

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE CITY COUNCIL FOR  
THE CITY OF BLACK DIAMOND

IN RE: MASTER PLANNED  
DEVELOPMENT APPLICATIONS FOR  
THE VILLAGES, PLN09-0017 AND  
LAWSON HILLS, PLN09-0016

No. PLN09-0017, PLN09-0016

MAPLE VALLEY BRIEF FOR CLOSED  
RECORD HEARING BEFORE THE  
BLACK DIAMOND CITY COUNCIL

**I. INTRODUCTION**

The City of Maple Valley (hereinafter "Maple Valley") hereby presents to the Black Diamond City Council ("City Council") this brief on the Recommendation<sup>1</sup> from the Hearing Examiner for Black Diamond ("Examiner") relating to the above referenced applications<sup>2</sup> for Lawson Hills Master Planned Development (MPD) and The Villages MPD (collectively referred to herein as "MPDs"). Maple Valley requests that the Black Diamond City Council take one of the following actions: 1) approve the MPDs subject to

<sup>1</sup> All references herein to the Examiner's Recommendation will be solely to the Recommendation for The Villages MPD, PLN09-0017 because the Examiner incorporated the Recommendations pertaining to traffic issues for The Villages into the Findings of Fact, Conclusions of Law, and Recommendations for Lawson Hills MPD, PLN09-0016. It is Maple Valley's intent that all references and argument herein to the Examiner's Recommendation incorporate the Examiner's Recommendation for Lawson Hills MPD, although the numbering of those recommendations does not exactly match the numbering of the recommendations as found in The Villages Recommendation.

<sup>2</sup> The Applicant is seeking MPD permit approval. The proceedings are for purposes of closed record hearings before the City Council on the Black Diamond staff report and recommendations to the Examiner on the MPD applications. Although the Examiner's decision on the adequacy of the Final Environmental Impact Statements (FEISs) is a decision appealable to Superior Court and not a part of the closed record hearings before the Council, the Council will see argument in the transcripts regarding the FEIS appeals and testimony on the MPD open record hearings before the Examiner because the FEIS appeals were consolidated with the open record hearings on the MPD permits. The FEIS appeal hearings were scheduled at different times than the MPD open record hearings and the FEIS appeal hearings were limited to testimony only by the appellants. The City of Maple Valley ("Maple Valley") was denied party status as an FEIS appellant by the Examiner. However, Maple Valley participated in the open record hearings before the Examiner on the MPD permit applications.

MAPLE VALLEY ARGUMENT  
AND BRIEFING, BLACK DIAMOND  
CLOSED RECORD HEARINGS FOR LAWSON HILLS  
AND THE VILLAGES MPD APPLICATIONS - 1

CITY OF MAPLE VALLEY  
CHRISTY A. TODD, CITY ATTORNEY  
22017 SE WAX RD, SUITE 200  
PO BOX 320  
MAPLE VALLEY, WASHINGTON 98038  
PHONE: (425) 413-8800  
FAX: (425) 413-4282

1 Maple Valley's proposed conditions; or 2) remand the applications to the Examiner for  
2 further proceedings with specific instructions contained in Maple Valley's proposed order  
3 on remand. The brief contains the following sections:

|    |   |         |
|----|---|---------|
| 4  | I. Introduction   | Page 1  |
| 5  | II. Facts in Evidence   | Page 2  |
| 6  | III. Applicable Law   | Page 8  |
| 7  | IV. Reasons to Impose Maple Valley's Proposed Conditions      | Page 12 |
| 8  | V. Reasons not to Impose the Examiner's Proposed Conditions   | Page 13 |
| 9  | VI. Reasons not to Impose the Applicant's Proposed Conditions | Page 18 |
| 10 | VII. Reasons to Remand the Proceedings to the Examiner        | Page 22 |
| 11 | VIII. Conclusion  | Page 23 |

12  
13 **II. FACTS IN EVIDENCE**

14 **a. Summary of Expert Testimony from Dr. Janarthanan**

15 Maple Valley submitted expert testimony regarding the MPD traffic impacts, and  
16 requested specific mitigation measures for those impacts through its expert, Dr.  
17 Janarthanan. Maple Valley analyzed the impacts for the MPDs combined and for each  
18 MPD individually. Because the MPD open record hearing procedures only allowed ten  
19 minutes per speaker, most of Dr. Janarthanan's testimony was provided by written  
20 declaration. Dr. Janarthanan provided three declarations. The first declaration is dated  
21 March 12, 2010 (Exhibit 15), the second declaration is dated March 17, 2010 (Exhibit 67),  
22 and the third declaration dated April 2, 2010 (Exhibit 211). These declarations provided a  
23 much more comprehensive analysis of the traffic impacts than the witness could have  
24 provided in ten minutes of oral testimony.

1 Exhibit 15 contains nine exhibits. The first exhibit contains thirty-six pages of  
2 testimony written in a question and answer format. This testimony is organized around the  
3 following topic areas:

- 4 Questions 1 – 5: professional qualifications and background information;
- 5 Questions 6 – 27: traffic engineering basics;
- 6 Questions 28 – 56: critique of the PSRC demand model as applied here;
- 7 Questions 57 – 62: critique of the Black Diamond model;
- 8 Questions 63 – 67: critique of inaccurate background traffic growth rate;
- 9 Questions 68 – 72: application of the Maple Valley demand model;
- 10 Questions 73 – 93: mitigation issues.

11 Exhibit 15 also includes eight graphical exhibits, numbered 2 through 9, which  
12 show the locations of various mitigation measures, tables that describe the MPD impacts on  
13 level of service at key Maple Valley intersections, and tables that describe various  
14 mitigations measures, including a description of which projects should be paid for solely by  
15 the applicants and which projects should be paid for partially by the applicants, including  
16 an appropriate percentage in each case.

17 Dr. Janarthanan's second declaration, Exhibit 67, responded to some testimony from  
18 Parametrix's expert, Mr. Perlic, and further elaborated on the advantages and disadvantages  
19 of two travel demand models: the PSRC model and the Maple Valley model. The PSRC  
20 model was utilized by Mr. Perlic for purposes of analyzing traffic mitigations outside Black  
21 Diamond.

22 Dr. Janarthanan's third declaration, Exhibit 211, included seven more exhibits,  
23 identified as A through G. Exhibit A contained an additional twelve pages of written  
24 testimony in question and answer format. This testimony covered the following subject  
25 areas:

1 Questions 1 – 19: Comparing the Trip Distribution Methods;

2 Questions 20 – 24: Peak Hour Factor;

3 Questions 25 – 30: AM Peak Hour Ignored in Maple Valley;

4 Questions 31 – 35: Explanation of SimTraffic Videos.

5 Exhibits B through F to the third declaration all relate to Dr. Janarthana's trip  
6 distribution testimony in Questions 1 – 19. Exhibit G to the third declaration is a DVD that  
7 contains fifteen traffic simulation videos

8 **b. Uncontested Facts.**

9 Trip generation estimates are provided in Table 10, page 3-8 of The Villages  
10 Transportation Technical Report, which is part of the FEIS. This table states that the MPDs  
11 will generate 7,202 net new trips in the PM peak hour. Dr. Janarthanan used this number as  
12 a starting point for his analysis and Maple Valley does not take issue with it.

13 **c. Contested Facts.**

14 Maple Valley does take issue with several other aspects of the traffic analysis that  
15 was done for the MPDs. These areas are discussed below.

16 **Differences in Trip Distribution.** The FEIS used the PSRC model to estimate the  
17 trip distribution from the two MPDs. Dr. Janarthanan testified that it was inappropriate to  
18 use the PSRC model in this way because the PSRC model was not detailed enough to be  
19 accurate in this part of southeast King County and had not been validated for use in this part  
20 of King County. Validation means that the model is capable of accurately representing  
21 existing traffic patterns when the outputs of the model are compared to actual traffic counts.  
22 When a model does not represent *existing* traffic accurately (is not validated), it raises  
23 doubt about its ability to accurately predict *future* traffic.

24 Dr. Janarthanan used Maple Valley's travel demand model to estimate the trip  
25 distribution from the two MPDs. Unlike the PSRC model, the Maple Valley model

1 contains much more detail in southeast King County and has been validated for use in  
2 Maple Valley. The Maple Valley model showed that more MPD trips would be distributed  
3 through Maple Valley, particularly along SR 169. Dr. Janarthanan's trip distribution  
4 analysis shows 310 more PM Peak Hour trips on SR 169 north of the Four Corners area;  
5 110 more PM Peak Hour trips on SR 169 just north of Witte Road; 325 more PM Peak  
6 Hour trips on SR 169 between SE Wax Road and SE 231st Street, and 610 more PM Peak  
7 Hour trips on SR 169 south of SE 271st Place.<sup>3</sup>

8 **Differences in Recommended Mitigation Measures.** Maple Valley identified a  
9 combined list of projects to mitigate impacts from each MPD that will need to be funded  
10 entirely by the applicant<sup>4</sup> because the need for the projects on that list are directly related to  
11 the impacts from these MPDs. Maple Valley has also identified a list of projects that will  
12 need to be funded proportionately by the applicant because the need for the projects on that  
13 list are directly related, at least in part, to the impacts from these MPDs.<sup>5</sup>

14 In addition to identifying the combined impacts from the two MPDs, Maple Valley  
15 has gone to the effort to separately identify traffic impacts for *each* MPD and has identified  
16 impacts 100% attributable to *each* MPD, as well as identifying impacts wherein a  
17 proportionate share contribution should be paid by the applicant.<sup>6</sup>

18 MPD Exhibit 15, Exhibit 7 to Declaration of Dr. Janarthanan, provides a table of  
19 Level of Service ("LOS") and delay at concurrency intersections, for the *combined* impacts  
20 of both MPDs (See Table 1, Summary of Los and Delay at Concurrency Intersections – The  
21 Villages and Lawson Hills Combined). This same exhibit provides a second table below  
22 Table 1, showing the identified mitigation measures for the *combined* MPDs. The

23 <sup>3</sup> MPD Exhibit 15, Declaration of Natarajan Janarthanan, Ph.D., PTP, Exhibit 2 to Declaration.

24 <sup>4</sup> The Applicant was sometimes referred to as the "master developer" in Maple Valley's previous briefings, MPD Exhibits 67 and 212.

25 <sup>5</sup> MPD Exhibit 15, Declaration of Natarajan Janarthanan, Ph.D., PTP, Exhibits 6 and 7 to Declaration. See also MPD Exhibit 67, City of  
Maple Valley Brief on Compliance with MPD Permit Decision Criteria, Section V., PP. 13-15.

26 <sup>6</sup> MPD Exhibit 15, Declaration of Natarajan Janarthanan, Ph.D., PTP, Exhibits 8 and 9 to Declaration

1 mitigation measures were determined to be necessary in order to restore intersections to  
2 Maple Valley's adopted LOS standard of D that were shown to fail as a result of traffic  
3 from these MPDs,<sup>7</sup> and/or to construct roadway improvements to add street networks. The  
4 second table distinguishes between pro rata share contributions for the Applicant and 100%  
5 mitigation measures to be completed entirely by the Applicant. 100% mitigation measures  
6 mean that Maple Valley's traffic modeling showed that but for these MPDs, the mitigation  
7 would not be necessary.

8 **d. Findings of Fact on Transportation**

9 Finding of Fact 5.B, on pages 123 through 125 of the Examiner's Recommendation  
10 contains the Examiner's findings on the issue of traffic. After summarizing some of the  
11 evidence on the issue, the Examiner stated as follows:

12  
13 Black Diamond and Maple Valley each made very compelling arguments  
14 that the traffic model of the other was deficient. The record is clear that  
15 *neither model is optimally suited to predict traffic impacts for the Black*  
16 *Diamond community.* The MPD, when completed, will have the effect of  
17 introducing the traffic of a new, small city to south King County. This scale  
18 of development justifies the creation of a project specific transportation  
19 demand model that accounts for all existing and planned local land uses, is  
20 validated for local traffic, contains an appropriately fine grained  
21 transportation analysis zone network, considers existing peak hour factors,  
22 considers both funded and unfunded transportation improvements that  
23 coincide with the build out timeframe for the project...

19 While this finding acknowledges that Maple Valley's model had been criticized by Mr.  
20 Perlic, it essentially comes down on the side of Maple Valley and Dr. Janarthanan by  
21 finding that a new transportation model is necessary. While Maple Valley did not request  
22 this relief from the Examiner, it did submit testimony that a new model should have been  
23 provided.<sup>8</sup> *Significantly, the Examiner said nothing about whether Maple Valley's model*

24 <sup>7</sup> Maple Valley has an adopted LOS standard of "D" for all the intersections identified in MPD Exhibit 67, Exhibits 7, 8 and 9 to  
Declaration.

25 <sup>8</sup>MPD Exhibit 15, Declaration of Natarajan Janarthanan, Ph.D., PTP, Exhibit 1 to Declaration, P. 22. "For larger developments like The  
26 Villages and Lawson Hills, appropriate models should be used to calculate the background growth. For a development of much smaller

1 was "optimally suited to predict traffic impacts" for the Maple Valley community. One can  
2 conclude from this that the Examiner wanted a new model prepared *not* because he was  
3 uncertain about the traffic impacts of the project on Maple Valley, but rather, because *he*  
4 was *uncertain* about the traffic impacts of the project in Black Diamond and other  
5 surrounding areas like Covington, Auburn, and unincorporated King County. But for these  
6 other shortcomings of the Black Diamond traffic analysis the Examiner likely would have  
7 just added Maple Valley's proposed mitigation measures to the conditions of approval. In  
8 other words, Maple Valley demonstrated that Black Diamond's analysis did not accurately  
9 describe the impacts on Maple Valley. The Examiner concluded from this that Black  
10 Diamond's traffic analysis probably did not accurately describe the traffic impacts upon  
11 other areas either, so he recommended that a new model be prepared.

12 **e. Deficiencies In Procedure to Develop Facts**

13 It should be noted that the criticism of Maple Valley's analysis that is summarized  
14 by the Examiner in Finding of Fact 5.B was contained in the Declaration of John Perlic,  
15 which was one of the last documents submitted before the Examiner closed the record.  
16 Maple Valley never had an opportunity to respond to the Perlic declaration and clarify some  
17 of the misleading statements in it. To the extent that Finding of Fact 5.B can be interpreted  
18 as the Examiner being unable to decide which expert witnesses to believe, the fact that  
19 Maple Valley and Dr. Janarthanan never had an opportunity to respond to Mr. Perlic's  
20 declaration should cause that declaration to be viewed with some skepticism.  
21 Maple Valley would also emphasize that the burden of proof to satisfy each MPD permit  
22 criterion rests on the Applicant.

23 **f. Offer of Proof of Additional Facts**

24  
25 size, it may not be necessary to use a travel demand model. But a project of this size warrants use of an appropriate demand model. Here,  
the Maple Valley demand model could have been used. Or alternatively, a new model *could have been created*. The cost of doing so in  
this case would have been justified by the scale of the project, and the failure to do so was unreasonable."

1 Because Maple Valley never had an opportunity to respond to Mr. Perlic's  
2 declaration before the Examiner, it is offering a fourth declaration from Dr. Janarthanan  
3 which should clarify some of the misleading statements in Mr. Perlic's declaration.

### 4 III. APPLICABLE LAW

#### 5 a. Burden of Proof

6 BDMC 18.98.080.A states that "[a]n MPD permit shall not be approved unless...".  
7 This phrase places the burden of proof upon the applicant to demonstrate compliance with  
8 all of the applicable criteria. If the city council is left with questions about whether a  
9 particular criterion has been met, those questions indicate that the applicant has not satisfied  
10 its burden. In such a case, the MPDs would need to be further conditioned until the City  
11 Council's doubts have been satisfied. Arguably, the applicant's burden would not be met  
12 even by a preponderance of the evidence. Consider this language from the MPD code:  
13 "The council may grant an extension of the 15 year vesting period for up to five years for  
14 any phase *so long as the applicant demonstrates with clear and convincing evidence* that all  
15 of the following are met..." BDMC 18.98.195.E (emphasis added). If an MPD cannot be  
16 *extended* without clear and convincing evidence, one would assume that the City Council  
17 intended that same standard to apply to initial approval of the MPD.  
18

19 Placing the burden of proof for MPDs upon the applicant is similar to the burden of  
20 proof established in other areas of the Black Diamond Municipal Code on less significant  
21 permits. The BDMC has similar language for conditional use permits, zoning map  
22 amendments, variances, preliminary plats and short plats.<sup>9</sup> As with MPDs, it is the  
23

24 <sup>9</sup> Conditional use permits: "The City ... may only approve an application if the applicant demonstrates that all of the criteria are met..."  
BDMC 18.12.010.B  
25 Zoning map amendment: "The City ... may only approve an application if the applicant demonstrates that all of the criteria are met..."  
BDMC 18.12.020.B  
26 Variance: "The City ... may only approve an application if the applicant demonstrates that all of the criteria are met..." 18.12.030.B

1 applicant that must demonstrate compliance with all of the criteria in each of these different  
2 types of land use applications.

3 The Examiner obviously was not satisfied that the applicant met its burden as the  
4 MPDs were originally proposed. So, he attempted to craft some additional conditions,  
5 specifically the new traffic model and resulting mitigation.

6 To the extent that the City Council is struggling over which experts to believe, the  
7 burden of proof becomes highly relevant. The applicant for each MPD is the only party  
8 that must convince the City Council that its traffic analysis is correct. Because the  
9 applicant must satisfy the burden of proof, the applicant was allowed to have the last word  
10 before the Examiner and that is why the applicant gets to have the last word before the City  
11 Council. The other jurisdictions who expressed concerns about traffic impacts (Maple  
12 Valley, King County, WSDOT, Auburn, and others) do not have that burden as none of  
13 them are applicants for a permit. So, during deliberations, if the City Council is still  
14 wondering which experts to believe, then the applicants have not satisfied their burden of  
15 proof. Therefore, the MPDs cannot be approved as proposed.

16 The City Council should consider the source of the expert testimony when  
17 deliberating on whether the applicant has satisfied its burden of proof. As a city, Maple  
18 Valley is tasked with advancing and protecting the public good. Also, Maple Valley was  
19 not the only such jurisdiction to express concerns about the traffic impacts of the MPDs and  
20 the way traffic impacts were analyzed by the applicant. Consider this excerpt from Finding  
21 of Fact 5B: "The Cities of Maple Valley and Auburn, King County, WSDOT and the  
22 SEPA Appellants also had serious concerns about traffic impacts and the modeling used by  
23 Black Diamond, in particular the choice of a regional model to predict local impacts and the

24  
25 Preliminary plats and short plats: "The City ... and may only approve an application if the applicant demonstrates that all of the criteria  
are met..." 18.12.040.A

26  
27 MAPLE VALLEY ARGUMENT  
AND BRIEFING, BLACK DIAMOND  
CLOSED RECORD HEARINGS FOR LAWSON HILLS  
AND THE VILLAGES MPD APPLICATIONS - 9

CITY OF MAPLE VALLEY  
CHRISTY A. TODD, CITY ATTORNEY  
22017 SE WAX RD, SUITE 200  
PO BOX 320  
MAPLE VALLEY, WASHINGTON 98038  
PHONE: (425) 413-8800  
FAX: (425) 413-4282

1 existence of several methodological inconsistencies in the assumptions employed to arrive  
2 at a description of project impacts.”<sup>10</sup> While some of these agencies were not able to  
3 devote the same amount of time and expert resources to these proceedings as Maple Valley,  
4 the Examiner was obviously impressed by the sincerity of concern expressed by so many  
5 different agencies that are charged with protecting the common good.

6 In contrast to the concerns of government agencies about traffic analysis and traffic  
7 impacts from these MPDs, the applicant is a private entity tasked with making a substantial  
8 profit for its investors. At the very least, where there is conflicting expert opinion as to  
9 traffic, the City Council should be mindful of the respective incentives that may have  
10 influenced such opinions.

#### 11 **b. Mitigation of Impacts**

12 Turning now to the substantive MPD criteria, there are two sets of criteria of  
13 concern to Maple Valley. The first set involves mitigation of impacts from the MPDs.  
14 BDMC 18.98.080.A.2 requires that “significant adverse environmental impacts are  
15 appropriately mitigated.” This requirement is also incorporated by BDMC 18.98.080.A.10,  
16 which, in turn, incorporates, BDMC 18.98.010.F. That section states that one of the  
17 purposes of the MPD code is to “identify significant environmental impacts, and ensure  
18 appropriate mitigation.” Again, the applicant has the burden of demonstrating that these  
19 criteria area satisfied. The evidence admitted into the record by Maple Valley before the  
20 Examiner showed that traffic impacts from Lawson Hills<sup>11</sup> and The Villages<sup>12</sup> on highways  
21  
22

---

23 <sup>10</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Finding of  
Fact No. 5.B, P. 123.

24 <sup>11</sup> 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.

25 <sup>12</sup> 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.

1 and arterials in Maple Valley are significant and adverse and would not be appropriately  
2 mitigated by Black Diamond staff's proposed recommendations.

3 **c. Provision of Necessary Infrastructure That Meets or Exceeds**  
4 **Levels of Service**

5 The MPD code requires that MPD applicants provide amenities and infrastructure  
6 that are not typically provided by developers.

7 BDMC 18.98.080.A.10 requires:

8 "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."

9 According to BDMC 18.98.010.I, "The purposes of the master planned  
10 development (MPD) permit process and standards set out in this chapter are  
11 to: ... I. Provide needed ... facilities in an orderly, fiscally responsible  
manner."

12 Furthermore, "A specific objective of the MPD permit process and standards  
13 is to provide public benefits *not typically available through conventional  
development.*" BDMC 18.98.020 (emphasis added).

14 This language is of great importance because it reflects an expectation that the MPD  
15 applicant should go above and beyond that which would normally be required of a  
16 developer.

17 "These public benefits shall include but are not limited to: ... G. *Timely*  
18 *provision of all necessary facilities, infrastructure and public services, equal*  
19 *to or exceeding the more stringent of either existing or adopted levels of*  
20 *service, as the MPD develops...*" BDMC 18.98.020.G (emphasis added).

21 This is not the only instance where the MPD code talks about exceeding standards.

22 Consider the following:

23 "The examiner shall evaluate the MPD application and other evidence  
24 submitted into the record, to determine if the application, when appropriately  
25 conditioned, meets or *exceeds* the approval criteria set forth in section  
26 18.98.080." BDMC 18.98.060.A.5 (emphasis added).

1 This “meet or exceed” language is special to the MPD code and reflects the give and  
2 take in the overall MPD scheme. Reduced to its essence, the MPD code basically stands for  
3 this proposition: the City of Black Diamond agrees to provide special privileges to the  
4 applicant (15 years of vesting, a huge amount of flexibility with respect to the use of the  
5 property) in exchange for the applicant’s provision of special benefits to the public. At  
6 least in the area of transportation, the applicant is not living up to its side of the bargain. It  
7 wants to take the special privileges offered by the City of Black Diamond without providing  
8 the public benefits. But again, the applicant has the burden of demonstrating satisfaction  
9 with this criteria and it has not satisfied that burden.

10 **IV. BLACK DIAMOND CAN ONLY APPROVE THE MPDs NOW BY**  
11 **IMPOSING MAPLE VALLEY’S PROPOSED CONDITIONS**

12 Maple Valley submitted thorough and compelling evidence of traffic impacts, and  
13 requested specific mitigations for those impacts, for the MPDs combined, and for each  
14 MPD individually. The City Council would be well justified in accepting the substantial  
15 evidence in the record submitted by Maple Valley, and imposing the mitigation measures  
16 requested by Maple Valley. Imposing Maple Valley’s requested mitigation measures would  
17 satisfy the MPD criteria outlined above, in Section III.

18 While the Examiner briefly summarized Mr. Perlic’s critique<sup>13</sup> of Maple Valley’s  
19 traffic analysis in Finding of Fact No. 5.B, his recommended conditions essentially require  
20 the Applicant to re-do its analysis substantially the way that Maple Valley did it. These  
21 conditions indicate general approval of the way that Maple Valley performed its analysis.  
22 Any reservations that the Examiner harbored about Maple Valley’s analysis, using its  
23 traffic model, appear to have come from Mr. Perlic’s critique.<sup>14</sup> *Significantly, and for the*

24 \_\_\_\_\_  
25 <sup>13</sup> Sixth Revised Email Exhibit List, The Villages/Lawson Hills SEPA Appeals “Exhibit D,” April 15, 2010, Exhibits 474-481,  
Declaration of John Perlic, April 12, 2010.

26 <sup>14</sup> *Id.*

1 purposes of the City Council's understanding of the record, Maple Valley was never  
2 afforded an opportunity to respond to Mr. Perlic's declaration. Procedurally, City staff  
3 and the applicant were allowed to have the last word. Also, Mr. Perlic raised issues in his  
4 April 12 declaration that had not been raised previously. Mr. Perlic's critique regarding trip  
5 generation would have been particularly hard for Maple Valley to anticipate because Dr.  
6 Janarthanan was simply using the trip generation figures from Mr. Perlic's FEIS analysis.

7 Finding of Fact No. 5.B focuses on comparing the traffic models utilized by Black  
8 Diamond and Maple Valley, using rather tepid language to find that neither model was  
9 "optimally suited" to predict traffic impacts for the Black Diamond community. Notably,  
10 Maple Valley's evidence was focused on traffic impacts *in Maple Valley* from these MPDs;  
11 the evidence submitted by Maple Valley did not address the traffic analysis within Black  
12 Diamond and other areas. Thus, the Examiner's Finding of Fact No. 5.B is not a rejection of  
13 Maple Valley's evidence of traffic impacts and proposed mitigations; but it does reject  
14 Black Diamond staff's and the applicant's proposed mitigations.

15 If one reads Finding of Fact 5.B as expressing uncertainty about *all* of the traffic  
16 mitigation, not just the mitigation within Maple Valley, it makes more sense that the  
17 Examiner required that a new traffic model be developed. In other words, even if the  
18 Examiner was satisfied with Maple Valley's proposed mitigation *within Maple Valley*,  
19 because Maple Valley did not spend time analyzing the mitigation elsewhere, he may still  
20 have wanted the new model to ensure that the mitigation *elsewhere* was appropriate.

21 **V. THE EXAMINER'S RECOMMENDATION DOES NOT SATISFY**  
22 **ADOPTED MPD APPROVAL CRITERIA**

23 Conditions 11 through 16 of the Examiner's Recommendation are the legal  
24 equivalent of putting the cart before the horse. By recommending MPD approval while at  
25 the same time directing the Applicant to prepare a new transportation model from scratch,  
26

1 the Examiner is essentially taking the position that as long as mitigation measures are  
2 capable of being determined *in the near future*, the MPDs should be approved *now*. The  
3 MPD code requires more.

4  
5 “The examiner shall evaluate the MPD application and other  
6 evidence submitted into the record, to determine if the application, when  
7 appropriately conditioned, *meets or exceeds the approval criteria set forth*  
8 *in section 18.98.080.*”<sup>15</sup>

9 “An MPD permit *shall not be approved unless* it is found to meet the intent  
10 of the following criteria *or* that appropriate conditions are imposed so that  
11 the objectives of the criteria are met.”<sup>16</sup>

12 As discussed in Section III, the “shall not be approved unless” language is  
13 extremely important because it places the burden of proof upon the Applicant. The  
14 Applicant must demonstrate compliance with *fourteen criteria* for an MPD permit to be  
15 approved, including certain of the purpose criteria in BDMC 18.98.010,<sup>17</sup> and the public  
16 benefit objectives criteria in BDMC 18.98.020. This must be understood as requiring that if  
17 the Applicant is unable to demonstrate compliance with the fourteen criteria for MPD  
18 permit approval, the Applicant must *alternatively* be able to show that the MPD is  
19 *appropriately conditioned* so that the objectives of the criteria are met. The Examiner did  
20 not find that Black Diamond staff’s proposal appropriately conditioned these MPDs – as  
21 argued below, he rejected staff’s proposed conditions.<sup>18</sup> However, the Examiner’s findings  
22 and conclusions did not appropriately condition these MPDs either.

23  
24 <sup>15</sup> BDMC 18.08.060.A.5 (emphasis added).

<sup>16</sup> BDMC 18.98.080.A (emphasis added).

<sup>17</sup> BDMC 18.98.080.A.10

<sup>18</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Condition No. 19, P. 194.

1 By failing to recommend *any* traffic related mitigation measures as conditions of the  
2 MPD permit, and instead recommending the creation of a new, project specific traffic  
3 model, the Examiner's Recommendation failed to satisfy MPD approval criteria.

4 The Examiner's Finding of Fact 5.B states: "...This scale of development justifies  
5 the creation of a project specific transportation demand model..."<sup>19</sup> In explicitly rejecting  
6 the staff's proposed traffic mitigations, the Examiner found that there was substantial  
7 evidence to justify the "enhanced mitigation" (e.g. the new traffic model) recommended in  
8 Finding of Fact No. 5.B. The Finding would therefore require going back to the so-called  
9 drawing board to develop a new traffic model that will more accurately identify the traffic  
10 impacts from the MPDs and use that model's output to assist in determining additional  
11 traffic mitigations so that the MPD permit can *then* be appropriately conditioned – but only  
12 as part of an MPD major amendment process.<sup>20</sup> It is notable that the Applicant does not  
13 support this recommendation. The Applicant seeks to avoid delay in receiving approval of  
14 the MPD permits.<sup>21</sup>

15 If the City Council were to adopt the Examiner's Recommendations as to  
16 transportation, the City Council would not be complying with its own adopted code  
17 criteria,<sup>22</sup> as neither the *intent* of the criteria will be satisfied, nor will appropriate  
18 conditions be imposed. It is axiomatic that *impacts must be identified before appropriate*  
19 *mitigating conditions can be imposed.*

20  
21  
22  
23  
24 <sup>19</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Finding of  
Fact No. 5.B, P. 124.

25 <sup>20</sup> *Id.*

26 <sup>21</sup> See Exhibit C-8, Black Diamond Closed Record Hearings Exhibit List, memo from Nancy Rodgers dated June 22, 2010.

27 <sup>22</sup> See BDMC 18.98.080.A, .A.2, A.10, or 18.98.020.G.



1 Therefore, the model will first determine traffic impacts, and once impacts are known,  
2 appropriate mitigations can be imposed. Having determined that a new traffic model is  
3 necessary to determine impacts, the Examiner explicitly rejected<sup>24</sup> the staff recommended  
4 (and Applicant supported) traffic mitigations for Lawson Hills and The Villages.<sup>25</sup>

5 Maple Valley asserts it is inconsistent with the MPD approval criteria for the  
6 Examiner to find that evidence in the record demands development of a new traffic model  
7 to determine impacts and yet-to-be-known mitigation measures, while also concluding that  
8 these unknown mitigation measures will ultimately satisfy the MDP approval criteria.

9 Finally, it is important to note also that in Conclusion of Law No. 24, the Examiner  
10 agreed with Maple Valley that the criterion set forth in BDMC 18.98.080.A.2 operates  
11 independently from any determination of the impacts or recommended mitigation that  
12 might result from the SEPA (State Environmental Protection Act) process.<sup>26</sup> In so doing,  
13 the Examiner specifically disagreed with the Applicant on this issue.<sup>27</sup> The Examiner stated,  
14 "...the Applicant essentially asserts that the FEIS precludes any further discussion of  
15 environmental impacts under the criteria above. This is incorrect."

16  
17  
18  
19  
20  
21  
22 <sup>24</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Condition No. 19, P. 194.

23 <sup>25</sup> 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.

24 <sup>26</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Conclusion of Law No. 24, P. 153-54 and fn.9 contained therein, and MPD Exhibit 67, City of Maple Valley Brief on Compliance with MPD Permit Decision Criteria, Section II, I. P. 4.

25 <sup>27</sup> *Id.* See also, MPD Exhibit 114, Memo to Hearing Examiner from Nancy Bainbridge Rogers, dated March 22, 2010.

1                   **VI. THE APPLICANT’S PROPOSED REVISIONS SHOULD BE REJECTED**

2                   The Examiner’s Recommendation establishes that the Applicant did not meet its  
3 burden of proof under the adopted code criteria for MPD approval, for the reasons asserted  
4 in Section III, above. In addition, the applicant’s most recent set of proposed transportation  
5 conditions<sup>28</sup> cannot be reconciled with the Examiner’s Recommendation, and the City  
6 Council should reject them. The following passages from the Examiner’s Recommendation  
7 demonstrate his unequivocal rejection<sup>29</sup> of the staff’s proposed traffic mitigation measures  
8 (which were supported by the applicant during the hearings before the Examiner and which  
9 the applicant has now requested the City Council “restore” because the Examiner has  
10 rejected them).

11                   The Examiner’s Recommendation contained the following Findings, Conclusions  
12 and Recommendations:

13                   **Finding of Fact No. 5.B:** “For both traffic and noise, the *Examiner*  
14 *recommends that added mitigation be added to the project* either through  
15 the development agreement or processed as a major amendment to the MPD.  
16 Traffic and noise mitigation should go through one of those processes to  
17 provide the public an opportunity to comment on the *new mitigation*.”<sup>30</sup>  
(Emphasis supplied).

18                   **Conclusion of Law 24:** “As discussed in Finding of Fact No.5, there  
19 are some environmental impacts that have been adequately mitigated under  
20 the rule of reason standard for the EIS *but nonetheless do not provide the*  
21 *most effective or comprehensive mitigation*. For the reasons discussed in  
22 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.” (Emphasis

23 \_\_\_\_\_  
24 <sup>28</sup> See Exhibit C-8, Black Diamond Closed Record Hearings Exhibit List, memo from Nancy Rodgers dated June 22, 2010.

25 <sup>29</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017,  
26 Recommendation No. 19, P. 194.

27 <sup>30</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Finding of  
Fact No. 5.B, P. 124.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

supplied, footnote in original). The Examiner’s footnote 9 from the previous quotation reads, in part, as follows, “[a]s 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.*”<sup>31</sup> (Emphasis supplied).

**Conclusion of Law 6:** “Through this [SEPA appeal] 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.*”<sup>32</sup> (Emphasis supplied).

**Condition 16:** “The resulting project impacts and mitigations [from the new transportation model] must be integrated into the development agreement or processed as a major amendment to the MPD *prior to City approval of any implementing projects.*”<sup>33</sup> (Emphasis supplied).

When read together, these statements leave no doubt that the Examiner rejected the transportation mitigation proposed by Black Diamond staff and supported by the applicant. In fact, when read together, it is clear the Examiner believed that additional mitigations are required *prior to* any permits for development being issued.

It would be contrary to the Examiner’s Recommendation for the City Council to adopt the recommendation of the applicant for revisions to the Examiner’s Recommendations. First, in light of Finding of Fact No. 5.B, and Conclusion of Law No. 24, the City Council would not be able to find sufficient support in the record to justify restoring the staff’s proposed transportation mitigations. The Examiner emphatically did not recommend that a new, regional model be developed *after* 3,000 dwelling units are built, when the traffic from those homes is already traveling on the area’s roadways. The Examiner *did* recommend that the new traffic model be prepared *before any homes are*

---

<sup>31</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Conclusion of Law No. 24 P. 154-56.

<sup>32</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Conclusion of Law No. 6, P. 142.

<sup>33</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Condition No. 16, P. 194.

1 *built*. Second, there is no basis in the record to justify the applicant's deferral of any new  
2 traffic model until mid-point review. There is nothing in the record to suggest that mid-  
3 point review is capable of accomplishing what the applicant suggests. Third, the record is  
4 devoid of evidence about which traffic assumptions are capable of being "truth tested." For  
5 example, Maple Valley submits that it will be extremely difficult and costly, if not  
6 impossible, to "truth-test" the trip distribution assumptions. The Black Diamond City  
7 Council should not entertain the applicant's mid-point review proposal simply because they  
8 state it will accomplish certain objectives. To do so would be to disregard the record, and  
9 the (lack of) evidence.

10 The applicant requested that the City Council restore the staff's recommended  
11 transportation improvement list – but, as noted above, the Examiner specifically rejected  
12 that list in his Recommendation to the City Council.<sup>34</sup>

13 Maple Valley emphatically disagrees with the Applicant that waiting to develop a  
14 new traffic model at the so-called mid-point review stage is "...more advantageous for the  
15 City of Black Diamond *and all surrounding jurisdictions...*"<sup>35</sup> Emphasis supplied. There is  
16 no evidentiary support in the record from transportation experts that establishes that there is  
17 a reliable way to "truth-test" traffic assumptions that were made prior to permit approval. It  
18 is clearly more advantageous for the applicant to request this mid-point review condition,  
19 and it is no surprise that such a request has been made because the applicant's goals are  
20 clear: the applicant would obtain its MPD permits without the delay that would ensue from  
21 the Examiners requirement to develop a new traffic model *before* building permits are  
22 issued. The applicant calls out delay as a reason *not* to wait to develop a new traffic model  
23

24 <sup>34</sup> City staff's verbal report to the City Council on June 24, 2010 concurred with the Applicant's proposed revisions to the Examiner's  
25 Recommendations on transportation issues. City staff did not submit to the Council any proposed revisions regarding transportation  
26 issues, to the Council on June 24.

27 <sup>35</sup> See Exhibit C-8, Black Diamond Closed Record Hearings Exhibit List, memo from Nancy Rodgers dated June 22, 2010.

1 until 3,000 homes are built.<sup>36</sup> But the applicant's argument conveniently ignores the fact  
2 that the City Council has an adopted code relating to fourteen criteria that must be satisfied  
3 in order to approve an MPD permit.<sup>37</sup> If the applicant experiences some short period of  
4 delay because one of the criteria is not satisfied, that may be disappointing for the applicant,  
5 but the City Council, sitting in a quasi-judicial capacity, has a duty to implement its own  
6 code.

7 The applicant has also requested that certain of the Examiner's other  
8 Recommendations pertaining to traffic be revised.<sup>38</sup>

9 Maple Valley disagrees with the applicant's request to:

- 10 1) Revise Finding of Fact No. 5;
- 11 2) Revise Conclusion of Law No. 20;
- 12 3) Delete Conditions 11 through 17 and replace them with revised Conditions 11  
13 through 17;
- 14 4) Revise Condition 18;
- 15 5) Revised Condition 21; and
- 16 6) Revised Condition 160.

17 Maple Valley's disagreement with the proposed revisions to Finding of Fact No. 5 is  
18 simple: the proposed revisions are completely self-serving. The applicant has inserted  
19 language into this finding that only benefit the applicant. The Examiner, by contrast, was  
20 trying to accomplish a different objective, as flawed as that might be. The Examiner was  
21 trying to arrive at the creation of a traffic model that wouldn't be driven by a developer's  
22 agenda. The applicant's insertion about the use of "professional judgment" is a clear  
23 attempt to revive the credibility of John Perlic of Parametrix, whose credibility was called

24 <sup>36</sup> *Id.*, at P. 4.

25 <sup>37</sup> See Section III, above.

26 <sup>38</sup> *Id.*, beginning on P. 5.

1 into question time and again for his use of “professional judgment” that is not consistent  
2 with standard industry practices. Similarly, the applicant’s insertion of language pertaining  
3 to the use of higher peak hour factors is there in order to bolster Mr. Perlic’s assertion –  
4 which was contested before the Examiner – that a peak hour factor of .97 is reasonable.<sup>39</sup>  
5 The applicant’s insertion of language pertaining to the likelihood of projects being funded  
6 is an attempt to skirt the planning of surrounding jurisdictions, for projects identified in  
7 Comprehensive Plans that have a twenty year planning horizon. The applicant hopes to only  
8 have to mitigate transportation impacts relating to projects that have been identified in  
9 surrounding jurisdictions’ six-year Transportation Improvement Plan (TIP). Maple Valley  
10 has previously submitted briefing<sup>40</sup> on this subject and disagrees with the applicant’s  
11 assertion that only funded TIP projects should be considered when mitigating impacts from  
12 projects that will be vested for at least fifteen years. Finally, there is no evidentiary support  
13 in the record for the new traffic model to be developed after 3,000 homes have been built in  
14 order to “truth test” assumptions used in the FEIS. The entire point of Maple Valley’s  
15 presentation of evidence in the MPD hearings was to contest city staff’s proposed traffic  
16 mitigations, which were based on assumptions from the FEIS traffic analysis.

17 Maple Valley’s disagreement with the applicants proposed revisions to Conclusion  
18 of Law 20 is for similar reasons. Conclusions of law are drawn from Findings of Fact. We  
19 disagree with the applicant’s proposed revisions to Finding of Fact 5.B, and Conclusion of  
20 Law 20 flows from that Finding. The proposed insertions and deletions are self-serving, nor  
21 do they comport with the Examiner’s recommendation that a new traffic model be  
22 developed and identification of impacts be provided *prior to* land use applications for each  
23

---

24 <sup>39</sup> See, for example, Volume VIII, Public Meeting Appeal of Final Environmental Impact Statement and Master Planned Development  
(MPD) Permit, P.2516-2519.

25 <sup>40</sup> See MPD Exhibit 67, City of Maple Valley Brief on Compliance with MPD Permit Decision Criteria, P. 11,  
26 Section IV, 2.

1 phase. Finally, the Examiner was clearly impressed with the analysis that Maple Valley  
2 brought to the table and was clearly impressed with Maple Valley's model. So, the words,  
3 "similar to that employed by Maple Valley" should not be deleted. They provide important  
4 guidance as to how traffic modeling should be done.

5 It would be redundant to further recount Maple Valley's disagreement with the  
6 applicant's proposed revisions. Maple Valley's disagreement with the applicant's proposed  
7 revisions stems from the following simple conclusion: the Examiner, despite all the  
8 evidence in the record from Black Diamond's traffic expert, believed that city staff's  
9 proposed traffic mitigations should be rejected, that a new traffic model was needed to  
10 better identify traffic impacts, that model should be similar to the one used by Maple  
11 Valley, and the model's outputs should be used to identify traffic mitigations.

12 The City Council should reject the applicant's proposed revisions to the Examiner's  
13 Recommendations pertaining to transportation. To the extent that additional findings  
14 and/or new modeling needs to be done, it should be done on remand as discussed below.

15  
16 **VII. THE CITY COUNCIL COULD REMAND TRANSPORTATION ISSUES AS**  
17 **AN ALTERNATIVE TO IMPOSING MAPLE VALLEY'S PROPOSED**  
18 **CONDITIONS**

19 If the City Council does not impose Maple Valley's proposed conditions on the  
20 MPDs; and because the applicant has not satisfied its burden of proof as to MPD approval;  
21 and because the Examiner's Recommendation does not satisfy the criteria for MPD  
22 approval, the Council must find that MPD criteria for approval have not been met, and  
23 remand transportation issues for further fact finding, and a request for new  
24 recommendations.<sup>41</sup> Maple Valley asserts that, in lieu of imposing Maple Valley's proposed

25 <sup>41</sup> Pursuant to BDMC 18.98.060.A.6.b., the Council may remand to the Hearing Examiner with instructions to reopen the hearings, and

1 conditions, another responsible course of action for the City Council, given the inability of  
2 the Examiner to determine the necessary facts and recommend definitive mitigations, would  
3 be to remand the transportation issues back to the Examiner.

4 It is significant that the Examiner recommended using the MPD major amendment  
5 process, (over a development agreement process), for purposes of the Applicant's  
6 development of a new project specific transportation model.<sup>42</sup> Under BDMC 18.98.100.I, a  
7 major amendment to an MPD is subject to the same public process as the MPD permit  
8 application, including an open record hearing before the Examiner. However, the  
9 Examiner's Recommendation for an MPD amendment would, in practical effect, be similar  
10 to a remand and would ultimately serve the same purpose as a remand: additional public  
11 review and comment, additional fact finding, and a Recommendation to the City Council  
12 for a decision on transportation mitigations. But unlike the Examiner's recommended  
13 procedure, the remand is actually allowed by the BDMC.

14 Under Black Diamond's code structure, an MPD must be appropriately conditioned  
15 before it is approved.<sup>43</sup> Therefore, a remand to develop a new model is legally supportable,  
16 while an approval conditioned upon a new yet-to-be-developed model is not. If the Black  
17 Diamond City Council opts not to impose Maple Valley's proposed conditions at this stage,  
18 Maple Valley would support additional fact finding, modeling, and resulting recommended  
19 mitigation, as long as it is done in the context of a remand. Doing so will satisfy the  
20 municipal code criterion for MPD approval that all significant, adverse environmental  
21 impacts be appropriately mitigated and public infrastructure benefits be determined prior to  
22 the grant of an MPD permit.<sup>44</sup>

---

23 provide supplementary findings and conclusions on specific issues.

24 <sup>42</sup> See Hearing Examiner Recommendation, In Re Master Planned Development Application for The Villages, PLN09-0017, Conclusion  
of Law No. 24, P. 154. and fn. 9 to Conclusion of Law No. 24.

25 <sup>43</sup> BDMC 18.98.080.A.

26 <sup>44</sup> BDMC 18.98.080.A.2.

1 On remand, the Examiner can review the results of additional modeling and explore  
2 the factual issues raised in Mr. Perlic's declaration of April 12, 2010, to which Maple  
3 Valley was given no opportunity to respond. Maple Valley is confident that remand would  
4 result in a factual record being developed that would allow the Examiner to be fully  
5 comfortable in recommending Maple Valley's proposed conditions (and possibly other  
6 mitigation that no parties have yet determined to be necessary). This additional modeling  
7 on remand will assist the Examiner in creating new Recommendations that will satisfy the  
8 MPD approval criteria. This would be a limited remand on transportation issues only.  
9 Maple Valley is submitting with this brief, a proposed order on remand for each MPD that  
10 would direct the Examiner's inquiry and the parties' responsibilities on remand.

### 11 12 **VIII. CONCLUSION AND REQUESTED DECISION**

13 Maple Valley has submitted compelling evidence that the staff recommended and  
14 applicant supported transportation mitigations are grossly inadequate to address the traffic  
15 impacts on Maple Valley roadways. The mitigations requested by Maple Valley should be  
16 imposed as conditions of MPD permit approval for each MPD. The specific request for  
17 mitigation is detailed in previous briefing submitted by Maple Valley and is incorporated  
18 herein by reference.<sup>45</sup> The City Council should reject the applicant's request for revisions to  
19 the Examiner's Recommendation for the reasons argued herein. The City Council should  
20 reject the Examiner's Recommendation for the reasons argued herein. Alternatively, the  
21  
22  
23  
24

25 <sup>45</sup> See MPD Exhibit 15, Declaration of Natarajan Janarthanan, Ph.D., PTP, and Exhibits thereto; and MPD Exhibit 67, City of Maple  
26 Valley Brief on Compliance with MPD Permit Decision Criteria, Section V., PP. 13-15.

1 Council should remand these matters back to the Examiner for further fact finding on  
2 transportation issues, pursuant to 18.98.060.A.6.b.

3 DATED this 7th day of July, 2010.

4  
5 CITY OF MAPLE VALLEY

MORRIS & TARADAY, P.C.



6  
7  
8 Christy A. Todd, WSBA #27324  
9 City Attorney for Maple Valley

Jeffrey B. Taraday, WSBA #28182  
Counsel for Maple Valley