ORDINANCE NO. 10-946

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE MASTER PLANNED DEVELOPMENT FOR THE VILLAGES; AMENDING THE CITY'S ZONING MAP TO DESIGNATE CERTAIN PROPERTY "MASTER PLANNED DEVELOPMENT – MPD"; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in accordance with a request by BD Village Partners, LP ("the Applicant"), the City of Black Diamond determined that an Environmental Impact Statement ("EIS") should be prepared concerning the Applicant's Villages Master Plan Development proposal pursuant to the State Environmental Policy Act, RCW 43.21C ("SEPA"); and

WHEREAS, the City retained an independent consulting firm, Parametrix, to prepare the EIS; and

WHEREAS, on May 28, 2008 and pursuant to WAC 197-11-408 and Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(4)(b), Parametrix held a scoping meeting to obtain input from the public and other public agencies as to the proposed scope of the EIS; and

WHEREAS, on June 11, 2008, Parametrix held an additional meeting with other public agencies, including the Cities of Maple Valley and Covington, and the Washington Department of Transportation, to discuss the scope of the EIS's analysis concerning the proposed MPD's anticipated transportation impacts; and

WHEREAS, pursuant to Black Diamond Municipal Code ("BDMC") Section 18.98.060(A)(1), on January 27, 2009 the Applicant attended a pre-application conference with City of Black Diamond staff, prior to submitting its application for the Villages Master Planned Development ("Villages MPD"); and

WHEREAS, on February 7, 2009, the Applicant held a public information meeting concerning the Villages MPD application, pursuant to BDMC 18.98.060(A)(2); and

WHEREAS, on February 10, 2009, pursuant to BDMC 18.98.060(A)(3), the Applicant made a presentation concerning the overall planning and design concept of the proposed Villages MPD to the Black Diamond Planning Commission, and the Commission provided preliminary feedback to the Applicant regarding the consistency of this concept with the City's adopted standards, goals and policies; and

WHEREAS, on March 17, 2009, a second public information meeting was held concerning the proposed Villages MPD; and

WHEREAS, on May 28, 2009, the Applicant submitted an application for the Villages MPD approval to the City of Black Diamond; and

WHEREAS, on August 12, 2009, Parametrix held additional meetings with the government agencies listed above, to conduct a pre-release discussion of the draft EIS element related to the transportation impacts analysis; and

WHEREAS, at the June 11, 2008 and August 12, 2009 transportation meetings, Parametrix explained the methodology the EIS would use to analyze transportation impacts, the size and parameters of the EIS study area and study area intersections, and the expected trip distribution percentages, and the other public agencies concurred in Parametrix's approach; and

WHEREAS, on September 2, 2009, the City of Black Diamond issued a Draft Environment Impact Statement ("DEIS"); and

WHEREAS, on September 29, 2009, the City of Black Diamond held a public hearing on the DEIS; and

WHEREAS, on September 30, 2009, the City of Black Diamond extended the comment period, during which it would accept written public comment on the DEIS, until October 9, 2009; and

WHEREAS, on December 11, 2009, the City of Black Diamond announced the availability of the Final Environmental Impact Statement ("FEIS"); and

WHEREAS, on December 28, 2009, appeals of the FEIS were filed by Christopher P. Clifford on behalf of Annette Smith, Gilbert and Marlene Bortleson, Jay and Kelley McElroy, Melanie Gauthier, Michael Smith, Judith Carrier, Gerold Mittlestadt, Steve Sundquist; Vicki and William Harp and their daughter, Cindy Proctor; Joe May; and

WHEREAS, on December 31, 2009, the Applicant submitted a revised application for the Villages MPD to the City of Black Diamond; and

WHEREAS, pursuant to BDMC Section 18.98.060(A)(d), the Villages MPD application was forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, pursuant to BDMC Section 19.04.250, the FEIS appeals were forwarded to the Black Diamond Hearing Examiner; and

WHEREAS, the Hearing Examiner scheduled consolidated hearings on the MPD application and the FEIS appeals, pursuant to WAC 197-11-680(3)(a)(v) and RCW 36.70B.120; and

WHEREAS, the Hearing Examiner held an open record hearing commencing on March 6, 2010 and continuing from day to day until March 22, 2010;and

WHEREAS, the Hearing Examiner accepted additional rebuttal presentations in accordance with the deadlines he had previously set, until April 12, 2010; and

WHEREAS, on April 15, 2010, the Hearing Examiner issued the Hearing Examiner Decision affirming the FEIS for the Villages MPD; and

WHEREAS, on May 10, 2010 the Hearing Examiner issued his Findings, Conclusions and Recommendation recommending approval of the Villages MPD, and issued an Errata and a signed copy of the Recommendation the following day, on May 11, 2010; and

WHEREAS, on June 21, 2010, the City Council convened its closed record hearing to consider the Villages MPD application; and

WHEREAS, the City Council continued the closed record hearing from day to day, and heard oral argument from and considered written materials submitted by parties of record from June 24, 2010 to July 14, 2010; and

WHEREAS, the City Council continued the closed record hearing from day to day to deliberate concerning the MPD application and to discuss potential litigation concerning it, from July 19, 2010 to August 24, 2010; and

WHEREAS, on August 24, 2010, the Black Diamond City Council approved a motion to direct the City Attorney to prepare a written ordinance approving the Villages MPD subject to conditions as discussed by the Council; and

WHEREAS, the City Council desires to approve the Villages MPD subject to certain specified conditions of approval as set forth herein, and to rezone certain parcels within the MPD to the zoning designation of "Master Planned Development – MPD");

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The City Council hereby adopts the Findings of Fact set forth in Exhibit A attached hereto and incorporated herein by this reference.

Section 2. Conclusions of Law. The City Council hereby adopts the Conclusions of Law set forth in Exhibit B attached hereto and incorporated herein by this reference.

Section 3. Approval of Master Planned Development. Based on the Findings of Fact and Conclusions of Law adopted in Sections 1 and 2 above, the City Council hereby approves the Villages Master Planned Development, as set forth in the application dated December 31, 2009 and as delineated on the revised Land Use Plan map (Figure 3-1) dated July 8, 2010, subject to the conditions of approval set forth in Exhibit C attached hereto and incorporated herein by this reference.

Section 4. Rezone. Although pursuant to Black Diamond Municipal Code Section 18.98.130(B) a formal rezone of parcels within the Master Planned Development boundary is not required, in order to remove any uncertainty or confusion as to the applicable zoning designation, the City of Black Diamond Zoning Map is hereby amended to designate the parcels legally described and depicted in Exhibit D attached hereto and incorporated herein by this reference as "Master Planned Development – MPD."

Section 5. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 6. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 14th day of September, 2010.

Passed by the City Council on the 20th day of September. 2010.

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Mayor Rebecca Olness

ATTEST:

_____
Brenda L.Martinez, City Clerk

APPROVED AS TO FORM:

_____
Chris Bacha, City Attorney

Published: 9/28/10
Effective Date: 10/3/10

EXHIBIT A

FINDINGS OF FACT

1. The record considered by the City Council consists of the following:

   A. Several hundred exhibits admitted into evidence before the Hearing Examiner. The Exhibit lists are set forth in Attachment 1 to these Findings of Fact, and summarized as follows:

      i. Index of "H" Documents: These exhibits were admitted during the hearings.

      ii Black Diamond MPD Hearing Exhibits: These documents, which include the City staff report and written comments from citizens, were submitted during the hearing and admitted at the end of the hearing process.

      iii. Index of Prehearing Documents: These documents were identified in pre-hearing exhibit lists submitted by the SEPA Appellants, the Applicant, and counsel for the City.

      iv. Emails for the Villages-Lawson Hills MPDs: These were emails that the SEPA Appellants, the Applicant, counsel for the City, and the Examiner exchanged on SEPA appeal issues.

   B. Audio recordings of proceedings before the Hearing Examiner on the FEIS Appeals and the Villages MPD application.

   C. A transcript of proceedings before the Hearing Examiner on the FEIS appeals and the Villages MPD application.

   D. Audio recordings of the proceedings before the City Council during the City Council's closed record hearing on the Villages MPD application.

   E. Written materials submitted by the parties of record to the City Council during the City Council's closed record hearing on the Villages MPD application. These materials were indexed as "C" exhibits, as shown in the list in Attachment 2 to these Findings of Fact.

2. Proposal Description. The Master Planned Development ("MPD") includes 1,196 acres, to be developed with the following uses: a maximum of 4,800 low, medium and high density dwelling units; a maximum of 775,000 square feet of retail, offices, commercial and light industrial development; schools; and recreation and open space. The MPD land uses are shown on the Land Use Plan map Figure 3-1 dated July 8, 2010. The MPD will also result in the rezoning of portions of the property from the

current R6 Single Family Residential and CC Community Commercial designations to a designation of Master Planned Development MPD. The details of the Villages MPD are outlined in the Master Planned Development application, dated May 11, 2009 and as revised on December 31, 2009. A significant feature of the project is that 505 acres, or 42% of the project area, will be open space.

3. MPD Project Area. The Villages MPD project area consists of two subareas, the Main Property and the North Property (also known as Parcel B). The "Main Property" is located primarily south of Auburn-Black Diamond Road at Lake Sawyer Road, extending approximately 2 miles south and eventually east to SR-169 along the southern city limits. A portion of the Main Property (a.k.a. Parcel C) is located on the north side of Auburn-Black Diamond Rd., west of Lake Sawyer Rd. The "North Property" (approx. 80 acres) is located to the west of SR 169, approximately two miles north of the Main Property and north of SE 312th Street (if extended). The North Property is south of and adjacent to the North Triangle property that is part of the proposed Lawson Hills MPD project. The MPD project area is shown on the Land Use Plan map, Figure 3-1 (dated July 8, 2010) accompanying the MPD application.

4. MPD Project Density. If developed to the full extent proposed in the MPD application dated May 11, 2009 and as revised on December 31, 2009, the Villages MPD will have an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133) and an average density of 8.71 units per net acre (4,800 units/551 acres with residential or mixed use designations (as shown on the Land Use Plan map in Figure 3-1) = 8.711).

5. MPD Project Traffic.

A. Chapter 3 of the Villages FEIS includes an analysis of the transportation impacts of the Villages MPD, as well as a discussion of possible mitigation of those impacts. The FEIS discussion of transportation impacts was based on a detailed analysis included in the Transportation Technical Report ("TTR") attached to the Villages FEIS as Appendix B.

B. The TTR analyzed the transportation impacts of the Villages MPD that would occur in a study area with 46 intersections, covering a geographic area ranging from Maple Valley, Covington, Auburn, Black Diamond and other areas within unincorporated King County. As discussed at page 2-1 of the TTR, the eastern limit of the study area is generally bounded by SR 169, with the northern boundary at SR 169/SE 231st Street in Maple Valley, and the southern boundary at SR 169/SE Green Valley Road. The western study area limit extends up to SR 516/160th Avenue SE in the City of Covington and SE Auburn-Black Diamond Road/SE Green Valley Road in the City of Auburn. Because traffic volumes are higher and traffic operations are worse during the PM peak hour, the TTR analyzed intersection operations during the PM peak hour, with the exception of a

few key intersections in the project vicinity, where operations were also analyzed for the AM peak hour.

C. Using traffic counts collected in 2007, the TTR analyzed existing transportation levels of service ("LOS") for the 46 study area intersections, by comparing the existing intersection operations to the LOS adopted by the jurisdiction in which the individual intersections are located. As depicted on Table 4, pages 2-14 – 2-15 of the TTR and as explained on pages 3-16 of the Villages FEIS, three study area intersections currently operate worse than the adopted LOS standard:

- SE 288th Street/216th Avenue SE: LOS D (vs. adopted Black Diamond standard of LOS C)
- SR 169/Black Diamond Ravensdale Road: LOS F (vs. adopted Black Diamond standard along SR 169 of LOS D)
- SR 169/SR 516: LOS E (vs. adopted Maple Valley standard of LOS D)

D. Based on the Institute of Traffic Engineers ("ITE") Trip Generation Manual (8th Edition), the Villages MPD will generate 6,019 total new PM peak hour vehicle trips, as shown in tables in Appendix A to the TTR.

E. After an 11 percent reduction for internal trip capture and a 10 percent reduction for pass by and diverted link trips respectively, the Villages MPD will generate 5,152 net new PM peak hour trips, as shown on Tables 9 – 10 of the Villages TTR. The internal trip capture rate of 11 percent was based upon the ITE Trip Generation Handbook, a widely accepted source for estimating internal trip capture. Perlic testimony, Transcript at 1,499 - 1,500. The internal trip capture rate and pass by and diverted link trip reduction rates were conservatively low estimates, so as not to underestimate the total net new traffic trips that would be generated by the Villages MPD.

F. Mr. Perlic distributed the 5,152 net new PM peak hour trips over the roadway network within the City of Black Diamond using the City of Black Diamond transportation demand model. For the study area roadway network outside of the City of Black Diamond, Mr. Perlic used the Puget Sound Regional Council ("PSRC") model, adjusted with the use of engineering judgment. The use of the PSRC model was appropriate because it is a regional model, whose full regional roadway network is needed to address the regional nature of many of the new vehicle trips that will be generated by the Villages MPD. The results of the trip distribution are shown on page 3-9 and Figures 6-11 of the Villages TTR.

G. Using the trip distribution percentages, the FEIS analysis then assigned trips from those percentages to individual intersections. The assigned trips

were combined with existing traffic, plus assumed growth in background traffic of 1.0% annually for the Covington area along SR 516, and 1.5% annual growth rate for all other intersections in the study area. In many areas the historical annual growth in traffic volume was less than this rate, and in some areas the current trend is a decline in growth. Consequently, as the City of Maple Valley's expert Natarajan Janarthanan agreed, the use of these background traffic growth rates was conservative, in that they potentially overstated the total amount of traffic at individual intersections and the potential need for future infrastructure improvements.

H. The FEIS analysis then considered the operations of the 46 study area intersections in the year 2025, assuming the total numbers of assigned trips described in Finding No. 5(G) above. The intersection operations analysis considered the average level of service for the entire intersection, rather than analyzing the level of service of individual intersection legs (although the TTR did analyze individual turning movements). As Mr. Perlic and the SEPA Appellants' expert Ross Tilghman testified, it is standard practice to analyze the entire intersection because mitigation is tied to failure of the whole intersection. Tr. pages 1,527 and 607. The FEIS analysis concluded at page 3-18 that 22 of 46 intersections would have failing levels of service. The year 2025 projected levels of service are shown in Exhibit 3-6 of the FEIS, and in Table 16 (pages 3-55 – 3-57) of the TTR.

I. The FEIS and TTR analyses described above contains a reasonably thorough discussion of significant adverse transportation impacts of the Villages MPD. The choice of methodology and engineering decisions made therein are all within the parameters of reasonably justified professional engineering judgment. The FEIS and TTR analyses are adequate and sufficient to support approval of the Villages MPD with conditions.

J. The FEIS analysis also identified infrastructure improvements as mitigation for the projected LOS failures. These improvements are listed in Exhibit 3-7 of the Villages FEIS. In addition to these improvements, the Applicant has also committed under certain conditions to pay a specified percentage of additional improvements located within the City of Maple Valley. The improvements listed in the FEIS, together with the additional improvements offered by the Applicant, are sufficient to mitigate the LOS failures projected by the Villages FEIS and TTR as well as the impacts projected by the City of Maple Valley, and are therefore adequate, appropriate and sufficient to support approval of the Villages MPD with conditions. Additional review of transportation impacts will be performed and potential additional mitigation identified in conjunction with specific projects, as called for by conditions of MPD approval.

K. Challenges to the FEIS and TTR analyses by parties of record are not supported by the balance of the evidence, for the following reasons:

i. Use of the PSRC Travel Demand Model. The FEIS and TTR appropriately utilized the PSRC regional model, rather than the City of Maple Valley's model:

a. The Maple Valley model's trip distribution was based on an incorrect split between trips generated by residential uses and trips generated by commercial uses. Because trips from these kinds of different land uses have different travel patterns, this error increased the percentage of MPD project trips that would be distributed along SR-169 into Maple Valley and overstated the extend of traffic impacts in Maple Valley. This error and its significance are explained in the Declaration of John Perlic at pages 10 - 13 and 17 - 18.

b. The Maple Valley model also incorrectly distributed more trips northward along SR-169 vs. west and northwest along Covington-Lake Sawyer Road and 216th Avenue SE. The PSRC regional model accounts for trips traveling to major employment centers in the Kent Valley, Seattle and Bellevue. Mr. Perlic adjusted the PSRC trip distribution manually to account for the fact that these longer regional trips would make a choice to avoid the congested SR-169 and travel west and northwest to take a different route. This will be particularly true for trips originating from the Villages, because those trips would essentially have to "backtrack" to get out to SR-169 rather than taking a more direct route west or northwest. The Maple Valley model, by contrast, is "cordoned off" with respect to regional work trips, and therefore could not take them properly into account. Further, the Maple Valley model did not take intersection delay along SR-169 into account, and automatically assigned trips to that route if capacity existed. These erroneous assumptions artificially inflated the percentage of trips distributed to SR-169, and inflated the extent of projected impacts in Maple Valley.

c. The Maple Valley distribution and assignment was then analyzed using inappropriately low peak hour factors, which artificially worsened intersection levels of service. In some cases the Maple Valley model used a peak hour factor ("PHF") lower than existing peak hour factors, when available literature documents that PHF increases as traffic volumes increase.

d. Other flaws in the Maple Valley model's analysis are detailed in Mr. Perlic's Declaration, which the Council finds credible.

ii. Internal Trip Capture. The FEIS analysis' internal trip capture rate was based on the ITE Trip Generation Handbook, which both Mr. Perlic and Matt Nolan of King County agreed (Tr. at 520 - 523) was the standard method for determining trip generation. Further, in its written comments on the DEIS, the City of Maple Valley expressed concern that the internal trip capture rate was actually too low and would thus overstate impacts from the project.

iii. Background Traffic Growth. The FEIS and TTR background traffic growth projections were conservative and therefore reasonable, and within the bounds of professional engineering judgment. The other parties did not demonstrate that the background traffic growth rates were erroneous. To the extent that actual growth in background traffic turns out to be lower than projected, this can be addressed in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.

iv. Peak Hour of Analysis. Use of the PM peak hour analysis was sufficient to establish necessary mitigation for traffic increases. While some SEPA Appellants would have preferred the FEIS address other times, including AM peak hours, it is customary to use the highest travel hour so mitigation is imposed for the worst-case traffic scenarios. Mr. Perlic testified to this effect.

v. Level of Service Intersection Analysis. It was not necessary for the FEIS and TTR to discuss the anticipated increases in travel times resulting from increased traffic. The FEIS and TTR addressed levels of service and contained a reasonable and appropriate discussion of the impacts resulting from increased traffic volumes and decreased levels of service. The LOS analysis, rather than a travel time analysis, is the more customary manner to address traffic issues. The Growth Management Act requires an LOS analysis to gauge the performance of local transportation systems. RCW 36.70A.070(6)(a)(iii)(B). City and County elected officials deal with level of service on a regular basis in their review of planning documents required by the Growth Management Act and their review of land use applications. Mitigation is based on level of service; thus a discussion of LOS is more meaningful than increased travel times. Mitigation is shown when the levels of service become unacceptable. It is reasonable to conclude that decision-makers are familiar with LOS analysis; additional analysis of anticipated increases in travel time was not necessary.

vi. Peak Hour Factor. Application of the 0.97 peak hour factor does not invalidate the FEIS and TTR analyses. While there was some testimony that a 0.92 peak hour factor is the accepted standard,

applying that factor to an intersection already at 0.92 or higher would be superfluous, and a higher factor is appropriate. 85% of the 39 study area intersections existing today (7 of the study area intersections will be created as a result of the MPD) have an existing peak hour factor of .92 or higher. There was also testimony that peak hour factors increase over time as congestion increases, and that an increase of .05 is an appropriate rule of thumb for planning purposes. In addition, the peak hour factor can be adjusted based on actual conditions in future traffic analysis performed as required by the MPD conditions of approval and/or as part of specific projects.

vii. Queuing Analysis. Queue analyses are more appropriately done at the project level, because the determination of whether there is a significant adverse impact will occur in conjunction with construction, rather than as part of a projection of impacts 15 years into the future. Queue analyses at the project level will allow consideration of signal timing, actual volumes, intersection design, and will more accurately predict what the specific mitigation needs would be, such as whether a left turn lane is needed to be added, and the necessary length of that left turn lane. Tr. pages 1,472-1,512.

viii. Railroad Avenue. The City's Comprehensive Plan designates Railroad Avenue as a collector road, with a level designation of C, and whose purpose is to collect and distribute traffic between local roads and arterial system. Railroad Avenue has sufficient capacity to handle projected increases in traffic, even with on-street parking. Tr. pages 1,535-1,536. While Railroad Avenue is part of the City's Old Town historic district overlay, and Black Diamond Comprehensive Plan policies state that the historical character "should be retained and enhanced, and this area should become the focus of tourist and specialized retail activities," there are several other roads in the area, such as the main roads through North Bend and Snoqualmie, with historical characteristics similar to Railroad Avenue (including parking) that have been able to retain their rural character in spite of development and increases in traffic. Moreover, analyzing impacts to a road's "rural character" would be speculative and subjective.

L. Future Transportation Analysis. Notwithstanding the above Findings concerning the reasonableness and appropriateness of the FEIS and TTR's analyses of potential transportation impacts and identification of mitigation for them, all travel demand models and transportation impact analyses rely upon engineering assumptions and the exercise of engineering judgment about future conditions. As such, neither the PSRC model nor the City of Maple Valley model is optimally suited to predict the long-term traffic impacts for the Black Diamond community. And, the length of the Village's 15-year build out period increases the risk that one

or more assumption could turn out to be incorrect. This risk, which may be exacerbated by the scale of the MPD development, warrants the preparation of additional transportation analyses at appropriate, future intervals, as called for by conditions of the MPD approval in Exhibit C below.

6. Traffic Safety.

   A. As a general matter, it is reasonable to expect the number of accidents to increase in proportion to increases in traffic volumes. This general proposition does not always hold true, however. Exhibit H-22 is a Washington State Department of Transportation accident history detail report, showing reported collisions that occurred on Southeast Green Valley Road from Auburn/Black Diamond Road to SR-169, January 1, 2001 through 2009. Ex. H-22 includes a period during 2008 during which traffic volumes increased substantially due to a detour resulting from a bridge closure; however, despite the increased traffic during that period, the number of accidents did not increase above the average for this nine-year reported period. Tr. at 1,541 - 1,543. Exhibit H-22 demonstrates that vehicle accident rates are somewhat random and are not necessarily directly tied to increases in traffic volumes.

   B. There are no high incident accident intersections in the FEIS transportation study area. Those accidents that did occur in the study area were random and not tied to any particular, identified hazards on the roads. Some of the safety impacts will be mitigated by the improvements called for in the FEIS, and the randomness of the accidents makes it difficult to predict and impose more specific mitigation that would decrease the risk. There is no known way to analyze safety impacts except to evaluate the particular configuration of a high incident location. Tr. at 1,541 - 1,543.

   C. Green Valley Road has been designated under King County's Historic Heritage Corridor. Traffic on Green Valley Road is projected to increase by as much as 300 – 400%. Tr. at 476. Green Valley Road currently has very low traffic volumes, and although the anticipated increase in traffic volumes resulting from the project will not exceed Green Valley Road's capacity, increased traffic may result in safety concerns. Green Valley Road has limited or no roadway shoulders, trees and fences in very near proximity to the roadway, and very curvilinear alignment. Additionally, some witnesses testified that Green Valley Road has a high number of large animals that regularly cross the road, as well as a high volume of bicyclists, hikers, joggers, tubers, swimmers, outdoor groups, and fishermen using the shoulder of the road. These factors justify a study of traffic impacts and recommended mitigation to provide for safety and compatibility between the varied uses of Green Valley Road. The study

should include an analysis of measures designed to discourage and/or prevent MPD traffic from utilizing the road, such as the installation of traffic calming devices, while ensuring that such measures can be designed in a manner consistent with the road's designated status.

7. Stormwater Quality.

A. Lake Sawyer. Lake Sawyer is a significant water body. It is the fourth largest lake in King County, covering 280 acres. Ex. NR-TV-11, p. ES-1. Its watershed encompasses 8,300 acres. Ex. H-9, p. vii. Over 200 people live upon its shorelines. The lake is used extensively for recreational purposes such as sailing, water skiing, scuba diving, swimming, picnicking, wildlife observation and aesthetic enjoyment. Ex. NR-TV-11, p. ES-1. Public access is provided by two city parks, one on the northwest side of the lake and another on the southern end of the lake. The lake provides habitat for three federally listed species: Steelhead, Coho and Chinook salmon. TV FEIS at 4-71, 4-73.

B. Phosphorus. Phosphorus poses a significant threat to Lake Sawyer water quality. In lakes of the Puget Sound Lowlands, phosphorus is often the nutrient in least supply, meaning that biological productivity is often limited by the amount of available phosphorus Lake Sawyer Water Quality Implementation Plan (Ex. H-9) at 6 (*citing* Abella, 2009). Thus, for lakes such as Lake Sawyer, phosphorus is usually the main nutrient that drives the eutrophication process. When lakes are polluted with excessive levels of nutrients and have high biological activity, they are considered eutrophic. When a lake reaches a eutrophic state the consequences are serious. Blue-green algae bloom, creating toxics that are lethal to aquatic life, birds and shore animals, including cats and dogs. The blue-green algae form a scum over lake surfaces, causing beach closures. Testimony of Abella, 3/8/10, p. 555. The toxins are also under study as a cause for liver ailments in humans. *Id.* A eutrophic state also harms coldwater fish. Coldwater fish need to stay in the lower, colder layers of a lake. A eutrophic state deprives the lower waters of necessary oxygen and leaves it in the warmer upper layers. Zisette testimony, 3/6/10, pp. 72 - 73.

C. Previous Lake Sawyer Water Quality Problems. In the 1970's, evidence of failing septic systems in the Lake Sawyer watershed resulted in a decline in water quality in Lake Sawyer and the rivers that feed into it. To correct this problem, the City of Black Diamond constructed a sewage treatment plant in 1981. Treated effluent was discharged into a natural wetland, which ultimately discharged into Lake Sawyer. Lake Sawyer Water Quality Implementation Plan ("Implementation Plan") Ex. H-9 at 1. The treated effluent caused a significant degradation of Lake Sawyer water quality. As phosphorous levels went up, algae blooms occurred.

According to witnesses, a green scum covered the lake, rendering the lake virtually unusable for recreational and other public activities. Testimony of Wheeler, Tr. 3/19, pp. 3647 - 3648. Due to the water quality problems caused by the treated sewer water, the Department of Ecology required the diversion of the effluent from the natural wetland to a secondary treatment plant in Renton via a King County sewer line. Ex. H-9 (Implementation Plan) at 1. This diversion was completed in 1992. *Id.*

D. Lake Sawyer Listing. As a result of Lake Sawyer's water quality problems, DOE listed Lake Sawyer as an "impaired water body" pursuant to the requirements of the Clean Water Act. The Clean Water Act requires a total maximum daily load (TMDL) to be developed for impaired water bodies. The TMDL is subject to approval by the US Environmental Protection Agency. The TMDL sets a limit to the amount of phosphorous that is allowed into a water body. Implementation Plan, Ex. H-9 at 3. The Lake Sawyer TMDL for phosphorous approved by the EPA in 1993 established a target in-lake, summertime average phosphorus concentration of 16 micrograms per liter. Ex. H-9 (Implementation Plan) at 1, 9, and 12. To meet this target, the TMDL also established a loading capacity, expressed in volume, of 715 kilograms of phosphorous per year. Id. at 9 (Table 1). This means that all sources of phosphorous may not exceed a total of 715 kilograms per year.

E. Current Lake Sawyer Water Quality. Lake Sawyer had average summertime (June-August) phosphorous concentrations of 12 to 23 micrograms/L from 1990 to 1998. Ex. H-9 at 1, 12 (Figure 5). From 1999 to 2007 the average summertime phosphorous levels have been in the 8 to 16 microgram/L range. *Id.*. The TMDL target of 16 micrograms/L has been met since 1998, with levels down to 8 or 9 micrograms/L in 2007. Ex. H-9 at 12. The Implementation Plan shows that this current state of the lake, with a total phosphorus concentration of 8 or 9 micrograms/L, is not temporary but is anticipated to be stable, absent further development.

F. King County Lake Sawyer Management Plan. In 2000 King County prepared the Lake Sawyer Management Plan, Ex. NR-TV-11 ("LSMP"). It is considered a supporting document of the Lake Sawyer TMDL. Ex. H-9 at 1. The purpose of the LSMP was to complete a Phase 1 study initiated in 1989-90. LSMP at 1 - 5. The primary purpose of the Phase 1 Study was to assess the impact of the water treatment plant diversion on water quality, update the lake's nutrient and water budgets, and to evaluate and recommend restoration alternatives that will maintain and protect Lake Sawyer's water quality and beneficial uses. *Id.* The LSMP was based upon years of data collection and employed the input of several stakeholders representing public and private organizations. It included a detailed projection of phosphorous levels at full build out of the Lake Sawyer watershed, with and without recommended mitigation. The

LSMP identifies several mitigation measures directed at the Lake Sawyer watershed to control phosphorous loading. LSMP, Chapter 6. If these measures fail to reach or maintain lake management goals, the LSMP identifies "contingency in-lake measures" to improve water quality. LSMP at 6 - 22. These measures consist of buffered alum treatment (treating the lake with alum) and hypolimnetic aeration and circulation (pumping oxygen into the lake through a piping system).

G. Department of Ecology Lake Sawyer Water Quality Implementation Plan. In 2009 DOE released the Lake Sawyer Total Phosphorous Maximum Daily Load Water Quality Implementation Plan ("Implementation Plan"), Ex. 9. It is considered the follow up document to the Lake Sawyer Total Phosphorous TMDL. Ex. H-9 at 2. It provides a framework for corrective actions to address sources of phosphorous pollution in Lake Sawyer and the surrounding watershed. Unlike the LSMP, it did not include any modeling of future lake conditions. Like the LSMP, the Implementation Plan was based upon the input of several stakeholders participating in the Lake Sawyer Steering Committee, consisting of representatives of: DOE; King County; City of Black Diamond; King County Conservation District; Washington Department of Fish and Wildlife; the Muckleshoot Indian Tribe; and local watershed residents. The corrective actions identified in the Implementation Plan largely mirrored the mitigation recommended in the LSMP, with the important distinction that the Implementation Plan also contemplated the City's adoption of the 2005 Stormwater Management Manual for Western Washington. The Implementation Plan concludes that with compliance with the Western Washington Phase II Municipal Stormwater Permit, the adoption of and compliance with the 2005 DOE Manual, and a monitoring program for the implementation projects, the City of Black Diamond would meet the requirements of the TMDL. Ex. H-9 at 31 - 32. There is no evidence to suggest that these measures, including the 2005 DOE manual, are inadequate.

H. Credibility of the LSMP and the Implementation Plan. The LSMP and the Implementation Plan build upon years of research and hundreds of pages of scientific analysis. The plans are the result of significant collaboration of all major stakeholders. The Implementation Plan's conclusions that compliance with the 2005 Stormwater Management Manual for Western Washington will constitute compliance with the TMDL were made by the Department of Ecology, whose primary mission and expertise are the protection of environmental resources, such as Lake Sawyer. Given DOE's mission and expertise, the City Council finds the Implementation Plan's conclusions credible. There is nothing in the record to suggest that DOE would have any self-interest or political reason to find TMDL compliance when that was not the case. The Applicant raised the issue of DOE approval prior to the Appellants' rebuttal and nothing was offered by the Appellants to explain why DOE would reach such a conclusion if there

was no reasonable basis for it. While some parties of record argued that the data and methodology shows that the MPD projects will load phosphorous in excess of TMDL and that this phosphorous loading will approach (but not exceed on its own) the eutrophication point for Lake Sawyer, these parties did not dispute the data or methodology used in the LSMP or the Implementation Plan to assess the effectiveness of mitigation. Therefore, their arguments and evidence are insufficient to refute the conclusions of DOE's Implementation Plan.

I. The Villages MPD is Within LSMP's Total Phosphorous Loading Assumptions.

i. Reliance on LSMP Loading Assumptions. Although the Applicant has not chosen to conduct its own analysis of how much phosphorous the MPD's will discharge to Lake Sawyer, the Applicant has relied upon the phosphorous loading estimates of the Lake Sawyer Management Plan ("LSMP"), prepared by King County in 2000. Through extensive analysis and testimony, the Applicant established that the MPD projects are consistent with the assumptions used by the LSMP in predicting total phosphorous loading.

ii. LSMP Overstates Potential Total Phosphorus Loading. The record of this proceeding conclusively establishes there are three (and potentially four) factors that result in an overstatement of phosphorous loading in the LSMP model:

a. The LSMP overstates the amount of the MPD development area that drains to Lake Sawyer. The Applicant's geotechnical consultants performed 110 test borings to determine the location of impermeable surfaces and the resultant subsurface flows of stormwater. Tr. 2641. Through this geotechnical analysis the Applicant determined that 30% of the project area does not drain into Lake Sawyer as assumed in the LSMP. Kindig Testimony, 3/12/10, pp. 2032 - 2033. No party rebutted this testimony or geotechnical analysis.

b. The LSMP overstates the amount of potential development in the MPD project area. As shown in Exhibit H-8 and as testified by Al Fure, the LSMP overstates the development of the MPD's by 25%. Tr. at 2,007 (Fure testimony, 3/12).

c. The LSMP model utilized an inappropriately high total phosphorus baseline. The LSMP model relied upon the in-lake phosphorous concentrations from March 1994 through April 1995. Wheeler Ex. 20(e), Appendix C, Figure E6. The concentrations during this base period ranged from 20 to 60 micrograms/L, significantly higher

than the TMDL concentration of 16 microgram/L. As shown at p. 12 of the Implementation Plan, the 2007 phosphorous concentration was 8 or 9 micrograms/L. *Id.* The "typical year" baseline used in the LSMP model was 84% over the TMDL concentration. Wheeler Ex. 20. The significant disparity between current phosphorous concentrations and those used in the baseline of the LSMP model is probably due to the five year recovery period of the lake from the treatment plant diversion in 1992. *Id.* Yet, Table 6-7 of the LSMP, which provided the projections on future phosphorous loading, noted that "it is assumed that internal loading will not change in the future," when more recent data (shown in the Implementation Plan) demonstrates that internal loading has, in fact, changed.

d. A fourth factor may be the City's adoption of the 2005 DOE Stormwater Manual. The LSMP was based upon the assumption that new development would be regulated by the Department of Ecology's 1992 Stormwater Manual. Tr. at 558 (Abella testimony, 3/8/10). Development of the Villages MPD, however, will be regulated by the DOE 2005 Manual. As Ms. Abella testified, the 2005 DOE Manual provides "better by far" phosphorous safeguards than the 1992 manual. Tr. at 564 (Abella Testimony, 3/8/10). However, some of the benefits of the 2005 Manual may already be integrated into the LSMP model. One of the recommended stormwater controls in the LSMP is the adoption of the 1998 King County Surface Water Design Manual. LSMP, p. 6-6 to 6-7. In the alternative, the LSMP recommends adoption of the "Lake Protection Standard", a component of the King County Surface Water Design Manual. In recommending these standards, the LSMP focuses upon the fact that they have a phosphorous treatment reduction goal of 50%, which is the same standard required under the 2005 DOE Manual. If the 2005 DOE Manual does not provide any level of phosphorous protection better than the 1998 King County Manual, the City's adoption of the 2005 DOE Manual is simply an adoption of one of the LSMP mitigation measures and its actions fall squarely within the LSMP modeling. However, if the 2005 DOE Manual provides better protection than the 1998 King County Manual, as Ms. Abella testified is the case, this is a fourth reason why the LSMP model overstates the potential phosphorous loading from future build out.

e. There is no evidence in the record that identifies any factors that would result in an underestimation of phosphorous loading in the LSMP. While Ms. Abella testified that the LSMP was outdated, she could only conclude that an updated LSMP could "go either way" in changing the outcome of phosphorous loading predictions.

Ms. Abella testified that the LSMP is based upon data and development regulations from 1995. Tr. at 174. She noted that development projections in the LSMP may not be accurate, due to possible changes in Black Diamond comprehensive plan policies and development regulations and Black Diamond annexations that occurred subsequent to 1995. *Id.* at 179. The Applicant addressed Ms. Abella's concerns about projected MPD development in the preparation of Ex. H-8 and the testimony of Al Fure, which, as discussed above, demonstrated that the LSMP actually overestimated potential development within the MPD project areas and, therefore, overestimated potential phosphorus loading from new development.

J. <u>The Villages MPD Will Comply With DOE Manual Requirements and the TMDL</u>.

i. The Villages MPD will comply with the requirements of the DOE 2005 Manual, and will therefore be within the TMDL. Dr. Kindig testified that, as designed, the Villages MPD meets the DOE conditions for consistency with the TMDL. Tr. at 2,025-26. Not only was Dr. Kindig's testimony on this point unrefuted, but Robert Zisette, the SEPA Appellants' water quality expert, agreed that the mitigation implementation measures identified in the Implementation Plan are incorporated into the Villages MPD proposal. Tr. at 3,625 (Zisette testimony, 3/19/10). Therefore, according to DOE's conclusion in the Implementation Plan, the Villages MPD will comply with the TMDL.

ii. The SEPA Appellants asserted that compliance with the mitigation measures outlined in the LSMP (and presumably the Implementation Plan) would not be sufficient to comply with the Lake Sawyer TMDL or to prevent Lake Sawyer from reaching eutrophic status. The SEPA Appellants' expert, Mr. Zisette, performed an interpolation of the modeling used to predict phosphorous loading for total build out, and determined that the phosphorous loading attributable to the MPD proposals, with LSMP stormwater controls, would generate an additional 353 kg/yr above the 715 kg/year TMDL limit. See Wheeler Prehearing Ex. 20. In making this calculation, Mr. Zisette used approximately the same MPD area calculated by the Applicant as draining into Lake Sawyer, employing the area outlined in Exhibit H-7. Mr. Zisette's TMDL calculations, however, did not reveal any new information not readily apparent to DOE when it concluded (in the Implementation Plan) that development in accordance with the 2005 Stormwater Manual would comply with the TMDL. Additionally, beyond adjusting downward for development area, Mr. Zisette's calculations did not alter any of the assumptions used in the LSMP model which, as found above, significantly overstated the potential

total phosphorus loading to Lake Sawyer. The LSMP model predicted a total phosphorous load of 2,255 kg/yr at build out, which is 1,540 kg/yr above TMDL; the baseline "typical year" in the LMSP model was already 627 kg/yr above the TMDL. Mr. Zisette's calculation merely showed that the MPD's proportionate share of this excess phosphorous is 353 kg/yr. Mr. Zisette's interpolation was not the kind of analysis of the total phosphorus volume loading of the Villages MPD to Lake Sawyer that he testified (Tr. at 3,596) that the Applicant should have performed. Given the objectivity and expertise of DOE, and the significant improvement in the current Lake Sawyer water quality that was not factored into the LSMP modeling, the City Council finds credible DOE's conclusions that compliance with the NPDES Phase II Stormwater Permit and the 2005 DOE Manual, and with additional monitoring and conditions of approval noted above, the Villages MPD will comply with the TMDL. Those conclusions are hereby adopted.

iii. The SEPA Appellants also asserted that the MPD could cause Lake Sawyer to exceed 24 micrograms/L, which they alleged, based on Table 4-10 of the LSMP, is the scientific dividing line between a mesotrophic and eutrophic lake. The meaning or eutrophic risk of this "dividing line" is not explained in the LSMP, however. The TMDL is set at a point where there is a 5% chance of reaching eutrophic status. *See* LSMP, Appendix F, 2/11/93 Wong Memo. And, the 24 micrograms/L is significantly more than the TMDL, which at 16 micrograms/L has a 50% less phosphorous concentration. Further, while the SEPA Appellants point to Table 6-3 of Appendix 1 to the LSMP, which provides that the current condition of Lake Sawyer is at 23 micrograms/L and that build out of the watershed, with watershed controls, will reach 31 micrograms/L, neither Table 6-3 nor Table 4-10 reflects current conditions. As discussed previously, the Implementation Plan shows the current state of the lake at 8 or 9 micrograms/L, and these levels are anticipated to be stable, absent further development. The lake concentration has been under 16 micrograms/L since 1998. There is nothing in the record to suggest that the Villages and Lawson Hills MPDs, alone, will push the Lake Sawyer total phosphorous concentration beyond 24 micrograms/L, given the lake's current conditions.

K. Estimation of Total Phosphorus Volume Loading. The Applicant did not determine the total volume of phosphorous the Villages MPD would add to Lake Sawyer. This phosphorus volume loading is not unreasonably difficult to compute, because the Applicant has data on both projected stormwater volumes and expected phosphorous concentrations. The Applicant did not rebut testimony on this point. Information as to the annual projected total phosphorus volume load from the Villages MPD to

Lake Sawyer would assist the City in meeting the future water quality monitoring called for by the TMDL, and in determining whether the Villages MPD is, in fact, in compliance with the TMDL established for Lake Sawyer.

L. Total Phosphorus Concentrations in Rock Creek. Mr. Rothschilds, one of the members of the public who testified on water quality issues, raised concerns over phosphorous impacts to Rock Creek that had not been discussed during the SEPA appeals. The Applicant submitted a rebuttal declaration by Dr. Kindig, Ex. 121, which detailed that Mr. Rothchilds had not considered the impacts of additional flows from development in his estimates of Rock Creek phosphorous concentrations. Dr. Kindig established that the resulting phosphorous concentrations after the build out of both MPDs would be 0.026 milligrams/L. There is no evidence in the record to suggest that these concentrations would be adverse to Rock Creek.

M. Low Impact Development. Low-impact development techniques are also proposed as part of the Villages MPD, and are recommended conditions of approval. These techniques will also significantly mitigate stormwater impacts. The MPD project site contains permeable soils that are amenable to low-impact development techniques.

8. Stormwater Quantity. One party of record, Jack Sperry, shared photos of, and others shared concern over, past flood events. The added stormwater generated by the MPDs will not make a significant difference in the quantity of water that reaches Lake Sawyer during storm events. As discussed in the declaration of Al Fure, Ex. 123, the developed areas of the Villages and Lawson Hills MPDs occupy only 4% of the Lake Sawyer watershed. A little more than a third (326/922 acres) of the MPD developed areas are within the Lake Sawyer watershed. Using the volumes generated by the January 7, 2009, flooding events, the MPDs would have added an additional depth of 1.85 inches to the storm event, if the storm quantity was instantaneously delivered to the Lake. It would take several days for all of the water from such storm event to reach Lake Sawyer from the MPDs. Therefore, the MPD does not serve as a significant flood threat to Lake Sawyer properties.

9. Noise.

A. Existing noise levels. As summarized in the Villages FEIS at page 3-25, existing noise levels along SR-169 in the vicinity of the Villages MPD project area have been measured between 54 and 66 decibels (dBA), depending largely on the speed of vehicles. Noise levels have been measured at 62 dBA on Roberts Drive/Auburn-Black Diamond Road at the City offices, but noise levels in residential areas at a distance from major roads drop to between 46 and 53 dBA, with noise levels in more rural and undeveloped areas as low as 31 dBA. Appendix C to the

Villages FEIS identified the five locations where sound level measurements (SLMs) were taken to establish the base line or existing environmental noise level along SE Auburn-Black Diamond Road/Roberts Drive. Richard Steffel, the Applicant's noise expert, testified in a rebuttal declaration that the SLMs were taken after a traffic detour on SR-169 was discontinued to ensure that unusual traffic conditions were not present to influence the findings of the noise analysis. The Villages FEIS and its technical appendix addressing noise impacts (Appendix C) do not disclose the anticipated duration of each of the construction activities listed in the table in the Villages FEIS Exhibit 3-12. Tr. at 795-96.

B. Projected Noise Impacts from Villages MPD. As discussed in the Villages FEIS at Exhibit 3-12, MPD construction noise is estimated to be 80 to 96 dBA at 50 feet from the source, 74 to 90 dBA at 100 feet from the source, and 68 to 84 dBA at 200 feet from the source.

C. Noise Standards. Generally speaking, 55 dBA is an acceptable level of outdoor noise in a residential area pursuant to the "environmental designation for noise abatement" classification system utilized by Washington State and the U.S. Department of Housing and Urban Development Index. Villages FEIS at 3-27. The Federal Highway Administration Noise Criteria indicate that 52 dBA is an acceptable noise level for the interior of a residence. *Id.* at 3-28. Construction noise originating from temporary construction sites is exempt from noise regulation by the Department of Ecology. Because the Villages MPD is anticipated to be built out over a fifteen-year period, the noise standards adopted by DOE and other agencies do not adequately address construction noise impacts associated with the scale and construction duration of the Villages MPD.

D. Parties Affected by Noise Impacts. The parties most likely to be affected by construction noise include residents adjacent to the site, including single-family residential development to the east on both sides of Roberts Drive, and one residential family to the west of the property south of Roberts Drive, the Harps, who could experience peak noise levels up to 90 dBA. Villages FEIS at 3-29; testimony of Jerry Lilly (SEPA Appellants' expert) and Richard Steffel (Applicant's expert). The Harps' residence is located within 35 feet of the Villages main property. At least one member of each household referenced on page 3-29 of the Villages FEIS suffers from medical conditions which may be exacerbated by the construction noise. Harp Appeal of the Villages FEIS, pp. 8 - 9.

E. Duration of Construction Noise Impacts. The Villages MPD application (page 1-6) indicates that it is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for development of the main Villages site. Because dirt removed must be

used as fill, trucks will not be used to export the entire 4.7 million cubic yards of dirt. If the Applicant performs 4.7 million cubic yards of cut, and retains the 1.685 million cubic yards on site as required, approximately 3,680,000 cubic yards of dirt would have to be removed from the site. This is equivalent to approximately 153,000 truckloads of exported material. If ten truckloads are removed per hour, eight hours per day, five days per week, that would be 400 truckloads a week for about 7.35 years. As acknowledged by Exhibit 3-12 of the Villages FEIS, dump trucks generate 82 – 94 dBA of noise when measured 50 feet from the source and 76 – 88 dBA when measured 100 feet from the source. The 90 dBA clearing activities will likely be of short duration, since there are only so many trees adjacent to the three residential properties that will most likely to be affected by such noise.

F. Noise Mitigation. During its rebuttal presentation, the Applicant volunteered to provide certain specified mitigation to address construction noise impacts. City staff also recommended a condition requiring establishment of a construction haul route, with a corresponding prohibition of construction haul use of specified City streets. The City Council finds that incorporation of the Applicant's volunteered mitigation, and the construction haul requirements recommended by staff as conditions of MPD approval, will appropriately mitigate the construction noise impacts of the Villages MPD.

10. Schools.

A. School District. The Villages MPD project area is located in the Enumclaw School District ("District"). The District's schools are already over capacity, according to testimony by school officials.

B. School site standards. The District's capital facilities plan ("CFP") identifies acreage needs for new schools. Ex. 14, attached Ex. A, p. 15. However, the CFP appended to Ex. 14 fails to identify an explanation/justification for the acreage standards. Nevertheless, it is the most suitable standard provided in the record because it is incorporated into the City's Comprehensive Plan. In addition, BDMC 18.98.080(A)(19) requires that:

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

This standard links the size of the "school" to adopted District standards, but does not expressly tie the size of the "site" to the CFP acreage needs used to calculate District school impact fees. Because the acreage

requirements in the CFP are used to calculate school impact fees and are not necessarily intended to serve as minimum site standards for the construction of all schools, the acreage standard can be applied in a flexible manner, so long as sufficient acreage is provided to meet the District's adopted school size standard incorporated in BDMC 18.98.080(A)(19).

C. District/Applicant School Mitigation Negotiations. The District and the Applicant have been involved in extensive negotiations on a school mitigation agreement since August, 2006. The record reflects that the latest draft is satisfactory to both the District and the Applicant.

D. School Facilities Needed. The draft school mitigation agreement (Ex. NR–TV-8) indicates that the District identified the need for new schools to serve 1,800 elementary students, 1,100 middle school students, and 1,200 high school students. Likewise, Ms. Graham testified that during the process of preparing the DEIS, Parametrix identified the need for seven schools to serve the project areas of the Villages and Lawson Hills MPDs. The District identified the school needs and the District and Applicant "firmed up" the location of the elementary and middle schools in April 2009, and the location of the high school in late August or early September 2009. Tr. at 878-79. If the District proposes to locate a school in unincorporated King County, a conditional use permit must be obtained from King County.

E. Analysis of Traffic Impacts of School Construction. The FEIS and TTR transportation analysis addressed the cumulative, AM peak hour traffic impacts of schools needed to serve approximately the same number of students contemplated by the draft school mitigation agreement. FEIS, Appendix B at Table 10, p. 3-7; Tr. at 2,535 (Perlic testimony). Because school-generated traffic does not affect the PM peak hour, any change in the AM peak hour school traffic analysis due to a change in school site location would likely not affect the FEIS and TTR impact analysis and mitigation for PM peak hour conditions. Tr. at 2,541-42. (Perlic testimony). The SEPA Appellants and other parties of record have not demonstrated that this analysis was deficient, in that they did not provide any evidence suggesting which, if any, of Mr. Perlic's calculations would be rendered inadequate and how that may affect the proposed MPD construction and the associated planned road and intersection improvements.

F. Alleged Water Quality Impacts from School Construction. One party of record, Gil Bortleson, alleged that building the twin school sites south of the Villages along Green Valley Road would create a "high risk" of drying out approximately ten shallow wells serving neighboring residents in rural King County. Tr. at 137. In addition, Mr. Bortleson alleged that increased

runoff from the school sites would drain to the west, potentially flooding septic systems located in that area. Tr. at 144. Mr. Bortleson's allegations are speculative. Mr. Bortleson did not review any site plan for the proposed school construction prior to giving his testimony and assumed that the entire twin school site, 70 acres of land, would be paved or graded, creating 70 acres of new impervious surface. Tr. at 148. Mr. Bortleson also was not able to give any testimony with respect to the quantity of water that currently infiltrates to the wells that would not infiltrate to the wells after the project. Tr. at 153. He also was not able to answer any question regarding the amount of surface water infiltration needed to sustain the operation of the at-risk wells. Tr. at 154. Further, these alleged impacts can be more effectively evaluated when a specific proposal for school construction is submitted for permit review.

G. Lake Sawyer Park. Some parties of record objected to the potential use, contemplated in the draft school mitigation agreement among the Applicant, the School District, and the City, for joint school/City use of Lake Sawyer Park. Such joint use is consistent with Black Diamond Comprehensive Plan Policy CF-14, which calls for the City to "Maintain a joint-use agreement for all facilities and land."

11. Fiscal Impacts.

A. FEIS Analysis. The FEIS Fiscal Impact Analysis ("FIA") determined that the Lawson Hills MPD would have a positive fiscal impact and the Villages a negative fiscal impact, with the Villages MPD reaching a million dollar annual deficit by 2030. FEIS FIS at 4; Villages FEIS at 3-95. The FIA assumes $152 retail sales per square foot, and a $354,000 value for single-family homes and a $125,000 value for multi-family units, based upon house sales in Black Diamond four to five years ago. The Villages and Lawson Hills MPD proposals may only build residences in the first phases of development. *See* Villages and Lawson Hills MPD Applications, Chapter 9. As noted in the ECS 11/16/09 memo (Ex. J to the Villages FEIS), single-family residential developments typically produce deficits, and it is therefore likely that the first phases of MPD development will produce deficits if those phases are limited to residential development.

B. Applicant Analysis. Mike Whipple, the Applicant's fiscal expert, provided written comment regarding the divergent results reached by the Applicant's FIA and that adopted into the Villages FEIS. *See* MPD Ex. 124. Mr. Whipple's analysis found that the fiscal impacts for both MPDs would be positive. MPD Ex. 124, p. 4. As reflected in the Villages FEIS, pp. 3 - 96, Mr. Whipple noted that slight changes in assumptions can lead to differing results in the fiscal impact analysis. The primary differences in assumptions appear to concern retail sales and housing values. Mr. Whipple wrote that the FEIS FIA dollar amount of retail sales per square foot is significantly below the average for retail sales and is not supported by any market study. Mr. Whipple based his retail sales estimates upon the lower end of estimates prepared utilizing the Urban Land Institutes' "Dollars and Cents of Shopping Centers, 2002" and "2007 Retail Taxable Sales Estimates" prepared by HDL Companies. For housing values, Mr. Whipple assumed that single-family homes would sell for $420,000 and multi-family homes for $150,000. Mr. Whipple stated these housing values were based upon current market studies, although he did not mention whether these studies were conducted before the recent downturn in real estate sales.

C. Parametrix Sensitivity Analysis. The City also subjected the FEIS FIA to peer review by Parametrix in a "sensitivity analysis." Parametrix employed the methodology of both Mr. Whipple and the FEIS FIA to determine what would happen under four scenarios: (1) adjusting housing values; (2) assuming all parks maintained by an HOA; (3) assuming all streets maintained by an HOA; and (4) reducing police costs (the DEIS incorrectly calculated the number of new police officers needed; it is unclear if this error was remedied for the FEIS). Parametrix made these changes to assess both short- and long-term impacts on each MPD

individually and cumulatively. Under each scenario, Parametrix found a net positive fiscal impact, although the amount of the change in anticipated housing values was not identified.

D. Comparison of Fiscal Analyses. Neither study makes any assumptions or employs any methodology that could be considered unreasonable or excessively self-serving. The primary difference in the models used by the Applicant and for the FEIS are the assumptions made about future housing values and commercial activity for the City of Black Diamond over the next 15 years. Selecting one FIA over another would require a determination of which FIA more accurately predicts the performance of the economy for Black Diamond during the FIA's duration. Predicting the economy is an impossible task, or at least beyond the capabilities of current economic science. The FIAs only serve as a general guide to economic impacts, and those impacts must be considered inconclusive given the limitations of predicting economic performance 15 years in advance.

E. Fiscal Neutrality Factors. There are several factors that put the City in a good position to assure fiscal neutrality.

i The Applicant has agreed to a condition that will make it responsible for any fiscal shortfalls projected after each phase of development. The Applicant proposes the following condition:

> The applicant shall be responsible for addressing any projected city fiscal shortfall that a fiscal analysis, prepared at each phase, shows is a result of the Villages MPD. The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement.

ii. The sensitivity analysis conducted by Parametrix determined that under both FIAs, measures such as HOA ownership and maintenance of roads and/or parks would result in a net positive fiscal impact. Consequently, it is reasonable to conclude that any long term projected shortfalls could be addressed by privatizing infrastructure. Combining Applicant responsibility with the options of privatization provides reasonable assurance that the projects will not have an adverse fiscal impact upon the current residents of Black Diamond. In order to ensure that the MPD does not lower staffing levels of service as required by BDMC 18.98.050(A)(5), a condition of approval could be

worded to also require that the projects generate sufficient revenues to maintain required staffing levels.

iii. Additional fiscal analysis is required every five years, and at the start of each phase. The Applicant's recommended condition will be combined with that of the Staff's. As recommended by Staff, a fiscal analysis will be required five years into the project when it is likely that the Applicant's development is mostly residential and hence impacts may be most severe.

F. Table 3.4 of the application shows proposed land uses, and shows that a school uses are conditionally permitted within the office and retail designations. If a high school were located in an office or retail designation, because the amount of land a high school would occupy the amount of retail/office development would be significantly reduced. For this reason, Exhibit C below contains a requirement for preparation of an updated fiscal analysis for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use. This condition will also assist in assuring fiscal neutrality.

12. Wildlife.

A. Wildlife Species Likely to be Found on MPD Project Site. In order to determine the types of wildlife and habitat present on the sites for the purposes of the FEIS analysis, a resource study was conducted, which involved multiple site investigations throughout several different months and years, in addition to research of records and documents from DFW and other agencies. Tr. at 178 - 180 and 2,407. This included days of site investigations in 2005, 2007, and 2008. The results of this study are presented in the FEIS, which contains at page 4-72, Ex. 4-14 a summary of wildlife species expected to inhabit the Villages MPD site. The appendix to the FEIS contains a detailed list of all species considered. FEIS Appendix N, at July 16, 2008 WRI Memorandum pp. 11 - 15 and App. B thereto. Jason Knight, the consultant who prepared the technical analysis included in the FEIS, also noted that band tailed pigeons need mineral springs at their breeding site, and such springs are not found at the MPD project sites. While the band tailed pigeons may be found there during their migration, evidence presented support the findings that they do not inhabit or nest at the sites. Tr. at 60 - 61 and 2410-11. Mr. Knight added that no endangered or threatened species were found at the sites, which is also consistent with the findings by the DFW. He opined that development may benefit elk population because elk feed on landscaping plants that are more likely to be present as a result of development.

B. Wildlife Corridors. The width of the wildlife corridors on the Villages MPD site will be between 300 and 900 feet. The King County network biologist's minimum recommended width for a wildlife corridor is 150 feet. The width of the wildlife corridors proposed as part of the Villages MPD is adequate because it is at least double the minimum recommended by King County's network biologist, and provides sufficient space for wildlife to travel around spots where natural barriers such as flooded wetlands are present. Tr. at 2410-16 and 2454.

C. Impacts to Wildlife. Wildlife impacts are an inevitable impact of development. The only way to completely mitigate them is to provide for a one-to-one replacement of lost habitat with new habitat. Most development could not proceed under these conditions, and such a requirement would not be reasonable. The Villages MPD proposes to retain 42% of the project area in open space, a large portion of which will serve as a wildlife corridor. This open space retention is a relatively large set-aside for any development project, and the wildlife corridor within the open space is of sufficient width to provide for wildlife migration. This provides appropriate mitigation for any significant, adverse impacts to wildlife. And, significantly, the record also establishes that there is no threatened, endangered or otherwise protected species that has a habitat within the project area.

13. Wetlands. No evidence was presented on the issue of impacts to Core Wetlands or that the City's Sensitive Areas Ordinance is inadequate to protect these wetlands.

14. Landslide Hazards. Although at least one party of record asserted that landslide hazards had been inadequately analyzed, no evidence of landslide hazards was presented other than photographs of landslides. There also was no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address landslide hazards. Further, the Villages FEIS identifies landslide hazard areas and provides an in-depth assessment of mitigation for such hazards. *See* TV Appendix D, AESI Technical Report, p. 3-54, 4-2, 4-3, 4-11, 4-18, 4-21, 4-28-29, and 6-13 and 6-14. There was no evidence presented to show this analysis was inadequate.

15. Mine Hazards. The TV FEIS identifies mine hazard areas and concludes that only a small number of low-hazard mine areas are located within the Villages MPD. Villages FEIS at 4-8, 4-14, 4-15 and Exhibit 4-6. The City's Sensitive Areas Ordinance will ensure that these hazards will be sufficiently addressed. Some parties of record asserted that mine hazards had been inadequately addressed. One party of record in particular was primarily concerned with the dumping of toxic waste at mine sites. However, there was no evidence presented on mine hazards by any parties of record other than the Applicant, and there is no evidence in the record to suggest that the FEIS was inadequate on its analysis of mine hazards, including toxic waste issues at mine sites. Several people testified about mine hazard issues during the MPD portion of the hearing,

but there was no evaluation provided of the adequacy of the FEIS on this issue. There was also no evidence presented on whether the City of Black Diamond's Sensitive Areas Ordinance is inadequate to address mine hazards. A condition of approval requiring a notice on title disclosing the existence of present and former mine hazard areas will provide disclosure to potential buyers of homes within the MPDs.

16. Health Care Services. The Lawson Hills FEIS and the Villages FEIS indicate at page 3-89 that three hospital/medical care facilities operate near the City of Black Diamond, including Enumclaw Community Hospital in Enumclaw, Valley Medical Center in Renton, and Auburn General Hospital in Auburn. Advanced Life Support services are provided by King County Medic and are funded through a separate county-wide tax assessment. In addition, emergency medical care is provided by Mountain View Fire and Rescue (also known as King County Fire District No. 44). Specifically, the Villages and Lawson Hills FEISes locate medical facilities on the map in Exhibit 3-39. The FEIS analysis also indicates that additional fire fighters or volunteer EMTs will be required to serve the Villages MPD population, and that updated facilities as well as increased staff and infrastructure may be required for other medical facilities. Lawson Hills FEIS and the Villages FEIS, p. 3-90 - 3-91. Although one party of record alleged that Black Diamond has been identified by King County Public Hospital District #1 as an "underserved" area for health care, there was no additional testimony or evidence presented on health services other than the bare assertion in the Clifford Appeal that the FEIS was inadequate with respect to health services.

17. Historic and Cultural Resources. One party of record asserted that the Villages MPD will have an adverse impact upon historic and cultural resources, specifically a collapsed mine site that still contains the remains of some miners, and the potential existence of some Native American archaeological sites. That party did not pursue these claims during the hearings (beyond alleging traffic impacts to historic downtown areas, dealt with elsewhere in these Findings of Fact). There is no evidence in the record to establish that the Villages MPD has any significant adverse impacts upon cultural and historic resources.

18. Trails and Parks.

A. Amount of Parks. The Villages MPD exceeds the amount of parks required by the 2008 Black Diamond Parks, Recreation and Open Space Plan. The Villages MPD provides double the amount of neighborhood and community parks required by the Plan, and the number of pocket parks meets the Plan's standard.

B. Amount of Open Space. There are two prior agreements relating to open space: the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Protection Agreement ("BDAOSPA"). The open space called for by these agreements has been provided. The BDUGAA called for conveyance to King County of 645.2 acres of land located in the unincorporated county, and 63.3 acres to the

City as an offset for the West Annexation area; and conveyance of 339 acres in unincorporated King County to the County and 81.7 acres as an offset for the South Annexation area. The BDUGAA also required protection or conservation of 347 acres of potential in-city open space on or before annexation of the West Annexation area, and protection or conservation of 195 acres of potential in-city open space on or before annexation of the South Annexation Area. The potential in-city open space was to be protected conserved through purchase or transfer of development rights, or dedication or conveyance of conservation easement to the City or County. BDUGAA (City Staff report, Ex. 7) at 12-13. The BDAOSPA identified the specific lands and provided for mechanisms for their transfer and/or dedication at closing, which was the effective date of annexation of the West Annexation area. Consequently, the lands identified in the BDUGAA for conveyance, protection and/or conservation have been so conveyed, protected and/or conserved. The Villages MPD itself includes 77 acres of open space, trails and parks, 177 acres of wetlands, and 251 acres of buffers, for a total of 505 acres (or 42% of the MPD project site) as open space. Figure 3-1 (July 8, 2010) Land Use Plan map.

C. Timing of Proposed Parks and Trails Construction. The phasing plan proposed by the Applicant calls for park construction at various stages of specified occupancy. Villages MPD Application at 9-10. This timing is contrary to BDMC 18.98.080(A)(4)(a), which requires that all park improvements be completed prior to any occupancy or final site or plat approval, whichever occurs first. This noncompliance is remedied by inclusion of a condition in Exhibit C below to require construction of parks prior to occupancy or final site or plat approval. For on-site trails and other recreational facilities other than parks, timing of construction is governed by p. 9-3 of the MPD applications, which generally requires that they must be built prior to occupancy. This requirement does not apply to off-site trails.

D. Integration Into Trail Network. A condition clarifying that off-site trails and recreational facilities may be required as a condition of phased development, as authorized by law, to mitigate the impacts of a particular phase, will enable the City to require off-site trail improvements and connections to facilitate the immediate integration of each phase into an area-wide trail network.

19. Water Availability. As to water availability, the Water Supply and Facilities Funding Agreement ("WSFFA") (Exhibit 9) dated August 11, 2003, provides for water supply through major property owner upgrades of the Black Diamond water system, including upgrades to the city springs, and delivery of city spring water to Black Diamond, and the purchase of new water supply from the City of Tacoma, with a requirement for reimbursement of costs incurred for the upgrades by credits on future

capital facility charges. The project has also been designed, generally, through infiltration systems and circumvention of wetlands, to avoid any risk of adverse impact to private wells and springs that could be affected by the Villages MPD, as established in the AESI reports in Appendix D to the Villages FEIS. There is no evidence to suggest that the use of these water sources will impact or impair existing water rights of other residents.

20. Tree Removal. The Applicant has agreed to comply with the tree preservation ordinance. *See* MPD Ex. 114, p. 21. The tree preservation ordinance has a comprehensive replacement program for trees that are removed, except for properties that have 40% open space. *See* BDMC 19.30.070. The City's tree preservation ordinance sets the standard for tree protection in Black Diamond, and is sufficient to protect the community from the removal of trees.

21. Greenhouse Gas Emissions.

A. Quantity of Emissions. Vehicle emissions are a significant source of greenhouse gases. Villages FEIS Appendix Q, "Air Quality", p. 10. The FEIS estimates the volume of vehicle emissions by using the average number of vehicle miles per day in Washington State per person. Villages FEIS, Appendix Q, "SEPA GHG Emissions Worksheet", at 10. While some parties of record (the SEPA Appellants) argued that this state-wide average grossly understates the average mileage of MPD residents because the MPDs are far from employment and commercial centers, as noted by the Applicant the use of the state-wide average is required by King County for assessment of green house gases in King County unincorporated areas. Applicant Closing Brief, pp. 77 - 78. It is also not necessarily intuitive that average daily trips for Black Diamond residents would be significantly higher than the state-wide average. Due to the long distance from commercial and employment centers, Black Diamond residents are probably more likely to carpool, take transit, telecommute, otherwise work from home, or not work at all. The state-wide average also includes all of the other rural areas of the state, including Eastern Washington, where distances to commercial and employment centers exceed those of Black Diamond. The SEPA Appellants presented no evidence of what average daily trips Black Diamond residents would take, or the length of those trips. The record does not support the assertion that the state-wide vehicle mileage used in the greenhouse gas estimates is significantly less than the average mileage of future Black Diamond residents.

B. Parametrix Peer Review. In cross-examination of Steve Pilcher, the SEPA Appellants also asserted that the greenhouse gas analysis was not consistent with the peer review requirements of Parametrix. Tr., pp. 3342 - 3344. SEPA Appellants' counsel referenced a Parametrix statement that no alternative land use scenario was analyzed in the air quality analysis. The Villages FEIS, however, does examine air quality impacts under an

alternative land use scenario, consistent with the concerns expressed by Parametrix. Villages FEIS at 4-93 – 4-95, alternative 3.

C. Mitigation for Greenhouse Gas Emissions. The SEPA Appellants identified several mitigation measures they asserted should be required to reduce greenhouse emissions. Wheeler Prehearing Ex. 19. Many of these recommended measures are already identified in the Villages FEIS, both in the text of the FEIS and in its technical appendices. Villages FEIS at 6-14; Appendix Q, "Air Quality," at 14 - 15. The project design already incorporates several elements that will help reduce greenhouse gases, such as an emphasis upon mixed use; bicycle and pedestrian trails; low impact development; and Built Green and LEED certified/Energy Star homes. Appendix Q, "Air Quality," at 14. As noted in the Villages FEIS technical discussion on greenhouse impacts, there is no standard for greenhouse emissions associated with development projects and the extent to which a single project affects climate change is unknown. Given this context, the mitigation outlined in the Villages FEIS and technical appendices for green house gases is reasonable, appropriate, and adequate.

22. Employment.

A. The Black Diamond 2009 Comprehensive Plan includes the City's employment targets for 2025. The Comprehensive Plan at pages 5-31 – 5-32 states that the City's target employment for the year 2025 is 2,952 jobs, an increase of 2,525 jobs over the year 2000 job total of 427 jobs. Comprehensive Plan at 5-31, Table 5-3 (2025 Target Employment). These jobs correspond to a total household target of 6,032 households. Comprehensive Plan at 5-29 – 5-30, Tables 5-1 and 5-2. Considering Tables 5-1, 5-2 and 5-3 together yields a job/household ratio of 0.468 (2,952 ÷ 6,032 = 0.468).

B. Table 3-9 of the Comprehensive Plan indicates a goal of attaining 0.5 jobs per household by the year 2025. This roughly corresponds to the 0.468 jobs per household that results from Tables 5-1, 5-2 and 5-3.

C. Page 3-11 of the Comprehensive Plan states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base. . . ." Comprehensive Plan at 3-11 – 3-12. Therefore, the Comprehensive Plan indicates that the City's updated projection is to have 2,677 new jobs by 2025. Comprehensive Plan at 3-12. These jobs are to be allocated among "833 acres of employment land. . .proposed in the City limits . . . ." *Id.* This equates to 3.21 jobs per acre of employment land.

D. The Comprehensive Plan also indicates that "development capacity was calculated for the commercial and industrial designations within the City, as shown in Figure 5-1. . . .The data indicate the City contains the capacity for 5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.

E. The Villages FEIS Fiscal Analysis in Appendix J contains an analysis of the amount of retail/office square footage to be developed, and projects that such development will generate 1,365 employees.

23. Findings Deemed Conclusions of Law. Any Findings of Fact set forth herein that are deemed to be conclusions of law should be considered as such. Any Conclusions of Law set forth in Exhibit B below that are deemed to be Findings of Fact are adopted herein by reference as if fully set forth.

EXHIBIT B

CONCLUSIONS OF LAW

1. Authority of City Council. BDMC 18.98.060(A)(6) provides that the City Council shall, following receipt of the hearing examiner's recommendation, schedule a time for consideration of the MPD, and that the council may (a) accept the examiner's recommendation; (b) remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or (c) modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed. The Conclusions of Law set forth below, and the Findings of Fact adopted in Exhibit A above upon which these Conclusions of Law are based, are within the City Council's authority provided in BDMC 18.98.060(A)(6)(c).

2. Conclusions as Findings of Fact. Any Conclusions of Law adopted herein that are findings of fact shall be deemed as such. Any Findings of Fact adopted in Exhibit A above that are conclusions of law are hereby adopted as if set forth herein in full.

3. Review Criteria. BDMC 18.98.060(A)(6) and18.98.080 require the City Council to base its decision the MPD on the approval criteria set forth in BDMC 18.98.080. However, BDMC 18.98.080(A)(1) also requires compliance with all applicable regulations, and BDMC 18.98.080(A)(10) requires compliance with the purposes outlined in BDMC 18.98.010(B) through (M) as well as the public benefit objectives contained in BDMC 18.98.020. Consequently, these Conclusions of Law address compliance with all the provisions of Chapter 18.98 BDMC, as well as some provisions of the International Fire Code (IFC) required to be addressed at this stage of review. Applicable criteria are quoted in bold italics with corresponding Conclusions of Law assessing compliance.

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

This purpose is met. The MPDs have been the subject of multiple environmental appeals, over one hundred hours of open and closed record hearings, and hundreds of written comments. Members of the public were given ten minutes each to testify before the Hearing Examiner, and parties of record who so testified or submitted written comments were also provided ten minutes each to present argument to the City Council during its closed record hearing. Although some parties of record nevertheless asserted that there was not enough time for them to review or comment upon the MPD applications, the public was provided ample opportunity to comment on the MPDs. The public review process utilized for the Villages MPD applications complied with the purpose of BDMC 18.98.010(A).

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

As detailed in Finding of Fact No. 2, the Villages MPD project comprises 1,196 acres. It is therefore subject to the MPD review process as per BDMC 18.98.010(B). The North Property (aka Parcel B), although approximately 80 acres in size (and thus potentially eligible to be an MPD unto itself), is considered part of the overall Villages MPD, and was therefore also subjected to the MDP review process in accordance with BDMC 18.98.010(B). Pursuant to Section 18.98.030(C), an MPD commercial area may be geographically separate from the MPD's residential component.

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

As detailed in Finding of Fact No. 2, the Land Use Plan map (Figure 3-1, dated July 8, 2010), and page 3-21 of the MPD application, the project proposes to preserve significant amounts of open space. They include a mix of passive and usable areas comprised of sensitive areas such as wetlands and their associated buffers, trails, parks, and utilities such as stormwater ponds. Figure 3-1 (July 8, 2010) of the MPD application shows a majority of the areas dedicated to open space as a coordinated network. As detailed in Finding of Fact No. 12.B, the wildlife corridors are more than double the width recommended by King County's wildlife network biologist. The vast majority of open space will be maintained as sensitive areas (primarily wetlands and streams) and their required buffers. Therefore, these open space, trails, parks, wetlands, buffers and wildlife corridors comply with BDMC 18.98.010(C)'s purpose of preserving open space, wildlife corridors and open space lands.

7. **BDMC 18.98.010(D):** ***Allow alternative, innovative forms of development and encourage imaginative site and building design and development layout with the intent of retaining significant features of the natural environment;***

Chapter 3 of the MPD application requests residential and commercial development standards that allow for great flexibility in building design and development layout. In terms of residential development, this includes a variety of housing types at varying densities; alley-loaded lots; clustered residential centered on common greens; and live/work units. The applicant has agreed to a condition requiring detached single-family dwelling units to be "alley loaded," which is not a typical suburban development pattern.

In addition, live/work units are described on page 3-35 of the application materials, and their potential location is now depicted on the Land Use Plan map contained in the Land Use Plan Map in Figure 3-1 (July 8, 2010). Although when researching other large master planned communities in the Puget Sound (such as Issaquah Highlands), staff

found the viability of live/work units to be limited, the location indicated in the Land Use Plan map is in the center of the Villages proposed development area where live/work units are most likely to be viable.

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

As proposed in the Villages MPD application, the innovative design purpose of BDMC 18.98.010(D) is met. The City Council expects to establish some of the street design features in the Development Agreement and other infrastructure design flexibility through the design deviation process already established within the Black Diamond Engineering Design and Construction Standards.

8. **BDMC 18.98.010(E):** ***Allow flexibility in development standards and permitted use.;***

A. Chapter 3 of the MPD application proposes residential and commercial development standards and uses that allow for flexibility in building design and development layout. The commercial component of the MPD would be located on the North Property (Parcel B) and in the northern portion of the Main Property. The eastern portion of Parcel B is proposed as a high density residential use. The remaining residential, schools, and parks components would occur on the Main Property. In some cases, these proposed densities differ from those available under other zoning designations in the remainder of the City, and would therefore be unique to these MPD properties. As such, the development of the MPD will utilize flexibility in development standards and permitted uses, and therefore satisfies the purpose outlined in BDMC 18.98.010(E), as explained in more detail below.

B. The project proposes three residential categories, MPD-L (1-8 du/ac), MPD-M (7-12 du/ac) and MPD-H (13-30 du/ac). (The minimum 1 unit per acre density proposed is not consistent with the BDUGAA, past pre-annexation agreements, or the City's Comprehensive Plan. A minimum density of 4 du/ac for residential properties is therefore a condition of approval.) Chapter 3 of the application requests the MPD "Master Developer" have the ability to propose to change the category of individual residential development parcels as shown on the Figure 3-1 Land Use Plan. The proposal includes the ability to adjust up or down one residential land use category through an administrative review process (this would not apply to the 18-30 du/acre category). The adjustment of land use categories would not allow an increase in the overall unit cap of 4,800. The areas proposed for the highest residential densities (18-30 du/ac) have been depicted on the land use plan.

C. The City Council concludes that if the applicant requests to change the residential category of a development parcel internal to the project, then an administrative process would be appropriate. However, a change in a residential category that abuts the perimeter of the MPD requires a public hearing process as a Major Amendment to the MPD. Additionally, the Development Agreement should also establish a limitation to allow such reclassification of development parcels no more frequently than once per calendar year (consistent with the allowance for Comprehensive Plan amendments).

D. While the applicant has proposed a wide variety of project-specific development standards, not all should be granted. Some of these areas are identified and discussed under the "Functionally Equivalent Standards" portion of these Conclusions. Specifically, decision on a number of the land use development standards (table of allowed uses, setbacks, etc.) should be addressed in the Development Agreement. This will provide the opportunity for further discussions with the applicant. There are several areas in which less stringent standards than required elsewhere in the city are being sought, some of which are requested in the functionally equivalent standards mentioned above. Until the applicant provides greater certainty and clarity to the actual development proposed for the site, these requests are not justifiable even with the flexibility called for by BDMC 18.98.010(E). The amount of flexibility being requested in the proposed project at this time - while the overall plan is highly conceptual - does not result in a compelling reason to allow these different standards. There are numerous concerns, including uses proposed to be permitted in open space areas; a minimum 18' front yard setback to residential garages (20' required by MPD Design Guidelines and in standard zones); inadequate parking lot landscaping, resulting in less required landscaping than the city's nonresidential zones; excessive allowance for compact parking stalls (65% vs. 25% elsewhere in the city); and insufficient required parking for commercial/retail uses (a particular concern when Parcel B's location means it will be heavily oriented to automobile trips).

E. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and storm water comprehensive plan concepts. Staff, the applicant, the hearing examiner and the Council can resolve the large, overarching design issues and establish some of the proposed functionally equivalent construction standards as part of the Development Agreement. In addition to the flexibility of establishing functionally equivalent standards as part of the Development Agreement, the Engineering Design and Construction Standards contain an administrative deviation process (section 1.3 of the standards) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering Design & Construction Standards' administrative deviation process.

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

The MPDs have been subject to extensive and intensive environmental review. The FEIS is supported by hundreds of pages of environmental analysis. The bulk of the hearings on the MPDs was comprised of the testimony of numerous experts addressing the appeals of the FEIS. Through this process several areas of improvement were identified, resulting in Hearing Examiner recommendations for and Applicant offers of extensive additional mitigation, including additional future impact analysis and mitigation. That mitigation, and the requirements for additional future analysis, are incorporated into the conditions of MPD approval in Exhibit C below. New conditions addressing traffic and noise in particular, will help ensure that all significant environmental impacts are appropriately mitigated. *See* Finding of Fact No. 5.E. For the reasons detailed in the Findings of Fact, the City Council concludes that the requirement of BDMC 18.98.010(F) has been met.

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

A. As detailed in the Findings of Fact, the project proposes a maximum of 4,800 units and 775,000 square feet of office and commercial uses to be built out in three phases over a period of approximately 15 years. (It should be noted that the application includes several uses which are typically considered to be industrial uses under the definition of "office"). Chapter 9 of the MPD application indicates the phasing of development, with the initial development focus south of Auburn-Black Diamond Road, followed later by development on the north side and the commercial area of the proposed Lawson Hills MPD (North Triangle). Development would progress outward from these areas, with the southeastern portion of The Villages site being the last area likely to be developed.

B. Chapter 3 of the MPD application contains design concepts that illustrate the proposed character of development. Ch. 3 also describes a variety of housing types anticipated to be built and proposes development standards that would apply exclusively within the MPD. Although the level of detail of the MPD does not include typical subdivision or project layouts, per Conclusion No. 8 above and related conditions of approval in Exhibit C below, the Development Agreement will specify details of what product type will be built where and when, and the additional development standards and design guidelines to which the development will be subject. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines adopted in June 2009. In addition, the conditions of approval shall also establish a target unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) be incorporated into the Development Agreement. And, all commercial/office uses (other than home occupations) shall only occur on lands so designated.

Therefore, subject to the conditions of approval in Exhibit C below, the purpose set forth in BDMC 18.98.010(G) is met.

11. **BDMC 18.98.010(H):** ***Provide environmentally sustainable development.***

A. Low Impact Development. The MPD application discusses implementation of low impact development (LID) techniques, water conservation, clustering development and preserving open space. Because of the suitability of soils on the Main Property (as described in Ch. 4 of the FEIS), LID should have excellent potential. As a condition of approval, mechanisms shall be identified to integrate LID into the overall design of the MPD.

B. Compliance with Environmental Ordinances. The MPD will comply with codes aimed at environmental protection, including but not limited to the Sensitive Areas Ordinance, and will also provide mitigation measures derived from the FEIS designed to prevent the project from having an adverse impact on the environment.

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

D. Villages MPD Provides Environmentally Sustainable Development. In light of the conclusions in 11.A – C above, and subject to the conditions of approval in Exhibit C below, the Villages MPD complies with BDMC 1898.010(H)'s purpose of providing environmentally sustainable development.

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

This purpose is met. The MPD application, along with conditions of approval, will ensure that needed services and facilities are provided in an orderly, fiscally responsible manner. Chapters 4-8 of the MPD application discuss transportation, parks, stormwater, sewer, and water facilities; Ch. 9 discusses the project phasing plan and the timing of these improvements. Ch. 9 of the MPD application also discusses several cost recovery mechanisms related to construction of facilities improvements, including local improvement districts, latecomer agreements and other financing mechanisms such as community facility districts. In addition, a proactive transportation monitoring plan, with a list of projects and trigger mechanisms acceptable to the City, is required by Conditions 20 and 25 in Exhibit C below, with the monitoring plan to be further detailed as part of the Development Agreement. Condition 25, in particular, requires traffic mitigation measures to be installed so as to maintain the City's adopted level of service, rather than subsequent to a decline in level of service. And, Condition No. 17 requires periodic

review of traffic impacts, and identification and construction of additional mitigation if the mitigation identified in Conditions 15 and 16 is insufficient to mitigate identified traffic impacts from the Villages MPD. In light of the phased construction of regional public infrastructure projects, the monitoring plan, and periodic review and analysis of traffic impacts and mitigation, to be further specified in the Development Agreement, the Villages MPD will provide services and facilities in an orderly fiscally responsible manner.

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

The Villages MPD also satisfies the purpose of promoting economic development and job creation in the City, as called for by BDMC 18.98.010(J). As shown on the Land Use Map in Figure 3-1 (July 8, 2010), and as detailed in Finding of Fact No. 2, the MPD project has designated 67 acres for a maximum of 775,000 square feet of commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail; among other things, it describes office uses as a broad category including such things as general office, business support services, light manufacturing, wholesaling and mini-storage. While the ultimate mix of uses will remain unknown until full build out, the amount of land provided in the MPD for retail and office uses meets the purpose of promoting economic development and job creation.

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

A. The purpose set out in BDMC 18.98.010(K) is also satisfied. As detailed in Finding of Fact No. 2 and as shown on the Land Use Plan map in Figure 3-1 (July 8, 2010) and described in the MPD application, the Villages MPD includes a mixed-use town center, a variety of housing types and densities, areas for schools and other civic uses, and recreational opportunities in the form of a variety of parks and trails. Chapter 3 of the MPD application describes a variety of housing types including detached single family, duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. With the exception of stacked flats, which are described as a possible housing type within the high-density category, all other types could be built within areas designated for either low or medium density residential uses.

B. The application includes schematic drawings of potential housing types and lot configurations (see Chapter 3). However, the distribution of these various modes of development is not defined; therefore, a condition is included in Exhibit C to require the development agreement to set targets for specified housing types for each phase of development.

C. Because the potential earning potential yielded by jobs that may be created in the MPD project area is unknown, if a significant number of jobs is in the retail and service sector, housing affordability may become a significant issue. Therefore, a condition of approval is included in Exhibit C below to require the project to include a mix of housing

types that contribute to the affordable housing goals of the City, and to require that the Development Agreement provide for a phase-by-phase analysis of affordable housing citywide to ensure that housing is being provided at affordable prices.

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

This purpose is also met by the Villages MPD. As detailed in Finding No. 2, the Land Use Plan map and the MPD application, the Villages MPD application proposes a mix of residential and commercial type uses, with development located in compact clusters separated by sensitive areas and open space. Parks and schools are proposed to be located on site with a road and trail network to link the residential portions of the project. These will provide opportunities for interaction, socializing and a sense of community. Stands of trees and natural areas are proposed along the main spine road through the project. These natural areas and extensive open space will help preserve rural character.

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

In June 2009, the City adopted an updated comprehensive plan, zoning code, design guidelines and engineering design and construction standards. The Comprehensive Plan includes the city's vision statement on page 1-2, which envisions "development [that] maintains a healthy balance of moderate growth and economic viability," residential development with "a mix of types, sizes and densities, clustered to preserve a maximum of open space and to access a system of connecting trails/bikeways." The proposed project is generally consistent with the vision statement and the City's development regulations and policies. Further, Page 5-13 of the Comprehensive Plan (Land Use element) discuss the MPD Overlay plan designation. The Villages MPD is also consistent with that section of the Comprehensive Plan.

These Conclusions of Law address below the MPD proposal's consistency with other provisions of the Black Diamond Municipal Code.

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

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

A. This objective is satisfied. The Villages MPD provides a greater preservation and enhancement of the physical characteristics (topography, drainage, vegetation,

environmentally sensitive areas, etc.) of the site than would typically be available through conventional development. This includes:

i. The MPD preserves 29 more acres of open space and sensitive areas than would conventional development, according to Exhibit 1-3 of the FEIS;

ii. Because the property is being developed via an MPD, roads, utilities and public facilities will be constructed in a coordinated fashion, minimizing disturbance of sensitive areas; with the unavoidable exception of several road crossings, avoidance of sensitive areas was a factor in the overall layout of this project, as shown in the land use plan/constraints map overlay (Exhibit 11). Under conventional development roads and utilities would be constructed incrementally, as Exhibit 1-3 of the FEIS acknowledges, which could result in additional incursions into sensitive areas as permitted by the City's development regulations for road and other public utility construction (BDMC Section 19.10.080(E)(1));

iii. Because the property is being developed in a coordinated fashion, drainage can be coordinated to maximize infiltration where soils permit, as well as utilization of a large drainage area to maximize sediment and phosphorus removal, in manner that would exceed that available under conventional development; and

iv. Other than where stormwater ponds, utilities and future active park and trail sites may be proposed, open space areas are to remain untouched.

B. Chapter 1 of the MPD application discusses clearing and grading for the project. It is estimated that approximately 4,753,000 cubic yards of cut and 1,685,000 cubic yards of fill would be required for the Main Property. Fill is proposed to come from material excavated on site. For Parcel B the estimate is 81,000 cubic yards of cut and 81,000 cubic yards of fill would be necessary (i.e., the site would be "balanced"). The City Council recognizes that in order for urban development to occur, some natural undulations and occasional sharp pitches in the natural grade will need to be graded for street and urban living compatibility, and that initial site grading will provide better, more consistent utility depths and minimize retaining walls and steps to homes and other buildings. The extent of removal and export (approximately 3,000,000 million cubic yards of soil) proposed for the Main Property would be inconsistent with the objective in BDMC 18.98.020.A, however. Therefore, a condition is included in Exhibit C below to require that, prior to the approval of the first implementing plat or site development permit within a phase, the applicant must submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%. This will insure that unnecessary mining of material will not occur and that reuse of existing materials will be maximized. Further, a condition is also included in Exhibit C below requiring the Villages MPD to comply with the Framework Design Standards and Guidelines, which require at 3.A.6 that grading be phased to maintain surface disturbance and maintain significant natural contours.

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

A. This objective is satisfied. The development standards adopted by the City, combined with the conditions contained in Exhibit C below, will protect both surface and groundwater quality on-site and downstream, through the use of innovative, low-impact and regional stormwater management technologies.

B. The City's adopted standards utilize regional stormwater management technologies. BDMC Ch. 14.04.020 adopts the 2005 Ecology Stormwater Management Manual for Western Washington (SWMMWW), which is consistent with the requirements of the NPDES Phase II Municipal Stormwater Permit for Western Washington. The provisions of BDMC Ch. 14.04 will apply to all development permits until such time as the City may be required by the terms of the NDPES Permit to amend the provisions of the adopted SWMMWW. In addition, the Villages MPD application proposes a project-wide approach to stormwater management (rather than an individual development parcel approach), which also meets the intent of regional stormwater management.

C. As indicated in Chapter 6 of the MPD application, the stormwater management plan includes incorporation of low impact development (LID) techniques. Given the soils on the Main Property as described in Ch. 4 of the FEIS, LID should have excellent potential. Further, Exhibit C contains a condition of approval requiring identification of mechanisms to integrate LID into the overall design of the MPD for the benefit of surface water resources. This meets the intention of the objective's provision for low-impact stormwater management technologies.

D. Exhibit C contains other conditions requiring the Development Agreement to incorporate additional innovative techniques, as follows:

i. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the SMMWW, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

ii. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring

conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of Tp, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in Tp so as to bring the discharge below the annual maximum identified pursuant to this Condition.

iii. The Development Agreement shall require a proactive, responsive temporary erosion and sediment control plan to prevent erosion and sediment transport and protect receiving waters during the construction phase.

iv. The Development Agreement shall ensure that the storm water system does not burden the city with excessive maintenance costs, while assisting the City with maintenance of landscape features in storm water facilities.

v. The Development Agreement shall require a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations. Particular attention should be paid to phosphorous levels in Lake Sawyer.

vi. If roof runoff will be discharged directly to wetlands or streams for recharge and base-flow purposes, include restrictions on roof types (no galvanized, no copper) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharge is suitable for direct entry into wetlands and streams without treatment. These restrictions should be enforced during permitting and also during the life of the project by the Homeowners Association (HOA). The applicant should develop public education materials that will be readily available to all homeowners and implement a process that can be enforced by the HOA.

vii. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent. This condition recognizes the fact that shifts in the discharge points of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments.

viii. The Applicant shall be required to obtain all necessary permits from King County for construction, including any necessary approval or agreement providing the City ability to perform maintenance of the large regional storm pond proposed to the west of the project. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County. This condition is required in recognition of the fact that although the property to the west of the MPD property is the best location for the regional stormwater infiltration pond because it presents an environmental advantage

(the ability to consolidate the infiltration of the excess runoff to a deep aquifer in one location at the most efficient collection location), this site is not within the City's jurisdiction and approval from King County is required for both pond construction and future City maintenance.

19. **BDMC 18.98.020(C):** ***Conservation of water and other resources through innovative approaches to resource and energy management including measures such as wastewater reuse.***

This objective is satisfied. Chapter 8 of the MPD application describes the proposed water system for the MPD, including details of the required water conservation plan. Additional conservation measures may be required in the Development Agreement as staff and the applicant develop a specific design.

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

A. This objective is satisfied. Chapter 3 of the MPD application contains details regarding open space. Pursuant to BDMC Sections 18.98.120(G), 18.98.140(F) and (G), an MPD shall provide the amount of open space required in any prior agreements, or the applicant may elect to provide 50% of the project area as open space. As detailed in Finding of Fact 18.B, there are two prior agreements, the Black Diamond Urban Growth Area Agreement ("BDUGAA") and the Black Diamond Area Open Space Agreement ("BDAOSPA"), and those agreements have been complied with. Those agreements resulted in the preservation of nearly 1,670 acres of open space and, as recited in those agreements, conveyance and/or preservation of the specific acreages set forth in the agreements resulted from a required ratio of 4 acres of open space for every one acre of land allowed for urban development. Finding of Fact No. 18.B; BDUGAA (Staff Report, Ex. 7) at 5, para. 3.5. The objective in BDMC 18.98.020(D) is therefore satisfied.

B. Even if BDMC Sections 18.98.120.G, 18.98.140.F and .G were construed as applying the prior agreements only to the specific portions of the MPD addressed by those agreements, and that a 50% open space requirement applies to the remainder of the MPD, the objective in BDMC 18.98.020(D) is nevertheless satisfied. The portions of the MPD subject to the prior agreements provided 145 acres of open space as an offset for the West (63.3 ac) and South Annexation (81.7 ac) areas. Under such an interpretation, the portions of the MPD not subject to prior agreements are required to provide 50% of the land area as open space (336.4 acres) in order to have varied lot dimensions, cluster housing and pursue additional density (see 18.98.140.G). Thus, the overall amount of open space required to be provided within the MPD is 481.4 acres (145 + 336.4 = 481.4). The Figure 3-1 Land Use plan shows that 505 acres of open space, parks and trails, wetlands and buffers are proposed, while page 1-4 states that a minimum of 481.4 ac will be provided. Therefore, even under an interpretation that applies the "prior agreement" standard to only part of the MPD, and the 50% open space standard to the remainder of the MPD, the Villages MPD complies with the open space requirements of the Black Diamond Municipal Code. This also satisfies the objective in BDMC 18.98.020(D).

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

D. Some parties of record argued that the Applicant was "double dipping," because some of the areas included in the open space totals itemized in Finding of Fact 18.B are also regulated under the City's Sensitive Areas Ordinance. Such a result was expressly contemplated by, and complies with, the BDUGAA and the Black Diamond Municipal Code. Section 7.5 of the BDUGAA expressly provides that open space within the West and South Annexation Areas "can only be used for the purposes included in KCC 26.04.020.L, such as preservation of wetlands and other critical areas, buffers, recreational areas and natural areas or as an urban separator and/or urban/rural buffer." BDMC Section 18.98.140(A) expressly defines open space as "wildlife habitat, areas, perimeter buffers, environmentally sensitive areas and their buffers, an trail corridors." It may also include "those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into a public park system."

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

The objective is satisfied. BDMC 18.98.020(E) does not require (nor could it) that the MPD meet all of the City's economic development objectives. Instead, it requires only that the MPD "help meet" them. Consequently, any significant contribution to available employment would satisfy this requirement. As detailed in Finding of Fact No. 2, the project has designated 67 acres for a maximum of 775,000 square feet of retail/commercial/office/industrial use. Chapter 3 of the MPD application describes these in more detail. The amount of jobs and tax revenues to be generated by this area will be dependent upon the mix of development that occurs, but there is no question that the project will add to the employment base of the City.

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

A. The objective is satisfied. The fiscal impacts of the project are addressed in detail in Finding of Fact No. 11. As noted in that Finding, a condition will be imposed in Exhibit C below, utilizing a combination of the conditions proposed by the Applicant and City staff, respectively, requiring repeated reassessment of fiscal impacts and requiring the Applicant to cover any shortfalls. This will ensure that the objective in BDMC 18.98.020(F) is satisfied.

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

23. **BDMC 18.98.020(G):** ***Timely provision of all necessary facilities, infrastructure and public services, equal to or exceeding the more stringent of either existing or adopted levels of service, as the MPD develops; and***

A. This objective, which requires provision of facilities, infrastructure and public services in accordance with the more stringent of the existing levels of service within the City of Black Diamond or Black Diamond's adopted levels of service, is satisfied. Chapters 4 and 6 through 9 of the application contain conceptual utility plans and a phasing plan which describes street and utility improvements. These plans assure that infrastructure will be in place at the time and to the extent needed. Details on the proposed timing of improvements are on page 9-3, as well as included in conditions of approval in Exhibit C below, especially for transportation improvements. Page 9-10 indicates the proposed "trigger" for park improvements. Further, the proposed phasing plan of supporting regional infrastructure projects, along with various conditions contained in Exhibit C below and a satisfactory implementing Development Agreement, will provide for the required facilities and infrastructure in time to meet adopted levels of service applicable in other jurisdictions.

B. Further, the conditions of approval in Exhibit C require preparation of a revised transportation demand model, and use of that model at specified points in the future to periodically review traffic impacts of the MPDs as they develop and identify additional mitigation as necessary to meet levels of service for successive phases of development. Mitigation may exceed that identified in the FEIS if necessary to meet level of service standards, so long as the adverse impacts are identified in the relevant environmental document (here, the FEIS), and the mitigation is consistent with an environmental policy adopted by the governmental body and referenced in its decision. WAC 197-11-660(1)(a) and (b); *see also Quality Rock Products, Inc. v. Thurston County*, 139 Wn. App. 125, 140-141 (Div. II 2007). Here, requiring such additional mitigation is consistent with the City's policy set out in BDMC 18.98.020(G), which is adopted by reference as a SEPA policy in BDMC 19.04.240(B)(3). Under these conditions, the first periodic review will be conducted at the point where building permits have been issued

for 850 homes for the Villages and Lawson Hills together; subsequent periodic review will occur at such future points specified by the City Council.

As discussed in Finding of Fact 5(L), the future periodic reviews utilizing a revised transportation demand model are warranted, because of the length of the project build out, and because the existing models are not optimally suited to predict future traffic impacts 15 or more years into the future, particularly given the scale of the two MPD projects and the models' underlying assumptions. Future periodic reviews will involve re-validation of the transportation demand model by checking the traffic analysis against actual MPD traffic growth.

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

The objective is satisfied. Chapter 5 of the MPD application contains provisions for a trail network which would connect areas of the MPD and provide points at which future extensions to the rest of the City could be made by others or the City through public projects.

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

This objective is satisfied. These Conclusions of Law are part of an ordinance granting MPD permit approval. The conditions of approval included in Exhibit C require a Development Agreement, consistent with BDMC 18.98.050(A).

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

This objective is satisfied, for the reasons explained in Conclusion No. 25 above. The recommended conditions of approval require execution of a development agreement before approval of any implementing land use or development permits.

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

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

regulations, then the specific requirement of this chapter shall be deemed the most stringent.

The criterion is met. As discussed at length below, Comprehensive Plan policies are met. Further, specific MPD regulations and design requirements are also met, as explained and addressed throughout these Conclusions of Law and in the conditions in Exhibit C below.

A. Compliance with Comprehensive Plan policies.

i. The most controversial polices at issue concern those pertaining to preservation of small town character. Many parties of interest argued that the Comprehensive Plan policies require preservation of "rural" character. This is incorrect, and would be inconsistent with the Growth Management Act, the City's Comprehensive Plan, and implementing development regulations in any event. As the Hearing Examiner's Recommendation explained, when it comes to density, "the die has already been cast on this issue." The Growth Management Act, Chapter 36.70A RCW, requires cities to encourage urban densities in order to promote efficient use of infrastructure and contain urban sprawl. *See* RCW 36.70A.110, 36.70A.020. Under the GMA, cities are not permitted to adopt Comprehensive Plan policies requiring certain areas to remain "rural." *See, e.g.*, Final Decision and Order in *Robison v. Bainbridge Island*, CPSGMHB No. 94-3-0025, at 22-23. In *Robison*, the Board determined that the City of Bainbridge Island's "Overriding Policy No. 1," which called for the City to "preserve the rural character of the Island" violated RCW 36.70A.020(1) and (2), and remanded the policy to the City for revision (the City excised the word "rural"). As the Board explained, "Compact urban development is not "rural" land use. . . . [B]ecause Bainbridge Island has chosen to be a city, it must remain cognizant of its duty under the Act to plan for compact urban development within its boundaries as it grows."

ii. The City Council has implemented the GMA's mandate to provide for urban densities, by adopting Comprehensive Plan provisions concerning a "Master Planned Development (MPD) Overlay (pages 5-13 - 5-14) that state that MPD "densities are intended to be urban in nature (minimum of 4 dwelling units per gross acre) and will be established as part of the MPD approval process." (Emphasis added). The Plan acknowledges that all cities (including Black Diamond) are to be included within the Urban Growth Area, which is to include "areas and densities sufficient to accommodate urban growth expected to occur in the City in the next 20 years." Comp Plan at 1-6. As such, the Plan proposed a "village" environment, residential and economic development (including job opportunities for local residents and a long-term tax base for the City) . . . ." Comp Plan at 1-8. The Plan also uses innovative techniques such as density bonuses and MPDs (*Id.* at 1-8 – 1-9) to accommodate a 2025 population of nearly 17,000 people in "compact" (i.e., dense) urban development that preserves 35-40% of the City as open space. *Id.* at 1-10. "Much of this growth will occur as a result of Master Planned Developments in areas annexed to the City in 2005 . . . ." Comp Plan at 3-1.

iii. In light of the above, the Legislature and the Black Diamond City Council have adopted legislation that authorizes projects the size and density of the Villages MPD if specified criteria are met, and due to those legislative actions, the City Council is not in a position to deny the MPD applications because their densities might be construed as damaging "rural character." The impacts created by those densities, however, may be (and are) addressed through application of the MPD criteria and conditions of approval imposed pursuant to them.

iv. The City's Comprehensive Plan policies do not require preservation of "rural" character, even if such an approach was authorized under the GMA. Instead, the Comprehensive Plan instead refers to protection of "small town" character – and this is to be accomplished by principles that include compact development. *See, e.g.*, Comp Plan at 5-10 (continue compact form); at 5-4 – 5-5 (existing residential areas are developed at density of 4 and 6 dwelling units per acre); at 5-7 – 5-11 (addressing seven principles to preserve "small town character"); at 5-10 (discussing compact development, along with ways to connect "large-scale development" to older sections of town). On page 5-10, the Comprehensive Plan indicates that it calls for the use of "techniques that continue the character of compact form," while design guidelines will help the new, compact development <u>feel</u> like a rural community. This does not mean that the Plan is calling for protection of "rural character" by limiting density. It is only areas designated "Limited" Residential, *i.e.*, areas subject to significant environmental constraints and open space protection" that are to "reflect the informal rural development typical of many portions of the City." Comp Plan at 5-50. And, while the Comprehensive Plan and BDMC 18.98.010(L) do reference the book "Rural by Design," they do so only with respect to the extent that the book identifies ways by which the City can achieve its goal that an MPD "incorporate and/or adapt the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community." The listed planning and design principles are not "rural"; if anything, the reference to "compact form" is a reference to urban rather than rural development.

v. Exhibit 161, prepared by Dave Bricklin, does not require a conclusion to the contrary. Exhibit 161 identifies several comprehensive plan policies that require protection and/or consistency of "community character," "existing character of the historic villages," "natural setting," "rural community," "traditional village community," "small town character," and "existing historical development." *See* Black Diamond Comprehensive Plan, pp. 2-5, 4-1, 5-7, 5-8, 5-33, 5-38, 5-49, 5-50, 7-49. Another policy provides that design guidelines are required to provide methods and examples of how to achieve design continuity and to reinforce the identity of the City as a rural community. *Id.* at 5-10. All of the policies referenced above reflect a strong preference to retain small town character. None require rural densities or suggest that they supersede the more specific comprehensive plan policies and state mandates requiring urban densities within the City. The MPD regulatory framework must and can be applied in a manner that harmonizes the requirement for urban densities with the objective of maintaining small town character. The MPD regulations provide the specific examples of how this is to be accomplished, including but not limited to reference in BDMC 18.98.010(L) to the book

"Rural by Design" and its synthesis of the urban density/small town character concepts. The City Council must apply these specific standards, and may not impose conditions upon the MPDs on some vague "feeling" that they are necessary to protect small town or rural character, because such terms are highly subjective and difficult to assess. *See, Anderson v. Issaquah*, 70 Wn. App. 64 (1993) (a statute violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application).

B. Compliance With King County Growth Allocations.

Some parties of record argued that the City has improperly planned for more growth in the MPDs than allocated to the City by King County GMA growth allocations. Cities, however, are not bound by County-adopted growth targets unless specifically required by county-wide planning policies. *See West Seattle Defense Fund v. City of Seattle*, CPSGMHB 94-3-0016, Final Decision and Order (4/4/95), p. 55. It is also worthy of note that even if the GMA growth targets were designed to limit growth in Black Diamond, it is too late to raise that issue now. The same reasoning applies to the applicability of any other county-wide planning policies. Black Diamond's comprehensive plan and development regulations allow master plan developments with the densities and population proposed in the Lawson Hills and Villages MPDs. If King County or any other party had wanted to challenge those regulations and policies as inconsistent with growth targets, that should have been done via an appeal to the Growth Management Hearings Board within sixty days of adoption of the comprehensive plan and development regulations that required the densities proposed for the MPDs[1]. RCW 36.70A.290(2); *Wenatchee Sportsmen Ass'n v. Chelan County,* 153 Wn. App. 394 (2009).

C. Compliance with MPD Framework Design Standards and Guidelines, Section G.

Some parties of record sought more protection than the five-foot perimeter setbacks that would generally be provided under the City's development regulations. The Framework Design Standards and Guidelines, however, require compatibility with adjoining densities. Through these guidelines, the Villages MPD will be conditioned to provide for 50 foot buffers along the most sensitive project interfaces on the northern part of the main property, where some of the highest densities are proposed. The guidelines require a minimum 25-foot buffer for multi-family and non-residential land uses, and perimeter lots for single-family development may be no less than 75% the size of the abutting residential zone or 7200 square feet, whichever is less. These standards help assure compatibility along perimeter areas.

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

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

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

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

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

A. For the reasons explained in Findings of Fact in Exhibit A above, and in subsections B-I in this Conclusion below, the criterion in BDMC 18.98.080(A)(2) is satisfied by imposition of the FEIS mitigation measures, in addition to the other mitigation identified in the Findings of Fact in Exhibit A above. The Applicant's argument that environmental mitigation is limited to that identified in the FEIS is incorrect. A local jurisdiction's exercise of substantive SEPA authority allows the imposition of environmental mitigation beyond that identified in a threshold environmental determination, if relevant to permitting criteria and otherwise consistent with legal requirements. WAC 197-11-660(1)(a) and (b); *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). Even with the issuance of an EIS, an applicant must still comply with all MPD permit criteria, and the review standard for an FEIS is significantly different than that under MPD permit review. As noted in the FEIS decisions, the Examiner must give substantial weight to the determination of the SEPA responsible official in assessing the adequacy of an EIS. By contrast, the factual findings made by the City Council in finding compliance with MPD criteria must be supported by substantial evidence. *See* RCW 36.70C.130(c). All FEIS mitigation and modifications thereto incorporated into the conditions of this MPD approval should be considered as imposed pursuant to the City's substantive SEPA authority under RCW 43.21C.060 and WAC 197-11-660, as well as pursuant to the MPD criterion in BDMC 18.98.080(A)(2) governing this Conclusion of Law.

B. As discussed in the Findings of Fact, including but not limited to Findings 5, 7, 9, and 10, there are some environmental impacts for which reasonable mitigation was

adequately identified under the rule of reason standard applicable to a challenge to an FEIS, but where additional or more comprehensive mitigation was nevertheless warranted. For the reasons discussed in the applicable Findings of Fact, there is substantial evidence to justify such additional mitigation, including but not limited to additional, periodic traffic analysis based on a revised transportation demand model, additional study of noise impacts and mitigation related thereto, and further study, monitoring, and mitigation for protection of Lake Sawyer water quality.

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

D. A condition shall be included in Exhibit C below requiring that all houses that are sold in classified or declassified coal mine hazard areas be accompanied by a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement. This Conclusion addresses environmental impacts from classified or declassified coal mine hazard areas by providing notice to potential homeowners of the hazards and creating a market disincentive for construction in such mine hazard areas.

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

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

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

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

- Low impact development proposal with HOA maintenance will provide distributed infiltration that will be closer to natural stormwater flow regimes.

F. Construction must be authorized by an NPDES permit for stormwater treatment and discharge issued by the Department of Ecology. Although permit conditions imposed by NPDES permits are not administered by the City, a condition is included in Exhibit C below reserving to the City the right to enforce the conditions of NPDES

permit(s) applicable to the Villages MPD project. Since the city has a high interest in protecting receiving waters under the city storm water permit, the condition also requires the Applicant to fund necessary costs for training related to inspection services.

G. The MPD application's suggestion (at page 6-5) that the City lacks approval authority for water quality treatment options, and that all options allowed under the 2005 Manual are allowed "without preference," is rejected. Because the City is the approving authority and will ultimately own and be responsible for most of the proposed storm water facilities, the City retains the authority to reject higher maintenance cost facilities when lower maintenance cost options may be available.

H. Given that there are water quality and balance challenges that are addressed in the storm water management concept, and that storm water management is not an exact science, shifts in the distribution of storm water may be appropriate and benefit wetlands, lake, streams or groundwater environments. The MPD approval will therefore include a condition in Exhibit C requiring that the Development Agreement include language to allow for adaptive management of the distribution of stormwater when justified by technical analysis and risk assessment, as long as the impacts to on-site and off-site environment are maintained or enhanced.

I. Per BDMC 18.98.195, stormwater ponds, water quality treatment facilities, and other components of the stormwater treatment and conveyance system governed by the City's stormwater regulations shall vest phase by phase, to the extent authorized by the NPDES Phase II Stormwater Permit for Western Washington and state law.

29. **BDMC 18.98.080(A)(3):** ***The proposed project will have no adverse financial impact upon the city at each phase of development, as well as at full build-out. The fiscal analysis shall also include the operation and maintenance costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. This shall include conditioning any approval so that the fiscal analysis is updated to show continued compliance with this criteria, in accordance with the following schedule: [Remainder not listed here; refer to BDMC for complete code text.]***

The criterion is satisfied as discussed in Finding of Fact 11 and as conditioned in Exhibit C below.

30. **BDMC 18.98.080(A)(4):** ***A phasing plan and timeline for the construction of improvements and the setting aside of open space so that:***

a. Prior to or concurrent with final plat approval or the occupancy of any residential or commercial structure, whichever occurs first, the improvements have been constructed and accepted and the lands dedicated that are necessary to have concurrency at full build-out of that project for all utilities, parks, trails, recreational amenities, open space, stormwater and transportation improvements to

serve the** project, **and to provide for connectivity of the roads, trails and other open space systems to other adjacent developed projects within the MPD and MPD boundaries; provided that, the city may allow the posting of financial surety for all required improvements except roads and utility improvements if determined to not be in conflict with the public interest; and

b. At full build-out of the MPD, all required improvements and open space dedications have been completed, and adequate assurances have been provided for the maintenance of the same. The phasing plan shall assure that the required MPD objectives for employment, fiscal impacts, and connectivity of streets, trails, and open space corridors are met in each phase, even if the construction of improvements in subsequent phases is necessary to do so.

A. As modified with the conditions identified below and included in Exhibit C, the criterion is satisfied. In addition, see Conclusion of Law 23 above.

B. Chapters 4-9 of the MPD application discuss transportation, parks, stormwater, sewer, water and the project phasing plan. Chapter 9 of the MPD application contains the phasing plan, which also projects which parcels will be developed and associated unit counts. Parks are to be built by phase also. The above provisions (4.a and 4.b) shall also be addressed in the Development Agreement.

C. Chapter 9 of the MPD application states that "[t]he facilities that serve the MPDs as well as development in areas outside of the MPD project boundaries will be a shared responsibility between the City and Master Developer, with the Master Developer contributing a proportionate share." While other benefiting parties may make use of roads and other infrastructure, it is unrealistic for the Applicant to expect full cost recovery for every implementing project. The City cannot guarantee cost recovery from benefiting non-contributing properties or cost recovery from the City. Absent these developments, there would not be a need to construct some of the improvements identified in the MPD Application. Many new vehicle trips coming from outside the City may make use of roads and intersection improvements funded by the developer, but the City has no ability to collect from the growth in background traffic. Cost recovery for the Applicant can occur where the benefiting parcels can be clearly defined, the benefiting parties are subject to the City's regulatory authority, and the other parties' pro rata share is significant. The identification of specific projects to be constructed by the Applicant, the projects to be constructed by the City, the projects for which credits or cost recovery may be available, shall be included in the Development Agreement, pursuant to a Condition No. 10, Exhibit C below

D. On page 9-3 of the MPD application, the Applicant proposes that final design must be approved and constructed, bonded or financially guaranteed prior to occupancy of any structure relying on the facility. This would be inconsistent with the surety requirement established in the City's Engineering Design and Construction Standards adopted pursuant to BDMC Section 15.08.010. To address this, a condition of approval is included in Exhibit C requiring that, before the first implementing project of any one

phase is approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

E. The timing of the design and alignment of the Pipeline Road will need to be determined as part of the Development Agreement, as parties other than the Applicant must be involved and the roadway alignment will need to be resolved so that water and sewer alignments to The Villages will not be delayed by preliminary road design issues.

F. With respect to traffic impact mitigation, Page 9-3 of the MPD application proposes to monitor traffic and then implement mitigation projects six months after a loss of level of service is identified. This request is denied; instead, mitigation projects should be in place prior to LOS failure. A condition of approval (No. 25) is included in Exhibit C requiring the Applicant to analyze the traffic impact of a pending phase of development before the start of that phase to determine when a street or intersection is likely to drop below the adopted level of service. Transportation mitigation projects should then be implemented to prevent LOS failure. Traffic mitigation projects may change or additional projects be added to address the traffic issues as they actually develop.

G. As discussed in Finding of Fact No. 18.C above, the phasing plan for the parks is not consistent with the criterion above, and a condition is included in Exhibit C to require compliance. As further discussed in Finding of Fact No. 18.D, off-site trail construction necessary to achieve connectivity will be required prior to occupancy and final plat and site plan approval to the extent allowed by law.

31. **BDMC 18.98.080(A)(5):** ***The project, at all phases and at build out, will not result in the lowering of established staffing levels of service including those related to public safety.***

As conditioned, the project meets the criterion above. The 2009 Comprehensive Plan contains levels of service related to police and fire and emergency medical services. The fiscal analysis indicates that staffing levels should generally be allowed to increase in accordance with population growth. Currently, this area of the city has a minimal level of fire and EMS protection. A condition of approval (No. 100) has been added to Exhibit C to require that the Development Agreement include specific provisions for mitigating fire service impacts to ensure protection concurrent with project build out. The conditions of approval regarding fiscal impacts also include a condition (No. 156) that requires that the fiscal analysis ensure that revenues from the project are sufficient to pay the project's pro rata share to maintain staffing levels of service.

32. **BDMC 18.98.080(A)(6):** ***Throughout the project, a mix of housing types is provided that contributes to the affordable housing goals of the City.***

A. As conditioned in Exhibit C below, this criterion is satisfied. Chapter 3 of the MPD application describes a variety of housing types including detached single family,

duplex, triplex, quadplexes, townhouses, cottages, and stacked flats. The Fiscal Analysis (Chapter 12) makes some assumptions regarding housing costs for various potential housing types. However, there is nothing in the remainder of the application to indicate whether all these housing types will be built. A condition is included in Exhibit C requiring that the Development Agreement include targets for various types of housing for each phase of development, as well as a unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial).

B. As previously noted, the commercial component of the project will most likely include retail, office and personal service uses. The MPD should provide housing opportunities for individuals anticipated to work at those jobs; this may require a greater mix of multifamily housing and/or the construction of housing types that can meet the affordability goals of the Comprehensive Plan. The staff report proposed a condition that requires the Applicant to meet housing targets for purchasers at specified income levels. The Applicant subsequently indicated its agreement to a modified condition that provides more generalized goals for providing affordable housing. This modification complies with BDMB 18.98.050.A.6 and the law governing the extent to which a development applicant may be compelled to address affordable housing goals. That condition is included in Exhibit C as Condition No. 138.

33. **BDMC 18.98.080(A)(7):** ***If the MPD proposal includes properties that are subject to the Black Diamond Urban Growth Area Agreement (December 1996), the proposal shall be consistent with the terms and conditions therein.***

A. For the reasons detailed in Finding of Fact 18.B, this criterion is satisfied. The Villages MPD includes properties that are subject Black Diamond Urban Growth Area Agreement (BDUGAA) (Exhibit 7): two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area). The BDUGAA requires that 63.3 acres of open space be provided within the West Annexation Area, which is located in the Villages Main property. BDUGAA, Ex. 7, at 8, Section 5.2(c)(1). The BDUGAA also requires that 81.7 acres of open space be provided within the South Annexation Area. *Id.* at 9, Section 4 (c)(1). As detailed in Finding of Fact No. 18.B, the BDUGAA also requires conveyance or protection and/or conservation of open space properties in unincorporated King County, and in other locations with the City of Black Diamond, and such properties have been conveyed or protected / conserved as provided by the BDUGAA and the BDAOSPA.

B. The BDUGAA also requires that for the West and South Annexation areas a minimum average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). As detailed in Finding of Fact No. 4, the proposal complies with this requirement. As a recommended condition of approval and for the Villages MPD to be consistent with this agreement, the entire "Pipeline Road" link will need to be constructed.

34. **BDMC 18.98.080(A)(8):** ***If the MPD proposal includes properties that were annexed into the city by Ordinances 515 and 517, then the proposal must be consistent with the terms and conditions therein.***

The criterion is satisfied. The MPD proposal includes properties annexed into the City by Ordinance 515 (Exhibit CBD-2-12) and appears to be consistent with the terms and conditions therein.

35. **BDMC 18.98.080(A)(9):** ***The orientation of public building sites and parks preserves and enhances, where possible taking into consideration environmental concerns, views of Mt. Rainier and other views identified in the comprehensive plan. Major roads shall be designed to take advantage of the bearing lines for those views.***

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

36. **BDMC 18.98.080(A)(10):** ***The proposed MPD meets or exceeds all of the public benefit objectives of 18.98.020 and the MPD purposes of 18.98.010, B through M.***

As detailed in the MPD staff report and the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions.

37. **BDMC 18.98.080(A)(11):** ***If the MPD project is adjacent to property already developed, or being developed as an MPD, or adjacent to property which is within an MPD zone, then the project is designed so that there is connectivity of trails, open spaces and transportation corridors, the design of streetscape and public open space amenities are compatible and the project will result in the functional and visual appearance of one integrated project with the adjacent properties subject to an MPD permit or, if not yet permitted, within an MPD zone.***

A. The criterion is satisfied. The North Property (Parcel B) and Main Property are not adjacent to property already developed as an MPD. The North Property is adjacent to property zoned MPD. The property to which the Villages Parcel B is adjacent is located to the north of Parcel B, is zoned MPD and is known as the "North Triangle" portion of the proposed Lawson Hills MPD. A soft surface trail connection between Parcel B and the Lawson Hills North Triangle is shown in Chapter 5 of the Villages and Lawson Hills MPD applications. Chapter 4 of the MPD applications shows the North Connector which will connect Parcel B and the North Triangle with SR 169. The proposed street standards

for the two MPD applications are identical, ensuring consistency between the two projects.

B. The Main Property is also adjacent to property zoned MPD. One hundred sixty (160) acres of property adjacent to the Main Property are located between the Villages' proposed Community Connector road and the western City of Black Diamond city limits. Both hard and soft surface potential trail connections between The Villages and these 160 acres are shown in Chapter 5 of the Villages MPD application. Chapter 4 of the MPD application shows three potential future road connections between The Villages and these 160 acres. Any future development will be reviewed against the regulations in effect at that time regarding connectivity of trails, open spaces and transportation corridors, and the compatibility of streetscape design and public open space amenities.

38. **BDMC 18.98.050(A)(12):** ***As part of the phasing plan, show open space acreages that, upon build out, protect and conserve the open spaces necessary for the MPD as a whole. Subsequent implementing approvals shall be reviewed against this phasing plan to determine its consistency with open space requirements.***

A. The criterion is satisfied as conditioned. The Land Use Plan map, Figure 3-1 (July 8, 2010) shows the areas intended as open space. Chapter 5 of the Villages MPD Application also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency shall be verified at the permitting stage.

B. As previously discussed in Conclusion of Law No. 20, even if the Black Diamond Municipal Code is construed as requiring portions of the MPD project area not specifically addressed in the BDUGAA or other prior agreements to provide 50% of their area as open space, the Villages MPD complies with the criterion above. While the phasing of open space is not included within the MPD Application, conditions have been included in Exhibit C below (Nos. 152 – 155) to require that phasing of open space (which includes parks and is identified within the MPD application) be defined and articulated for timing of final designation within the Development Agreement once acreages have been finalized.

39. **BDMC 18.98.080(A)(13):** ***Lot dimensional and building standards shall be consistent with the MPD Design Guidelines.***

The criterion is satisfied as conditioned. Analysis of consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of these Conclusions. A recommended condition of approval is to require that this provision be enforced.

40. **BDMC 18.98.080(A)(14):** ***School sites shall be identified so that all school sites meet the walkable school standard set for in the comprehensive plan. The number and sizes of sites shall be designed to accommodate the total number of children that will reside in the MPD through full build-out, using school sizes based upon the applicable***

school district's standard. The requirements of this provision may be met by a separate agreement entered into between the applicant, the city and the applicable school district, which shall be incorporated into the MPD permit and development agreement by reference.

A. Determining compliance with this criterion requires identification of the walkable school standard. This is not straightforward. There is no specific "walkable" standard expressed in the 2009 Black Diamond Comprehensive Plan, or the Enumclaw School District Capital Facilities Plan (2009-2014). However, pages 1-10 of the Comprehensive Plan provide as follows:

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

The half-mile distance is consistent with the maximum distance one would expect a child to walk to school, as well as with the proximity needed in order for schools to provide for joint recreational use as encouraged by Comprehensive Plan Objective CF-14, under School Objectives and Policies, which encourages the use of joint-use agreements for school recreation facilities.

B. Figure 3-1, Land Use Plan, shows four proposed school sites on development parcels V21 (10 ac), V50 (10 ac), V57 (8.4 ac) and V58 (4.1 ac). Alternatively, as shown in Table 3.4 of the application, the applicant is requesting that any development parcel may be used for an institutional use (which could include a school site). Figure 3-2, School Proximity Exhibit, shows that the areas of the project intended for residential use, with the exception of the proposed residential on Parcel B, are within 0.5-1.0 mile of the proposed school site. To ensure compliance with BDMC 18.98.080(A)(14)'s requirement for compliance with the walkability standard, a condition (No. 98) has been included in Exhibit C below to require that, where reasonable and practicable, all schools shall also be located within a half-mile walk of residential areas.

C. To address the Villages MPD's compliance with the remainder of BDMC 18.98.080(A)(14)'s requirements, the Applicant and Enumclaw School District staff have been negotiating a draft school mitigation agreement (Ex. MPD 194 and Ex. 6) to address the district's needs for public schools to serve both the Villages and Lawson Hills MPD. Conditions have been included in Exhibit C require that the Development Agreement include requirements for the Applicant's payment of school impact fees or its proportionate share of school mitigation, based upon the number of school sites and acreage requirements set forth in Exhibit 6.

41. **BDMC 18.98.080(B):** ***So long as to do so would not jeopardize the public health, safety, or welfare, the city may, as a condition of MPD permit approval, allow the applicant to voluntarily contribute money to the city in order to advance projects to meet the city's adopted concurrency or level of service standards, or to mitigate any identified adverse fiscal impact upon the city that is caused by the proposal.***

The criterion above is not mandatory. As discussed in Finding of Fact No. 5(F) the Applicant has agreed to cover any short-falls in fiscal impacts attributable to its development. Beyond this the record does not identify any need at this time to advance funds.

42. **BDMC 18.98.090:** ***MPD permit - Development Agreement. The MPD conditions of approval shall be incorporated into a Development Agreement as authorized by RCW 36.70B.170. This agreement shall be binding on all MPD property owners and their successors, and shall require that they develop the subject property only in accordance with the terms of the MPD approval. This agreement shall be signed by the mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the city may approve any subsequent implementing permits or approvals.***

The MPD conditions of approval will be incorporated into a Development Agreement as required by this criterion.

43. **BDMC 18.98.110(A):** ***Design Standards. The MPD master plan and each subsequent implementing permit or approval request, including all proposed building permits, shall be consistent with the MPD design standards that are in effect at the time each application is determined to be complete.***

Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in these Conclusions of Law below. Any subsequent implementing permit or approval will be subject to the MPD design standards.

44. **BDMC 18.98.110(B)(1):** ***MPD Permit. The hearing examiner shall evaluate the overall MPD master plan for compliance with the MPD design standards, as part of the examiner's recommendation to the city council on the overall MPD permit.***

Analysis of the MPD master plan consistency with Master Planned Development Framework Design Standards and Guidelines is discussed below.

45. **BDMC 18.98.120(A):** ***MPDs shall include a mix of residential and nonresidential use. Residential uses shall include a variety of housing types and densities.***

The criterion is satisfied. As previously discussed, the MPD proposes residential and commercial uses and the residential uses are proposed at a variety of densities. Conditions of MPD approval in Exhibit C below also require the Development Agreement to provide specific targets for housing types.

46. **BDMC 18.98.120(B):** ***The MPD shall include those uses shown or referenced for the applicable parcels or areas in the comprehensive plan, and may also provide neighborhood commercial uses, as defined in the comprehensive plan, sized and located to primarily serve the residential portion of the MPD.***

The criterion is satisfied. The Comprehensive Plan designation for the North Property is Mixed Use with Master Planned Development Overlay and the Main Property has areas of Low Density Residential and Mixed Use with Master Planned Development Overlay. According to the Comprehensive Plan, "an MPD may include residential and commercial uses clustered around private and community open space, supported by adequate services and facilities." The Mixed Use designation identifies a preferable location for mixed use development within an MPD, in specific areas where the anticipated larger commercial component can also serve the broader community. The potential for mixed uses is permissive, as opposed to being a requirement of development. The Main Property has areas designated for Mixed Use and Low Density Residential uses according to the Comprehensive Plan. The MPD application also includes several parcels designated for high density residential uses in accordance with Section 18.98.120(F). Table 3.4 in the application materials lists neighborhood commercial as a permitted use in low-, medium- and high-density residential areas; however, it is not known if this will actually occur, as the application makes no other mention of it.

47. **BDMC 18.98.120(C):** ***The MPD shall, within the MPD boundary, or elsewhere within the city, provide for sufficient properly zoned lands, and include sufficient incentives to encourage development as permit conditions, so that the employment targets set forth in the comprehensive plan for the number of proposed residential units within the MPD, will, with reasonable certainty, be met before full build-out of the residential portion of the MPD.***

A. The criterion requires the MPD to provide <u>within the MPD boundary or elsewhere within the City</u> (1) sufficient properly zoned lands; and (2) sufficient incentives as permit conditions to encourage development; (3) so that that the employment targets set forth in the comprehensive plan for the number of residential units within the MPD will with reasonable certainty be met. This criterion requires that the "employment targets set forth in the comprehensive plan" be applied to the MPD as well as "elsewhere within the city." As explained below, because there are properly zoned lands for employment development within the MPD and within the City as a whole sufficient to permit the comprehensive plan's employment targets to be met, this criterion is satisfied.

B. As detailed in Finding of Fact No. 22, the Comprehensive Plan includes the City's updated projection for 2,677 new jobs by the year 2025. Table 3-9 characterizes this as 0.5 jobs per household by the year 2025. This is roughly consistent with the Comprehensive Plan's "Employment Targets" shown on Table 5-3, for a year 2025 jobs target of 2,952 jobs (2,525 new jobs) which, when divided by the household target of 6,302 households, is jobs per household ratio of 0.468.

C. As detailed in Finding of Fact No. 22, the Comprehensive Plan also states that "the City's employment target is to provide one job per household within the City by the year 2025, which would translate to a jobs target of 6,534 jobs. However, employment projections used in this update are more conservative in order to recognize that the City's population will need to grow first so that it provides a larger market base that can attract and support a larger market base . . . ." Comprehensive Plan at 3-11 – 3-12.

D. Given the Comprehensive Plan's acknowledgement that more conservative targets are being utilized to recognize that population growth must precede employment growth, and in light of the "Employment Targets" specified in Table 5-3 and on page 3-12, the jobs per household target specified by the Comprehensive Plan is 0.5 jobs per household. Applying this standard to the Villages MPD, the MPD should include sufficient zoned land either within the MPD boundary or the City as a whole, to provide approximately 2,400 jobs (4,800 X 0.5 = 2,400).

E. The Appendix J Fiscal Analysis of the FEIS contains an analysis of the amount of retail/office square footage to be developed within the Villages MPD, which is projected to generate 1,365 employees. Finding of Fact No. 22.E. As detailed in Finding No. 22.D, the City has sufficient zoned lands within it to generate "5,761 total jobs or 5,334 new jobs (from 2000)." Comprehensive Plan at 5-31.

F. The conditions of MPD approval set forth in Exhibit C below also contain a number of incentives for development of the retail/commercial/light industrial lands within the Villages MPD. These include a requirement for designation of a light industrial area, a requirement that the Development Agreement specify a Floor Area Ratio ("FAR") standard for the retail/commercial/light industrial development, a limitation that no more than two floors of residential development be constructed on top of any retail or commercial development, and a granting of the request for reduced parking standards within the Mixed Use Town Center area. Exhibit C, Conditions 140, 145-148.

G. Because the Villages MPD is projected to generate 1,365 jobs within the Villages MPD boundary, because the City has sufficient zoned land within the City as a whole for 5,761 jobs, and because the conditions of approval contain incentives for development of the retail/commercial/light industrial areas, the criterion in BDMC 18.98.120(C) is met.

F. To the extent that a reviewing court may construe the City's Comprehensive Plan employment targets or BDMC 18.98.120(C) otherwise, the Hearing Examiner's observations should also be noted:

> [R]equiring a developer to be responsible for job creation is of dubious validity, both because there is no clear nexus between job creation and mitigation of development impacts and also because placing this type of burden on a developer can be construed as unreasonable.

Hearing Examiner Villages MPD Recommendation at 164, Conclusion 41.

48. **BDMC 18.98.120(E):** ***Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the minimum density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.***

A. The criterion is satisfied. Two portions of the Main property (portions of West Annexation area) and the southeastern portion of the Main Property (South Annexation area) are subject to a pre-annexation agreement, the Black Diamond Urban Growth Area Agreement (BDUGAA) (Ex. CBD-2-7). The BDUGAA requires that for the West and South Annexation areas a minimum average density of 4 dwelling units/acre be achieved with a base density of 2 du/ac with the remainder achieved through transfer of development rights (TDR). As stated in Finding of Fact No. 4, the Villages MPD proposes an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133). This complies with the BDUGAA's requirements.

B. The portion of the Villages Main Property not subject to the BDUGAA has a Comprehensive Plan Master Plan Development overlay. The MPD Overlay requires a minimum of 4 dwelling units per gross acre. Comprehensive Plan at 5-13. The portion of the Villages Main property not subject to the BDUGAA also has an underlying Comprehensive Plan designation of Low Density Residential, which has a base density of 4-6 dwelling units du/gross ac. The northwest corner of the Main Property has an underlying Comprehensive Plan designation of Mixed Use which does not propose a base density.

C. As noted above, as stated in Finding of Fact No. 4 the Villages MPD proposes an average density of 4.01 units per gross acre (4,800 units/1,196 acres = 4.0133). This complies with the minimum densities set forth for these properties in the Comprehensive Plan. The minimum 1 unit per acre density allowance described in the Villages MPD application (page 3-19, Table 3.2) is not consistent with the BDUGAA or the City's Comprehensive Plan. Therefore, a condition of approval is included in Exhibit C below requiring a minimum density of 4 du/ac.

49. BDMC 18.98.120(F): ***The council may authorize a residential density of up to 12 dwelling units per acre so long as all of the other criteria of this chapter are met, the applicant has elected to meet the open space requirements of section 18.98.140(G), or otherwise is providing the open space required by section 18.98.140(F), and the additional density is acquired by participation in the TDR program. In any development area within an MPD, for which the applicant has elected to meet the open space requirements of Section 18.98.140(G) or is otherwise meeting the open space requirement of [Section] 18.98.140(F), an effective density of development up to a maximum of eighteen dwelling units per gross acre may be approved, so long as the total project cap density is not exceeded and the development, as situated and designed, is consistent with the provisions of [Sections] 18.98.010 and 18.98.020. A MPD may include multi-family housing at up to thirty dwelling units per gross acre, subject to the following:***

A. This provision establishes an overall density of 12 du/ac for the entire proposal, and does not set a maximum cap for specific parcels within the project boundaries. The areas proposed for medium density residential range from 7-12 du/ac and high density 13-30 du/ac (with certain areas dedicated to 18-30 units in accordance with the additional criteria below). As discussed above, the MPD meets the requirements of both BDMC 18.98.140(F) and 18.98.140(G) even assuming that 18.98.140(G) applies independently to those portions of the MPD that are not covered by a prior agreement. As detailed under the analysis above for Sections 18.98.010 and 18.98.020, as conditioned the proposed MPD satisfies these provisions

BDMC 18.98.120(F)(1): ***Areas proposed for development at more than 18 dwelling units per gross acre shall be identified on the MPD plan; and***

B. Figure 3-1 Land Use Plan in the MPD application shows eight areas (development parcels V3, V4, V5, V6, V10, V13, V14 and V17) totaling approximately 35 acres intended for high-density residential over 18 du/ac.

BDMC 18.98.120(F)(2): ***Identified sites shall be located within ¼ mile of shopping/commercial services or transit routes; and***

C. The eight parcels would be located adjacent to proposed shopping/commercial services, and therefore comply with the requirement that they be located within ¼ mile of shopping/commercial services or transit routes.

BDMC 18.98.120(F)(3): ***The maximum building height shall not exceed 45 feet; and***

D. Table 3.8 Residential Development Standards in the MPD application shows 45 feet as a maximum height for high-density residential development. Therefore, this criterion is met.

BDMC 18.98.120(F)(4): ***Design guidelines controlling architecture and site planning for projects exceeding 18 dwelling units per gross acre shall be included in the required Development Agreement for the MPD; and***

E. Appendix E of the application contains the high-density residential (18-30 du/ac) supplemental design standards and guidelines. Staff is recommending these guidelines become part of the Development Agreement. Analysis of the MPD master plan consistency with the Master Planned Development Framework Design Standards and Guidelines is discussed in a later section of this report.

BDMC 18.98.120(F)(5): ***Residential uses located above ground floor commercial/office uses in mixed use areas within a MPD are not subject to a maximum density, but area subject to the maximum building height, bulk/massing, and parking standards as defined in the design guidelines approved for the MPD. No more than two floors of residential uses above the ground floor shall be allowed.***

F. Mixed use as described above is proposed in the application on parcels V11 and V12. A recommended condition stipulates that no more than two floors of residential uses above ground floor commercial/office uses shall be allowed.

50. **BDMC 18.98.120(G):** ***Unless the proposed MPD applicant has elected to meet the open space requirements of section 18.98.140(G), or is otherwise meeting the open space requirements of section 18.98.140(F), the following conditions will apply, cannot be varied in a Development Agreement, and shall preempt any other provision of the code that allows for a different standard:***
1-3 [Not listed here; refer to BDMC for complete code text.]

As set forth in Findmg of Fact No. 18.B, the open space requirements of section 18.98.140(F) are met, because the Villages MPD "contain[s] the amount of open space required by any prior agreement," namely, the BDUGAA and the BDAOSPA. Further, even if Section 18.98.140(G) is construed as applying independently to those portions of the Villages MPD that were not included within the BGUGAA, the provisions of BDMC 18.98.140(G) are met. Therefore, the prohibitions in BDMC 18.98.120(G)(1)-(3) do not apply to this project.

51. **BDMC 18.98.130:** ***MPD standards - Development standards.***

A. Where a specific standard or requirement is specified in this chapter, then that standard or requirement shall apply. Where there is no specific standard or requirement and there is an applicable standard in another adopted city code, policy or regulation, then the MPD permit and related Development Agreement may allow development standards different from set forth in other chapters of the Black Diamond Municipal Code, if the proposed alternative standard:

1. Is needed in order to provide flexibility to achieve a public benefit; and
2. Furthers the purposes of this chapter and achieves the public benefits set forth in Section 18.98.010; and
3. Provides the functional equivalent and adequately achieves the purpose of the development standard for which it is intended to deviate.

B. Any approved development standards that differ from those in the otherwise applicable code shall not require any further zoning reclassification, variances, or other city approvals apart from the MPD permit approval.

A. Chapter 13 of the MPD application lists the Applicant's requests for "functionally equivalent standards." There are 19 separate requests that seek to deviate from adopted city codes and standards. In its closing statement to the City Council, however, the Applicant withdrew its request for deviation from the Tree Preservation Ordinance (BDMC 19.30), and its requests for deviation from required front yard setback fro garages, alternate parking lot landscaping, allowance for additional compact parking stalls, and insufficient parking outside of the Town Center area. Applicant's Closing Statement in Response to Council Questions and Parties of Record Statements at Section IX, pp. 1-2. One request, for reduced parking standards in the Town Center, is justified, because it is common to have flexible parking standards within mixed use and "downtown" areas. Therefore, this request will be granted in part in the conditions of approval set forth in Exhibit C below.

B. The City Council recognizes the advantages of flexibility and provides a mechanism for exploring alternatives to the City's water, sewer, and stormwater comprehensive plan concepts. Staff and the applicant can resolve the large, overarching design issues and work to establish functionally equivalent construction standards as part of the Development Agreement. The Engineering Design and Construction Standards contain an administrative deviation process (section 1.3) that does not require a showing of hardship. Any proposed deviation from standards must show comparable or superior design and quality; address safety and operations; cannot adversely affect maintenance and operation costs; will not adversely affect aesthetic appearance; and will not affect future development or redevelopment. Most of the requested functionally equivalent standards for streets and utilities can be addressed in the Development Agreement and through the Engineering, Design and Construction Standards' administrative deviation process.

C. The following requests do not need to be considered as "functionally equivalent standards" and can therefore be addressed through the Development Agreement process:

18.100 Definitions—generally, this is not an area where "functional equivalency" is applicable. While adding words that are not already defined in City code may make some sense, in City code, there is no advantage to treating proposed alternative definitions as "functionally equivalent" standards.

18.76 Gateway Overlay District—grading, removal of invasive species, and installation of infrastructure within the public right of way are not subject to the Gateway District overlay (per Section 18.76.020.B). Therefore, the Applicant's request is unnecessary.

18.38—Community Commercial (CC) Zone Standards and Allowed Uses; Parcel B is being rezoned to MPD as part of this MPD approval.

18.30—R4 Zone Standards—None of the property associated with The Villages is currently zoned R4, nor will be zoned R4.

52. **BDMC 18.98.140(A)*: Open space is defined as wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, playfields, parks of on-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and stormwater detention/retention ponds that have been developed as a public amenity and incorporated into the public park system. An MPD application may propose other areas to be considered as open space, subject to approval. It shall not include such space as vegetative strips in medians, isolated lands that are not integrated into a public trail or park system, landscape areas required by the landscape code, and any areas not open to the public, unless included within a sensitive area tract as required by Chapter 19.10.***

The project proposes to preserve amounts of open space as detailed on page 3-10 of the MPD application. They include a mix of passive and active areas comprised of sensitive areas such as wetlands, associated buffers, trails, parks, forested areas and utilities such as stormwater ponds. The Land Use Plan map, Figure 3-1 (July 8, 2010) depicts a majority of the open space areas as a coordinated network. The vast majority of open space will be maintained as sensitive areas and their buffers. The uses proposed for the open space areas shown on Figure 3-1 comply with the requirement of BDMC 18.98.140(A). Further, use of sensitive areas and their associated buffers for development including trails, stormwater management, etc. is regulated by the City's sensitive areas ordinance, BDMC Chapter 19.10. Appropriate mitigation for impacts, if required, as well as other required measures would apply and will be evaluated on a case-by-case basis at the time of implementing project application. Chapter 5 of the MPD application (p. 5-5) also contains a figure on open space typologies at the MPD project scale. Specific development parcel open space consistency would need to be verified at the permitting stage. Storm ponds should only be considered as open space if they are developed as an amenity and incorporated into the public park system. A condition of approval is included in Exhibit C below identifying specific criteria to be applied to determine whether a particular storm pond has been developed as an "amenity."

53. **BDMC 18.98.140(B):** ***Natural open space shall be located and designed to form a coordinated open space network resulting in continuous greenbelt areas and buffers to minimize the visual impacts of development within the MPD, and provide connections to existing or planned open space networks, wildlife corridors, and trail corridors on adjacent properties and throughout the MPD.***

A. Figure 3-1 of the application shows that the dedicated open space areas serve as a coordinated network. In order to enhance this coordination for natural areas, a recommended condition of approval is to require that areas shown as natural open space/areas in the figure on page 5-7 of the application to remain natural, with the possibility for vegetation enhancement. No other land clearing shall be permitted other than trails and storm ponds. As previously noted, the figure on page 5-5 depicts some areas as "natural open space" that are also proposed to include stormwater facilities. As noted above, stormwater facilities may be considered as open space only if designed as an amenity. Other than trails and stormwater facilities designed as amenities, the natural areas in the figure on page 5-7 of the Villages MPD application shall be required to remain natural with the possibility for vegetation enhancement. Retention in the natural state is necessary in order to maintain continuous greenbelt areas as required in the criterion above.

B. In order to retain currently forested open space areas in their natural condition, the Development Agreement should also include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested. And, the Development Agreement should include a narrative of the process and basis for removing selective hazard trees at the project perimeter. The intent of this section will be to leave the majority of the perimeter as designated passive open space, and to have it appear and function as native forest.

54. **BDMC 18.98.140(C):** ***The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.***

This criterion is met. The Villages MPD is designed so that open space outlines the sensitive areas and their relevant buffers, so as to minimize impacts on wildlife resources. As noted in Finding of Fact No. 12.B, the wildlife corridors proposed as part of the Villages MPD are adequate because they provide at least double the minimum width recommended by King County's network biologist, and provide sufficient space for wildlife to travel around spots where natural barriers such as flooded wetlands are present. And, while some development impacts to wildlife are unavoidable, the large amount of open space provided by the Villages MPD proposal provides appropriate mitigation for any significant, adverse impacts to wildlife. Finding of Fact 12.C. And, mitigation measures related to fish and wildlife are included in Exhibit C as conditions of approval.

55. **BDMC 18.98.140(D):** ***The approved MPD permit and Development Agreement shall establish specific uses for open space within the approved MPD.***

Chapters 3 and 5 of the MPD application, including tables 3.4 and page 5-6, describe proposed open space uses. For those portions of the open space that are sensitive areas or associated buffers, minimal flexibility exists as it relates to uses within these areas. All activities shall be conducted in accordance with BDMC Chapter 19.10. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided. A condition of approval is included in Exhibit C requiring the Development Agreement to include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

56. **BDMC 18.98.140(E):** ***The approved MPD permit and Development Agreement shall establish which open spaces shall be dedicated to the city, which shall be protected by conservation easements, and which shall be protected and maintained by other mechanisms.***

Page 5-2 of the MPD application generally describes proposed ownership, but as to sensitive areas only identifies various options rather than any specific type of ownership mechanism. A condition of approval is included in Exhibit C below requiring that specific details on which open space is to be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms be established as part of the Development Agreement. An additional condition of approval will also require language in the Development Agreement that will allow for public access to parks and trails facilities.

57. **BDMC 18.98.140(F):** ***An approved MPD shall contain the amount of open space required by any prior agreement.***

As discussed in Findings of Fact No. 18B and Conclusions of Law Nos. 6, 20, 33, and 49 above, the MPD application contains the amount of open space required by the BDUGAA and the BDAOSPA.

58. **BDMC 18.98.140(F):** ***If an applicant elects to provide fifty percent (50%) open space, then the applicant may be allowed to vary lot dimensions as authorized elsewhere in this chapter, cluster housing, and seek additional density as authorized in Section 18.98.120(F).***

The application is seeking to vary lot dimensions, cluster housing and include high-density residential housing. As discussed above, this is permitted pursuant to Section 18.98.120.F, because the Applicant has complied with BDMC 18.98.140(F). Therefore, compliance with BDMC 18.98.140(G) is not required. As discussed above, even if BDMC 18.98.140(G) is construed as applying independently to those portions of the

MPD site not included in the BDUGAA, those portions of the Villages MPD proposal not included within the BDUGAA provide 50% of open space (336.4 ac total). The MPD proposal satisfies this requirement, to the extent that it applies.

59. **BDMC 18.98.150(A):** ***An MPD shall provide on-site recreation areas and facilities sufficient to meet the needs of MPD residents, exceeding or at a minimum consistent with levels of service adopted by the city where applicable. This shall include providing for a coordinated system of trails and pedestrian linkages both within, and connecting to existing or planned regional or local trail systems outside of the MPD.***

(B). ***The MPD permit and Development Agreement shall establish the sizes, locations, and types of recreation facilities and trails to be built and also shall establish methods of ownership and maintenance.***

A. Chapter 5 of the MPD application contains information regarding proposed recreation areas and facilities. The proposal meets the adopted levels of service with regard to on-site parks and recreation areas and facilities. In addition, as discussed in Conclusions 15 and 24 above, the MPD includes a coordinated system of trails and pedestrian linkages, both within and connecting to existing or planned trail systems outside of the MPD. Therefore, the criteria in BDMC 18.98.150(A) and (B) are satisfied.

B. Based on maps included with the application, it appears that a significant amount of trail systems will be located within the buffer areas and potentially within sensitive areas themselves. The use of sensitive areas and their associated buffers for development including trails and stormwater management requires appropriate mitigation and other requirements in accordance with BDMC Section 19.10. Conditions of approval in Exhibit C below will require that the Development Agreement include a unit trigger for when trails need to be constructed, and establish the sizes, locations and types of recreation facilities and trails to be built, along with methods of ownership and maintenance. Further, the City, and not the Applicant, must retain discretion concerning when and if a lump sum payment by the Applicant can be accepted in lieu of constructing off-site recreational facilities.

60. **BDMC 18.98.155(A):** ***The requirements of the Sensitive Areas Ordinance (BDMC 19.10) shall be the minimum standards imposed for all sensitive areas.***

The Applicant has requested a deviation from Sensitive Area Ordinance standards. This is denied. The general authority under MPD code provisions in BDMC Ch. 18.98 to vary development standards is superseded by the more specific requirement in BDMC 18.98.155(A). The Villages MPD must at minimum comply with the Sensitive Areas Ordinance. A condition of approval shall be included requiring that the Development Agreement include language providing that areas subject to the Sensitive Areas Ordinance are fixed at the time the mapped boundaries of sensitive areas have been delineated and approved by City staff. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary should

prevail. The applicant should neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

61. **BDMC 18.98.155(B):** ***All development, including road layout and construction, shall be designed, located and constructed to minimize impact of wildlife habitat and migration corridors. This shall include minimizing use of culverts in preference to open span crossings.***

With respect to the proposed "Community Connector at Sensitive Areas" (Figure 4-4 in the MPD application), impacts to sensitive areas and buffers should be mitigated, if necessary, in accordance with BDMC 19.10 at the time of actual development. The Villages MPD project overall, including road locations, has been designed to minimize impacts to wildlife and migration corridors as set forth above and in the Finding of Fact No. 12.

62. BDMC 18.98.160(A): ***All proposed transfers of development rights shall be consistent with the TDR program (Chapter 19.24). An MPD permit and Development Agreement shall establish the TDR requirements for a specific MPD. Maximum allowable MPD residential densities can only be achieved through participation in the city's TDR program as a receiving site.***

The MPD application is consistent with the City's transfer of development rights program. Specifics as they pertain to development right use and timing shall be included within the Development Agreement.

63. **BDMC 18.98.160(A):** ***Property that is subject to a pre-annexation agreement, Development Agreement or annexation ordinance conditions relating to residential density will have as its base density the density designated in such agreement or ordinance. All other property will have as its base density the minimum density designated in the comprehensive plan.***

This criterion is met. *See* Conclusion of Law No. 48 above.

64. **BDMC 18.98.170(A):** ***Street standards shall be consistent with the MPD design guidelines, which may deviate from city-wide street standards in order to incorporate "low impact development" concepts such as narrower pavement cross-sections, enhanced pedestrian features, low impact stormwater facilities, and increased connectivity or streets and trails. Any increased operation and maintenance costs to the city associated therewith shall be incorporated into the fiscal analysis.***

Functionally equivalent standards are expected be approved on a general level in the Development Agreement and specific deviations can be dealt with at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

65. **BDMC 18.98.170(B):** ***The street layout shall be designed to preserve and enhance views of Mt. Rainier or other views identified in the city's comprehensive plan to the extent possible without adversely impacting sensitive areas and their buffers.***

The criterion is satisfied. The application materials indicate that the Community Connector Road and multiple parks are designed to enhance views of Mt. Rainier. There are very limited opportunities for views of Mt. Rainier on The Villages main property. The school site in parcel F may have some views of Mt. Rainier if the areas to the south are cleared. There appears to be reasonable opportunities for views from Parcel B that will be further enhanced if the nearby tailing piles on property not owned by the Applicant are removed in the future. A condition is included in Exhibit C below encouraging the Applicant to explore opportunities for view enhancement and incorporate them into the planning process.

66. **BDMC 18.98.170(C):** ***The approved street standards shall become part of the MPD permit approval, and shall apply to public and private streets in all subsequent implementing projects except when new or different standards are specifically determined by the city council to be necessary for public safety.***

Implementing projects shall be designed to foster the development of a street grid system. Functionally equivalent standards are expected be approved on a general level in the Development Agreement and specific deviations will be addressed at the site development and design phase using the existing administrative deviation process under the City's Engineering Design and Construction Standards.

67. **BDMC 18.98.180(A):** ***The stormwater management system shall enhance the adopted standards that apply generally within the city, in order to implement the concepts in sections 18.98.010(C), (H), and (L), 18.98.020(B) and (C), and 18.98.180(C). The stormwater detention system shall be publicly owned. Provided, in non-residential areas, the use of private vaults and filters may be authorized where: 1) the transmission of the stormwater by gravity flow to a regional system is not possible and 2) there is imposed a maintenance/replacement condition that requires vault filters to be regularly inspected and maintained by the property owner.***

A. The criterion is met. The AESI reports in Appendix D to the TV FEIS show conclusively that the stormwater system has been designed to locate infiltration ponds in areas that will recharge aquifers as required by BDMC 18.98.180(C). Planning on such a large scale has enabled the applicant to use its land efficiently for stormwater purposes, such as creation of a regional infiltration pond that would otherwise be segmented in several areas and thereby increase the need to encroach and segment natural open space and wildlife corridors. In this respect the regional nature of the facilities furthers the purposes of BMDC 18.98.010(C). The Applicant proposes a list of low impact development techniques, maximizing the use of permeable soils, thereby promoting environmentally sustainable development as contemplated in BDMC 18.98.010(H). The efficiencies of using a regional stormwater system also promote compact development as contemplated in BDMC 18.98.010(L). As further required by the criterion above, the

Applicant proposes public ownership of the facility as identified in page 6-4 of the Villages MPD application.

B. Conditions of approval require use of the most recent DOE stormwater manual (the 2005 SWMMWW). They also require that in the event that new phosphorus treatment technology is discovered and is either certified by DOE as authorized for use in meeting requirements of the SMMWW or is in use such that it is considered by the stormwater engineering community as constituting part of AKART, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities. These conditions provide additional compliance with the criterion above, by ensuring that the most up to date standards and technologies are employed to maximize the effectiveness and efficiency of the stormwater system.

68. **BDMC 18.98.180(B):** ***The stormwater management system shall apply to public and private stormwater management systems in all subsequent implementing projects within the MPD, except when new or different standards are specifically determined by the city council to be necessary for public health or safety, or as modified as authorized in section 18.98.195(B).***

The City's storm water codes apply to both public and private improvements.

69. **BDMC 18.98.180(C):** ***Opportunities to infiltrate stormwater to the benefit of the aquifer, including opportunities for reuse, shall be implemented as part of the stormwater management plan for the MPD.***

The criterion is satisfied. The stormwater management plan proposed as part of The Villages takes advantage of the soil conditions in and around the project for infiltration. The stormwater management plan will incorporate distributed infiltration through Low Impact Development and a regional infiltration pond for the excess volume from the developed site. Opportunities for water reuse are preserved with the central collection of stormwater.

70. **BDMC 18.98.180(D):** ***The use of small detention/retention ponds shall be discouraged in favor of the maximum use of regional ponds within the MPD, recognizing basin constraints. Ponds shall be designed with shallow slopes with native shrub and tree landscaping and integrated into the trail system or open space corridors whenever possible. Small ponds shall not be allowed unless designed as a public amenity and it is demonstrated that transmitting the stormwater to a regional pond within the MPD is not technically feasible.***

The criterion is satisfied. A regional storm water system is proposed with sensitivity to existing wetlands and water balance within the basins. A condition of approval requires that stormwater ponds proposed to be included as "open space," and must be developed as a public amenity (i.e., safe, accessible, and aesthetically pleasing). A condition of approval is included in Exhibit C below to require that mechanisms be identified to integrate LID into the overall design of the stormwater system for the benefit of surface

and groundwater resources, provided that future Homeowners' Associations bear the increased cost of landscape maintenance that may be required as a result of use of LID.

71. **BDMC 18.98.190(A):** ***An MPD shall be served with public water and sanitary sewer systems that:***

> ***1. Employ innovative water conservation measures including metering technologies, irrigation technologies, landscaping and soil amendment technologies, and reuse technologies to reduce and/or discourage the reliance upon potable water for nonpotable uses including outdoor watering.***

This criterion is satisfied. See Conclusion of Law No. 72 below.

> **2:** ***Are designed in such a way as to eliminate or at a minimum reduce to the greatest degree possible the reliance upon pumps, lift stations, and other mechanical devices and their associated costs to provide service to the MPD.***

A. This criterion is met subject to conditions. First, the Council recognizes that it may be impractical in the early stages of this project to construct the regional sewer pump station within the area identified within the application as the western expansion parcel. Therefore, the Council concludes that an interim sewer pump station will comply with the above criterion, provided that:

i. Routing of the gravity sewer mains is consistent with the City's ultimate plan for routing sewage; and

ii. No capital facility charge credit will be considered for interim improvements.

B. In addition, for the Northern Parcel, the Villages MPD application states there will be a point of connection in SR 169. Although that connection point will function, abandonment of the Diamond Glen sewer pump station and connection of the new sewer force main to the existing Diamond Glen sewer force main will be required. Continued installations of redundant interim sewer pump stations would be inconsistent with the criterion above, and will not be permitted. A pump station may be necessary to serve the easternmost portion of Parcel F. Alternatively, if the property to the north has developed or easements are obtained, the eastern area of Parcel F can be served by gravity to the existing King County Jones Lake sewer pump station.

C. King County is in the pre-design phase of an equalization sewer storage project to reduce the peak flow from the Black Diamond sewer service area. Currently, the City and King County have different proposals as to where such a storage facility should be located. When the final location is determined, the Applicant may need to shift its sewer infrastructure to deliver sewage from The Villages to a location upstream of the existing King County pump station G located just southwest of existing downtown Black Diamond. A condition of a approval is added to Exhibit C to so require.

D. The Applicant shall pay the Capital Facilities Charge in accordance with BDMC 13.04.020 and 13.04.295, as they exist or are subsequently amended. Page 8-1 of the Villages MPD application states, "Since water use can vary significantly...projected water use per ERU will be determined at the preliminary plat, binding site plan or site plan approval stage and confirmed prior to Occupancy." This statement implies that the developer can establish their own capital facility charge rate based on projected water use within The Villages. While the Applicant may anticipate that households within the Villages will use less water than other single- or multi-family households, the amount of water used by an "equivalent residential unit" is set by the City's water comprehensive plan. BDCM 13.04.020. Until such time as either the City's code or the water comprehensive plan is amended, the Applicant must pay a CFC in accordance with the same rules that apply to other development.

E. The planned projects for water service to The Villages are consistent with the City's Water Comprehensive Plan. If the City and developer identify new alternatives to distribute water to The Villages that will meet fire flow requirements, maintain redundant looping of the water system and/or reduce the needed facilities without compromising the level of service, the applicant shall pay the cost of a water comprehensive plan update if one is needed to accommodate such alternatives prior to the next scheduled water comprehensive plan update.

72. **BDMC 18.98.190(B):** ***Each MPD shall develop and implement a water conservation plan to be approved as part of the Development Agreement that sets forth strategies for achieving water conservation at all phases of development and at full build out, that results in water usage that is at least ten percent less the average water usage in the city for residential purposes at the time the MPD application is submitted. For example, if the average water usage is 200 gallons per equivalent residential unit per day, then the MPD shall implement a water conservation strategy that will result in water use that is 180 gallons per day or less per equivalent residential unit.***

This criterion is satisfied. The water conservation plan identified on page 8 of the MPD applications meets the requirements of BDMC 18.98.190(B) above. A condition of approval (No. 54) will be included in Exhibit C requiring that the water conservation plan be evaluated for its effectiveness in light of the City's available water resources after 500 dwelling units have been constructed. At that time, additional measures may be imposed.

73. **<u>Master Planned Development Framework Design Standards and Guidelines (MPDFSG)</u> (A)(Environmentally Sustainable)(p. 3):** ***To provide resource-efficient site design which includes consideration for saving trees, constructing on-site stormwater retention/infiltration features, and building orientation to maximize passive solar heating and cooling.***

This criterion is satisfied. The Villages MPD application indicates that Low Impact Development techniques will be used for treating and disposing of stormwater. This shall be required as a condition of approval, wherever practical and feasible. Because no specific lot layouts are included in the MPD application, compliance or noncompliance

with solar orientation cannot be determined at this time. The City's Tree Preservation Ordinance will assure a significant retention and/or replacement of trees.

74. **MPDFSG (A)(1)**: ***Implement a construction waste management plan to reduce construction waste. Consider life-cycle environmental impacts of building materials.***

This criterion is satisfied, with the condition that the Applicant shall submit a construction waste management plan as part of the Development Agreement.

75. **MPDFSG (A)(2)**: ***Incorporate energy-saving techniques into all aspects of building's design and operation.***

This criterion shall be evaluated at the time of individual building permit applications.

76. **MPDFSG (A)(3)**: ***Maximize water conservation by maintaining or restoring pre-development hydrology with regard to temperature, rate, volume and duration of flow; use native species in landscaping; recycle water for on-site irrigation use.***

This criterion will be satisfied, subject to a condition requiring use of native vegetation in street landscaping and in parks. The Development Agreement will be required to include a water conservation plan with performance measurements; a general landscape plan; and a stormwater management plan.

77. **MPDFSG (A)(4)**: ***Use measures that can mitigate the effects of potential indoor air quality contaminants through controlling the source, diluting the source, and capturing the source through filtration.***

This will be addressed at the time of future building permit applications.

78. **MPDFSG (A)(5)**: ***Reduce overall community impacts by providing connectivity from the project to the community; by incorporating best management practices for stormwater management; by creating useable public spaces such as plazas and parks; and by protecting important community-identified viewsheds and scenic areas.***

This criterion is satisfied. In addition, high pedestrian use is expected to develop east-west along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek is currently unsafe for pedestrians. A condition of approval will be included requiring that a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area be constructed, provided that a design study confirms that the improvement is feasible from an engineering standpoint and that construction costs will be reasonable. Construction timing should be specified in the Development Agreement.

79. **MPDFSG (A)(6)**: ***Grading plans shall incorporate best management practices with phased grading to minimize surface disturbance and to maintain significant natural contours.***

This criterion is satisfied, subject to a condition that will be included as a condition of approval in Exhibit C below, requiring compliance with the Framework Standards and Guidelines. Further, a condition of approval will be included requiring that, prior to the approval of the first implementing plat or site development permit within a phase, the Applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%. This will insure that unnecessary mining of material will not occur and reuse of existing materials will be maximized.

80. **MPDFSG (B)(p. 4)**: ***Black Diamond has a specific history and setting that involves varied topography, an agricultural past, forested areas, mining, and a small town scale. Care should be taken to reflect these patterns in master planned developments. In addition, the MPD chapter of Black Diamond's Municipal Code requires that fifty percent (50%) of the total land area of an MPD be maintained as open space. Proper design and integration of this open space into a development is very important.***

Guidelines

1. All master planned developments shall include a wide range of open spaces, including the following:

a. Sensitive environmental features and their buffers
b. Greenbelts
c. Village greens
d. Parks and school playgrounds
e. Public squares
f. Multi-purpose trails

These features should be deliberately planned to organize the pattern of development and serve as centerpieces to development cluster, not merely as "leftover" spaces.

2. Open spaces shall be linked into an overall non-motorized network through sidewalks, trails and parkways.

The overall network shall be delineated at initial MPD approval and implanted through subsequent plats and permit approvals.

For reasons previously discussed, this criterion is satisfied, because the Villages MPD proposal meets the intent of these guidelines.

81. **MPDFSG (B)(3)**: ***Stands of trees as an element of open space. Due to the propensity of severe wind events in the Black Diamond area, an MPD should incorporate the preservation of larger rather than smaller stands of native trees.***

This criterion is satisfied. There are forested areas proposed for retention as open space (Compare Figure 10-1 with Land Use Plan (Figure 3-1)). In addition, a condition of approval is included that requires a tree inventory prior to the development of implementing projects so that other opportunities to preserve trees may be realized. The City's Tree Preservation Ordinance will also result in significant large tree retention.

82. **MPDFSG (C)(p. 5)**: ***To allow for an efficient use of land, lower the cost of infrastructure and construction, protect environmentally sensitive areas, and maintain a small town "village" character within an MPD. Development is to be integrated with networks of preserved natural features and developed open space for both passive and active recreational uses.***

Guidelines

1. Use of conventional, suburban-style subdivision design that provides little common open space shall be avoided.
2. Groupings of primarily residential development of approximately 400-600 units should be contained generally within a quarter mile radius to support walking, bicycling and future transit service. Development clusters shall be surrounded by a network of open space with a variety of recreational uses (including trails) to provide connections between clusters.
3. Methodology for Planning Development in clusters.
a. environmentally sensitive areas to be protected (including streams, wetlands, steep slopes, wildlife corridors, and their buffers) shall be identified, mapped and used as an organizing element for design;
b. areas for development of housing and commercial development shall be indicated;
c. streets and public spaces (as well as sites for public facilities such as schools, fire stations and other civic structures) shall be identified;
d. lots and groups of lots with various ownerships (i.e. fee simple by occupant, condominium, single ownership apartments, etc) shall be integrated with one another throughout all phases of a project;
e. views of Mt Rainier and other desirable territorial views shall be identified and integrated into site planning to maximize viewing from public spaces (streets, trails, parks, plazas, etc.).

For reasons previously discussed and as demonstrated in the layout proposed in the MPD applications, the Villages MPD meets the intent of these guidelines; therefore, these guidelines are satisfied.

83. ***MPDFSG (D)(Ensuring Connectivity)(p. 6)***: *To promote ease of mobility and access within all portions of the development.*

1. Pedestrian Connectivity

a. Similar to a traditional small town, services and common spaces shall be easily accessible to residents on foot. Off-street pedestrian trails are to be provided as a network throughout the development. Pedestrian connections shall be provided where cul-de-sacs or other dead-end streets are used.

As conditioned, the criterion is satisfied. The MPDs propose an integrated trail network that connects all portions of the development, including up to the commercial portions of the projects. In addition, high pedestrian use is expected to develop east-west along Auburn Black Diamond Road/Roberts Drive to and from The Villages and existing neighborhoods to the east. The existing Roberts Drive bridge over Rock Creek is currently unsafe for pedestrians. A condition of approval will be included requiring that a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area be constructed, provided that a design study confirms that the improvement is feasible from an engineering standpoint and that construction costs will be reasonable. Construction timing should be specified in the Development Agreement.

84. **MPDFSG (D)(2)(a)**: ***The system of streets shall demonstrate a high degree of both vehicular and pedestrian connectivity, allowing residents and visitors multiple choices of movement. Isolated and dead-end pockets of development are not desired.***

As depicted in Figure 4-1 of the MPD applications, the proposals depict only an "approximate" and basic "skeleton" of a future street system and descriptions of street types including cul-de-sacs. The trail networks depicted in Chapter 5 of the applications provide more detail. The vehicular and pedestrian circulation plans proposed by the Applicant exhibit several connection points to adjoining properties, thus demonstrating a high degree of connectivity as required by the criterion above. Therefore, this criterion is satisfied. For clarification, page 4-26 of the MPD application refers to a connection point to Green Valley Road. This is construed as in error, because the connection is not depicted in the Land Use Plan and the FEIS assesses a direct connection to SR 169.

85. **MPDFSG (D)(2)(b)**:. ***Cul-de-sacs shall be avoided unless there are no other alternatives.***

No cul-de-sacs are proposed at this MPD level of design. Regulations and conditions of approval require consistency with the MPDFSG at all stages of development; therefore, this criterion is satisfied.

86. **MPDFSG(E)(Mixing of Housing)(p. 7)**: ***To encourage a diversity of population and households within Black Diamond through a range of choices in housing types and price.***

> ***Guidelines***
> ***1. MPD's shall include various types of housing, such as:***
> ***a.-e. [Not listed here; refer to Design Guidelines for complete text.]***
> ***2. Each cluster of development shall include a variety of unit types and densities.***

As noted previously, it is not clear what the exact housing mix in the MPD project will be. As previously noted, a condition of approval is included requiring compliance with this guideline. In addition, a condition of approval is also included requiring that the Development Agreement contain specific targets for various types of housing for each phase of development so that this requirement does not become perpetually deferred from one phase to the next. So conditioned, this criterion is satisfied.

87. **MPDFSG(E)(3)**: ***For Single Family developments, alley access to garages is desired. Direct driveway access to streets should only occur if there are no other alternatives.***

Page 3-30 of the MPD application materials indicates that front loaded single-family homes will, "form the majority of the residential typology" within The Villages MPD. To assure this, a condition of approval is included requiring that detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. However, while alleys provide convenience and a clean streetscape, the City may not be able to cover the additional cost of policing the alleys and maintaining double public street frontage. Therefore, for alleys or auto courts serving less than 20 lots, the alleys and auto courts be privately owned and maintained.

88. **MPDFSG(E)(4)**: ***Large apartment complexes and other repetitive housing types are discouraged. Apartments should replicate features found in Single Family Residential areas (i.e., garages associated with individual units, individual outdoor entries, internal driveway systems that resemble standard streets, etc.).***

This level of detail is more appropriate at the Development Agreement and implementing permit issuance. Compliance with this guideline is required as a condition of the Development Agreement. As so conditioned, this criterion is satisfied.

89. **MPDFSG(F)(*Creating Neighborhood Civic/Commercial Centers*)(p. 8):** ***To conveniently concentrate services and activities to serve multiple residential clusters.***

> ***Guidelines***
> ***1. Civic/Commercial Centers shall be located to serve groupings of clusters as well as pass-by traffic in order to support an array of shops and services.***
> ***2. Such centers shall be anchored by a public green space and, ideally, a public building such as a school or meeting hall.***

The proposed Town Center and uses on Parcel B satisfy this provision. Although the proposed allowed uses in the various land use categories indicate the potential for small scale (neighborhood) commercial development occurring in the residential classifications, actual locations are not defined at this time. Commercial areas should be identified on the Land Use Plan through a future amendment to the MPD. Proposed parks are located in areas which comply with this guideline.

91. **MPDFSG(F)(3):** ***Upper story housing above retail or commercial space is strongly encouraged within Civic/Commercial Centers.***

Development parcels V11 and V12, with approximately 160 dwelling units, are proposed as a mixed use component of the Town Center.

92. **MPDFSG(F)(*Interface with Adjoining Development*)(p. 9):** ***To ensure a transition in development intensity at the perimeter of MPD projects.***
Guidelines.

> ***1. Where individual lot residential development is located along the boundary of an MPD, lot sizes shall be no less than 75% the size of the abutting residential zone or 7200 sq. ft., whatever is less.***
> ***2. Multi-family and non-residential land uses should include a minimum 25 ft. wide dense vegetative buffer when located along the boundary of an MPD.***
> ***3. When there is no intervening development proposed, a minimum 25 ft. wide dense vegetative buffer should be provided between main entrance or access routes into an MPD and any adjoining residential development.***

Compliance with these standards will be required at the time of implementing projects. As so conditioned, this criterion is satisfied. In addition, the minimum buffer along the eastern border of development parcel V13 should be 50 feet. Existing vegetation should be retained and augmented with native plantings. The minimum buffer along the western border of development parcels V1, V2, V10, V15 and V20 should be 50 feet. These parcels comprise the northern part of the main property and Figure 3-1 already depicts these areas as open space tracts. Existing vegetation should be retained and augmented,

except for construction of the planned regional trail with native plantings. The Applicant does propose trails for the 50 foot western border buffer. *See* MPD application, p. 5-27.

93. **MPDFSG(A)(*Streets*)(p. 10)**: ***To establish a safe, efficient and attractive street network that supports multiple choices of circulation, including walking, biking, transit and motor vehicles.***

1. Connectivity

a. The street layout shall create a network that promotes convenient and efficient traffic circulation and is well connected to other existing City streets.

A. The criterion is satisfied. The new Pipeline Road, the South (Community) Connector and the North Connector through parcel B will provide new efficient transportation links that will avoid having to increase existing roads to 4 or 5 lanes. The network of trails and bike lanes will provide alternate means for local travel. The connection points to surrounding urban zoned properties will provide for future connectivity. Also see previous discussion regarding the extension of the Community Connector to SR 169.

2. Design

a. The layout of streets should relate to a community-wide focal point.

B. This criterion is satisfied. The street design does provide for a neighborhood focal point at the elongated roundabout near The Villages center.

b. A consistent overall landscape theme should be utilized, with variations provided to indicate passage through areas of different use, densities, topography, etc.

C. The MPD application includes a variety of street sections, which can be unified through a landscape theme that emphasizes the use of native plant species.

c. Limit the use of backyard fences or solid walls along arterial streets.

D. Compliance with this standard will be required at the time of implementing projects.

3. Reduced Pavement Widths

a. Pavement widths should be minimized to slow vehicular speeds and maintain an area friendly to pedestrians and non-motorized users.

E. The City street standards were adopted in June of 2009, with reduced widths to address this goal. The Villages proposed streets are very similar to the City's standard streets, but in some cases are wider. The design standards will be established through the Development Agreement and the administrative deviation process provided for in the Engineering Design and Construction Standards.

4. Low-Impact Design

a. Stormwater runoff should be reduced through "natural" techniques: flush curbs, bio-filtration swales, use of drought-tolerant vegetation within medians and planting strips, etc.

F. This criterion is satisfied as discussed above.

5. Traffic calming methods should include:

- ***Roundabouts***
- ***Traffic Circles***
- ***Chicanes***
- ***Corner bulbs***

G. Two roundabouts are proposed along the Community Connector. Staff recommends that traffic calming measures be explored with each implementing development action, at the discretion of the Public Works Director.

6. Lanes and Alleys

a. Access to rear residential garages and commercial loading and service areas shall be available through lanes and alleys.

H. As noted, the application materials indicate that the majority of homes will be "front loaded lots," which is inconsistent with this guideline. The recommended conditions of approval require that homes have alley access except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion. Further, as noted above, in order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all alleys and auto courts serving 20 units or less shall be maintained by the Master Developer or future Homeowners Association(s).

7. Non-motorized Circulation

a. All streets shall include either sidewalks or trails on at least one side of the street. Design streets to be "bicycle" friendly.

8. Street Landscaping

a. All streets shall include native and/or drought-tolerant vegetation (trees, shrubs and groundcover) planted within a strip abutting the curb or edge of pavement. Native and/or drought-tolerant vegetation shall also be used within all medians.

I. Compliance with these standards will be required at the time of implementing projects. The details of these design features will be resolved through the Development Agreement and the design deviation process. The City does not have adequate funds to manage street landscaping; a condition of approval included in Exhibit C requires that future Homeowners' Association(s) be required to maintain the street-side landscaping.

9. On-Street Parking

a. Curbside parallel parking shall be included along residential streets. Parallel or angle parking should be included within non-residential areas.

J. The proposed street standards indicate that parallel parking will be available along residential streets. Compliance with these standards will also be required at the time of implementing projects.

94. **MPDFSG(B)(*Sidewalks*)(p. 11):**

B. Sidewalks

Intent

Guidelines

1. Width

a. The minimum clear pathway shall generally be between 5 ft and 8 ft, depending upon adjacent land uses and anticipated activity levels.

2. Lighting

a. All lighting shall be shielded from the sky and surrounding development and shall be of a consistent design throughout various clusters of the development.

3. Furnishings

a. Street furnishings including seating, bike racks, and waste receptacles shall be located along main streets in Civic/Commercial areas.

b. Furnishings serving specific businesses (outdoor seating) will require a building setback and shall maintain a minimum passable width of the sidewalk.

c. Mailbox stations shall be designed to be architecturally compatible with the development in which they are located

The Villages proposal provides a good network of trails, sidewalks and bike lanes within the project itself. A safe sidewalk link is needed and will be required from The Villages to Morganville (current west Black Diamond) along the Auburn Black Diamond Road/Roberts Drive. The area of greatest concern is the narrow bridge over Rock Creek. Compliance with these standards will be required at the time of implementing projects.

95. **MPDFSG(C)(*Walkways and Trails*)(p. 12):**

Intent

To provide safe, continuous pedestrian linkages throughout and sensitive to the project site, open to both the public and project residents.

A. The Villages proposal provides internal safe continuous pedestrian linkages with sidewalks and trails. With the one additional off-site sidewalk pedestrian link along Auburn Black Diamond Road/Roberts Drive, this guideline will be met.

Guidelines
1. Location
a. Walkways and trails shall be integrated with the overall open space network as well as provide access from individual properties. Trail routes shall lead to major community activity centers such as schools, parks and shopping areas.

B. Staff finds that the proposal meets the intent of this guideline.

2. Width
a. Not less than 8 feet wide to allow for multiple modes of use.

C. Both 8-foot-wide hard and a 6-foot-wide soft surface trail types are proposed within the project (see page 5-29 of the application). A 5-foot-wide boardwalk trail section is also proposed for limited use. The MPD proposal meets the intent of this guideline, with the exception of the soft-surface trail which is proposed to be 6 feet in width.

3. Materials
a. Walkways connecting buildings and hardscaped common spaces shall have a paved surface.
b. Trails throughout the development and connecting to larger landscaped common spaces shall be of at least a semi-permeable material.

D. The MPD proposal meets the intent of this guideline as proposed and the requirement will be enforced for implementing projects.

96. **MPDFSG(pp. 13-18):**

Text not included.

The remaining design guidelines in the MPDFSG concern design requirements for site plan and building permit level development that are not addressed at this stage of development review. While the staff report references some specific design standards proposed by the Applicant, these do not warrant analysis at this stage of review because the conditions of approval below exclude those proposals from the scope of the MPD approval. As to land use, the conditions of MPD approval limit the proposal to the land use plan map (Figure 3-1 in the MPD applications), description of categories (beginning on page 3-18), and target densities. BDMC 18.98.110 and the conditions of approval both require application of the MPDFSG for implementation projects. Deferral of the site plan and building level of MPDFSG review for implementing permits will not compromise the ability to comply with those standards.

97. ***International Fire Code, 2006 Edition***

BDMC 18.98.080(A)(1) requires the MPD to comply with all adopted regulations, which includes the International Fire Code. The requirements below are necessary at this stage of project review to assure compliance with the Fire Code.

Access: All Fire Department access roads should be required to meet the International Fire Code, specifically Section 503 (Fire Department Access Roads) and Appendix D (Fire Department Access Roads). Generally this requires that all roads be at least 20 feet in unobstructed width with 13 feet 6 inches of unobstructed vertical clearance across the entire road surface. If fire hydrants are located on the Fire Department access road, then the roads must be at least 26 feet in width. The proposed street designs include some elements (e.g., "auto courts") that do not comply with this standard. Per the Fire Code, road grades should not exceed 10 percent. All portions of the first floor exterior walls of structures should be within 150 feet of approved fire apparatus access roads (especially with high density housing, multi-family and commercial occupancies).

More than one means of access and egress is required per the International Fire Code 2006 ed. Appendix D Section D107. Specifically D107.1 states: "Developments of one or two family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads and shall meet the requirements of Section D104.3...."

Parks and Open Spaces: Separation of combustible structures and vegetation must be provided to prevent potential wildland fires from the east and south from spreading to structures. This separation will vary with types of structures and the natural vegetation and will be evaluated at the time of implementing project approval.

Access to Park/Open Space Trails: To allow for Fire Department access to medical emergencies and small fires involving natural vegetation within the open space and park trails, these trails to be wide enough to allow for passage of the Fire Department off-road "Gator" and wheeled stretchers.

EXHIBIT C

CONDITIONS OF APPROVAL

The Villages MPD

GENERAL

1. Approval of the MPD is limited to the terms and conditions set forth in the City Council's written decision, and does not include approval of any other portion of the MPD set forth in the application.

2. After approval by the City Council at an open public meeting and after a public hearing as required by law, a Development Agreement shall be signed by the Mayor and all property owners and lien holders within the MPD boundaries, and recorded, before the City shall approve any subsequent implementing permits or approvals. Any requirements deferred to the Development Agreement in this decision shall be integrated into the Agreement prior to any approval of subsequent implementing permits or approvals.

3. The Phasing Plan of Chapter 9 of the MPD application is approved, with the exception of the bonding proposal at p. 9-3 and the proposal for off-site trails at p. 9-2 (to the extent not already considered a regional facility) and parks at p. 9-10, and except as otherwise noted in these conditions of approval.

4. The Development Agreement shall specify which infrastructure projects the applicant will build; which projects the City will build; and for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur.

5. The Development Agreement shall specifically describe when the various components of permitting and construction must be approved, completed or terminated (e.g., when must open space be dedicated, plats recorded, and utility improvements be accepted by the City).

6. The Development Agreement shall include language that defines and identifies a "Master Developer." A single Master Developer shall be maintained through the life of the Development Agreement. The duties of the Master Developer shall include at least the following: a) function as a single point of contact for City billing purposes; b) function as a single authority for Development Agreement revisions and modifications; c) provide proof of approval of all permit applications (except building permits) by other parties prior to their submittal to the City; and d) assume responsibility for distributing Development Agreement entitlements and obligations and administering such.

7. The City shall have the ability but not the obligation to administratively approve off-site projects that would otherwise be compromised if they cannot be completed prior to approval and execution of the Development Agreement. In these instances, the applicant shall acknowledge in

writing that the approval of any such applicable projects does not in any way obligate the City to incur obligations other than those specifically identified in the approved permits for the applicable project.

8. The applicant shall submit a construction waste management plan for inclusion in the Development Agreement.

9. Homeowners Association(s) conditions, covenants and restrictions (CCRs) and/or the proposed Architectural Review Committee shall be required to allow the use of green technologies (such as solar panels) in all buildings. In addition, the CCRs shall include provisions, to be enforced by the HOA, prohibiting washing of cars in driveways or other paved surfaces, except for commercial car washes, and limiting the use of phosphorous fertilizers in common areas, so as to limit phosphorous loading in stormwater.

TRANSPORTATION

10. Over the course of project build out, construct any new roadway alignment or intersection improvement that is: (a) depicted in the 2025 Transportation Element of the adopted 2009 City Comprehensive Plan and in the City's reasonable discretion is (i) necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service deficiency as determined by the City's adopted level of service standard, or (ii) to provide access to or circulation within the project; (b) functionally equivalent to any said alignment or improvement; or (c) otherwise necessary to maintain the City's then-applicable, adopted levels of service to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard, or to provide access to or circulation within the project, as determined by the City in its reasonable discretion based on the monitoring and modeling provided for in Conditions 25 and 20 below. The Development Agreement shall specify for which projects the applicant will be eligible for either credits or cost recovery and by what mechanisms this shall occur. Any "functionally equivalent" realignment that results in a connection of MPD roads to Green Valley Road shall be processed as a major amendment to the MPD.

11. The City shall create, at the expense of the Applicant, a new transportation demand model for this project for use in validating the distribution of project traffic at the intervals specified in Condition No. 17. The new model shall incorporate, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city. The new model shall include the intersections studied in the FEIS, together with the following additions: all existing principal and minor arterials in Black Diamond, Covington and Maple Valley and the unincorporated areas between these cities and specifically including the Kent-Black Diamond Road; additional study intersections at SE 231st Street/SR 18 westbound ramps, SR 169/SE 271st Street and SR 169/SE 280th Street in Maple Valley. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation. Key to the success of the new model is a well-coordinated effort and cooperation among the

cities of Black Diamond, Maple Valley and Covington, the Applicant, King County and the Washington State Department of Transportation. Although the specific assumptions ultimately made in the model may be the subject of differences in professional judgment, the City Council's goal is that, notwithstanding these differences in judgment, the model will be comprehensive and therefore acceptable to all parties. The City Council therefore directs staff in preparing the model to work within the spirit of openness and cooperation with these other agencies and the Applicant, and similarly requests that other agencies and the Applicant join with the City of Black Diamond staff in working together in the same spirit for the common good.

12. The new demand model must take into account recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, and existing speed limits on all roadway links included in the model's roadway network. The model must be run with currently funded transportation projects for each affected jurisdiction as shown in the applicable 6-year Transportation Improvement Plans and with transportation projects shown in the applicable 20-year Transportation Improvement Plans which projects are not funded but are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction.

13. The new model must contain a mode split analysis that reflects the transit service plans of Sound Transit, King County Metro and any other transit provider likely to provide service in the study area. This mode split analysis should include an estimate of the number of project residents likely to use the Sounder and to which stations these trips might be attributed. This analysis must be presented to the City, the applicable transit agencies, and the jurisdictions in which trips are likely to use park and ride, Sound Transit parking garages or other facilities.

14. The new model must include a reasonable internal trip capture rate assumption. The assumed internal trip capture rate must be based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in Western Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available.

15. Intersection improvements outside the City limits may be mitigated through measures set forth in an agreement between the developer and the applicable agency. Where agreement is possible, the developer shall enter into traffic mitigation agreements with impacted agencies outside the city that have projects under their jurisdiction in the list below, and the agreement shall be incorporated as part of the Development Agreement, or as an addendum to an adopted Development Agreement. Any agreement so incorporated supersedes all other conditions and processes that may set mitigation measures and that are contained in the MPD Conditions or Development Agreement. If an agreement is not reached, the projects identified below shall be added to the regional project list and included as part of the Development Agreement, and the developer and the City shall agree on reasonable time frames for construction (for projects located within the City of Black Diamond and subject to Condition No. 10), or Applicant payment of its proportional costs toward construction of projects located outside of the City of Black Diamond.

Exhibit 6-1
Intersection Improvements

Study Intersection	Jurisdiction	Mitigation
SE 288th Street/216th Avenue SE	Black Diamond	Signalize. Add NBR turn pocket.
SE 288th Street/232nd Avenue SE	Black Diamond	Add NBR turn pocket and provide a refuge for NBL turning vehicles on EB approach.
SR 169/SE 288th Street	WSDOT	Signalize. Add NBL turn pocket. Add second SBT lane (SBTR).
SE Covington Sawyer Road/ 216th Avenue SE	Black Diamond	Add EBL, NBL and SBR turn pockets.
SE Auburn Black Diamond Road/ 218th Avenue SE	King County	Provide a refuge for NBL turning vehicles on EB approach.
SE Auburn Black Diamond Road/ Lake Sawyer Road SE	Black Diamond	Signalize. Add WBL turn pocket.
SE Auburn Black Diamond Road/ Morgan Street	Black Diamond	Roundabout.
SR 169/Roberts Drive	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL and NBL turn pockets.
SR 169/SE Black Diamond Ravensdale Road (Pipeline Road)	Black Diamond/WSDOT	Add second SBT and NBT lanes. Add SBL turn pocket.
SR 169/Baker Street	Black Diamond/WSDOT	Signalize.
SR 169/Lawson Road	Black Diamond/WSDOT	Signalize. Add SBL turn pocket.
SR 169/Jones Lake Road (SE Loop Connector)	Black Diamond/WSDOT	Signalize. Add WBL, NBL, and SBL turn pockets.
SR 169/SR 516	Maple Valley/WSDOT	Add second NBL turn pocket.
SR 169/SE 240th Street	Maple Valley/WSDOT	Add additional SBT lane on SR 169 from north of 231st Street to Witte Road. Add second NBT lane at SR
SR 169/Witte Road	Maple Valley/WSDOT	

SR 169/SE Wax Road	Maple Valley/WSDOT	169/240th Street.
SR 169/SE 231st Street	Maple Valley/WSDOT	
SR 169/SR 18 EB Ramps	Maple Valley/WSDOT	
SR 516/SE Wax Road	Covington/WSDOT	Add second SBL, WBR, and NBL turn pockets.
SR 516/168th Pl SE	Covington/WSDOT	Add NBL and EBR turn pockets.
SR 516/Covington Way SE	Covington/WSDOT	Optimize signal timings.
SE 272nd Street/160th Avenue SE	Covington/WSDOT	Signalize.
SE Kent Kangley Road/ Landsburg Road SE	Maple Valley/King County	Add SBL turn pocket and provide a refuge on WB approach for SBL turning vehicles.
SR 169/SE Green Valley Road	WSDOT	Signalize.
SE Auburn-Black Diamond Road/ SE Green Valley Road	King County	Provide a refuge on EB approach for NBL turning vehicles.
SR 169/North Connector	Black Diamond/WSDOT	Signalize. Add second SBT and NBT lane. Add EBL, EBR, SBR, and NBL turn pockets. End additional NBT lane 1,000 feet north of intersection.
Lake Sawyer Road/Pipeline Road	Black Diamond	Signalize. Add EBL, WBL, NBL, and SBR turn pockets.
SE Auburn Black Road/Annexation Road	Black Diamond	Signalize. Add EBL, EBR, WBL, NBL, and SBR turn pockets.
SR 169/South Connector	Black Diamond/WSDOT	Signalize. Add SBR and NBL turn pockets.

16. If (a) the City of Maple Valley does not appeal or challenge the MPD Approval for the Villages MPD, (b) the City of Maple Valley does not appeal or challenge the MPD Approval for the Lawson Hills MPD, (c) the City of Maple Valley does not appeal or challenge the Development Agreement for the Villages MPD, (d) the City of Maple Valley does not appeal or challenge the Development Agreement for the Lawson Hills MPD, the Applicant shall provide the following mitigation for the City of Maple Valley, which as to the identified mitigation supercedes the mitigation projects listed for the City of Maple Valley in Condition 15 above.

For purposes of this condition, the percentage of the mitigation project to be contributed by the Applicant to the City of Maple Valley is shown for each project. All references to percentages constitute the combined contribution share of the Villages and Lawson Hills projects.

Project A: Contribute 25.3 percent toward one additional southbound through lane on SR 169 from SE 231st Street to Witte Road. Add a second eastbound to southbound right-turn lane on SE Wax Road (double right turn lanes). Upgrade signal equipment to be able to run the eastbound right turn phase with northbound protected left turn phase at the same time.

Project B: Contribute 26.1 percent toward one additional southbound through lane on SR 169 from SE Wax Road through the intersection at SR 169/Witte Road SE. The curb lane will become a right turn lane. The southbound approach to this intersection will be one right turn lane and two through lanes.

Project C: Contribute 66.6 percent toward a second northbound to westbound left-turn lane (300 ft) on SR 169 and a second westbound to southbound left-turn lane (400 ft) on SE 240th Street. Widen SE 240th Street west of SR 169 to add a second westbound lane (500 ft).

Project E: Contribute 37.2 percent toward a second southbound lane on SR 169 from Witte Road SE to SE 244th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 240th Street to Witte Road SE.

Project F: Contribute 63.2 percent toward installation of a traffic signal at the intersection of SR 169/SE 244th Street.

Project G: Contribute 50.8 percent toward a second southbound lane on SR 169 from SE 244th Street to SE 264th Street. Construct a second northbound lane on SR 169 from SE 264th Street to 1,000 feet north of SE 264th Street.

Project H: Contribute 59 percent toward a second southbound lane on SR 169 from south of SR 516 to SE 271st Street.

Project I: Contribute 54.6 percent toward a signal equipment upgrade at the intersections of SR 169/SE 264th Street, SR 169/SR516, and SR 169/SE 271st Street to be able to coordinate these three signals, and set the signal cycle length at 140 seconds.

Project J: Contribute 61.25 percent toward a second southbound lane on SR 169 from SE 271st Street to SE 280th Street and a second northbound lane on SR 169 from 1,000 feet south of SE 271st Street to SE 271st Street.

Project K: Contribute 58.4 percent toward a second southbound lane on SR 169 from SE 280th Street to Maple Valley's south City limit.

Project L: Contribute 6.8 percent toward a new three-lane road (one eastbound and two westbound lanes) on the SE 271st Street alignment between SR 169 and SR 516. Add a

second northbound to westbound left turn lane (200 ft) on SR 169 and a signal at SR 516/SE 271st intersection.

Project W: Contribute 29.9 percent toward widening SR 516 to 4/5 lanes from 216th Ave SE to the west City limits of Maple Valley. Add a second westbound lane on SR 516 to 1,000 feet east of 216th Ave SE.

Project X: Contribution 29.9 percent toward reconfiguration of the northbound approach to SR 516/216th Ave SE to include one left-turn lane and one left and right-turn share lane. Increase the left turn pocket length to 270 feet. Modify signal to accommodate eastbound right-turn phase overlapping with northbound phase.

Project Y: Contribute 13.5 percent toward a second westbound lane on SE 240th from 500 feet west of SR 169 (see Project C) to Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Y (except for the contribution of the Applicant).

Project Z: Contribute 13.5 percent toward a 2-to-3 lane extension of SE 240th Street between Wax Road and Witte Road if and when the City of Maple Valley obtains all the remaining funding necessary for completion of Project Z (except for the contribution of the Applicant).

17. a. At the point where building permits have been issued for 850 dwelling units at the Villages and Lawson Hills together, and again at such phase or interval determined by the City Council following completion of the review called for by this condition, the City shall validate and calibrate the new transportation demand model created pursuant to Condition 11 above for the then-existing traffic from the Villages and Lawson Hills together. The calibration may include an assumption for internal trip capture rates as set forth in Condition 14 above, rather than actual internal trip capture rates, if an insufficient amount of commercial development has been constructed at the time of the validation/calibration required herein. The City shall then run the model to estimate the trip distribution percentages that will result from the next upcoming phase or interval of MPD development, and to assign the estimated trips from that phase or interval to the intersections identified in Condition 11 above.

b. Using the trip distribution and trip assignment yielded by the transportation demand model validation and calibration required in subsection (a) above, the City shall conduct an intersection operations analysis of the transportation levels of service (LOS) for the intersections identified in Condition 11 above, and shall issue findings, conclusions and a recommendation as provided below. The intersection operations analysis shall determine whether then-existing, adopted PM peak hour intersection levels of service are met, and whether the then-existing, adopted PM peak hour intersection levels of service are projected to be met by the time of the next validation/calibration/operations analysis identified by the City Council pursuant to subsection (a) above. The intersection operations analysis for existing conditions must take into account the then-existing peak hour factor; the analysis for the next identified phase or interval of development must be based on a reasonable assumption (justified by reasonable traffic engineering practice) as to the future peak hour

factor, and contain a sensitivity analysis to identify the effect of such peak hour factor assumption. If the findings and conclusions determine that the then-existing, adopted PM peak hour LOS will not be met, they shall also determine whether the projects set forth in Conditions 15 and 16 above adequately mitigate the impacts resulting from the failure to meet the adopted LOS. If the findings and conclusions determine that failure to meet adopted transportation LOS will not be adequately mitigated, they shall also recommend such additional measures necessary to adequately mitigate the impacts reasonably attributable to the MPD projects' failure to meet the adopted LOS.

c. The review identified in subsections (a) and (b) above, may be performed concurrent with a preliminary plat application held on either the Villages or Lawson Hills implementing plat, and the City review may incorporate relevant portions of any SEPA documents prepared for the implementing plat which analyze cumulative MPD impacts.

d. When the review thresholds identified in subparagraph a above have been reached, the City shall issue written notice to the Master Developer(s) to each submit within 90 days review documentation summarizing their respective project impacts and compliance with mitigations and conditions to date, as well as any additional information the City deems necessary to perform the transportation demand model validation/calibration and/or intersection operations analysis. In addition, the Master Developer(s) shall each pay a proportionate share of the validation/calibration/operations analysis costs incurred by the City. If a Master Developer fails to submit satisfactory periodic review documentation regarding its project within the 90-day period after notice has been issued as required herein, further permits shall not be approved for that MPD until the required documentation has been submitted.

e. Not later than 90 days following the City's completion of the validation/calibration/operations analysis, the City Director of Community Development shall consult with other affected jurisdictions as to the review analysis results, obtain any input such jurisdictions wish to provide, issue the City's proposed findings, conclusions and recommendation, and at the close of the 90-day period, the City shall meet with the Master Developer(s) to review the proposed findings, conclusions and recommendation and identify what improvements the Master Developer(s) plans to construct. Within 14 days of the City meeting with the Master Developer(s), the City shall finalize its findings, conclusions and recommendation and shall provide mailed notice to all Parties of Record on the Villages MPD and/or the Lawson Hills MPD that the review has been issued.

f. The City's demand model validation and calibration called for by subsection (a) above, and the intersection operations analysis called for by subsection (b) above, (the "periodic review analysis") shall result in written findings and conclusions plus a recommendation for new future permit conditions and mitigations for the Villages and/or Lawson Hills, as required. Proposed conditions and mitigations applicable to future permits and associated mitigation within either or both projects shall be revised if the City finds that the conditions or mitigation measures imposed pursuant to the City's standards in effect at the time of MPD approval have resulted in an unsatisfactory level of mitigation, either because the degree of mitigation is

inadequate or the quantity of impact demonstrated to be attributable to MPD development exceeds levels predicted. New permit conditions and mitigations imposed for cumulative impacts through the periodic review process shall comply with the following standards and limitations:

i. No new standards or requirements shall be imposed upon property in any plat recorded within 60 months of MPD approval to the extent that such standards or requirements would affect infrastructure serving said property also constructed within the 60-month timeframe.

ii. Performance standards more stringent than those contained in the original MPD permit shall not be imposed.

iii. No retrofitting or major modification shall be required for facilities properly installed in accordance with MPD permits unless such is determined necessary to avoid a threat to public health or safety or a new significant adverse environmental impact, and such impact or threat cannot be mitigated by requirements imposed upon or downsizing of MPD development yet to be constructed.

iv. New conditions and mitigations shall be limited to those shown to be necessary as a direct result of the MPD development, and such mitigation must be reasonable and achievable without compromising other MPD permit requirements.

v. Conditions and mitigations applicable to a MPD shall be modified only to the extent that cumulative impacts are demonstrated to be the result of development of such project. If cumulative impacts have been demonstrated to exist but cannot be attributed solely to the MPDs, or allocated between the two MPDs, responsibility for mitigation shall be apportioned equitably in a proportionate or pro-rata share. For purposes of this condition, "proportionate share" shall mean the ratio of the combined Villages and Lawson Hills MPD project PM peak hour trips projected to use the intersection compared to the total number of PM peak hour trips expected to use the intersection. Any mitigations or conditions imposed shall specify clearly which project and which portion thereof to which they apply.

g. The Villages Master Developer, the Lawson Hills Master Developer, or any other party of record may appeal the periodic review analysis within 21 days of the date of its issuance by filing an appeal statement with the Community Development Director, plus a fee in the amount then applicable to an administrative appeal of a SEPA threshold determination. The appeal statement shall specify in detail the errors alleged to exist in the periodic review analysis and any appeal proceedings shall be limited to analysis of such allegations.

h. If one or more timely appeals are filed of the City's periodic review analysis, they shall be heard and decided by the Hearing Examiner within 90 days of the date the appeal is filed. The hearing shall be limited to the issues included within the written appeal statement. Participation in the appeal shall be strictly limited to the City, the Applicant and parties who timely filed complete written appeal statements and paid the appeal fee. The

appellant shall bear the burden of proof in the appeal. The periodic review analysis shall be upheld on appeal unless found to be clearly erroneous based on the record as a whole.

i. The Hearing Examiner's decision on the periodic review analysis shall be a final decision appealable under the Land Use Petition Act, Chapter 36.70C RCW.

j. If no timely appeal of the periodic review analysis is received, its findings, conclusions, and recommendation shall become final and non-appealable 21 days after issuance. If an appeal is filed, the time required for determination of such appeal shall be excluded from the approval period for any MPD permit and preliminary plat in effect on the date of issuance of the periodic review analysis.

18. The responsibilities and pro-rata shares of the cumulative transportation mitigation projects shall be established in the two Development Agreements, which must cover the complete mitigation list and be consistent with one another. (Traffic impacts were studied based on the cumulative impacts of The Villages and the Lawson Hills MPDs. These various projects have a mutual benefit and need crossing over between them.)

19. For each potential signal, first consider and present a conceptual design for a roundabout as the City's preferred method of intersection control. [FEIS Mitigation Measure]

20. A transportation monitoring plan shall be established as part of the Development Agreement using the projects identified in the list included in Condition 15 (and as that list is modified as a result of the periodic review process), and including trigger mechanisms acceptable to the City. The monitoring plan shall ensure that construction of improvements commences before the impacted street or intersection falls below the applicable level of service, provided that for projects within the State right-of-way, the monitoring plan shall establish timing for commencement of only engineering and design of improvement and shall not including deadlines for commencement of construction.

21. Implementing projects shall be designed to foster the development of a street grid system throughout the project.

22. In order to balance the impact of the added street maintenance and the proposed street standards with higher maintenance costs, all auto courts serving 20 units or less, and all alleys shall be private and maintained by the Applicant or future Homeowners' Association(s). The Development Agreement shall provide that, in the event that the Applicant or future Homeowners' Association(s) fails to maintain such auto courts and/or alleys, the City may enter onto the property, repair or maintain the alleys or autocourts as the City determines in its reasonable discretion is necessary, and collect the costs of such repair or maintenance from the Applicant or Homeowners' Association(s), as applicable. The Development Agreement shall also provide that, to secure repayment, the City may lien the individual lots within the subdivision in which the alley or autocourt is located.

23. The applicant or future Homeowners' Association(s) shall be required to maintain all street side landscaping, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s). The Development Agreement shall provide that, in the event that

the Applicant or future Homeowners' Association(s) fails to maintain such street-side landscaping, the City may enter onto the property, repair or maintain the landscaping as the City determines in its reasonable discretion is necessary, and collect the costs of such maintenance from the Applicant or Homeowners' Association(s), as applicable. The Development Agreement shall also provide that, to secure repayment, the City may lien the individual lots within the subdivision in which the street-side landscaping is located.

24. Traffic calming measures shall be explored with each implementing development action and implemented at the discretion of the Public Works Director.

25. The monitoring plan required by these conditions shall require the applicant to model the traffic impacts of a development phase before submitting land use applications for that phase, in order to determine at what point a street or intersection is likely to drop below the City's adopted level of service. The monitoring plan shall provide for the timing of commencement of construction of projects identified in Condition 15, as well as the amendments to the scope of said projects and/or additions to Condition 15's project list as determined by the City in its reasonable discretion as necessary to maintain the City's adopted levels of service in effect at the time of the modeling, to the extent that project traffic would cause or contribute to any level of service failure as determined by the City's adopted level of service standard. In the event of a disagreement between the applicant and the City about the timing of construction of a transportation project under the monitoring plan, and if the monitoring plan does not already include period modeling, the applicant shall also monitor traffic levels midway through each phase to determine if the traffic generation, trip distribution and assignment patterns are developing as expected.

26. Reserve a site within the commercial area on either the north or south side of Auburn-Black Diamond Road for a future park and ride lot. [FEIS Mitigation Measure] The site shall be of sufficient size to accommodate parking for the number of vehicles identified in the mode-split analysis in the new transportation demand model as set forth in Condition No. 14 above.

27. No more than 150 residential units shall be permitted with a single point of access. 300 units may be allowed on an interim basis, provided that a secondary point of access is provided.

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

29. Prior to the first implementing project of any one phase being approved, a more detailed implementation schedule of the regional infrastructure projects supporting that phase shall be submitted for approval. The timing of the projects should be tied to the number of residential units and/or square feet of commercial projects.

30. The applicant shall apply road design speed control and traffic calming measures so that inappropriate speeds are avoided on neighborhood streets.

31. The timing of the design and alignment of the Pipeline Road shall be included as part of the Development Agreement.

32. Provided a study confirms engineering feasibility and reasonable and customary construction costs, a connecting sidewalk and safe pedestrian connection to the programmed sidewalk in the Morganville area shall be required along Roberts Drive. Construction timing should be specified in the Development Agreement. The City and applicant shall work in good faith to seek grants and other funding mechanisms to construct the improvement. The applicant shall otherwise be responsible for construction costs to the extent authorized by law.

33. a. The City shall commission a study, at the Applicant's expense, on how to limit MPD traffic from using Green Valley Road, and which shall include an assessment of traffic calming devices within the existing improved right-of-way. The study shall also include an analysis and recommended mitigation ensuring safety and compatibility of the various uses of the road. All reasonable measures identified in the study shall be incorporated into the Development Agreement together with a description of the process and timing required for the Applicant to seek permits from King County should King County allow installation of the improvements, and with a proviso that none of the measures need to be implemented if not agreed to by the Green Valley Road Review committee.

b. A Green Valley Road Review Committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members or representatives of King County desire to participate, they may do so, but only two community members shall have a vote on the committee regarding any matter. The Committee shall meet as needed, and specifically shall meet to review the study required by Condition 33(a) and attempt to reach agreement on whether any suggested traffic calming devices should be provided. If the community members of the Green Valley Road Review Committee decide against the traffic calming measures, then the Applicant need not construct them. The Committee shall also meet to review the plan to prohibit or discourage the use of Plass Road. The Applicant shall be responsible, at its expense, for drafting a report to the City Council regarding the Committee's findings on the traffic calming devices and on Plass Road.

34. a. The Development Agreement shall address which traffic projects will be built by the developer, which projects will be built by the City and what projects will qualify for cost recovery.

b. The Applicant agrees to work in good faith with the City, King County and residents on Plass Road to develop a plan to prohibit or discourage the use of Plass Road as a connection to Green Valley Road. The Applicant will agree to vacate a portion of Plass Road through the Villages property to assure no connectivity to the South Connector roadway towards Green Valley Road, provided the City, King County and Plass Road residents support the road vacation.

NOISE

35. Each implementing development shall include a plan for reducing short term construction noise by employing the best management practices such as minimizing construction noise with properly sized and maintained mufflers, engine intake silencers, engine enclosures, and turning off equipment when not in use. [FEIS Mitigation Measure]

36. Stationary construction equipment shall be located distant from sensitive receiving properties whenever possible. Where this is infeasible, or where noise impacts would still be likely to occur, portable noise barriers shall be placed around the equipment (pumps, compressors, welding machines, etc.) with the opening directed away from the sensitive receiving property. [FEIS Mitigation Measure]

37. Ensure that all equipment required to use backup alarms utilizes ambient-sensing alarms that broadcast a warning sound loud enough to be heard over background noise, but without having to use a preset, maximum volume. Alternatively, use broadband backup alarms instead of typical pure tone alarms. [FEIS Mitigation Measure]

38. Require operators to lift, rather than drag materials wherever feasible. [FEIS Mitigation Measure]

39. Substitute hydraulic or electric models for impact tools such as jackhammers, rock drills and pavement breakers, wherever feasible. [FEIS Mitigation Measure]

40. Electric pumps shall be specified whenever pumps are required. [FEIS Mitigation Measure]

41. The developer shall establish a noise control "hotline" to allow neighbors affected by noise to contact the City and the construction contractor to ask questions or to complain about violations of the noise reduction program. The noise reduction program is established by conditions 35 through 40 and 42-43. Whether the noise reduction program has been violated shall be determined by the City in its reasonable discretion. Failure to comply with the noise reduction program shall result first in a warning and one or more continuing failures may result in cessation of construction activities until the developer provides an acceptable solution to the City that will reasonably achieve the intent of the noise reduction program and allow construction to continue. Nothing in this condition shall be construed as limiting or altering the City's authority to enforce its noise regulations.

42. If pile driving becomes necessary, impact pile-driving shall be minimized in favor of less noisy pile installation methods. If impact pile driving is required, the potential for noise impacts shall be minimized by strict adherence to daytime only. [FEIS Mitigation Measure]

43. Work hours of operation shall be established and made part of the Development Agreement

44. To provide construction noise attenuation for existing residents adjoining the Villages development, the following condition shall apply to Villages development parcels V1, V2, V10, V13, V15, V20, V49, V57, V60, and V71. For each of the designated parcels, the Applicant shall:

a. offer to meet with the affected existing resident(s) to seek a mutual agreement about mitigation to be provided, or if mutual agreement cannot be reached, then,

b. the Applicant shall have the choice to provide either:

i. mitigation consisting of a buffer, trail easement or other separator between the edge of the development parcel and the property boundary that is 100-feet wide, provided that trails, recreational facilities, stormwater facilities and similar uses otherwise permitted for the MPD are allowed inside the 100-foot area, or

ii. mitigation consisting of all of the following:

(A) a construction noise attenuation barrier (i.e., a berm, wall, or combination of the two) on the development parcel, provided that if a buffer or trail easement less than 100-feet wide adjoins the development parcel, the barrier may be placed within that area;

(B) design, sizing and placement of the noise attenuation barrier in a manner intended to reduce noise from long-term construction activities (i.e., activities lasting 6 months or longer, such as construction hauling and including the loading/unloading of dump trucks);

(C) payment to the City for its costs in commissioning a study to evaluate the noise barrier design and placement shall be prepared by the Applicant, at its expense, and submitted for review and approval by the City;

(D) the noise study shall evaluate whether noise from long-term construction activities will comply with the environmental noise limits in WAC 173-060-040, and if the noise study concludes that an on-site noise barrier cannot effectively control long-term construction noise to the degree that it complies with the WAC noise limits outside the adjoining existing homes, additional mitigation measures intended to reduce interior sound levels will be evaluated,

(E) any additional noise mitigation measures determined to be effective at reducing interior sound levels (i.e., providing a reduction of exterior-to-interior noise transmission at least 7 dBA more than provided by the existing building envelope) shall be implemented so long as the adjoining owner provides permission if the mitigation requires work on their property, and

(F) at the Applicant's discretion, the noise barrier may be temporary (i.e., removed after construction on one of the designated parcels is complete) or permanent.

Mitigation under section (b)(ii) shall be installed before construction activities begin on the designated development parcel. In the event that lands adjacent to any of the

designated development parcels are acquired by the developer of the MPD, this condition shall not apply as to the acquired lands.

45. A Noise Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Noise Review committee shall review and evaluate compliance with the noise conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

PUBLIC UTILITIES – WATER

46. Comply with the terms of the Water Services Future Funding Agreement (WSFFA).

47. Utilize the Tacoma Intertie, in addition to the Spring Supply per the WSFFA. [FEIS Mitigation Measure]

48. Construct an appropriately sized reservoir in 850 Zone or construct an 850 Zone loop back to the existing system in the vicinity of Railroad Avenue. [FEIS Mitigation Measure]

49. Construct a 750 Zone loop back to the existing system, or propose a functionally equivalent alternative as allowed in the MPD code. [FEIS Mitigation Measure]

50. Complete the 850 loop in the North Property and the 850 loop in Pipeline Road with a pressure reducing station to the 750 Zone water main within the North Property. [FEIS Mitigation Measure]

51. Construct needed water supply and storage improvements in accordance with the City's Comprehensive Plan and necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved by City staff within the MPD. [FEIS Mitigation Measure]

52. Should new water distribution alternatives be desired by the applicant that are not consistent with the recently adopted Water Comprehensive Plan, the applicant shall be responsible for the cost of updating the Plan if needed.

53. The Water Conservation Plan included in the Chapter 8 of the MPD Application is approved. The Development Agreement shall include details about the responsibility for water conservation, the basis and methods for measuring conservation savings, and the impacts if the required savings targets of 10% less than the average water use in the City by residential uses at the time the MPD was submitted are not achieved.

54. The proposed water conservation plan shall be evaluated for its effectiveness in light of the City's available water resources after the first 500 units have been constructed. At that time, additional measures may be required if goals are not being achieved.

PUBLIC UTILITIES – SEWER

55. King County will be constructing a sewer flow equalization storage reservoir in a location to serve the needs of the City. [FEIS Mitigation Measure]

56. Construct trunk lines Nos. 1 and 4. [FEIS Mitigation Measure]

57. Construct pump station 1 and force main 1 to equalization tank. [FEIS Mitigation Measure]

58. Collection of sewage shall occur as presented in City's Comprehensive Plan, consistent with King County sewage storage site selection, and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved in the future if determined appropriate by City staff and consistent with King County's sewage storage site selection process. [FEIS Mitigation Measure]

59. An interim sewer pump station is accepted, provided that:

a. Routing of the gravity sewer mains is consistent with the City's ultimate plan for routing sewage.

b. No capital facility charge credit will be considered for interim improvements.

PUBLIC UTILITIES – STORMWATER AND WATER QUALITY

60. Stormwater runoff that is collected from impervious surfaces shall be mitigated in accordance with the *2005 Stormwater Management Manual for Western Washington*, and stormwater designs shall include low impact development techniques wherever practical and feasible. [FEIS Mitigation Measure]. Homeowner associations should bear the cost of landscape maintenance associated with the low impact development techniques.

61. Preserve the volume of stormwater for the groundwater area tributary to Black Diamond Lake and associated wetlands. [FEIS Mitigation Measure]

62. Implement the stormwater program described in Appendix D to The Villages FEIS in order to match total runoff volume discharges via surface and subsurface conveyance routes to Horseshoe Lake. [FEIS Mitigation Measure]

63. Provide mitigation facilities within the project limits, expansion parcels or provide an agreement with King County for long term City ownership and/or maintenance of off-site facilities not within City limits. [FEIS Mitigation Measure]

64. Native plants shall be primarily used as part of the planting palette within the MPD. Lawn planting shall be reduced wherever practical. [FEIS Mitigation Measure]

65. Where point discharges to streams must occur, design the outfall to minimize impacts to the stream channel and avoid areas of significant vegetation. [FEIS Mitigation Measure]

66. Construct stormwater treatment and storage improvements as presented in City's Comprehensive Plan and as necessary to serve the proposed development. Alternatively, a functionally equivalent improvement to the facilities above may be approved with the MPD. [FEIS Mitigation Measure]

67. Mechanisms shall be identified to integrate Low Impact Development technologies into the overall design of the MPD and incorporated into the Development Agreement. Future Homeowners' Associations shall bear any increased cost of landscape maintenance.

68. The Development Agreement shall include restrictions on roof types (no galvanized, copper, etc.) and roof treatments (no chemical moss killers, etc) to ensure that stormwater discharged from roof downspouts is suitable for direct entry into wetlands and streams without treatment. This condition does not constitute approval for direct discharge of roof drainage into wetlands, streams or their buffers; any such direct discharge is authorized only if approved by the Public Works Director as in compliance with Black Diamond Municipal Code Ch. 14.04 and the standards adopted therein. The applicant shall develop related public education materials that will be readily available to all homeowners and implement a process that can be enforced by future homeowners associations.

69. Stormwater facilities to be considered as part of required open space shall be designed as an amenity per the Public Works and Natural Resources Directors. Factors to be considered by the Directors in determining whether the facilities are designed as an amenity include, but shall not be limited to, whether the facilities are safe for general public access (*i.e.*, do not have steeply sloped banks requiring fencing), are suitable for active recreational use during at least 3 months per year, are suitable for passive recreational use such as walking, hiking, or bird or other wildlife viewing, and/or provide wildlife habitat. If approved, future Homeowners Association(s) shall be required to provide landscape maintenance of these facilities, unless otherwise agreed upon by the City, and the Applicant or future Homeowners' Association(s).

70. The Development Agreement shall include language that binds future developers and contractors to a requirement to comply with any NPDES permits issued by the Washington State Department of Ecology and acknowledge that although permit conditions imposed by NPDES

permits are not administered by the City, staff reserves the right to enforce the conditions of the NPDES permit. Since the city has a high interest in protecting receiving waters under the city storm water permit, the developer shall fund necessary costs for training related to inspection services.

71. Develop a proactive temporary erosion and sediment control plan to prevent erosion and sediment transport and provide a response plan to protect receiving waters during the construction phase.

72. Construct a storm water system that does not burden the city with excessive maintenance costs; assist the city with maintenance of landscape features in storm water facilities. The City shall have the right to reject higher cost of maintenance facilities when lower cost options may be available.

73. Include a tabular list of stormwater monitoring requirements. The list should include the term of the monitoring, the allowable deviation from design objectives or standards, and the action items necessary as a result of excess deviations.

74. The stormwater plan shall include the ability to adaptively manage detention and discharge rates and redirect stormwater overflows when environmental advantages become apparent.

75. The size of storm ponds for hydraulic purposes shall vest on a phase by phase basis to the extent allowed by the City's DOE discharge permit and state law.

76. In the event that new phosphorus treatment technology is discovered and is either certified by the State Department of Ecology as authorized for use in meeting requirements of the Stormwater Management Manual for Western Washington, or is in use such that it is considered by the stormwater engineering community as constituting part of the set of measures described as "All known available, and reasonable methods of prevention, control, and treatment" ("AKART") as defined in WAC 173-201A-020, then the Applicant shall incorporate that new phosphorus treatment technology in all new ponds and facilities applied for as part of an implementing project, such as a preliminary plat, even if the Applicant's ponds and facilities would otherwise be vested to a lower standard.

77. The Development Agreement shall include language to allow deviations from the stormwater facilities listed in the FEIS when justified by a technical analysis and risk assessment.

78. The applicant shall obtain all necessary permits from King County for both construction, including any necessary approval or agreement providing the City ability to perform maintenance of the large regional storm pond proposed to the west of the project. The Applicant shall submit engineering plans to the City for approval, which shall not be unreasonably withheld or delayed, prior to submitting such plans to the County.

79. The City shall determine whether the Applicant's reasonable proportionate share participation in any watershed-wide implementation measures identified in Exhibit H-9 would be of significant benefit in protecting Lake Sawyer water quality. If so, those measures shall be incorporated into the Development Agreement. The Development Agreement shall also integrate the phosphorous monitoring plan proposed by the Applicant in Ex. NR-TV-7 as well as a temperature monitoring plan identical to the plan proposed for the Lawson Hills project in Exhibit NR-LH-5.

80. Runoff from basins tributary to Lake Sawyer shall provide water quality treatment in accordance with the phosphorous control menu in the 2005 Stormwater Management Manual for Western Washington. [FEIS Mitigation Measure]

81. Prior to approval of the Development Agreement, the Applicant shall identify to the City the estimated maximum annual volume of total phosphorus (Tp) that will be discharged in runoff from the MPD site and that will comply with the TMDL established by the State Department of Ecology for Lake Sawyer. If monitoring conducted pursuant to the phosphorus monitoring plan proposed by the Applicant in Ex. NR-TV-7 and integrated into the Development Agreement pursuant to Condition No. 78 above indicates that the MPD site is discharging more than the identified annual maximum volume of Tp, the Master Developer shall modify existing practices or facilities, modify the design any proposed new stormwater treatment facilities, and/or implement a project within the Lake Sawyer basin that collectively provide an offsetting reduction in Tp so as to bring the discharge below the annual maximum identified pursuant to this Condition.

82. Enhanced water quality treatment shall be provided as required by the 2005 Stormwater Management Manual for Western Washington. [FEIS Mitigation Measure]

83. When the Applicant builds improvements to existing public road right-of-way inside the City of Black Diamond and which road right-of-way drains to Lake Sawyer, the Applicant is required to treat the stormwater from those improvements to the then current and applicable phosphorus treatment standard, and the Applicant shall also treat the existing stormwater that runs off the existing right-of-way in the immediate vicinity of the improvement.

84. The Applicant agrees to work cooperatively with the City to identify opportunities where the City can reduce phosphorus sources or improve phosphorus treatment on existing City lands and for existing City owned or maintained stormwater facilities.

85. A Water Quality Review committee shall be formed. The committee shall consist of two representatives of the Applicant, one representative of the City, and two representatives of the community. If additional community members desire to participate, they may do so, but only two members shall have a vote on the committee regarding the annual report. The Committee shall meet at least once a year, and no more than six times per year. The Water Quality Review committee shall review and evaluate compliance with the stormwater conditions imposed upon the Villages MPD. The Committee shall endeavor to reach mutual agreement (i.e., a 5-0 vote) on the contents of an annual report to be filed with the City Council. The Applicant shall be responsible, at its expense, for drafting the annual report. The annual report will summarize the

Committee's findings regarding compliance, and shall include recommendations, if any, for improved performance. If the Committee is unable to reach mutual agreement, then the Applicant shall prepare the annual report summarizing the matters for which agreement is reached, as well as the matters still under debate, and shall allow the other members of the community to provide comments on the report prior to submittal to the City Council. The City Council shall review the report and respond as appropriate under applicable City Codes, or the provisions of the Development Agreement.

VISUAL AND AESTHETICS

86. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.

87. The Development Agreement shall define when and under what conditions a development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.

PUBLIC SERVICES – PARKS AND RECREATION

88. If a school site is developed and the proponent proposes to build a joint-use facility, the proponent shall provide one or more youth/adult baseball/softball fields, soccer fields, tennis courts, or basketball courts in conjunction with the school site(s) or at an alternative location. [FEIS Mitigation Measure]

89. The details of the park and recreation facilities to serve the new demand from the MPD shall be set in the required Development Agreement, including whether such facilities may be constructed on- or off-site. [FEIS Mitigation Measure]

90. The cost of such facilities, including a proportionate share of facilities not fully warranted by the MPD build out, could be provided by payment of fees. [FEIS Mitigation Measure]

91. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities

92. The details regarding the timing of construction and optional off-site construction or payment of fee in lieu of construction included in Table 5.2 of the MPD application (Recreation Facilities) shall be specified in the Development Agreement.

93. Dependant on the availability of land, the adequacy of funds to construct City-approved recreational facilities and an ability to maintain these facilities, the City shall retain the sole discretion to determine when and if the applicant will be allowed to provide a lump sum payment in lieu of constructing off-site recreational facilities. This condition may be further defined within the Development Agreement.

94. The Development Agreement shall include language authorizing public access to parks and trails facilities.

95. As proposed in the Master Plan Application, on-site trails (i.e. on the site of the implementing project) shall be constructed or bonded prior to occupancy, final site plan or final plat approval, whichever occurs first. Off-site trail connections shall meet the same standard to the extent authorized by law.

96. Parks within each phase of development shall be constructed or bonded prior to occupancy, final site plan or final plat approval of any portion of the phase, whichever occurs first, to the extent necessary to meet park level of service standards for the implementing project.

97. The Development Agreement shall include a tabular list of the characteristics of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

PUBLIC SERVICES – SCHOOLS

98. The Applicant shall enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference. Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws). The agreed number of school sites and associated minimum acreage, both as set forth in Exhibit 6, shall be used to guide any school mitigation alternative. To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs.

99. An updated fiscal analysis shall be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

PUBLIC SERVICES – PUBLIC SAFETY

100. The Development Agreement shall include specific provisions for providing fire mitigation to ensure protection concurrent with project build out. Fire mitigation may include

fire impact fees under a City-wide fire impact fee program for new development, a voluntary fire mitigation agreement, and/or the dedication of land for fire facilities (subject to credit under State impact fee laws).

101. All Fire Department access roads must meet International Fire Code, specifically Section 503 Fire Department Access Roads and Appendix D Fire Department Access Roads, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations

102. Auto courts shall meet the requirements of the International Fire Code 2006 ed. Per IFC Section 503, specifically 503.2.1, except to the extent modifications or exceptions are approved by the designated official as authorized by applicable regulations.

103. Separation of combustible structures and vegetation shall be provided to prevent wildland fires from the east and south from spreading to buildings. This shall be determined at the time of implementing projects.

EROSION HAZARDS

104. Major earth moving and grading may be limited to the "dry season," between April and September, to avoid water quality impacts from erosion due to wet soils. Construction during the "wet season" may occur as allowed by the Engineering Design and Construction Standards Section 2.2.05. [FEIS Mitigation Measure]

105. In cases where vegetation is an effective means of stabilizing stream banks, stream banks shall be protected from disturbance to reduce the adverse impacts to stream erosion. [FEIS Mitigation Measure]

106. Bridges or appropriately sized box culverts shall be used for roadway crossings of streams to allow peak flow high-water events to pass unimpeded and to preserve some normal stream processes. [FEIS Mitigation Measure]

107. Design stormwater facilities to avoid discharging concentrated stormwater flows on moderate and steep slopes in order to avoid severe land erosion. [FEIS Mitigation Measure]

108. Utilize stormwater detention facilities that avoid increases in peak stream flows. [FEIS Mitigation Measure]

109. The Applicant shall submit a Temporary Erosion and Sedimentation Control (TESC) plan meeting City standards that will mitigate the potential for construction run-off from the site prior to grading or land clearing activities. The best management practices in the TESC plan shall include standby storage of emergency erosion and sediment control materials; a limit to the amount of property that may be disturbed in the winter months; and guaranteed time frames for the establishment of wet weather erosion and site protection measures.

110. Prior to approval of the first implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan that will balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20%.

LANDSLIDE HAZARDS

111. Development of landslide hazard areas shall be avoided. Sufficient setbacks shall be required to assure or increase the safety of nearby uses, or where feasible grade out the landslide hazard area to eliminate the hazard in compliance with the city's Sensitive Areas Ordinance BDMC 19.10. [FEIS Mitigation Measure]

112. Stormwater and groundwater shall be managed to avoid increases in overland flow or infiltration in areas of potential slope failure to avoid water-induced landslides. [FEIS Mitigation Measure]

113. Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.

MINE HAZARDS

114. Development within the moderate mine hazard area may require additional mitigation measures, which shall be evaluated with future implementing development proposals.

115. All proposed development within mine hazard areas shall occur in conformance with BDMC 19.10.

116. All houses that are sold in classified or declassified coal mine hazard areas shall require a liability release from the homeowner to the City. The release must recognize that the City is not liable for actual or perceived damage or impact from the coal mine hazard area. The release form shall be developed and included in the Development Agreement.

VEGETATION AND WETLANDS

117. Structural measures such as silt fences and temporary sediment ponds shall be used to avoid discharging sediment into wetlands and other critical areas. [FEIS Mitigation Measure]

118. Implementing projects shall provide "on the ground" protection measures such as wetland buffers or root protection zones for significant trees. [FEIS Mitigation Measure]

119. New stormwater outfalls shall be located to avoid impacts to any stream and adjacent wetlands, riparian buffers, unstable slopes, significant trees, and instream habitat. Where all

practical and feasible avoidance measures have been employed, provide mitigation in the form of outfall energy dissipaters and/or vegetation restoration and slope stabilization as necessary. [FEIS Mitigation Measure]

120. A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.

121. The Development Agreement shall include text that defines when and under what conditions a parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain un-worked before it must be reforested.

122. The use of native vegetation in street landscaping and in parks shall be required.

FISH AND WILDLIFE

123. Wildlife forage preferences shall be of primary consideration in plant species selection for enhancement areas. [FEIS Mitigation Measure]

124. Mast-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.

125. Provide a 300-foot-wide wildlife corridor from the western edge of the Core Complex to the City's western boundary. The corridor should be located within areas of contiguous open space that form a network. [FEIS Mitigation Measure]

CLIMATE CHANGE

126. Building design guidelines shall allow the use of solar, wind, and other renewable sources. [FEIS Mitigation Measure]

127. Should a large employer (100+ employees) or a group of similar employers locate in the commercial areas of the MPD, a Transportation Management Association shall be implemented to reduce vehicle trips. [FEIS Mitigation Measure]

LAND USE

128. Approval of the design concept and land use plan (Chapter 3) shall be limited to the Land Use plan map (Figure 3-1, as updated July 8, 2010); description of categories (beginning

on page 3-18); a maximum of 4,800 total residential units and 775,000 square feet of commercial space; and target densities (Table 3.2), except as modified herein. Corner store-style neighborhood commercial uses within residential land use categories shall be defined in the Development Agreement and shall only be allowed through minor amendment of the MPD. All other specifics shall be resolved through the Development Agreement process.

129. The project shall provide a mix of housing types in conformance with the MPD Design Guidelines. The Development agreement shall set targets for various types of housing for each phase of development.

130. Identification of specific areas where live/work units can be permitted shall be done as part of the Development Agreement or through an MPD minor amendment.

131. A minimum density of 4 du/per net acre for residential development shall be required for implementing projects, and shall be calculated for each development parcel using the boundaries of that parcel (or the portion thereof to be developed) as shown on the Land Use plan map (Figure 3-1, as updated July 8, 2010).

132. If the applicant requests to increase a residential category that abuts the perimeter of the MPD, it shall be processed as a Major Amendment to the MPD. Residential land use categories can otherwise be adjusted one category up or down through an administrative approval process provided they also otherwise meet the requirements for minor amendments outlined in BDMC 18.98.100.

133. The Development Agreement shall limit the frequency of proposed reclassification of development parcels to no more frequently than once per calendar year.

134. The Expansion Area process shall be clarified in the Development Agreement.

135. Project specific design standards shall be incorporated into the Development Agreement. These design guidelines must comply with the Master Planned Development Framework Design Standards and Guidelines. All MPD construction shall comply with the Master Planned Development Framework Design Standards and Guidelines, whether or not required by the Development Agreement.

136. A unit split (percentages of single family and multifamily) and commercial use split (commercial, office and industrial) shall be incorporated into the Development Agreement.

137. All commercial/office uses (other than home occupations and identified live/work areas) shall only occur on lands so designated. Additional commercial areas shall be identified on the Land Use Plan through future amendment to the MPD.

138. The project shall include a mix of housing types that contribute to the affordable housing goals of the City. The Development Agreement shall provide for a phase-by-phase analysis of affordable housing Citywide to ensure that housing is being provided at affordable

prices. Specifications for affordable housing needs within the project shall be determined as a result of the phase-by-phase analysis.

139. Exact specifications for the housing described in paragraph 122 shall be included within the Development Agreement.

140. A distinct land use category shall be created to recognize potential light industrial uses or the "office" category shall be renamed to properly indicate the range of potential uses. Areas intended to have light industrial type uses shall be identified on the Land Use Map that is made part of the Development Agreement.

141. The high density residential (18-30 du/ac) supplemental design standards and guidelines (MPD application Appendix E) shall become part of the Development Agreement.

142. Detached single family dwelling units shall be alley loaded, except where site conditions prevent alley loading or cause alleys to be impractical as determined by the City, in its reasonable discretion.

143. Homeowners Association conditions, covenants and restrictions (CCRs) or the Architectural Review Committee shall review, but shall not preclude, the use of green technologies such as solar panels.

144. Front yard setbacks and other specific lot standards shall be determined as part of the Development Agreement.

145. A FAR standard shall be established through the Development Agreement process.

146. No more than two floors of residential uses above ground floor commercial/office uses shall be allowed.

147. The orientation of public building sites and parks shall preserve and enhance views of Mt. Rainier and other views identified in the comprehensive plan. There are tailing piles located on property near Parcel B. The Applicant is not responsible for removal of those tailing piles, but future site and building design for Parcel B should consider the nature of the views to Mt. Rainier that may be possible if those piles are later removed.

148. The Applicant's requests for reduced parking standards in the Mixed Use Town Center as identified at p. 13-4 of the MPD application is granted. All other requests for deviation in the Chapter 13 of the MPD application are denied except for those deviations, mostly utility and street standards, that are identified in the recommendation as amenable to further review in the development agreement process. Any MPD deviations to the Sensitive Areas Ordinance are denied, because BDMC 18.98.155(A) provides that the Sensitive Areas Ordinance shall be the minimum standards for protection of sensitive areas within MPDs.

SENSITIVE AREAS/OPEN SPACE

149. The use of sensitive areas including but not limited to wetlands, landslide and mine hazard areas and their associated buffers for development including trails, stormwater management, etc. shall be regulated by BDMC Chapter 19.10. Appropriate mitigation, if required, for impacts as well as other required measures shall be evaluated on a case-by-case basis at the time of implementing project application.

150. Areas shown as natural open space in the figure on Page 5-7 of the application are required to remain natural with the possibility for vegetation enhancement. Modifications to these areas may be approved by the City in its reasonable discretion, on a case-by-case basis, only if necessary for construction of required infrastructure such as roads, trails or stormwater facilities. Any areas disturbed pursuant to such approval shall be replanted with native plants. Nothing in this condition shall allow grading or modifications in the sensitive areas and buffers, except as provided in the Sensitive Areas Ordinance.

151. The Development Agreement shall include a tabular list of the types of activities and the characteristics of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

152. The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example; when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

153. Specific details on which open space shall be dedicated to the city, protected by conservation easements or protected and maintained by other mechanisms shall be established as part of the Development Agreement.

154. Once acreages have been finalized, phasing of open space (which includes parks and is identified within the MPD application) shall be defined and articulated for timing of final designation within the Development Agreement.

155. Once the mapped boundaries of sensitive areas have been agreed to, the Development Agreement shall include text that identifies that these areas are fixed. If during construction it is discovered that the actual boundary is smaller or larger than what was mapped, the mapped boundary shall prevail. The applicant shall neither benefit nor be penalized by errors or changes in the sensitive area boundaries as the projects are developed.

ADMINISTRATION

156. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to

maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

a. Within five years, a new fiscal analysis shall be completed to determine the long-term fiscal impact to the City. If necessary, additional project conditions may be required.

b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding..

157. The Applicant and other property owners may petition for the formation of a Community Facilities District to provide a mechanism for funding the costs of "facilities" as defined in Section 501 of SSB 6241. The City Council will review the petition as provided in SSB 6241 and, as set forth in Section 205, determine in its sole discretion whether the petitioners will benefit from the proposed district and whether the formation of a district will be in the best interest of the City and comply with the requirements of the Growth Management Act, Ch. 36.70A RCW.

The Development Agreement shall include language that specifically defines when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

158. The Development Agreement shall document a collaborative design/review/permitting process that allows City staff to participate in the conceptual stage of project planning in order to provide input on designs and choices that benefit the City as well as the applicant.

159. The Development Agreement shall specifically identify which rights and entitlements are vested with each level of permitting, including but not limited to the MPD Application approval, the Development Agreement approval, and Utility Permit approvals.

160. Reclassification of development parcels shall occur no more frequently than once per calendar year.

161. Proposed reclassification of development parcels located at the project perimeter to a higher density shall only occur through a Major Amendment to the MPD.

162. A process for including lands identified as "Expansion Areas" in the application shall be defined in the Development Agreement.

163. The Development Agreement shall define the proposed phasing plan for the various matters (utility and street infrastructure, parks, transferred development rights, etc.) subject to phasing standards.

164. Prior to the approval of the first implementing project of a defined phase, a detailed implementation schedule of the regional projects supporting that phase shall be submitted to the City for approval. The timing of the projects shall be tied to the number of residential units and/or square feet of commercial projects.

Exhibit D

Villages MPD
Legal Description of Parcels Rezoned to MPD

1. Villages Parcel H (Guidetti) (Parcel #1521069088), legally described as follows:

That portion of the Easterly 660 feet of the West half of the Northeast quarter of Section 15, Township 21 North, Range 6 East W.M., in King County Washington, lying Southerly of Auburn-Black Diamond Highway;

Except the East 381.24 feet of the Northwest quarter of the Northeast quarter of Section 15, Township 21 North, Range 6 East, W.M. lying Southerly of Auburn-Black Diamond Highway and the East 90 feet of the North 165.70 feet of the Southwest quarter of the Northeast quarter of Section 15, Township 21 North, Range 6 East W.M., in King County Washington;

(Also known as Parcel 1 under survey recorded under recording number 20030917900009); and

2. Parcel B (Parcel #1121069006 and portion of parcel #1121069109), legally described as follows:

The West half of the Northwest Quarter of Section 11, Township 21 North, Range 6 East, W.M., in King County, Washington.