targets for specified housing types for each phase of development.

A variety of parks and trails are proposed within the main portion of the project. Other than four school sites (three elementary and one middle school), the land use plan does not identify other public or civic uses. The project narrative on Page 3-17 indicates that additional public and civic uses may be located within the project. The predominant character of the southern portion of the Main Property will be that of a large, yet unique, residential development

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

12. The MPD application proposes residential and commercial type uses, with development located in clusters separated by sensitive areas and open space. Parks and schools are proposed to be located on site with a road and trail network to link the residential portions of the project. These will provide opportunities for interaction, socializing and a sense of community. Drifts of trees and natural areas are proposed along the main spine road through the project. These natural areas and extensive open space will help preserver rural character.

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

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

This recommendation addresses the proposal's consistency (or lack thereof) with other provisions of the Black Diamond Municipal Code in other parts of the recommendation.

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

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

14. This objective is satisfied. Chapter 1 of the MPD application discusses clearing and grading for the project. It is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for the Main Property. Fill is proposed to come from material excavated on site. For Parcel B the estimate is 81,000 cubic yards of cut and 81,000 cubic yards of fill would be necessary (a "balanced site").

The applicant proposes to remove and export approximately 3,000,000 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 shallow restricting layer, the potential for implementation of Low Impact Development techniques will be adversely impacted. Also, as discussed previously in the FEIS decision, the amount of fill removal would create a perpetual caravan of trucks exporting fill from the site, creating adverse noise impacts on proximate properties.

Staff is recommending a condition 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 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.

Given the proposed densities, it is anticipated that the development areas shown on the Figure 3-1 Land Use Plan will be cleared of all vegetation and graded to facilitate development. Other than where stormwater ponds, utilities and future active park sites may be proposed, open space areas will apparently remain untouched, except for trail construction.

With the unavoidable exception of several road crossings, it appears that avoidance of sensitive areas was a factor in the overall layout of this project. The land use plan/constraints map overlay (Exhibit 11) shows the relationship between sensitive areas and proposed development parcels.

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

15. This objective is satisfied. The City adopted the 2005 Ecology manual in June 2009 and it will apply to this project until such time as the city may be required to adopt an updated stormwater manual by state mandate as a requirement of the City's Phase II Municipal Stormwater General Permit.

Chapter 6 of the MPD application describes the proposed stormwater management plan including incorporation of low impact development (LID) techniques. Staff finds that, given the soils on the Main Property (as described in Ch. 4 of the FEIS), LID should have excellent potential. As a recommended condition of approval, mechanisms shall be identified to integrate LID into the overall design of the MPD for the benefit of these resources. A project-wide approach to stormwater management is proposed (rather than at an individual development parcel level), meeting the intent of regional stormwater management.

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

- Provide a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction phase.

- Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities.

- Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design

objectives or standards, and the action items necessary as a result of excess deviations. 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.

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

17. This objective is satisfied. Chapter 3 of the MPD application contains details regarding open space. Pursuant to BDMC Sections 18.98.120.G, 18.98.140.F and G, there are amounts of open space required in prior agreements (BDUGAA and BDAOSPA) in addition to the amount required in the City's MPD regulations. The BDUGAA requires that 145 acres of open space serve as an offset for the West (63.3 ac) and South Annexation (81.7 ac) areas.

The remaining portions of the MPD not subject to prior agreements are required to provide 50% of the land area as open space (336.4 acres) in order to have varied lot dimensions, cluster housing and pursue additional density (see 18.98.140.G). Thus, the overall amount of open space required to be provided within the MPD is 481.4 acres. 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.

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

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

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

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

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

18.98.020(E) doesn't require that the MPD meet the City's economic development objectives but only to help meet them. Consequently, any significant contribution to available employment would satisfy this requirement. The project has designated 67 acres for a maximum of 775,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. The amount of jobs and tax revenues to be generated by this area will be dependent upon the mix of development that occurs, but there is no question that the project will add to the employment base of the City.

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

19. The objective is satisfied. The fiscal impacts of the project are addressed in detail in Finding of Fact No. 5(F). As noted in that discussion, a condition proposed by the Applicant requiring repeated reassessment of fiscal impacts and requiring the Applicant to cover any shortfalls is an excellent way to address the objective.

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

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. The objective is satisfied. Chapters 4 and 6 through 9 of the application contain conceptual utility plans and a phasing plan which describes street and utility improvements. These plans assure that infrastructure will be in place at the time and to the extent needed. Details on the proposed timing of improvements are on page 9-3, including the proposed "trigger" for transportation improvements. Page 9-10 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.

The conditions of approval require modeling of traffic impacts and mitigation to the extent necessary to meet level of service for each phase of development. Mitigation can exceed that anticipated in the FEIS and conditions of approval if necessary to meet level of service standards. The modeling and identification of impacts must be provided prior to the land use applications for each phase. The applicant has also 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.

As identified in Finding of Fact 5(B), the traffic modeling proposed by the FEIS is adequate from an environmental review standpoint but may yield more accurate results through a more localized model similar to that employed by Maple Valley. 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.

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

21. The objective is satisfied. Chapter 5 of the MPD application contains provisions for a trail network which would connect areas of the MPD and provide points at which future extensions to the rest of the City could be made by others or through public projects. At this time, the City is developing a Trails Plan, but it has yet to be adopted.

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

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

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

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

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

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

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

- No more than 150 residential units shall be permitted with a single point of access. Three hundred units may be allowed on an interim basis, provided that a location for a secondary point of access is identified.

- The Development Agreement shall define a development parcel(s) beyond which no further development will be allowed without complete construction of the South Connector.

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

24. The criterion above is satisfied by imposition of the FEIS mitigation measures recommended by this decision in addition to the enhanced mitigation identified in Finding of Fact No. 5.

In MPD Exhibit 114, p. 3, the Applicant essentially asserts that the FEIS precludes any further discussion of environmental impacts under the criterion above. This is incorrect. Although not directly addressed in the context of an EIS, the courts have ruled that a mitigated determination of nonsignificance does not preclude an

additional finding of significant environmental impacts if relevant to permitting criteria. *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). Even with the issuance of an EIS, an applicant must still comply with all permitting criteria. The review standard for an FEIS is significantly different than that under MPD permit review. As noted in the FEIS decisions, the Examiner must give substantial weight to the determination of the SEPA responsible official in assessing the adequacy of an EIS. By contrast, the factual findings made by the City Council in finding compliance with MPD criteria must be supported by substantial evidence. *See* RCW 36.70C.130(c).

As discussed in Finding of Fact No. 5, there are some environmental impacts that have been adequately mitigated under the rule of reason standard for the EIS but nonetheless do not provide the most effective or comprehensive mitigation. For the reasons discussed in Finding of Fact No. 5, there is substantial evidence to justify the enhanced mitigation identified in Finding of Fact No. 5, including but not limited to revised traffic modeling, further noise study and mitigation and additional mitigation for protection of Lake Sawyer water quality. [9]

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

Staff recommends that all houses that are sold in classified or declassified coal mine hazard areas be sold with a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form 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.

homeowners of the hazards and creating a market disincentive for construction in mine hazard areas.

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

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

- Regional infiltration pond will provide a central low maintenance facility that could also provide multipurpose recreational opportunities.

- Regional infiltration pond will provide opportunities for storm water reuse that could further conserve potable water.

- Low impact development proposal with HOA maintenance will provide distributed ES permits issued by the Department of Ecology. Although permit conditions imposed by NPDES permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer should be required to cover the City's cost of NPDES storm water permit oversight.

Staff objects to the developer taking the approval authority away from the City, as detailed on page 6-5 of the application. As the City is the approving authority and will ultimately own and be responsible for most of the proposed storm water facilities, staff does not concur with the terms "without preference." Staff 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

permit. Staff therefore recommends storm ponds for hydraulic sizing purposes vest phase by phase to the extent allowed by the City's storm water discharge permit and state law.

All FEIS mitigation and modifications thereof incorporated into the conditions of MPD approval should be considered as imposed from the separate substantive authority of SEPA as well as through the MPD criterion governing this Conclusion of Law.

BDMC 18.98.050(A)(3): ***The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule: [Remainder not listed here; refer to BDMC for complete code text.]***

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

BDMC 18.98.050(A)(4): ***A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:***

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

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

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

phasing plan, which also projects which parcels will be developed and associated unit 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.

Chapter 9 of the application states that "[t]he facilities that serve the MPDs as well as development in areas outside of the MPD project boundaries will be a shared responsibility between the City and Master Developer, with the Master Developer contributing a proportionate share." Although staff recognizes that other benefiting parties may make use of roads and other infrastructure, it is unrealistic for the applicant to expect full cost recovery for every implementing project. Staff cannot guarantee cost recovery from benefiting non-contributing properties or cost recovery from the City. Absent these developments, there would not be a need to construct the 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.

Staff recommends that decisions on what projects will be built by the developer, or the city with traffic impact fees, and what projects for which there will be credits or cost recovery be determined in the Development Agreement.

On page 9-3 of the application, the applicant proposes that final design must be approved and constructed, bonded or financially guaranteed prior to occupancy of any structure relying on the facility. Staff does not agree that home construction should 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.

The timing of the design and alignment of the Pipeline Road will need to be determined as part of the Development Agreement, as other parties in addition to the applicant must be involved and the roadway alignment will need to be resolved so that water and sewer alignments to The Villages will not be held up by these preliminary road design issues.

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

On Page 9-3 of the application, the applicant proposes to monitor traffic and then implement mitigation projects six months after a loss of level of service is identified. Staff finds this type of delay to be inappropriate and that mitigation projects should be in place prior to LOS failure. Staff is recommending the applicant be required to model the traffic impact of a pending phase of development before the start of that phase to determine when a street or intersection is likely to drop below the adopted level of service. Transportation mitigation projects should then be implemented to prevent failure. Traffic mitigation projects may change or additional projects be added to address the traffic issues as they actually develop.

As discussed in Finding of Fact No. 5(K), the phasing plan for the parks is not consistent with the criterion above and will be modified accordingly. As further discussed in Finding of Fact No. 5(K), off-site trail construction necessary to achieve connectivity will be required prior to occupancy and final plat and site plan approval to the extent allowed by law.

BDMC 18.98.050(A)(5): ***The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.***

27. As conditioned, the project meets the criterion above. The 2009 Comprehensive Plan contains levels of service related to police and fire and emergency medical services. The fiscal analysis indicates that staffing levels should generally be allowed to increase in accordance with population growth. Currently, this area of the city has a minimal level of fire and EMS protection. Staff is recommending that the Development Agreement include specific provisions for mitigating fire service impacts to ensure protection concurrent with project build out. The 2009 City of 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).

BDMC 18.98.050(A)(6): ***Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.***

28. As conditioned the criterion is satisfied. Chapter 3 of the MPD application describes a variety of housing types including detached single family, duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. The Fiscal Analysis (Chapter 12) makes some assumptions regarding housing costs for various potential housing types. However, there is nothing in the remainder of the application to indicate whether all these housing types will be built. As noted previously, there appears to be conflicting statements in the application concerning how much non-single family detached housing is being provided.

As previously noted, the commercial component of the project will most likely include retail, office and personal service uses. The MPD should provide housing opportunities for individuals anticipated to work at those jobs; this may require a greater mix of multifamily housing and/or the construction of housing types that can meet the affordability goals of the Comprehensive Plan.

The staff report proposes a condition that requires the Applicant to meet housing targets for purchasers at specified income levels. The Applicant subsequently proposed a modification that provides more generalized goals for providing affordable housing. The City made no objection to this revision. The modifications proposed by the Applicant are probably the best the City can do absent providing low-income development incentives. The courts are not very receptive to making developers responsible for affordable housing problems, suggesting that developers don't create the problem and therefore can't be made to fix it. *See, Sintra v. Seattle*, 119 Wn.2d 1 (1992); *San Telmo v. Seattle,* 108 Wn.2d 20 (1987), *overruled on other grounds, Isla Verda v. Camas,* 146 Wn.2d 740 (2008).

BDMC 18.98.050(A)(7): ***If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.***

29. The criterion is satisfied. The Black Diamond Urban Growth Area Agreement (BDUGAA) (Exhibit 7) applies to two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area). The BDUGAA requires that 145 acres of open space as an offset 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).

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.

BDMC 18.98.050(A)(8): ***If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.***

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

BDMC 18.98.050(A)(9): ***The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive***

plan. Major roads shall be designed to take advantage of the bearing lines for those views.

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

BDMC 18.98.050(A)(10): ***The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.***

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

BDMC 18.98.050(A)(11): ***If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.***

33. The criterion is satisfied. The North Property (Parcel B) and Main Property are not adjacent to property already developed as an MPD. The North Property is adjacent to property zoned MPD. 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

corridors, and the compatibility of streetscape design and public open space amenities.

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

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

As previously discussed, the portions of the MPD not subject to prior agreements are required to provide 50% open space (336.4 acres). The phasing of open space is not included within the MPD Application as required by the criterion above. Phasing of open space (which includes parks and is identified within the MPD application), once acreages have been finalized, should be defined and articulated for timing of final designation within the Development Agreement.

BDMC 18.98.050(A)(13): ***Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.***

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

BDMC 18.98.050(A)(14): ***School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable school district's standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.***

36. Figure 3-1, Land Use Plan, shows four proposed school sites on development parcels V21 (10 ac), V50 (10 ac), V57 (8.4 ac) and V58 (4.1 ac). Alternatively, as shown in Table 3.4 of the application, the applicant is requesting that any development parcel may be used for an institutional use (which could include a school site). Figure 3-2, School Proximity Exhibit, shows the areas of the project intended for residential use, with the exception of the proposed residential on Parcel B, are within 0.5-1.0 mile of the proposed school site. There is no specific walkable school standard in the 2009 City of Black Diamond Comprehensive Plan or the

Enumclaw School District Capital Facilities Plan (2009-2014), although a half-mile standard is consistent with more general policies as discussed in Finding of Fact No. 5(D).

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

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

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

BDMC 18.98.050(B): ***So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.***

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.***

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

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

39. 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 recommendation. Any subsequent implementing permit or approval will be subject to the MPD design standards.

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

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

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.***

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

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

42. The criterion is satisfied. The Comprehensive Plan designation for the North Property is Mixed Use with Master Planned Development Overlay and the Main Property has areas of Low Density Residential and Mixed Use with Master Planned Development Overlay.

The entire project is covered by the MPD Overlay. According to the Comprehensive Plan, "an MPD may include residential and commercial uses clustered around private and community open space, supported by adequate services and facilities." The Mixed Use designation identifies a preferable location for mixed use development within an MPD, in specific areas where the anticipated larger commercial component

can also serve the broader community. The potential of mixed uses in permissive, as opposed to being a requirement of development.

The Main Property has areas designated for Mixed Use and Low Density Residential uses according to the Comprehensive Plan. The application includes several parcels designated for high density residential uses in accordance with Section 18.98.120(F). Table 3.4 in the application materials lists neighborhood commercial as a permitted use in low-, medium- and high-density residential areas; however, it is not known if this will actually occur, as the application makes no other mention of it.

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

43. The Comprehensive Plan includes the City's updated projection for 2,677 new jobs by the year 2025. The staff report states that Table 3-8 (actually Table 3-9) indicates a goal of attaining 0.5 jobs per household by the year 2025. Based upon this standard, the staff report concludes that the project should provide approximately 2,400 jobs. The Appendix J Fiscal Analysis of the FEIS contains an analysis of the amount of retail/office square footage to be developed along with employment projections of 1,365 employees. Therefore, it appears that the proposal is not compliant with this standard with regard to jobs provided within the MPD boundary. Staff acknowledges that these are projections and that exact numbers will not be known until the project develops, and that jobs may also be provided elsewhere 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

Examiner leaves it to the City Attorney to advise the City Council on how to deal with this situation.

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

44. The criterion is satisfied. The Black Diamond Urban Growth Area Agreement (BDUGAA) (Ex. CBD-2-7) applies to two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area). The BDUGAA requires that 145 acres of open space as an offset 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).

The remaining portion of the Main Property primarily has a Comprehensive Plan designation of Low Density Residential, which has a base density of 4-6 dwelling units du/gross ac. The northwest corner of the Main Property has a Comp Plan designation of Mixed Use which does not propose a base density. The MPD Overlay requires a minimum of 4 du/ac.

Planned residential development is to consist of approximately 3,600 single family detached and 1,200 attached dwelling units on the approximately 551 acres of the site that will be developed with residential uses (approximately 8.7 du/ac). The minimum 1 unit per acre density allowance in the application is not consistent with the BDUGAA or the City's Comprehensive Plan. A minimum density of 4 du/ac must be achieved and will be a recommended condition of approval.

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

45. This provision establishes an overall density of 12 du/ac for the entire proposal, and does not set a maximum cap for specific parcels within the project boundaries. The areas proposed for medium density residential range from 7-12 du/ac and high density 13-30 du/ac (with certain areas dedicated to 18-30 units in accordance with the additional criteria below). The MPD is subject to the requirements of both sections 18.98.140(F) and 18.98.140(G) with analysis provided in a later section of the staff report. As detailed under the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions

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

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

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

47. The eight parcels would be located adjacent to proposed shopping/commercial services.

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

48. Table 3.8 Residential Development Standards in the MPD application shows 45 feet as a maximum height for high-density residential development.

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

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.***

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

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

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

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

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

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

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

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

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

comprehensive plan; 5) a new zoning code, including the Gateway Overlay District; 6) new design guidelines; and 7) updated public works standards. The proposed "functionally equivalent" standards appear to reflect the applicant's effort to use the MPD code in order to implement its proposed different development standards. For most of the proposed "functionally equivalent" requests, staff finds that the "public benefit" test is not met. The applicant is one member of the public at this conceptual level of MPD review, and it appears likely to be the only member who could or would benefit from its requests. For example, there is not enough justification for the alternate parking standards to apply anywhere other than the Mixed Use Town Center. A majority of the residential component would be located at a considerable walking/biking distance from commercial uses, and as a result it is unlikely that vehicle trips would be reduced. Staff finds that deviations from the City's Sensitive Areas Ordinance should be evaluated on a case by case basis with project specifics and in accordance with BDMC Section 19.10, which offers flexibility and a process for these deviations. The Applicant has withdrawn its request for deviation from the Tree Preservation Ordinance (BDMC 19.30), so that does not need to be addressed.

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

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

Staff finds the following request is justified and should be approved in part:

4) 18.80.030-060; Parking—reduced parking standards for the Mixed Use Town Center only. It is common to have flexible parking standards within mixed use and "downtown" areas.

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

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

14, 15 & part of 18) 18.38—Community Commercial (CC) Zone Standards and Allowed Uses; Parcel B will be rezoned to MPD if the MPD is approved.

19) 18.30—R4 Zone Standards—None of the property associated with The Villages is currently zoned R4, nor will be zoned R4.

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

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

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

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

54. Figure 3-1 of the application shows that the dedicated open space areas serve as a coordinated network. In order to enhance this coordination for natural areas, a recommended condition of approval is to require that areas shown as natural open space/areas in the figure on page 5-7 of the application to remain natural, with the possibility for vegetation enhancement. No other land clearing shall be permitted besides trails and storm ponds. As previously noted, the figure on page 5-5 depicts some areas as "natural open space" that are also proposed to include stormwater facilities. Staff is supportive of allowing stormwater facilities to be considered as open space if they are designed as an amenity. Other than trails and stormwater facilities designed as amenities, staff is recommending that areas shown as natural areas in the figure on page 5-7 of the application be required to remain natural with the possibility for vegetation enhancement. The Examiner finds retention in the natural state to be necessary in order to maintain continuous greenbelt areas as required in the criterion above.

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

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.

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

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

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

56. Chapters 3 and 5 of the MPD application, including tables 3.4 and page 5-6, describe proposed open space uses.

As much of the open space has been identified as sensitive areas and their associated buffers, minimal flexibility exists as it relates to uses within these areas. All activities shall be conducted in accordance with BDMC Chapter 19.10. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided. The Development Agreement should include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

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

57. Page 5-2 of the MPD application generally describes proposed ownership, but as to sensitive areas only identifies various options and doesn't propose any specific ownership. Staff is recommending that specific details on which open space is to be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms be established as part of the Development Agreement.

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.

Staff and the applicant should negotiate language to be included within the Development Agreement that will allow for public access to parks and trails facilities. City ownership of major park and trail facilities may be preferred to ensure the 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.

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

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

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

59. The application is seeking to vary lot dimensions, cluster housing and include high-density residential housing (pursuant to Section 18.98.120.F). Therefore the 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.

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

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

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

60. Chapter 5 of the MPD application contains information regarding proposed recreation areas and facilities. The proposal meets the adopted levels of service with regard to parks.

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

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

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

Additionally, staff is concerned that there is an adequate amount of property suitable for park development outside of the proposed project. Areas designated as "sending areas" within the transfer of development right program are considered sensitive and are limited in what can be constructed. More suitable, developable land will need to be acquired in order to accommodate recreation activities off-site. Other issues including access, parking and maintenance of these facilities need to be evaluated and are more appropriately addressed on a case by case basis. The proposal that the 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

recommends that the Development Agreement be required to include a provision that 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.

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

61. The Applicant has requested a deviation from Sensitive Area Ordinance standards. The Examiner finds the general authority under MPD regulations to vary 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.

Staff recommends that once the mapped boundaries of sensitive areas have been agreed to between the applicant and staff, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary should prevail. The applicant should neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

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

62. Regarding the proposed "Community Connector at Sensitive Areas" (Figure 4-4 in the MPD application), staff finds that impacts to sensitive areas and buffers should be mitigated, if necessary, in accordance with BDMC 19.10. Impacts are more appropriately addressed on a case by case basis; staff does not support the specific details of this proposed street section at this time.

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

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

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

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

64. This has been previously discussed in this recommendation.

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

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.

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

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

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

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.

BDMC 18.98.180(A): ***The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.***

68. The criterion is met. The AESI reports in Appendix D to the TV FEIS show conclusively that the stormwater system has been designed to locate infiltration ponds in areas that will recharge aquifers as required by BDMC 18.98.180(C). Planning on such a large scale has enabled the applicant to use its land efficiently for stormwater purposes, such as creation of a regional infiltration pond that would otherwise be segmented in several areas and thereby increase the need to encroach and segment natural open space and wildlife corridors. In this respect the regional nature of the facilities further BMDC 18.98.010(C). The Applicant proposes a list of low impact development techniques, maximizing the use of permeable soils, thereby promoting environmentally sustainable development as contemplated in BDMC 18.98.010(H). The efficiencies of using a regional stormwater system also promote compact development as contemplated in BDMC 18.98.010(L). As further required by the criterion above, the Applicant proposes public ownership of the facility as identified in page 6-4 of the Villages application.

The City's recommended conditions regarding use of the most recent DOE 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.

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

69. The City's storm water codes apply to both public and private improvements.

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

70. The criterion is satisfied. The stormwater management plan proposed as part of The Villages takes advantage of the soil conditions in and around the project for infiltration. The stormwater management plan will incorporate distributed infiltration

through Low Impact Development and a regional infiltration pond for the excess volume from the developed site. Opportunities for water reuse are preserved with the central collection of stormwater.

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

71. The criterion is satisfied. A regional storm water system is proposed with sensitivity to existing wetlands and water balance within the basins. Staff 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.

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

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

72. See B below in this section.

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

73. Staff recognizes that it may be impractical in the early stages of this project to construct the regional sewer pump station within the area identified within the application as the western expansion parcel. 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.

- No capital facility charge credit will be considered for interim improvements.

For the northern parcel, the application states there will be a point of connection in SR 169. Although that connection point will functionally work, staff recommends requiring the abandonment of the Diamond Glen sewer pump station and connection of the new sewer force main to the existing Diamond Glen sewer force main. Staff is opposed to continued installations of redundant interim sewer pump stations.

A pump station may be necessary to serve the easternmost portion of Parcel F. Alternatively, if the property to the north has developed or easements are obtained the eastern area of Parcel F can be served by gravity to the existing King County Jones Lake sewer pump station.

King County is in the pre-design phase of an equalization sewer storage project to reduce the peak flow from the Black Diamond sewer service area. Currently, the City and King County have different concepts on where the storage facility should be located. When the final location is determined, the applicant may need to shift the sewer infrastructure project planning to deliver sewage from The Villages to a location upstream of the existing King County pump station G located just southwest of existing downtown Black Diamond.

Page 8-1 of the application states, "Since water use can vary significantly...projected water use per ERU will be determined at the preliminary plat, binding site plan or site plan approval stage and confirmed prior to Occupancy." This statement implies that the developer can establish their own capital facility charge rate based on projected water use within The Villages, an idea for which staff is not supportive. The City has always set capital facility charges and the water use per ERU by citywide studies and 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***

forth strategies for achieving water conservation at all phases of development and at full build out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit.

74. Staff finds the proposed water conservation plan identified in page 8 of the MPD applications to be acceptable, but recommends it be evaluated for its effectiveness in light of the City's available water resources after 500 dwelling units have been constructed. At that time, additional measures may be necessary.

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

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

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

water conservation plan with performance measurements; a general landscape plan; and a stormwater management plan.

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

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

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

80. A high east-west pedestrian demand is expected to develop along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek is unsafe for pedestrians. Staff recommends that a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area should be required as a condition of approval. Construction timing should be specified in the Development Agreement.

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

81. A grading plan has not been proposed at this time, so compliance or noncompliance with this guideline cannot be determined. However, this does not relieve the applicant from the need to comply with this provision in the future.

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

and other buildings. However, on a site of this size, site grading can be done without having to export 3 million 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.

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

Guidelines

1. ***All master planned developments shall include a wide range of open spaces, including the following:***
   - ***a. Sensitive environmental features and their buffers***
   - ***b. Greenbelts***
   - ***c. Village greens***
   - ***d. Parks and school playgrounds***
   - ***e. Public squares***
   - ***f. Multi-purpose trails***

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

2. ***Open spaces shall be linked into an overall non-motorized network through sidewalks, trails and parkways.***

The overall network shall be delineated at initial MPD approval and implanted through subsequent plats and permit approvals.

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

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

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

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

Guidelines

1. Use of conventional, suburban-style subdivision design that provides little common open space shall be avoided.
2. Groupings of primarily residential development of approximately 400-600 units should be contained generally within a quarter mile radius to support walking, bicycling and future transit service. Development clusters shall be surrounded by a network of open space with a variety of recreational uses (including trails) to provide connections between clusters.
3. Methodology for Planning Development in clusters.
a. environmentally sensitive areas to be protected (including streams, wetlands, steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and used as an organizing element for design;
b. areas for development of housing and commercial development shall be indicated;
c. streets and public spaces (as well as sites for public facilities such as schools, fire stations and other civic structures) shall be identified;
d. lots and groups of lots with various ownerships (i.e. fee simple by occupant, condominium, single ownership apartments, etc) shall be integrated with one another throughout all phases of a project;
e. views of Mt Rainier and other desirable territorial views shall be identified and integrated into site planning to maximize viewing from public spaces (streets, trails, parks, plazas, etc.).

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.

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

1. Pedestrian Connectivity

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

85. As conditioned, the criterion is satisfied. The MPDs propose an integrated trail network that connects all portions of the development, including up to the commercial portions of the projects. A high east-west pedestrian demand is expected to develop along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek bridge is unsafe for pedestrians. Staff recommends that a connecting sidewalk and safe pedestrian connection to programmed sidewalk construction in the Morganville area should be required as a condition of approval. Construction timing should be specified in the Development Agreement.

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

86. As depicted in Figure 4-1 of the MPD applications, the proposals depict only an "approximate" and basic "skeleton" of a future street system and descriptions of street types including cul-de-sacs. The trail networks depicted in Chapter 5 of the applications provide a little more detail. The vehicular and pedestrian circulation 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.

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

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

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

98. The City street standards were just established in June of 2009 and were reduced in width to keep this goal in mind. The Villages proposed streets are very similar to the city standard streets but in some cases are wider. The design standards will be established through the Development Agreement and the design deviation process.

4. Low-Impact Design

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

99. This criterion has been discussed above.

5. Traffic calming methods should include:

- *Roundabouts*
- *Traffic Circles*
- *Chicanes*
- *Corner bulbs*

100. Two roundabouts are proposed along the Community Connector. Staff recommends that traffic calming measures be explored with each implementing development action, at the discretion of the Public Works Director.

6. Lanes and Alleys

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

101. As noted, the application materials indicate that the majority of homes will be "front loaded lots," which is inconsistent with this guideline. The recommended conditions of approval require that at least 25% of homes have alley access.

In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, staff is recommending that all cul-de-sacs and auto courts serving 20 units or less, and all alleys be private and maintained by the Master Developer or future Homeowners Association(s).

7. Non-motorized Circulation

a. All streets shall include either sidewalks or trails on at least one side of the street. Design streets to be "bicycle" friendly.

8. Street Landscaping

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

102. Compliance with these standards will be required at the time of implementing projects.

The details of these design features will be resolved through the Development Agreement and the design deviation process. The City does not have adequate funds to manage street landscaping. The staff is recommending that future Homeowners' Association(s) be required to maintain the street side landscaping.

9. On-Street Parking

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

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

MPDFSG(B)(*Sidewalks*)(p. 11):

B. Sidewalks

Intent

Guidelines

1. Width

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

2. Lighting

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

3. Furnishings

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

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

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

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.

MPDFSG(pp. 13-18):

Text not included.

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

International Fire Code, 2006 Edition

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

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

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

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

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

VI. RECOMMENDATION

The Examiner recommends the requested Master Planned Development be approved, subject to the following conditions:

[Conditions are organized into categories; however the categories themselves are not meant to limit the applicability of the condition to the overall project. Track changes have been retained in order to show all alterations to the conditions of approval recommended in the staff report.]

GENERAL

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

2. After approval by the City Council at an open public meeting and after a public hearing as required by law, a Development Agreement shall be signed by the Mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the City shall approve any subsequent implementing permits or approvals. Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of subsequent implementing permits or approvals.

3. The Phasing Plan of Chapter 9 of the MPD application is approved, with the exception of the bonding proposal at p. 9-3 and as otherwise noted in these conditions of approval.

~~3.~~4. The Development Agreement shall specify which infrastructure projects the applicant will build; which projects the City will build; and for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

~~4.~~5. The Development Agreement shall specifically describe when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

~~5.~~6. The Development Agreement shall include language that defines and identifies a "Master Developer." A single Master Developer shall be maintained through the life of the Development Agreement. The duties of the Master Developer shall include at least the following: a) function as a single point of contact for City billing purposes; b) function as a single authority for Development Agreement revisions and modifications; c) provide proof of approval of all permit applications (except building permits) by other parties prior to their submittal to the City; and d) assume responsibility for distributing Development Agreement entitlements and obligations and administering such.

~~6.~~7. The City shall have the ability but not the obligation to administratively approve off-site projects that would otherwise be compromised if they cannot be completed prior to approval and execution of the Development Agreement. In these instances, the applicant shall acknowledge in writing that the approval of any such applicable projects does not in any way obligate the City to incur obligations other than those specifically identified in the approved permits for the applicable project.

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

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

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

[TRANSPORTATION]

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

~~11.~~10. Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion

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

~~12.~~11. The applicant shall create a new transportation model for this project which incorporates, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city, and west to SR 167 in Auburn. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic.

~~13.~~12. The new model must consider recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, current peak hour factors and existing speed limits on all project roads. The model must be run with both currently funded and unfunded transportation projects for each affected jurisdiction as shown in the applicable 6 year Transportation Improvement Plans and 20 year Transportation Plans, respectively.

~~14.~~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

local master planned developments with similar land use mixes. The methodology for choosing the final internal trip capture rates must be justified. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.

~~17.~~16. The resulting project impacts and mitigations must be integrated into the development agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects.

~~18.~~17. The intersections needing mitigation as identified in the analysis required above ~~noted in the FEIS~~ shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. ~~[FEIS Mitigation Measure]~~ The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard.

~~19.~~18. Intersection improvements outside the City limits shall be mitigated through measures acceptable to the applicable agency. [FEIS Mitigation Measure] The developer shall enter into traffic mitigation agreements with impacted agencies outside the city that have projects under their jurisdiction in the list below as part of the Development Agreement. If those mitigation agreements include the construction of a project, those projects shall be added to the regional project list and included as part of the Development Agreement.

~~20.~~19. The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

~~**Exhibit - INTERSECTION IMPROVEMENTS**~~

~~**Study Intersection**~~	~~**Jurisdiction**~~	~~**Mitigation**~~
~~SE 288th Street/216th Avenue SE~~	~~Black Diamond~~	~~Signalize. Add NBR turn pocket.~~
~~SE 288th Street/232nd Avenue SE~~	~~Black Diamond~~	~~Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.~~
~~SR 169/SE 288th Street~~	~~WSDOT~~	~~Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).~~

~~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)~~

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

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

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

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

~~22.~~20. For each potential signal, first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control. [FEIS Mitigation Measure]

~~23.~~21. A ~~proactive rather than reactionary~~ transportation monitoring plan shall be established as part of the Development Agreement ~~with~~ using the projects identified in the new traffic analysis required above, ~~a list of projects~~ and including trigger mechanisms acceptable to the City.

~~24.~~22. Implementing projects shall be designed to foster the development of a street grid system throughout the project.

~~25.~~23. In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all ~~cul de sacs and~~ auto courts serving 20 units or less, and all alleys shall be private and maintained by the applicant or future Homeowners' Association(s).

~~26.~~24. The applicant or future Homeowners' Association(s) shall be required to maintain all street side landscaping.

~~27.~~25. Traffic calming measures shall be explored with each implementing development action and implemented at the discretion of the Public Works Director.

~~28. The applicant shall model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the adopted level of service. Necessary transportation mitigation projects shall then be listed in the schedule to prevent failure. The applicant shall also monitor traffic levels midway through each phase to determine if the traffic generation assumptions and distribution patterns are developing as expected. Traffic mitigation projects may therefore change or additional projects be added to address traffic issues as they actually develop.~~

26. The monitoring plan required by these conditions shall require the applicant to model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the City's adopted level of service. The monitoring plan shall provide for the timing of commencement of construction of projects identified ~~from the list contained~~ in Condition 21~~13~~, as well as the amendments to the scope of said projects and/or additions to Condition 21~~13~~'s project list as determined by the City in its reasonable discretion as necessary to maintain the City's adopted levels of service in effect at the time of the modeling, to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard. In the event of a disagreement between the applicant and the City about the timing of construction of a transportation project under the monitoring plan, and if the monitoring plan does not already include period modeling, the applicant shall also monitor traffic levels midway through each phase to determine if the traffic generation, trip distribution and assignment patterns are developing as expected.

~~29.~~27. Reserve a site within the commercial area on either the north or south side of Auburn-Black Diamond Road for a future park and ride lot. [FEIS Mitigation Measure]

~~30.~~28. No more than 150 residential units shall be permitted with a single point of access. 300 units may be allowed on an interim basis, provided that a secondary point of access is provided.

29. The Development Agreement shall define a development parcel(s) beyond which no further development will be allowed without complete construction of the South Connector.

~~31.~~30. Prior to the first implementing project of any one phase being~~is~~ approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

~~32.~~31. The applicant shall apply road design speed control and traffic calming measures so that inappropriate speeds are avoided on neighborhood streets.

~~33.~~32. The timing of the design and alignment of the Pipeline Road shall be included as part of the Development Agreement.

33. Provided a study confirms engineering feasibility and reasonable and customary construction costs, ~~A~~a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area shall be required along Roberts Drive. Construction timing should be specified in the Development Agreement. The

City and applicant shall work in good faith to seek grants and other funding mechanisms to construct the improvement. The applicant shall otherwise be responsible for construction costs to the extent authorized by law.

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

~~34.~~35. The Development agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.

[NOISE]

~~35.~~36. Each implementing development shall include a plan for reducing short term construction noise by employing the best management practices such as minimizing construction noise with properly sized and maintained mufflers, engine intake silencers, engine enclosures, and turning off equipment when not in use. [FEIS Mitigation Measure]

~~36.~~37. Stationary construction equipment shall be located distant from sensitive receiving properties whenever possible. Where this is infeasible, or where noise impacts would still be likely to occur, portable noise barriers shall be placed around the equipment (pumps, compressors, welding machines, etc.) with the opening directed away from the sensitive receiving property. [FEIS Mitigation Measure]

~~37.~~38. Ensure that all equipment required to use backup alarms utilizes ambient-sensing alarms that broadcast a warning sound loud enough to be heard over background noise, but without having to use a preset, maximum volume. Alternatively, use broadband backup alarms instead of typical pure tone alarms. [FEIS Mitigation Measure]

~~38.~~39. Require operators to lift, rather than drag materials wherever feasible. [FEIS Mitigation Measure]

~~39.~~40. Substitute hydraulic or electric models for impact tools such as jackhammers, rock drills and pavement breakers. [FEIS Mitigation Measure]

~~40.~~41. Electric pumps shall be specified whenever pumps are required. [FEIS Mitigation Measure]

~~41.~~42. The developer shall establish a noise control "hotline" to allow neighbors affected by noise to contact the City or the construction contractor to ask questions or to complain about noncompliance with the noise reduction program ~~particularly noisy activities~~. Failure to comply with the noise reduction program shall result first in a warning and one or more continuing failures may result in cessation of construction activities until the developer provides adequate assurance to the City that there will be no further noncompliance. ~~a solution is found~~. Noting in this condition shall be construed as limiting or altering the City's authority to enforce its noise regulations. [FEIS Mitigation Measure]

~~42.~~43. If pile driving becomes necessary, impact pile-driving shall be minimized in favor of less noisy pile installation methods. If impact pile driving is required, the potential for noise impacts shall be minimized by strict adherence to daytime only. [FEIS Mitigation Measure]

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

~~43.~~45. The City shall commission a noise study, at Applicant's expense, that identifies long term noise impacts resulting from the 15 year development window. Long term noise impacts shall comply with Chapter 173-60 and not qualify under construction noise exemptions. The noise study shall define the period(s) of time that constitute long term noise, based upon professionally accepted standards or noise regulations from other agencies. If this information is not available, six months shall qualify as long term. Particular attention shall be paid to any truck traffic generated by the large amount of grading proposed by the Applicant. The study shall propose mitigation to mitigate noise within the levels required by Chapter 173-60, which could include rerouting of truck traffic, sound barriers and/or sound proof windows. Any reasonable mitigation shall be addressed in the Development Agreement or processed as an amendment to the MPD.

[PUBLIC UTILITIES – WATER]

~~44.~~46. ~~Upgrade Spring Supply source per~~ Comply with the terms of the Water Services Future Funding Agreement (WSFFA). ~~[FEIS Mitigation Measure]~~

~~45.~~47. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA. [FEIS Mitigation Measure]

~~46.~~48. Construct an appropriately sized reservoir in 850 Zone or construct an 850 Zone loop back to the existing system in the vicinity of Railroad Avenue. [FEIS Mitigation Measure]

~~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]

~~57.~~59. An interim sewer pump station is accepted, provided that:

a. Routing of the gravity sewer mains is consistent with the City's ultimate plan for routing sewage.

b. No capital facility charge credit will be considered for interim improvements.

[PUBLIC UTILITIES – STORMWATER AND WATER QUALITY]

~~58.~~60. Stormwater runoff that is collected from impervious surfaces shall be mitigated in accordance with the *2005 Stormwater Management Manual for Western Washington*, and stormwater designs shall include low impact development techniques wherever practical and feasible. [FEIS Mitigation Measure]. Homeowner associations should bear the cost of landscape maintenance associated with the low impact development techniques.

~~59.~~61. Preserve the volume of stormwater for the groundwater area tributary to Black Diamond Lake and associated wetlands. [FEIS Mitigation Measure]

~~60.~~62. Implement the stormwater program described in Appendix D to The Villages FEIS in order to match total runoff volume discharges via surface and subsurface conveyance routes to Horseshoe Lake. [FEIS Mitigation Measure]

~~61.~~63. Provide mitigation facilities within the project limits, expansion parcels or provide an agreement with King County for long term City ownership and/or maintenance of off-site facilities not within City limits. [FEIS Mitigation Measure]

~~62.~~64. Native plants shall be primarily used as part of the planting palette within the MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation Measure]

~~63.~~65. Where point discharges to streams must occur, design the outfall to minimize impacts to the stream channel and avoid areas of significant vegetation. [FEIS Mitigation Measure]

~~64.~~66. Construct stormwater treatment and storage improvements as presented in City's Comprehensive Plan and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD. [FEIS Mitigation Measure]

~~65.~~67. Mechanisms shall be identified to integrate Low Impact Development technologies into the overall design of the MPD and incorporated into the Development Agreement. Future Homeowners' Associations shall bear any increased cost of landscape maintenance.

~~66.~~68. The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.

~~67.~~69. Stormwater facilities to be considered as part of required open space shall be designed as an amenity per the Public Works and Natural Resources Directors. If approved, future Homeowners Association(s) shall be required to provide landscape maintenance of these facilities.

~~68.~~70. The Development Agreement shall include language that binds future developers and contractors to a requirement to comply with any NPDES permits issued by the Washington State Department of Ecology and acknowledge that although permit conditions imposed by NPDES permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer shall fund necessary costs for training related to inspection services. ~~cover the city's cost of NPDES stormwater permit oversight.~~

~~69.~~71. Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.

~~70.~~72. Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities. The City shall have the right to reject higher cost of maintenance facilities when lower cost options may be available.

~~71.~~73. Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations.

~~72.~~74. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

~~73.~~75. The size of storm ponds for hydraulic purposes shall vest on a phase by phase basis to the extent allowed by the City's DOE discharge permit and state law.

~~74.~~76. The Development Agreement shall include language to allow deviations from the stormwater facilities listed in the FEIS when justified by a technical analysis and risk assessment.

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

mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities

~~82.~~85. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in ~~contents of~~ Table 5.2 of the MPD application (Recreation Facilities) shall be specified ~~resolved~~ in the Development Agreement.

~~83.~~86. Dependant on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement.

~~84.~~87. The Development Agreement shall include language authorizing public access to parks and trails facilities.

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

~~85.~~89. Parks within each phase of development shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the phase, whichever occurs first, to the extent necessary to meet park level of service standards for the implementing project.

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.

[PUBLIC SERVICES – SCHOOLS]

~~86.~~91. A separate school mitigation agreement shall be entered into between the applicant, the City and the Enumclaw School District which provides adequate mitigation of impacts to school facilities and be incorporated into the MPD permit and Development Agreement by reference. [FEIS Mitigation Measure] Alternatively, school mitigation may be addressed in the Development Agreement if authorized by the City. The capital facilities plan adopted by the City shall govern the acreage requirements for school sites and shall also serve as the source of

enrollment projections. Smaller sites may be used if it can be established that less areas will still meet the needs of the District. All proposed schools shall be located within a half-mile walk or residential areas.

~~87.~~92. An updated fiscal analysis shall be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

[PUBLIC SERVICES – PUBLIC SAFETY]

~~88.~~93. The Development Agreement shall include specific provisions for providing both fire station sites and funding for future fire facilities and equipment to ensure protection concurrent with project build out. [FEIS Mitigation Measure]

~~89.~~94. All Fire Department access roads must meet International Fire Code, specifically Section 503 Fire Department Access Roads and Appendix D Fire Department Access Roads, .~~-~~except to the extent modifications or exceptions are approved by the designated official as~~nd~~ authorized by applicable regulations

~~90.~~95. Auto courts shall meet the requirements of the International Fire Code 2006 ed. Per IFC Section 503, specifically 503.2.1, -, except to the extent modifications or exceptions are approved by the designated official as~~nd~~ authorized by applicable regulations.

~~91.~~96. Separation of combustible structures and vegetation shall be provided to prevent wildland fires from the east and south from spreading to buildings. This shall be determined at the time of implementing projects.

[EROSION HAZARDS]

~~92.~~97. Major earth moving and grading ~~shall~~ may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

~~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]

~~95.~~100. Design stormwater facilities to avoid discharging concentrated stormwater flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS Mitigation Measure]

~~96.~~101. Utilize stormwater detention facilities that avoid increases in peak stream flows. [FEIS Mitigation Measure]

~~97.~~102. ~~The Development Agreement shall identify an appropriate administrative fee to cover the costs of staff to deal with construction runoff discharges that exceed discharge permit limits.~~ The Applicant ~~developer~~ shall ~~provide~~ submit a Temporary Erosion and Sedimentation Control (TESC) plan meeting City standards that will mitigate the potential for construction run-off from the site prior to grading or land clearing activities. The best management practices in the TESC plan shall include standby storage of emergency erosion and sediment control materials; a limit to the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.

~~98.~~103. Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.

[LANDSLIDE HAZARDS]

~~99.~~104. Development of landslide hazard areas shall be avoided. Sufficient setbacks shall be required to assure or increase the safety of nearby uses, or where feasible grade out the landslide hazard area to eliminate the hazard in compliance with the city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

~~100.~~105. Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides. [FEIS Mitigation Measure]

~~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.

[MINE HAZARDS]

~~102.~~107. Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.

~~103.~~108. All proposed development within mine hazard areas shall occur in conformance with BDMC 19.10.

~~104.~~109. All houses that are sold in classified or declassified coal mine hazard areas shall require a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement.

[VEGETATION AND WETLANDS]

~~105.~~110. Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas. [FEIS Mitigation Measure]

~~106.~~111. Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees. [FEIS Mitigation Measure]

~~107.~~112. New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. [FEIS Mitigation Measure]

~~108. Any deviations from the Tree Preservation Ordinance (BDMC 19.30) shall only be considered through implementing projects on a case by case basis.~~

~~109.~~113. A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.

~~110.~~114. The Development Agreement shall include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested.

~~111.~~115. The Development Agreement shall describe the process and basis for removing selective hazard trees at the project perimeter. The intent of this section will be to leave the majority of the perimeter as designated passive open space, but to have it appear and function as native forest.

~~112.~~116. The use of native vegetation in street landscaping and in parks shall be required.

[FISH AND WILDLIFE]

~~113.~~117. Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]

~~114.~~118. Mast-producing species (such as hazelnut) shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure]

~~115.~~119. Provide a 300-foot-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network. [FEIS Mitigation Measure]

[CLIMATE CHANGE]

~~116.~~120. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

~~117.~~121. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

[LAND USE]

~~118.~~122. Approval of the design concept and land use plan (Chapter 3) shall be limited to the plan map (Figure 3-1); description of categories (beginning on page 3-18); 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. Commercial uses within residential land use categories shall only be allowed through amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

~~119.~~123. The project shall provide a mix of housing types in conformance with the MPD Design Guidelines. The Development agreement shall set targets for various types of housing for each phase of development.

~~120.~~124. Identification of specific areas where live/work units can be permitted shall be done as part of the Development Agreement or through an MPD minor amendment.

~~121.~~125. A minimum density of 4 du/ac for residential properties shall be required for implementing projects.

~~122.~~126. If the applicant requests to increase a residential category that abuts the perimeter of the MPD, it shall be processed as a Major Amendment to the MPD. Residential land use categories can otherwise be adjusted one category up or down through an administrative approval process provided they also otherwise meet the requirements for minor amendments outlined in BDMC 18.98.100.

~~123.~~127. The Development Agreement shall limit the frequency of proposed reclassification of development parcels to no more frequently than once per calendar year.

~~124.~~128. The Expansion Area process shall be clarified in the Development Agreement.

~~125.~~129. Project specific design standards shall be incorporated into the Development Agreement. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines. All MPD construction shall comply with the Master Planned Development Framework Design Standards and Guidelines, whether or not required by the Development Agreement.

~~126.~~130. A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement.

~~127.~~131. All commercial/office uses (other than home occupations and identified live/work areas) shall only occur on lands so designated. Additional commercial areas shall be identified on the Land Use Plan through ~~a~~ future amendment to the MPD.

~~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-by-phase analysis ~~a periodic analysis~~ of affordable housing Citywide to ensure that housing is being provided at affordable prices. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis. ~~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.~~

~~129.~~133. Exact specifications for the housing described in paragraph 122 shall be included within the Development Agreement.

~~130.~~134. A distinct land use category shall be created to recognize potential light industrial uses or the "office" category shall be renamed to properly indicate the range of potential uses. Areas intended to have light industrial type uses shall be identified on the Land Use Map that is made part of the Development Agreement.

~~131.~~135. The high density residential (18-30 du/ac) supplemental design standards and guidelines (MPD application Appendix E) shall become part of the Development Agreement.

~~132.~~136. No more than 25% of non-multifamily housing shall consist of "front-loaded lots."

~~133.~~137. Homeowners Association conditions, covenants and restrictions (CCRs) or the Architectural Review Committee shall review, but shall not preclude, the use of green technologies such as solar panels.

~~134.~~138. Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement.

~~135.~~139. A FAR standard shall be established through the Development Agreement process.

140. No more than two floors of residential uses above ground floor commercial/office uses shall be allowed.

141. The orientation of public building sites and parks shall preserve and enhance views of Mt. Rainier and other views identified in the comprehensive plan. Consideration of the removal of the tailing piles in Parcel B shall be taken in order to enhance views of Mt. Rainier.

~~136.~~142. The Applicant's requests for reduced parking standards in the Mixed Use Town Center as identified at p. 13-4 of the MPD application should be granted. All 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.

[SENSITIVE AREAS/OPEN SPACE]

~~137.~~143. The use of sensitive areas including but not limited to wetlands, landslide and mine hazard areas and their associated buffers for development including trails, stormwater management, etc. shall be regulated by BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts as well as other required measures

shall be evaluated on a case-by-case basis at the time of implementing project application.

~~138.~~144. Areas shown as natural open space in the figure on Page 5-7 of the application are required to remain natural with the possibility for vegetation enhancement. Modifications to these areas may be approved by the City in its reasonable discretion, on a case-by-case basis, only if necessary for construction of required infrastructure such as roads, trails or stormwater facilities. Any areas disturbed pursuant to such approval shall be replanted with native plants. ~~No other land clearing shall be permitted besides trails and stormwater facilities.~~ Nothing in this condition shall allow grading or modifications in the sensitive areas and buffers, except as provided in the Sensitive Areas Ordinance.

~~139.~~145. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

~~140.~~146. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

~~141.~~147. Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

~~142.~~148. Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement.

149. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

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

~~143.~~

[ADMINISTRATION]

~~144.~~151. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. ~~—~~The required fiscal analysis shall ~~also~~ include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

a. Within five years, a new fiscal analysis shall be completed to determine the long-term fiscal impact to the City. If necessary, additional project conditions may be required.

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

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

~~145.~~152. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

~~146.~~153. The Development Agreement shall document a collaborative design/review/permitting process that allows City staff to participate in the conceptual stage of project planning in order to provide input on designs and choices that benefit the City as well as the applicant.

~~147.~~154. The Development Agreement shall specifically identify which rights and entitlements are vested with each level of permitting, including but not limited to the MPD Application approval, the Development Agreement approval, and Utility Permit approvals.

~~148.~~155. Reclassification of development parcels shall occur no more frequently than once per calendar year.

~~149.~~156. Proposed reclassification of development parcels located at the project perimeter to a higher density shall only occur through a Major Amendment to the MPD.

~~150.~~157. A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement.

~~151.~~158. The Development Agreement shall define the proposed phasing plan for the various matters (utility and street infrastructure, parks, transferred development rights, etc.) subject to phasing standards.

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

[MID POINT TRAFFIC ANALYSIS]

160~~57~~. a. At the point where building permits have been issued for 3,000 dwelling units at the Villages and Lawson Hills together, the City shall perform a single comprehensive review of the combined cumulative transportation impacts of the Villages MPD and the Lawson Hills MPD and shall issue findings, conclusions and a recommendation as provided below. This review shall determine whether the cumulative transportation impacts of the two projects are reasonably close to the environmental impacts identified and projected within the SEPA documents; whether such impacts have been adequately mitigated; and whether the projects comply with their respective MPD permit conditions regulating their cumulative transportation impacts.

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

c. When the midpoint review threshold identified in subparagraph a, above, has been reached, the City shall issue written notice to the Master Developer(s) to each submit within 90 days midpoint review documentation summarizing their respective project impacts and compliance with 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

consult with other affected jurisdictions as to the midpoint review results, shall issue the City's proposed findings, conclusions and recommendation, and at the close of the 90-day period, the City shall meet with the Master Developer(s) to review the proposed findings, conclusions and recommendation and identify what improvements the Master Developer(s) plans to construct. Within 14 days of the City meeting with the Master Developer(s), the City shall finalize its findings, conclusions and recommendation and shall provide mailed notice to all Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the midpoint review has been issued.

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

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

Review the adequacy of the City's 2025 Transportation Network' and EIS study intersections impacted by the Villages and Lawson Hills MPDs to meet the applicable service standards in effect at the time the EISs were prepared, including consideration of the following specific topics:

i. The accuracy of background PM peak hour traffic level 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

mitigation within either or both projects shall be revised if the City finds that the conditions or mitigation measures imposed pursuant to the City's standards in effect at the time of MPD approval have resulted in an unsatisfactory level of mitigation, either because the degree of mitigation is substantially inadequate or the quantity of impact demonstrated to be attributable to MPD development significantly exceeds levels predicted. New permit conditions and mitigations imposed for cumulative impacts through the midpoint review process shall comply with the following standards and limitations:

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

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

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

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

v. Conditions and mitigations applicable to a MPD shall be modified only to the extent that cumulative impacts are demonstrated to be the result of development of such project. If cumulative impacts have been demonstrated to exist but cannot be attributed solely to the MPDs, or allocated between the two MPDs, responsibility for mitigation shall be apportioned equitably in a pro-rata or lair 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

midpoint review analysis and any appeal proceedings shall be limited to analysis of such allegations.

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

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

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

DATED this 11 Day of May, 2010.

Phil Olbrechts
City of Black Diamond Hearing Examiner