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 BRIEF ON COMPLIANCE WITH MPD PERMIT DECISION CRITERIA

I. Introduction

These two proposed MPDs (The Villages and Lawson Hills) will create nothing less than a new city in SE King County, consisting of an additional 15,000 residents, and over 1 million square feet of commercial development.[1] The addition of 15,000 residents in Black Diamond, more than tripling the current population, represents the biggest master planned development constructed in the recent history of King County, in terms of anticipated population growth.[2]

The 6,050 dwelling units to be contained in The Villages and Lawson Hills are more than the Snoqualmie Ridge I and II developments (5,466 dwelling units), more than the three combined Redmond Ridge developments (4,550 dwelling units), and more than the combined unit count of the Issaquah Highlands and Talus developments (4,985 dwelling units). Placed in

[1] See The Villages Master Planned Development, Final Environmental Impact Statement, Chapter 5, Indirect and Cumulative Effects, Exhibit 5-2, Total Cumulative MPD Land Use by Alternative at Year 2025.

[2] See Appendix A, Declaration of Matt Torpey, with attached Exhibit 1, table of recently approved urban planned developments within King County.

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this context, one begins to understand the extent of the new infrastructure that will be needed to serve a new city.[3]

When the time comes to act upon the MPD permits, one can expect the Black Diamond City Council to rely heavily upon the Examiner's recommendation and his expertise in land use matters. Furthermore, it does not appear that the Examiner will play a role during the development agreement hearings. Therefore, the Examiner has a tremendous responsibility in these MPD proceedings to accurately assess the evidence in the record, and recommend conditions of approval that ensure not only compliance with Black Diamond's municipal code requirements for Master Planned Development approval, but also to ensure that all significant adverse environmental impacts have been appropriately mitigated.

Although Black Diamond incorporated in 1959, its current population is only 4,120 residents.[4] In its 50 years of incorporation, the City's population has grown very little. In fact, the growth target rates for housing set by King County in 2009 establish a target rate of 1,900 households through the year 2031.[5] If the 6,050 housing units proposed in these two MPDs are permitted, Black Diamond's housing population will exceed the regional growth target rates for housing by 218%. In other words, these developments more than triple Black Diamond's regional growth targets without accounting for any other residential development in Black Diamond.

The Black Diamond Municipal Code allows an MPD permit to vest for 15 years, with the option for an applicant to request a five-year extension. BDMC 18.98.195. Considering the tremendous number of homes to be built, a five-year extension should be expected here, which likely means a 20-year vesting period for the MPD permit. In addition, once an MPD permit is

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[3] Issaquah Highlands (3,250 dwelling units), for example, needed a new interchange at I-90 and Sunset Way and corresponding flyover ramp to serve Issaquah Highlands. The project was completed in August 2003 and cost $116 million dollars.

[4] See www.ci.blackdiamond.wa.us, "Black Diamond History."

[5] See Appendix B, King County Ordinance 16747, Motion 09-2, Approved February 4, 2010.

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granted, the master developer can then submit subdivision applications. Any preliminary plats approved toward the end of an MPD's 20 year vesting period would be vested under the MPD for another ten years.[6] Depending upon the timing of submission of subdivision applications under the MPD permits, the build out scenario for these MPDs could be as long as 30 years.[7]

As the newly adopted regional housing targets indicate, regional planning efforts for growth within King County *do not contemplate a new city of 15,000 residents in Southeast King County*. Because regional planning does not take this level of growth into consideration, there is not likely to be regional funding for infrastructure needed to serve this growth. Hence, under the MPD decision criteria, there is a high burden on the applicant to prove that the infrastructure necessary to serve that growth can be and will be provided. Because some of the critical infrastructure necessary to serve these developments will be needed in other jurisdictions – not just in Black Diamond - it is incumbent upon the Examiner to recommend conditions that mitigate the impacts of this level of growth.

II. Master Planned Development Approval Criteria

BDMC 18.98.080, Permit Approval – Conditions of approval provides, "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."[8] *Emphasis supplied.* The "shall not be approved unless" language is extremely important because it places the burden of proof upon the applicant. The applicant must demonstrate compliance with

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[6] RCW 58.17.140 states that "A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval." RCW 58.17.170 states that "Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing." We note that SSB 6544 would extend these two five year periods to seven years, but these extended time periods are supposed to sunset in 2014 and should not affect the overall vesting period of the MPD.

[7] Under the existing law, one can see how the build out period could easily occur over a 30 year period: MPD approval (15 years) plus MPD extension (5 years) plus 5 years to finalize a preliminary plan plus 5 years of land use validity under the final plat.

[8] It is difficult to determine how use of the word "or" in this code should be interpreted or utilized in the context of the grant of approval of an MPD permit. This code provision is ambiguous at best.

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fourteen criteria for an MPD permit to be approved, including certain of the purpose criteria in BDMC 18.98.010,[9] and the public benefit objectives criteria in BDMC 18.98.020.[10]

Maple Valley asserts that the applicant has failed to show that the proposed conditions of approval of these MPDs will appropriately mitigate their traffic impacts and result in the timely construction of infrastructure necessary to serve the growth from these MPDs. Maple Valley further asserts that the applicant cannot satisfy the fourteen MPD approval criteria set forth in BDMC 18.98.080.A without significantly expanding upon the proposed traffic mitigation measures for *each* MPD to include the mitigation measures proposed by Maple Valley. Finally, Maple Valley urges the Examiner to recommend conditions of approval on a basis that would make the two MPDs jointly and severally responsible for certain conditions of approval. The proposed conditions for each MPD should fully and adequately mitigate impacts for a particular MPD just in case, for whatever reason, only one of the MPDs gets built. This must be done, of course, while still being mindful of their cumulative impacts.

1. Significant Adverse Environmental Impacts are required to be appropriately mitigated.

One of the criteria for approval of an MPD is found in BDMC 18.98.080.A.2 which provides, "Significant adverse environmental impacts are appropriately mitigated." This section does not further specify what constitutes a "significant adverse environmental impact."

It is important to note that the criterion set forth in BDMC 18.98.080.A.2 operate independently from any determination of the impacts or recommended mitigation that might result from the SEPA process. The discussion of this criterion in the staff report for each MPD simply references the FEIS for each MPD and concludes that significant, adverse,

[9] BDMC 18.98.080.A.10
[10] Id.

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environmental impacts were disclosed and can be appropriately mitigated.[11] The Examiner's inquiry must go further, as required by BDMC 18.98.080.A.2.

In other words, for the purposes of MPD compliance, the Hearing Examiner must consider evidence of significant, adverse, environmental impacts whether or not they are identified in any SEPA documents submitted for an MPD application, including an FEIS. Maple Valley also notes that the burden of proof on the MPD decision rests on the applicant. So, even if the Examiner determines that the FEIS for each MPD is adequate for the purposes of SEPA, such a decision would not and should not preclude the Examiner from finding that, for MPD compliance purposes, there are significant adverse environmental impacts that need to be mitigated beyond whatever mitigation might have been proposed in the FEIS. The Hearing Examiner is *not* restricted from considering significant, adverse environmental impacts that were not identified in the FEIS for each of the MPDs under review.

To determine compliance with BDMC 18.98.020.A.2, the Hearing Examiner *must* consider evidence of other significant adverse environmental impacts that has been presented to him during the SEPA and MPD hearings.

2. The MPD must meet or exceed the public purpose objectives of the Black Diamond Municipal Code by:

a. providing needed facilities in an orderly, fiscally responsible manner; and

b. identifying significant environmental impacts and ensuring appropriate mitigation.

The MPD code sets forth a series of purpose statements in BDMC 18.98.010. The purpose statements are incorporated into the criteria for permit approval found in BDMC 18.98.080. BDMC 18.98.010(I) states that one purpose of an MPD is to, "Provide needed services and

[11] The staff report for The Villages indicated that significant, adverse environmental impacts could be appropriately mitigated, and were identified in the FEIS for that application. Pg. 19, "18.98.080 MPD Permit Approval – Conditions of approval" Section 2. The staff report for Lawson Hills reached the same conclusion. Pg. 18, "18.98.080 MPD Permit Approval – Conditions of approval" Section 2.

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facilities in an orderly, fiscally responsible manner." BDMC 18.98.010(F) states that another purpose of an MPD is to, "Identify significant environmental impacts and ensure appropriate mitigation." BDMC 18.98.010.F. It is a criterion of approval for the MPD to *meet or exceed all of the MPD purpose statements* of 18.98.010, subsections B through M. BDMC 18.98.080.A10.

3. The MPD must meet or exceed all of the public benefit objectives of the Black Diamond Municipal Code by:
a. ensuring timely provision of all necessary infrastructure equal to or exceeding the more stringent of either existing or adopted levels of service as the MPD develops.

The MPD code also sets forth a set of public benefit objectives in BDMC 18.98.020. BDMC 18.98.080.A.10 incorporates the public benefit objectives into the approval criteria of BDMC 18.98.080. In fact, BDMC 18.98.080.A.10 provides that it is a criterion of approval for the MPD to *meet or exceed all of the public benefit objectives* of 18.98.020. The purpose of the public benefit objectives and the MPD permit process "is to provide public benefits not typically available through conventional development." BDMC 18.98.020. One of these public benefit objectives is, "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…"[12]

III. The Traffic Impacts Within Maple Valley from Lawson Hills and The Villages Are Significant Adverse Environmental Impacts Which Must Be Mitigated as a Condition of Approval of Each Respective Master Planned Development

Because Maple Valley shares a border and a highway of statewide significance (SR 169) with Black Diamond, the impact of traffic on Maple Valley streets from development of these two MPDs is of great concern to Maple Valley's citizens and elected officials. Appendix C is a

[12] BDMC 18.98.020.G.

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map that shows the borders of both cities, and the major road networks connecting the two cities.

As shown in Appendix C, the major north-south thoroughfare connecting Black Diamond with Maple Valley is State Route 169 ("SR 169"). SR 169 is a 25.26 mile Highway of Statewide Significance connecting Enumclaw to Renton, and Interstate 405. A 2007 corridor study by Washington Department of Transportation ("WSDOT")[13] identifies necessary improvements to SR 169.[14] The improvements in the Maple Valley segment of SR 169 were estimated to cost $92 million; the improvements in the Black Diamond segment of SR 169 were estimated to cost $32 million.[15] WSDOT currently has no plans to fund these improvements identified in this corridor study.[16] This means that improvements to the corridor will need to be funded through the efforts of the local governments like the cities of Maple Valley and Black Diamond, and, in situations like this one, by developers whose projects will impact this corridor.

As set forth in Section II., above, the Black Diamond Municipal Code provides that significant adverse environmental impacts must be appropriately mitigated as a condition of approval of an MPD.[17] Although the Black Diamond Municipal Code does not expressly address this, traffic impacts *outside* the boundaries of incorporated Black Diamond must be appropriately mitigated for MPD approval, as well as traffic impacts *inside* the incorporated boundaries of Black Diamond. WAC 197-11-060(4)(b) provides, "In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those

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[13] See www.wsdot.wa.gov/Projects/SR169/RDP/Report.htm. These estimates were made in the year 2005, and is a planning level estimate only.

[14] Id.

[15] Id.

[16] FEIS appeal hearings, March 11, 2010, testimony of Ramin Pazooki on direct examination by Bob Sterbank.

[17] Maple Valley notes that the word "adverse" does not appear in BDMC 18.98.010.F; whereas it is used in 18.98.080.A.2. BDMC 18.98.080.A.1 provides that the most stringent requirement applies in the event of conflict, therefore, BDMC 18.98.080.A.2 should be controlling, and the criterion should be "significant, *adverse*, environmental impact."

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aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also)."

Maple Valley appreciates the fact that Black Diamond's staff has included Maple Valley within the area that it studied for possible mitigation and that it has addressed *certain* mitigation measures necessary in Maple Valley. But due to the fact that an inappropriate traffic model was used by Parametrix to assess the projects' traffic impacts, the proposed mitigation measures are not adequate. Furthermore, Maple Valley urges the Examiner to not defer the determination of mitigation measures to a later stage in the development process. BDMC 18.98.080.A.2 requires that an MPD permit not be approved unless significant adverse environmental impacts are appropriately mitigated. While a "monitoring program,"[18] could be used to help determine the *timing* of certain mitigation measures, *the conditions themselves should be recommended now.*

Maple Valley retained Dr. Natarajan Janarthanan to properly analyze the impacts of these projects upon Maple Valley's transportation network. Dr. Janarthanan engaged in a detailed analysis of those impacts using Maple Valley's validated travel demand model. Having properly identified the impacts, he then developed mitigation measures that would appropriately mitigate those impacts. Tables that outline the mitigation measures needed and maps that depict their locations are attached to Dr. Janarthanan's Declaration and this brief.[19]

The MPD permit should not be recommended for approval until *all* significant, adverse environmental impacts have been identified and appropriately conditioned *as part of the MPD permit process*. Maple Valley has established the nature of the significant, adverse, environmental impacts, as part of the MPD public hearings. The conditions necessary to

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[18] See Staff Report, The Villages Master Planned Development, File No. PLN09-0017, Section VIII., Transportation, P. 49, recommendation Nos., 11, 12, 13, 16, 21. See Staff Report, Lawson Hills Master Planned Development, File No. PLN09-0016, Section VIII, Transportation. P. 45, recommendation Nos. 2, 3, 4, 9, 11.

[19] See Appendix D, Exhibits 4 through 9.

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mitigate these traffic impacts within Maple Valley must be fully addressed *now*. BDMC 18.98.080.A.2 requires this. There can be little doubt that Dr. Janarthanan's analysis is more accurate than the Parametrix analysis at least with respect to impacts upon Maple Valley. John Perlic, expert witness for the applicants for each MPD essentially conceded this point in his cross-examination during the FEIS Appeal Hearings.[20] Similarly, because the mitigation analysis flows from the impact analysis, the Examiner should condition each MPD using Dr. Janarthanan's proposed mitigation measures over the Parametrix mitigation measures.

IV. The Traffic Impacts of Lawson Hills and The Villages on Maple Valley Are Not Appropriately Mitigated

The staff reports for Lawson Hills and The Villages identify several traffic related mitigation measures located in jurisdictions other than Black Diamond that are recommend as conditions for these two MPDs.[21] The conditions recommended by Black Diamond staff in each respective MPD staff report *are the same* in regards to traffic mitigation measures, and are identified as "Intersection Improvements" within each staff report.[22]

Maple Valley has determined that traffic impacts from Lawson Hills[23] and The Villages[24] on highways and arterials in Maple Valley are significant and adverse.[25] Maple Valley has identified a list of projects that will need to be funded entirely by these projects' master developer because the need for the projects on that list is 100% attributable to the impacts from

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[20] March 11, 2009 FEIS Appeal Hearings, on cross examination by Attorney David Bricklin.

[21] The staff report for The Villages indicated that significant, adverse environmental impacts could be appropriately mitigated, and were identified in the FEIS for that application. Pg. 19, "18.98.080 MPD Permit Approval – Conditions of approval" Section 2; with "Intersection Improvements" identified on PP. 49-50. The staff report for Lawson Hills reached the same conclusion. Pg. 18, "18.98.080 MPD Permit Approval – Conditions of approval" Section 2; with "Intersection Improvements" identified on PP. 45-46.

[22] Id.

[23] Lawson Hills will have 1,250 residential units, and 390,000 square feet of retail, commercial, office and light industrial development. Staff Report, Lawson Hills Master Planned Development, File No. PLN09-0016, Pg. 3, Findings of Fact, Section 1.

[24] The Villages will have 4,800 dwelling units and 775,000 square feet of retail, commercial, office, and light industrial development. Staff Report, The Villages Master Planned Development, File No. PLN09-0017, Pg. 3, Findings of Fact, Section 1.

[25] See Appendix D, Exhibits 1 through 9.

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these developments.[26] Maple Valley has also identified a list of projects that will need to be funded proportionately by the projects' master developer in the form of pro rata share contributions because the need for the projects on that list is attributable in part to impacts directly resulting from these developments.[27]

Specifically, the significant, adverse environmental impacts on Maple Valley roadways are a combination of an increased number of PM Peak Hour trips that is significantly higher than what is indicated by the technical reports submitted by Parametrix;[28] and the directionality of traffic shown by Parametrix during the PM Peak Hour is significantly underestimated for southbound traffic on SR 169.[29] These discrepancies should discredit the proposed mitigation measures that flow from the Parametrix analyses, which in turn are incorporated into the recommendations for each MPD by Black Diamond staff. The staff-recommended mitigation measures do not appropriately mitigate the impacts of these projects. Maple Valley's proposed mitigations present the appropriate mitigation measures needed to support these two MPD projects.

1. Parametrix's use of the PSRC travel demand model to forecast traffic impacts on Maple Valley roadways is inappropriate for project specific impacts, is not validated for project specific impacts, and does not accurately assess impacts on the City of Maple Valley.

As reflected in the written testimony of Dr. Natarajan Janarthanan,[30] the PSRC travel demand model is designed for regional level modeling – *not* project specific modeling,

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[26] See Appendix D, Exhibits 7, 8, 9.

[27] Id.

[28] See Lawson Hills Transportation Technical Report, Prepared by Parametrix, Appendix B, Figures 17a and 17b, Lawson Hills Master Planned Development, Final Environmental Impact Statement. See also The Villages Transportation Technical Report, Prepared by Parametrix, Appendix B, Figure 17a and 17b, The Villages Master Planned Development, Final Environmental Impact Statement. Compare to Appendix D, Questions/Answers 36 through 43.

[29] Id. See also Appendix D, Exhibit 1, Questions/Answers 36 through 43 and 88 through 91.

[30] See Appendix D, Questions 28 through 72.

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especially in the Maple Valley / Black Diamond area where the regional PSRC roadway network has not been modeled in any detail. Furthermore, the PSRC travel demand model is not validated for use in analyzing project specific impacts in either Black Diamond or Maple Valley. Therefore, in the expert opinion of Dr. Janarthanan, and due to the foregoing, the PSRC travel demand model should not be used to model project-level traffic impacts or as a basis for determining the mitigation of those impacts.

2. Parametrix's reliance on Maple Valley's TIP rather than the Maple Valley Comprehensive Plan results in erroneous data, and inadequate mitigation conditions.

When Parametrix analyzed traffic impacts in Black Diamond, it utilized Black Diamond's Comprehensive Plan (which incorporates long-term projects), *and* its Transportation Improvement Program ("TIP") (which incorporates short-term projects, over a 6 year period). Considering the fifteen to thirty year build out period, Parametrix was right to assume that both sets of projects as identified in Black Diamond's Comprehensive Plan and TIP would become part of the existing roadway network during build out. However, when Parametrix analyzed traffic impacts in Maple Valley, however, it did *not* utilize the Maple Valley Comprehensive Plan. Instead, Parametrix only used Maple Valley's TIP (which incorporates only those projects that are expected to be built within the next six years).[31] In order to accurately forecast development impacts 15 to 30 years out[32] the travel demand model used by Parametrix should have utilized a street network that assumes the construction of Maple Valley's Comprehensive Plan improvements, *like it did for impacts within the City of Black Diamond.* This is especially true since *both* the Maple Valley and Black Diamond Comprehensive Plans use the year 2025 as a "planning horizon."

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[31] See Lawson Hills Master Planned Development Final Environmental Impact Statement, Appendix B, Section 3.1. See also The Villages Master Planned Development Final Environmental Impact Statement, Appendix B, Section 3.1.
[32] See footnotes 6 and 7.

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When making assumptions about the future roadway network, for the purposes of analyzing impacts on that network, there is no basis for Parametrix to assume that over the fifteen to thirty year project build out period, Black Diamond would build fifteen years of transportation projects while Maple Valley would only build six. The lack of an "apples to apples" analysis by Parametrix resulted in a list of proposed mitigation measures that is inadequate.

3. Necessary Traffic Mitigation Measures Within Maple Valley

As explained above, Black Diamond's Comprehensive Plan/Transportation Element ("CP/TE") has a planning horizon to the year 2025 – as does Maple Valley's CP/TE.[33] By assuming that projects identified in the Maple Valley CP/TE have been built, Maple Valley's travel demand model can forecast traffic impacts from these projects with much greater accuracy.

In contrast to the Parametrix analyses, Dr. Janarthanan used the recently validated Maple Valley traffic demand model which is more accurate in the Maple Valley / Black Diamond area than the unvalidated regional PSRC demand model used by Parametrix.[34] John Perlic of Parametrix conceded this point in his testimony on the FEIS adequacy appeal hearings.[35]

Dr. Janarthanan's analysis shows 310 more PM Peak Hour trips on SR 169 north of the Four Corners area; 110 more PM Peak Hour trips on SR 169 just north of Witte Road; 325 more PM Peak Hour trips on SR 169 between SE Wax Road and SE 231st Street, and 610 more PM Peak Hour trips on SR 169 south of SE 271st Place.[36]

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[33] See Appendix E, City of Maple Valley 2005 Transportation Plan, "Travel Forecasting and Alternatives Analysis," beginning P. 14.
[34] See Appendix D, Exhibit 1, Questions/Answers 31 through 56.
[35] March 11, 2009 FEIS Appeal Hearings, on cross examination by Attorney David Bricklin.
[36] See Appendix D, Exhibit 1, Questions/Answers 36 through 43 and Exhibit 2.

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The extent of the increase in these PM Peak Hour trips as analyzed by Dr. Janarthanan demonstrate the unreliability of using the PSRC model for the purposes of analyzing project specific development impacts and proposing appropriate mitigation. The MPD approval criteria as outlined in Section II., above, requires the Hearing Examiner to recommend mitigation measures that appropriately mitigate the impacts. As Dr. Janarthanan explained, the staff recommended mitigation for transportation does not appropriately mitigate the impacts. The conditions of approval should include a combination of: construction of certain improvements at the sole cost of the master developer for each MPD; and contributions for other improvements based on a pro rata contribution. The mitigation measures that are 100% attributable to these two MPDs as well as the pro rata share contribution percentages for capacity improvements are identified by Dr. Janarthanan.[37]

V. Requested Traffic Mitigation measures Within Maple Valley

Black Diamond has structured the hearings on these two MPDs as separate hearings.[38] However, Black Diamond staff has combined the traffic mitigation measures as presented in each staff report for each MPD, and has not treated each MPD as a separate "development" for purposes of proposing traffic mitigation measures.[39] Maple Valley has gone to the effort to separately identify traffic impacts for *each* MPD and has identified impacts 100% attributable to *each* MPD, as well as impacts wherein a proportionate share contribution should be paid by the master developer. Dr. Janarthanan has also analyzed the *combined* traffic impacts from Lawson Hills and The Villages.

Appendix D, Exhibit 7 provides a summary of Level of Service ("LOS") and delay at concurrency intersections, for the *combined* impacts of both MPDs. Appendix D, Exhibit 7 also

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[37] See Appendix D, Exhibit 1, Questions/Answers 73 through 91 and Exhibits 4, 9.
[38] See Appendix F, Notice of Hearing for Lawson Hills; and Appendix G, Notice of Hearing for The Villages.
[39] See footnote 22.

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provides a table of proposed mitigation measures for the *combined* MPDs, distinguishing between pro rata share contributions and 100% mitigation measures for impacts caused by the *combined* traffic impacts of both MPDs.

If the Hearing Examiner is going to condition these MPDs as if both were one development project, then Maple Valley requests the Hearing Examiner to condition each MPD permit to be jointly and severally responsible for all the listed pro rata share contributions and all the 100% mitigation measures for impacts caused by the *combined* traffic impacts from Lawson Hills and the Villages as shown in Table 1 and Figure 1 (Appendix D, Exhibit 7) in order to satisfy the requirements of BDMC 18.98.080.A.2; 18.98.010.F .010.G and .010.I.

However, if the Hearing Examiner is truly considering *each* MPD application on its own merits, and will not be conditioning each MPD using the combined mitigation approach as recommended by Black Diamond staff, then Maple Valley requests the Hearing Examiner to condition *each* MPD to be jointly and severally responsible in the following manner:

(a) Condition the Lawson Hills MPD permit to require all the listed pro rata share contributions and the 100% mitigation measures for impacts caused by the Lawson Hills MPD as shown in Appendix D, Exhibit 9 in order to satisfy the requirements of BDMC 18.98.080.A.2; 18.98.010.F, .010.G and .010.I; and

(b) Condition The Villages MPD permit to require all the listed pro rata share contributions and the 100% mitigation measures for impacts caused by The Villages MPD as shown in Appendix D, Exhibit 8 in order to satisfy the requirements of BDMC 18.98.080.A.2; 18.98.010.F, .010.G and .010.I.

When imposing conditions on each MPD whether considering each MPD as an individual project or considering the MPDs as one combined project, the Hearing Examiner must consider the requirements of BDMC 18.98.020.G which requires that timely provision

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(e.g. construction of facilities or payment of a pro rata share of capacity usage) of facilities occur that meets or exceeds adopted levels of service as the MPD develops.

VI. CONCLUSION

In considering an MPD application, the Examiner "shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.08.080."[40] Maple Valley is not opposed to growth in Black Diamond per se, however, a new city of 15,000 people is anticipated from the full build out of these two master planned developments. The substantial evidence submitted by Maple Valley shows that the travel demand model utilized by Parametrix was: inappropriate to evaluate project specific growth in Black Diamond and Maple Valley; was not validated against existing conditions; and the resulting analyses for each MPD led to a severe underestimation of trip counts and inaccurate directionality of travel on SR 169.

All parties agree that these projects create significant, adverse, environmental impacts that must be mitigated before an MPD permit can be issued. The differences in the traffic analyses stems from the use of different models: one (the Maple Valley model) which has proven to be accurate for use in Maple Valley; and one (the PSRC model) which has not been similarly proven. Maple Valley respectfully requests the Hearing Examiner to condition Lawson Hills and The Villages as set forth in Section V. of this brief, in order to fully mitigate the traffic impacts of these master planned developments.

DATED this ____ day of March, 2010.

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[40] BDMC 18.98.060.5.

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