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BEFORE THE HEARING EXAMINER FOR  
THE CITY OF BLACK DIAMOND

IN RE MASTER PLANNED  
DEVELOPMENT, LAWSON HILLS –  
**PLN09-0016**

IN RE MASTER PLANNED  
DEVELOPMENT, THE VILLAGES –  
**PLN09-0017**

CITY OF MAPLE VALLEY’S  
SECOND BRIEF ON COMPLIANCE  
WITH MPD CRITERIA

**I. IMPORTANT MPD APPROVAL CRITERIA**

Maple Valley has previously identified the MPD approval criteria that are important to its interests. Without entirely repeating the arguments made in our first brief on compliance and in Mr. Taraday’s oral argument before the Examiner, we will simply list those criteria here:

- BDMC 18.98.080.A.2 (“significant adverse environmental impacts are appropriately mitigated”)
- BDMC 18.98.080.A.10, which incorporates:
  - BDMC 18.98.010.F (“identify significant environmental impacts, and ensure appropriate mitigation”)
  - BDMC 18.98.010.I (“provide needed ... facilities in an orderly, fiscally responsible manner”)



1 provided substantial expert testimony about the traffic impacts and how to mitigate them during  
2 the MPD open record hearings.

3 The under disclosure of impacts upon Maple Valley stems in large measure from Black  
4 Diamond's failure to use an appropriate travel demand model to forecast the trip distribution  
5 for the two projects. During the hearing, there was much testimony about which model was  
6 more appropriate, the Maple Valley travel demand model or the PSRC travel demand model.  
7 As the Third Declaration of Natarajan Janarthanan makes clear, the Parametrix trip distribution  
8 (Figure 10 from the Transportation Technical Report) method appears not to have been  
9 generated by any model at all. In contrast, the Maple Valley model, which is detailed and has  
10 been validated for use in this area, reflects a distribution pattern for the projects that has a major  
11 negative impact on Maple Valley's streets.  
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#### 14 **IV. SUBSTANTIVE SEPA AUTHORITY**

15 In addition to the conditioning authority provided by the MPD code provisions, SEPA  
16 would also provide the Hearing Examiner with a basis for recommending additional conditions  
17 beyond what is identified in the staff reports. Maple Valley has requested traffic mitigation  
18 measures for impacts to Maple Valley's roadway network that go beyond those identified in the  
19 staff reports and FEIS. But WAC 197-11-655(3)(b) provides that "...mitigation measures  
20 adopted need not be identical to those discussed in the environmental document."  
21

22 Furthermore, SEPA substantive authority allows mitigation that is "related to" significant  
23 adverse environmental impacts identified in an environmental document on the proposal. 197-  
24 11-660(1)(b). Under both WAC provisions cited above, Maple Valley's request for mitigation,  
25

1 based on its expert’s analysis, is justified under SEPA substantive authority as well as under  
2 Black Diamond’s MPD criteria for approval.

3  
4 **V. MAPLE VALLEY’S REQUESTED CONDITIONS OF APPROVAL**

5 Maple Valley requests the following conditions of approval:

- 6 a. That Exhibit 6-1 (the list of staff proposed mitigation measures) be amended to  
7 include all of the projects on listed on Exhibit 7 to the March 12, 2010  
8 Declaration of Natarajan “Jana” Janarthanan, Ph.D, PTP. This list should  
9 include both the roadway projects and the intersection projects. The list should  
10 include not only those in the column title “Improvements to be done by The  
11 Villages and Lawson Hills 100%”, but it should also require the developer to  
12 make the pro-rata share contributions identified on Exhibit 7 as well.
- 13 b. That the projects listed above be timed according to a proactive monitoring plan  
14 that allows for transportation improvements to be constructed before existing  
15 facilities fall below adopted levels of service standards. To ensure that the  
16 projects are “shovel ready” at the time that the monitoring plan trigger-point is  
17 met, the Master Developer should be required to fund right-of-way acquisition  
18 and design/engineering expenses upon MPD approval. Any use of a monitoring  
19 plan to time projects in Maple Valley should, of course, be tied to Maple  
20 Valley’s adopted levels of service.

21 **VI. MAPLE VALLEY’S RESPONSES TO CONDITIONS REQUESTED BY THE**  
22 **APPLICANT**

- 23 a. Mid-Point Review: As we stated in our first brief, this project could take thirty  
24 years to build out. So, Maple Valley supports some type of periodic  
25 environmental review process would essentially re-open SEPA review on the

1 MPD permit and corresponding development agreement (probably in the form  
2 of a supplemental EIS) as the project develops. The Villages and Lawson Hills,  
3 however, are too large for that additional environmental review to take place at  
4 the “mid-point,” after more than 3000 homes have been built. Instead, Maple  
5 Valley would propose that the review take place at the following thresholds:  
6 1500 homes built, 3000 homes built, 4500 homes built. Also, the “mid-point”  
7 review should not be used as an excuse to take a “wait and see” approach to  
8 conditioning these projects, especially where, as here, there is ample support in  
9 the record to impose Maple Valley’s requested conditions now. The purpose of  
10 a mid-point review is to provide a safety net to catch an impact that is  
11 completely unforeseeable at this point in time. Maple Valley does not support  
12 the Applicant’s mid-point review requested condition as proposed.

- 13 b. Proportionate Share Contributions: Maple Valley rejects the notion that these  
14 developments should be allowed to make intersections fail while only paying a  
15 “proportionate share” of the cost to fix that failure. Maple Valley has  
16 demonstrated through its traffic consultant, that The Villages and Lawson Hills  
17 will cause major level of service changes at certain identified intersections. The  
18 Master Developer should be entirely responsible for fixing the problems that it  
19 creates. These are not situations where there is an existing deficiency. These  
20 are intersections that would functioning within the adopted level of service for  
21 the 2025 baseline and only fail as a result of the projects. Proportionate share  
22 contributions have their place, but only for projects where the failure cannot be  
23 attributed solely to the projects at issue. See, for example, Exhibit 7 to  
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Janarthanan's March 12, 2010 declaration, where several proportionate share projects are identified.

DATED this 2<sup>nd</sup> day of April, 2010.

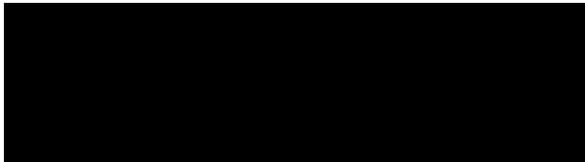
CITY OF MAPLE VALLEY



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4810-3941-1973, v. 1