



**CITY OF BLACK DIAMOND**  
**January 11, 2024, Special Meeting Agenda**  
**Council Chambers, 25510 Lawson Street, Black Diamond, WA 98010**

**THIS IS OFFERED AS A HYBRID MEETING AND MAY BE ATTENDED IN PERSON AT THE ABOVE NOTED ADDRESS OR BY JOINING VIRTUAL/TELEPHONICALLY. CALL IN AND JOINING INFORMATION FOLLOWS:**

**Zoom link to join meeting:**

<https://zoom.us/j/4454477047?pwd=eGxRY3ZEeU14SVM2cGRBcUxCSjdmZz09>

*(Note: You do not need a web cam to join the meeting, but you will need audio to hear the proceedings.)*

Meeting ID: 445 447 7047

Password: Council

**Telephone dial in options:**

+1 253 215 8782 US (Tacoma)

+1 206 337 9723 US (Seattle)

Meeting ID: 445 447 7047

Password: 426953 (phone in only)

**6:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL**

**PUBLIC HEARINGS:**

**1) Quasi-Judicial Closed Record Hearing – Palmer Rezone Nos 1,2 and 3**

The Black Diamond City Council will conduct a hybrid in-person and virtual/telephonic CLOSED RECORD HEARING on the proposed Palmer Rezone 1 (PLN22-045), Palmer Rezone 2 (PLN22-0022), and Palmer Rezone 3 (PLN22-047). Only parties of record who testified at the open-record hearing in front of the Hearing Examiner on November 6, 2023, may speak at the closed record hearing. All testimony is limited to discussion regarding the Hearing Examiner's recommendations. All argument must be based on the factual record developed at the Hearing Examiner's open-record hearing on November 6, 2023. No additional documents or information may be presented or accepted.

The order of proceedings shall be as follows:

- a) Mayor to state the hearing procedures and inquire regarding appearance of fairness/conflicts of interest
- b) City Staff presentation
- c) Applicant spokesperson presentation
- d) Presentations by other parties of record (if any).

**e)** Rebuttals

**f)** Council Questions

**g)** Optional Executive Session for deliberations, consistent with RCW 42.30.140(2), with possible action to follow on Palmer Rezone 1, Palmer Rezone 2 and/or Palmer Rezone 3

## **ADJOURNMENT**

BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER

IN RE:

PALMER REZONE 1  
PALMER REZONE 2  
PALMER REZONE 3

HEARING NO. PLN22-0045  
HEARING NO. PLN22-0022  
HEARING NO. PLN22-0047

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDATIONS  
TO CITY COUNCIL

**OWNER/APPLICANT:**

Palmer Coking Company, LLP  
P. O. Box 10  
Black Diamond, Washington 98010

**REPRESENTATIVE:**

Jami Balint  
Attorney at Law

**OWNER'S REPRESENTATIVE:** Whitney Welsh

**OTHER REPRESENTATIVES:**

David Toyer, Toyer Strategic Advisors  
Jeff Schramm, Transportation Engineering North West

**CITY'S REPRESENTATIVES:**

Andrew Love, Contract Planner  
Mona Davis, Community Development Director  
David Linehan City Attorney

**PROJECT LOCATION:**

Rezone 1: Parcel No. 102106-9010. 20.63 acres located  
off of Lake Sawyer Road SE and north of Roberts Drive  
and surrounding Lake Marjorie.

Rezone 2: Parcel Nos. 152106-9110, 1521106-9112,  
152106-9113, 152106-9114, and 152106-9115. 25.46 acres  
again located off Lake Sawyer Road SE and north of  
Roberts Drive.

Rezone 3: Parcel No. 102106-9111. 27.96 acres located  
north of Fairfax Street and Dail Drive.

**SUMMARY OF REQUEST:**

The Applicant requests Site Specific Rezoning of the three properties: Rezone 1 proposes the rezoning of 20.63 acres from Single-Family Residential (R4) to Medium Density Residential (MDR8); Rezone 2 proposes the rezoning of 25.46 acres from Business/Industrial Park (B/IP) to Medium Density Residential (MDR8); and Rezone 3 proposes the rezoning of 27.96 acres from Business/Industrial Park (B/IP) to Medium Density Residential (MDR8). If all requested rezones are approved, all properties would be rezoned to MDR8. All three properties have a land use designation of Medium Density Residential (MDR) in the City's Comprehensive Plan.

*Findings of Fact and Conclusions  
of Law and Recommendations to  
City Council - 1*

**CITY OF BLACK DIAMOND HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

1 **HEARING EXAMINER'S RECOMMENDATIONS:**

2 Palmer Rezone 1: **Approve.**

3 Palmer Rezone 2: **Approve.**

4 Palmer Rezone 3: **Deny, defer or approve subject to conditions.**

5 **BACKGROUND**

6 This matter involves three separate applications by Palmer Coking Coal Company, LLP  
7 ("Palmer" or "Applicant") for the rezoning of properties to Medium Residential (MDR8)  
8 consistent with their land use designation of Medium Density Residential (MDR) in the City's  
9 Comprehensive Plan. The first application (Rezone 1) seeks the rezoning of 20.63 acres  
10 surrounding Lake Marjorie (Oak Lake). The second application (Rezone 2) seeks rezoning of  
11 25.46 acres northeast of the intersection of Roberts Drive and Lake Sawyer Road. The third  
12 application (Rezone 3) seeks rezoning of 27.96 acres east of Lake Sawyer Road and just north of  
13 the Bruckner's Way/Sunny Lane Neighborhood. All three properties are part of Palmer's larger  
14 landholdings and were part of its historic coal and now gravel mining operations.

15 When the City updated its Comprehensive Plan in 2019 it designated all three properties  
16 as "Medium Density Residential" in the Future Land Use Map. The three properties' zoning  
17 designations were inconsistent with this land use designation at the time of the 2019 update and  
18 have remained inconsistent. The only zoning designation consistent with the MDR land use  
19 designation is MDR8 - the zoning designation sought by Palmer.

20 Site Specific Rezones such as this must undergo a seven-pronged analysis found in  
21 BDMC 18.12.020(B), with the Applicant having the burden of proving that all seven  
22 requirements are satisfied. Palmer asserts that all seven requirements have been met and that the  
23 requested rezones should be approved by City Council. City Staff agrees and concurs in the  
24  
25

1 recommendation that all three rezones be approved without conditions. There has been  
2 significant public response to the request, mostly in opposition, and with most of that opposition  
3 arguing that the applications fail to satisfy BDMC 18.12.020(B)(4) and (7), although opponents  
4 cite to other requirements as not having been met as well.

5 The matter comes before the Hearing Examiner for the purpose of reviewing the  
6 applications and receiving public comment so as to then make recommendations to City Council.

### 7 PUBLIC HEARING

8 Prior to the public hearing the Hearing Examiner undertook an independent site  
9 inspection of the three properties to better understand site conditions and surrounding properties.  
10

11 The public hearing commenced at 5:00 p.m. on Monday, November 6, 2023, at the City's  
12 Public Hearing Facility. The hearing lasted approximately four hours. City Staff appeared  
13 through Andrew Love, Contract Planner, along with Mona Davis, Community Development  
14 Director, and was represented by its City Attorney, David Linehan. Various other City Staff  
15 members were in attendance. The Applicant appeared through the Owner's Representative,  
16 Whitney Welsh, and its other representatives, David Toyer and Jeff Schramm, and was  
17 represented by its attorney, Jami Balint. A large crowd was in attendance and a significant  
18 number asked to testify. The hearing was recorded and all testimony was taken under oath. The  
19 hearing was conducted in a hybrid format whereby the public was encouraged to attend in person  
20 but could also attend remotely. Several members of the public participated remotely and at least  
21 two testified.  
22

23 In advance of the public hearing Mr. Love prepared Staff Reports for each of the three  
24 applications, all bearing the date of October 26, 2023. In addition to these three Staff Reports,  
25 the record developed in advance of the hearing consisted of a significant number of other

documents including various studies and reports as well as the cumulative public comment presented in advance of the hearing. All documents were identified as exhibits, with the entire list of exhibits attached to this Decision.

### **CITY'S PRESENTATION**

The City's presentation was primarily made by Andrew Love, Contract Planner. In addition to his oral presentation, Mr. Love relied extensively upon his three Staff Reports and the accompanying PowerPoint presentations (Exhibits 13, 14 and 15). Mr. Love began by describing the three rezone properties:

- Rezone 1 consists of 20.63 acres and surrounds Lake Marjorie (Oak Lake) and adjoins Lake Sawyer Road SE a short distance north of its future intersection with the proposed Pipeline Road. The site is undeveloped and forested. Property to its north is zoned Public (Lake Sawyer Park); property to the east and south is zoned Business/Industrial Park (B/IP). Property west of Lake Sawyer Road lies in unincorporated King County and is zoned Rural 1 per 5 Acres. Property to the north and west has limited development while property to the south and east has undergone extensive coal/gravel mining.

- Rezone 2 consists of 25.46 acres lying northeast of the intersection of Lake Sawyer Road and Roberts Drive. It is currently zoned B/IP. It is undeveloped and forested. Property to its west is undergoing intensive development as part of the Ten Trails Master Planned Development. Property to the north is currently involved in the Applicant's gravel mining operations. Property to the east includes critical areas associated with Rock Creek and, further east, the Bruckner's Way/Sunny Lane Neighborhood. To the south, across Roberts Drive, is a mix of Ten Trails development and older City development.

1           ●       Rezone 3 consists of 27.96 acres consisting of a rectangular parcel immediately  
2 north of the Bruckner's Way/Sunny Lane Neighborhood but having no direct road connection to  
3 that neighborhood or to any other public road. The site slopes steeply downward from south to  
4 north. The upper, southerly portion, is forested while the northerly, lower portion is part of the  
5 Applicant's gravel mining operations. The site adjoins Rock Creek to the west and is surrounded  
6 on the west, north and east by the Applicant's gravel operations, and on the south by a mix of  
7 residential neighborhoods and critical areas. The site currently has no direct road access but  
8 adjoins the intended route for the Pipeline Road which is yet to be dedicated to the City or  
9 constructed. Like Rezone 2, it is currently zoned B/IP. About a third of the Rezone 2 property is  
10 covered by the "Mineral Extraction Overlay" while the Rezone 3 property is fully covered by this  
11 Overlay.  
12

13           **History of Properties and Their Land Use Designations.** As everyone in Black  
14 Diamond knows, Palmer's coal mining and then gravel mining operations have been ongoing on  
15 these and surrounding properties for several generations. The three properties either touch on or  
16 are included in the area currently involved in gravel mining. As noted above, a portion of the  
17 Palmer Rezone 2 property is covered by the Mineral Extraction Overlay while all of Palmer  
18 Rezone 3 is covered by this Overlay. The three properties are just a small portion of Palmer's 569  
19 acres in or near the City.  
20

21           In the 1996 Comprehensive Plan these properties were given a mixed land use  
22 designation of partially Medium Density Residential and the remainder Business/Industrial Park,  
23 with all of the properties given a "Interim Mineral Extraction" overlay to allow for continued  
24 mining. The next Comprehensive Plan update (delayed until 2009) designated Rezone 1 as Low  
25 Density Residential and the remaining properties as Business Park and Light Industrial. The

1 properties' zoning has remained consistent with these earlier land use designations. The City's  
2 most recent Comprehensive Plan update in 2019 changed the land use designation for all three  
3 parcels to Medium Density Residential (MDR) but there was no concurrent change in their  
4 zoning designation, leaving Rezone 1 as R4 - Single Family Residential and Rezones 2 and 3 as  
5 Business/Industrial Park.

6 In April 2022, Palmer applied for the rezoning of the three parcels to MDR8. This began  
7 an extensive and lengthy review by City Staff. The first public notice of the pending application  
8 was sent in August 2022, resulting in more than 60 public comments, mostly in opposition.  
9 Following these initial public comments, the City refined its review and requested additional  
10 information from the Applicant. On June 13, 2023, the City issued a SEPA Determination of  
11 Nonsignificance (DNS). The SEPA DNS was appealed by the City of Maple Valley but its  
12 Appeal was dismissed by the Hearing Examiner. There were no other appeals of the SEPA DNS  
13 and it is now final.

14 As the public hearing approached, additional public comments trickled in, many in  
15 support. All public comment will be discussed more fully later on.

16 As has been frequently pointed out by City Staff and the Applicant, these applications for  
17 rezoning to MDR8 *do not propose any development activity at this time*. If the rezones are  
18 granted, any subsequent development will require separate applications and more intensive  
19 review based upon the land use regulations then in effect.

20 **Consistency with the City Comprehensive Plan.** As earlier noted, in 2019 the City  
21 Council changed the land use designation in the Comprehensive Plan for these three properties to  
22 Medium Density Residential (MDR). The City's Comprehensive Plan describes the purpose of  
23 this land use designation:  
24

25 *Findings of Fact and Conclusions  
of Law and Recommendations to  
City Council - 6*

**CITY OF BLACK DIAMOND HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

1 "The Medium Density Residential development designation provides for stable  
2 and attractive residential neighborhoods of small lot, single-family homes, or  
3 attached single-and multi-family residences on land suitable for these residential  
4 intensities. Medium Density Residential areas should be located near commercial  
5 services, employment, and arterial roads, and may also be in mixed-use  
6 developments. The base residential density in these areas is eight units per acre.  
7 Increased density may be approved up to twelve units per acre with the  
8 acquisition of TDRs."

9 [Please note that these three rezone properties are not eligible to receive TDRs. As a result, their  
10 maximum density is eight units per acres, not twelve. This is important when later discussing  
11 transportation impacts.]

12 When the City Council changed the land use designation to MDR in 2019 it did so  
13 pursuant to its established guidelines for what properties are best suited for the MDR  
14 designation. The Comprehensive Plan recognizes that the MDR designation is best applied to  
15 those properties where:

- 16 ● Existing or planned public facilities are adequate to support residential  
17 development in this density.
- 18 ● The area is free of significant amount of environmentally sensitive areas.
- 19 ● The area fronts an arterial.
- 20 ● The area is developed and consists of a mix of attached and detached housing  
21 types. A residential neighborhood that is primarily single-family with a strip of multi-family  
22 housing along an arterial does not meet this criteria.
- 23 ● Medium density housing can be developed to be compatible with existing  
24 development.
- 25 ● The area is identified as a receiving site for density under the TDR program.

1 It is important to recognize that these are *general criteria* for areas to be designated as  
2 MDR, not *requirements*. Indeed, none of the three rezone parcels comply with every one of  
3 these criteria (e.g., none are receiving sites for TDRs), yet the City Council determined that the  
4 three parcels sufficiently qualified in order to be placed in the MDR land use designation.

5 Importantly, the only *zoning* designation that is consistent with the MDR land use  
6 designation in the Comprehensive Plan is MDR8. Neither the current R4 zoning for Rezone 1 or  
7 the current B/IP zoning for Rezones 2 and 3 is consistent with the MDR land use designation,  
8 and no other zoning designations are consistent except the MDR8 zoning. The current zoning  
9 designations are therefore inconsistent with the land use designations in the Comprehensive Plan.

10 In his Staff Reports, Mr. Love undertakes an extensive analysis of the proposed rezoning  
11 and its consistency with the Goals and Policies of the City's Comprehensive Plan to determine if  
12 the proposed rezoning is not only consistent with the MDR land use designation but with the  
13 Plan's many Goals and Policies. It is important to remember that it is difficult, if not impossible,  
14 for a project to be consistent with *all* Goals and Policies of the Plan as there is a natural tension  
15 among many of the Goals and Policies (for example, goals for increased economic development  
16 and industrial growth versus goals for environmental protection and retention of a "smalltown  
17 feel"). Nonetheless, City Staff believes that the rezones are consistent with multiple land use  
18 Goals and Policies including LU Goal 3 and Policy LU-10; LU Goal 6 and Policy LU-22; LU  
19 Goal 7 and Policy LU-28, 29 and 30; LU Goal 13; with Natural Environment Policies NE-8 and  
20 NE-35; with Housing Goal and Policy H-1, H-3 and H-4; Goal 2, Goal 3 and Policies H-23 and  
21 H-24, and Capital Facilities and Utilities Goal 1 and Policies U-15 and P-1. In summary, City  
22 Staff finds that the rezones are consistent with the Goals and Policies of the Comprehensive Plan  
23 as well as with the MDR land use designation.

1        **Changes in Land Uses Resulting from Change in Zoning.** Mr. Love's Staff Reports  
2 detail how each change in zoning would alter the allowed uses. As to Rezone 1, a change in  
3 zoning from R4 to MDR8 would allow the maximum number of units per acre to increase from  
4 four to eight. It would also allow for multi-family residential structures, cottage housing, senior  
5 housing, assisted elderly housing, manufactured home parks and group homes. None of these  
6 are currently allowed in the R4 zone. As to Rezones 2 and 3, a change from B/IP zoning to  
7 MDR8 would change the use from office, medical, wholesale and light industry to the type of  
8 residential uses described in the previous sentence. In addition, it would decrease maximum  
9 building coverage and maximum building height while increasing landscaping.  
10

11        **Traffic Impacts.** Trip generation analyses have been prepared for all three projects  
12 *based solely on the change in zoning.* In other words, these analyses calculate the maximum  
13 possible traffic impacts resulting from rezoning from MDR8 as compared to the parcels' current  
14 zoning (Exhibit 5). These analyses also assume that development under MDR8 would allow up  
15 to *twelve* residential units per acre, but this number of units per acre is only allowed when  
16 Transfer Development Rights (TDRs) are allowed, and none of the three rezone parcels are  
17 approved to receive TDRs. Their maximum density per acre is therefore eight, not twelve. As a  
18 result, each of the trip generation analyses overestimates the traffic impacts of the rezoning.  
19

20        As to Rezone 1, the analysis found that the proposed rezone would potentially increase  
21 the number of PM Peak Trips by 155 trips - again, based upon twelve units per acre, not eight.  
22 But even at an additional 155 PM Peak Trips, the analysis concludes that "the rezone is not  
23 expected to cause significant adverse impacts to the transportation system and no additional  
24 traffic analysis is needed at the time of the rezone." Mr. Love also notes that the Rezone 1 is  
25 adjacent to Lake Sawyer Road and therefore well connected to the transportation grid.

1 As to Rezone 2, the analysis found that the proposed rezone would reduce PM Peak Hour  
2 Trips significantly. As compared to industrial uses, the rezone would reduce PM Peak Hour  
3 Trips by 434. As compared to General Office, it would reduce PM Peak Hours by 1,597. Again,  
4 these analyses assume a higher residential density than allowed and thus the reduction in PM  
5 trips would actually be significantly greater. Similar to Rezone 1, Rezone 2 is adjacent to Lake  
6 Sawyer Road and is centrally located within the City's road system.

7  
8 Similar to Rezone 2, Rezone 3 would result in a reduction in PM Peak Hour Trips  
9 ranging from 476 few trips when compared to Light Industrial and 1,754 few trips when  
10 compared to General Office - again assuming a maximum residential density of twelve lots per  
11 acre instead of the allowed eight.

12 Importantly, Mr. Love's Staff report does not discuss how traffic from Rezone 3 would  
13 access the City's road system. Rezone 3 is currently landlocked. It adjoins Bruckner's Way and  
14 Sunny Lane to the south but neither road extends into the project and the testimony presented  
15 during the hearing is that an extension of either road into the site would be practically impossible  
16 due to the steep change in grade. This leaves only access from the north by way of the proposed  
17 Pipeline Road which currently does not exist and its right-of-way has not yet been dedicated.

18 Mr. Love's Staff Reports note that none of these rezones would reserve any capacity in  
19 the transportation system and that any proposed development on any of the three sites would be  
20 reviewed at time of application to determine whether public utilities are available and sufficient  
21 or need upgrading. This applies not only to roads but to water, sewer and stormwater as well as  
22 to police, fire service and schools.

23  
24 **Analysis Under the Seven Criteria of BDMC 18.12.020(B).** Pursuant to BDMC

25 18.12.020(B): "The City will consider the following criteria in reviewing applications for zoning

1 classifications, and may only approve an application if the applicant demonstrates that all of the  
2 criteria are met." Each of the Staff Reports analyzes the respective rezoning under these seven  
3 criteria and finds that all criteria have been satisfied:

4 **B1. The proposal is consistent with the Goals and Policies of the Comprehensive**  
5 **Plan and with the Future Land Use Map.**

6 Compliance with the Future Land Use Map is obvious as the MDR8 zoning is the only  
7 zoning consistent with the MDR designation in the Comprehensive Plan. Staff finds that the  
8 rezones are also consistent with the Goals and Policies of the Comprehensive Plan as earlier  
9 discussed. Most notably, rezoning would allow a greater variety of housing types and provide  
10 opportunity for housing available to a larger range of incomes while also creating more compact  
11 communities, all of which is consistent with the City's declared housing goals.

12 **B2. The subject property is suitable for development in conformance with the**  
13 **standards applicable to the requested zoning designation.**

14 City Staff finds that all three proposed rezones contain property that can be developed in  
15 conformance with development standards applicable to the MDR8 zoning designation. As  
16 earlier noted, any future development would go through additional review at the time of  
17 application and would be required to meet the then applicable regulations and demonstrate that  
18 adequate utilities are available or will be upgraded to accommodate the development.  
19

20 **B3. The proposal will not be materially detrimental to properties in the**  
21 **immediate vicinity or the community based on the range of uses allowed in the proposed**  
22 **zoning classification.**

23 As to Rezone 1, City Staff notes that the rezone from R4 to MDR8 will not be materially  
24 detrimental as the property is adjacent to Lake Sawyer Road, near regional park facilities and  
25

1 would serve as a transition from the Business/Industrial Park to the south and east. As to  
2 Rezone 2, Staff finds that the rezone from B/IP to MDR8 will not be materially detrimental; that  
3 the property is adjacent to arterial roads and the MDR8 zone would allow for transitional  
4 residential development between the Ten Trails development to the south and west and  
5 Business/Industrial Park development to the north, and that the site is ideal for transitional  
6 residential housing. As to Rezone 3, City Staff again notes that the site is adjacent to arterial  
7 roads (the proposed Pipeline Road) and that it would serve as an excellent transition from  
8 Business/Industrial Park properties to the north and the existing single-family residential  
9 neighborhoods immediately to the south, making it an ideal location for higher density  
10 residential development.  
11

12 **B4. Adequate services and facilities, including transportation facilities, will be**  
13 **available to serve the range of uses permitted in the proposed zoning classification.**

14 As to Rezone 1, the site fronts Lake Sawyer Road and has existing utility services  
15 available to the site. As to Rezone 2, the site again fronts Lake Sawyer Road as well as Roberts  
16 Drive and has existing utilities available to the site. As to Rezone 3, there are currently no  
17 utilities connected to the site but there are utilities available along both Lake Sawyer Road and  
18 Roberts Drive capable of being extended to the site. Access is proposed via the future Pipeline  
19 Road which, as earlier noted, has not yet been constructed and its right-of-way has not been  
20 dedicated to the City.  
21

22 The Staff Reports reiterate that any future developments at any of these sites would need  
23 to demonstrate capacity with respect to water, sewer, stormwater, transportation, schools, police  
24 and fire.  
25

1           B5.     **The proposed reclassification is warranted because of a change in**  
2 **circumstances, or because of a demonstrated need for additional land within the proposed**  
3 **zoning classification.**

4           City Staff finds that the reclassification of all three sites as MDR in the 2019  
5 Comprehensive Plan satisfies the requirement for a change in circumstances, as the MDR8  
6 zoning designation is the only allowed zoning designation in this new land use. In addition, City  
7 Planning has long recognized that these properties would be transitioned away from their historic  
8 mining uses and Palmer has announced that it is in the process of winding up its gravel  
9 operations.  
10

11           B6.     **The reclassification does not reflect special treatment of the subject property.**

12           The requested rezones are consistent with the changes made to the three sites in the 2019  
13 update of the Comprehensive Plan. Changing their zoning designation to adapt to their change  
14 land use designation is not special treatment but rather is consistent with the requirements of the  
15 Growth Management Act.

16           B7.     **The reclassification will promote the general health, safety and welfare of the**  
17 **community.**

18           As to all three proposed rezones, City Staff notes that the City's current housing supply is  
19 overwhelmingly single-family with very limited affordable housing. There are limited  
20 opportunities for those who wish to rent; for those who seek assisted care; and for more elderly  
21 residents. Rezoning would allow for more diverse types of housing and would include cottage  
22 housing and multi-family development. All of this is consistent with the City's announced  
23 housing goals and therefore promotes the general health, safety and welfare of the community.  
24  
25

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

Following Ms. Balint's opening statement, Whitney Welsh spoke as the Applicant representative. Ms. Welsh described herself as part of the fourth generation of family ownership of Palmer. As most everyone who lives in Black Diamond knows, Palmer undertook coal mining operations in the area for decades before winding down its coal operations in the mid-eighties. Since then it has been utilizing the same areas for gravel operations, but these operations are also ending their useful life and will soon be wound down. Once the gravel operations come to an end the properties will be put to new uses. Palmer hopes that the three rezone sites will be converted to Medium Density Residential development consistent with the City's Comprehensive Plan. Palmer regards the MDR8 zoning as an excellent transition between its remaining industrial properties zoned B/IP and the surrounding residential neighborhoods, while fulfilling the City's goals of more diverse and affordable housing. Ms. Welsh affirmed Ms. Balint's previous comments that Palmer envisions all traffic from Rezone 3 to rely on the future Pipeline Road, with none of it intended to connect to roads to the south due to the steep slope in between. She concluded her remarks by stating that Palmer regards the requested rezones as an

1 appropriate way of transitioning these properties from their old use to a new, more thoughtful  
2 one that will serve as a helpful buffer between differing uses on each side.

3         Following Ms. Welsh's testimony the Applicant presented the testimony of David Toyer  
4 of Toyer Strategic Advisors, Inc., a land use and economic development consulting company.  
5 Mr. Toyer's presentation consisted of his oral testimony along with a PowerPoint presentation  
6 (Exhibit 17) and, most importantly, a lengthy and detailed "Technical Memorandum" dated  
7 November 6, 2023, prepared by Mr. Toyer (Exhibit 16). It provides an in-depth analysis of the  
8 impacts of the proposed rezoning. The following is the collective presentation made by Mr.  
9 Toyer through his testimony, PowerPoint presentation and Technical Memorandum.  
10

11         Mr. Toyer began by noting that the sites' use for gravel mining will soon end and that a  
12 new use will be inevitable. The Applicant believes that the requested rezoning will allow for a  
13 new use that is more compatible with surrounding uses; provides greater environmental  
14 protection; and carries out the City's housing goals to provide more affordable and varied  
15 housing options. Further, the rezoning will avoid turning to industrial uses that will be more  
16 burdensome to surrounding properties without any added benefit to the City.

17         Mr. Toyer undertook an analysis of development under current zoning (R4 for Rezone 1,  
18 B/IP for Rezones 2 and 3). As compared to the current R4 zoning for Rezone 1, MDR8 would  
19 allow greater maximum building coverage and twice the number of units per acre (eight versus  
20 four). But, more importantly, would allow for a greater variety of housing including clustered  
21 housing, multi-family housing, and senior housing. This would allow for not only more diverse  
22 housing consistent with the City's housing goals but would also allow development to be  
23 clustered away from critical areas such as Lake Marjorie and Rock Creek. As compared to the  
24 B/IP zoning currently in place for Rezones 2 and 3, the MDR8 would reduce maximum building  
25

1 height, reduce maximum building coverage, and increase landscaping while also providing a  
2 better transition between a residential neighborhood in one direction and industrial properties in  
3 the other.

4 Mr. Toyer confirmed that the Applicant does not envision attempting to connect  
5 development in Rezone 3 to the existing residential streets to the south, as the steep bluff  
6 (Exhibit 19) separating the two areas makes access impractical. Instead, the Applicant envisions  
7 all development in Rezone 3 to rely on the future Pipeline Road. Mr. Toyer also submitted  
8 schematics of how the Rezone 3 property might look if it was developed as currently allowed  
9 under the B/IP zoning as compared to its look should it be rezoned as MDR8 (Exhibit 17). The  
10 schematics emphasize that the B/IP zone would allow taller industrial buildings with limited  
11 aesthetics and large parking areas, while residential development under the MDR8 zoning would  
12 provide for lower buildings with less concentrated mass and greater open space.

14 Mr. Toyer then addressed the City's housing needs as envisioned by local, county and  
15 regional goals. He notes that our State has recognized a housing shortage and that our  
16 Legislature as well as Puget Sound Region governments have emphasized the need for more  
17 middle housing options to address both the shortage of residential units as well as the high cost  
18 of housing. The MDR8 zoning allows more middle housing types and more diverse housing  
19 options, including those that are more likely to attract a workforce to the City. According to the  
20 City's 2020 Housing Needs Assessment:

- 22 • Only 15% of the City's occupied housing units are rentals, and 71% of renter  
23 occupied units are single-family with another 25% being mobile homes.

1           ●       Only 25% of the proposed housing within the City's Master Planned  
2 Developments will be multi-family, with Ten Trails limiting rental units to only 10% of the total  
3 number of housing units.

4           ●       Other data indicates that 97% of the City's residents are employed *outside* of the  
5 City while 90% of the jobs in the City are held by *nonresidents*. This strongly suggests that  
6 those working in Black Diamond simply cannot afford to live there. The City's 2020 Housing  
7 Needs Assessment recognizes that a more affordable workforce housing is critical.

8           ●       The MDR8 zoning would allow multi-family units, cottage housing, accessory  
9 dwelling units, assisted elderly housing, senior housing, manufactured housing parks and group  
10 homes. Most of these housing types are consistent with the City's Housing Needs Assessment,  
11 the City's Housing Action Plan, and recent State legislation promoting middle housing options.

12           Mr. Toyer's research also concludes that the B/IP zoning was not included in the City's  
13 capacity assumption for future employment growth. Thus, rezoning these properties to MDR8  
14 will not affect the City's calculations for achieving future employment goals.

15           Mr. Toyer also undertook a detailed analysis as to whether the rezoning would have any  
16 negative impact on the City's tax revenues. He compared the tax revenue consequences from  
17 using this property to develop a commercial/industrial building to constructing a six-unit  
18 residential building. His analysis concludes that the residential building would result in *greater*  
19 tax revenues to the City than the commercial/industrial building, both in terms of one-time  
20 revenues as well as annual property taxes. Mr. Toyer adds that the current B/IP zoning for  
21 Rezones 2 and 3 generally prohibits retail activity and therefore will not result in sales tax. In  
22 summary, development under the MDR8 zoning is likely to create more tax revenue to the City  
23 than development under the B/IP zoning. In addition, MDR8 zoning would allow for increased  
24

1 City population which, in turn, would increase the City's pro rata receipt of statewide shared  
2 revenues (liquor tax, etc.).

3 Mr. Toyer concluded his general comments by providing a list of benefits from rezoning  
4 to MDR8:

- 5 ● It will improve transitioning and compatibility between surrounding land uses and  
6 offer a less intense next to use adjoining existing residential neighborhoods.
- 7 ● It will provide greater housing variety with more housing options, including  
8 housing types needed to entice a future workforce.
- 9 ● It will have no impact upon the City's employment targets or its anticipated future  
10 tax revenues.
- 11 ● By providing additional housing opportunities for the City, it will increase the  
12 City's population which, in turn, will drive other commercial development opportunities and  
13 attract retail, restaurants, professional services and other businesses.

14 Mr. Toyer's presentation concluded with an analysis of the rezones compliance with the  
15 seven criteria found in BDMC 18.12.020(B)(1-7):

16 B1. **The proposal is consistent with the Goals and Policies of the Comprehensive**  
17 **Plan and with the Future Land Use Map.**

18 Mr. Toyer cites to more than 35 Goals and Policies found in the City's Comprehensive  
19 Plan which he believes are consistent with these rezones. Please refer to his Technical  
20 Memorandum, Appendix A for a full list of these Goals and Policies (Exhibit 16). He also  
21 asserts that the rezones are consistent with the Countywide Planning Policies including DP-2,  
22 DP-2, H-12, H-15, H-16, and H-18. In addition, he believes that the rezonings are consistent  
23 with Multi-County Planning Policies (PRSC "Vision 2050") including MPP-RGS-4,  
24  
25

1 MPP-RGS-5, MPP-RGS-6, MPP-DP-1, MPP-H-1, MPP-H-2, and MPP-H-3. In addition, he  
2 believes that the rezonings are consistent with the Goals 1-15 of the Growth Management Act.  
3 Mr. Toyer also notes that the MDR8 zone is the only implementing zone for the MDR land use  
4 designation and that the sites' current zonings are inconsistent with the MDR land use  
5 designation. The rezones are necessary to create consistency between the two.

6 **B2. The subject property is suitable for development in conformance with the**  
7 **standards applicable to the requested zoning designation.**

8  
9 As to Rezone 1, the rezone would increase density and allow for cottage housing and  
10 multi-family units. It would also provide greater flexibility in site design and support clustering  
11 of housing to protect critical areas such as Lake Marjorie and Rock Creek. As to Rezones 2  
12 and 3, the proposed rezone will allow for medium density residential development and a greater  
13 mix of housing unit types while providing a greater transition between existing residential  
14 neighborhoods and future B/IP zoned development.

15 **B3. The proposal will not be materially detrimental to properties in the**  
16 **immediate vicinity or the community based on the range of uses allowed in the proposed**  
17 **zoning classification.**

18 As to Rezone 1, the rezone would provide for a transition between the existing residential  
19 development to the west and future B/IP zoning to the east, while also being consistent with the  
20 adjacent park to the north. As to Rezone 2, the rezoning would provide a smoother transition  
21 from the Master Planned Development and R4 Single-Family zoning to the west, south and east  
22 and B/IP development to the north. It will also result in smaller building footprints and heights  
23 in the B/IP zoning thus reducing visual impacts to surrounding residential neighborhoods. As to  
24 Rezone 3, rezoning will provide a better transition between lower density residential  
25

1 development to the south and future B/IP development to the north. And, because of the  
2 elevation change between the existing neighborhood to the south and this rezone site, the change  
3 will help reduce visual, noise and aesthetic impacts that otherwise would arise from uses allowed  
4 in the B/IP zone.

5       **B4. Adequate services and facilities, including transportation facilities, will be**  
6 **available to serve the range of uses permitted in the proposed zoning classification.**

7       As to Rezone 1, existing utilities are available within Lake Sawyer Road and will also be  
8 included in the future Pipeline Road. The adequacy of the public facilities and services will be  
9 more fully addressed during development review and site specific SEPA review to ensure that  
10 facility services are available at the time of any new development. The proposed rezone will  
11 result in more efficient land use while continuing to comply with environmental protections.  
12 The rezone will cause a slight increase in PM Peak Hour Trips but this increase is not expected  
13 to cause any intersections to fail or cause significant adverse impacts to the transportation  
14 system.  
15

16       As to Rezone 2, the property will be accessed from Lake Sawyer Road where utilities  
17 exist and additional utilities will be extended with development of the Pipeline Road  
18 right-of-way. As with Rezone 1, the adequacy of public facilities and services will be further  
19 addressed during development review and site specific SEPA review to ensure concurrency.  
20 Even without this rezone, the property would require the extension of utilities for uses allowed in  
21 the B/IP zone. Additionally, the current zoning would have a greater impact on the  
22 transportation system such that the rezone would result in a reduction of PM Peak Hour Trips by  
23 at least 434 trips and as many as 1,310 trips or more.  
24  
25

1 As to Rezone 3, the property will be accessed from Lake Sawyer Road, where utilities  
2 exist, as well as additional utilities installed with the construction of the Pipeline Road. Again,  
3 the adequacy of public facilities and services will be further addressed during development  
4 review and site specific SEPA review to ensure concurrency. The rezone will result in more  
5 efficient use of land for housing while maintaining environmental protections. Even without the  
6 rezone, the current zoning would require the extension of utilities while having a greater impact  
7 on the transportation system. The rezone would result in a reduction of PM Peak Hour Trips by  
8 at least 470 trips and as many as 1,438 trips or more.  
9

10 **B5. The proposed reclassification is warranted because of a change in**  
11 **circumstances, or because of a demonstrated need for additional land within the proposed**  
12 **zoning classification.**

13 As to all rezones, the 2019 update to the City's Comprehensive Plan is, itself, a sufficient  
14 change in circumstances to warrant the rezoning.

15 As to all rezones, the pending termination of mining operations is a change in  
16 circumstances justifying the change in zoning to be consistent with the sites' land use  
17 designation.

18 As to Rezone 1, the City faces an affordability crisis and the need for more diverse and  
19 affordable housing types as declared in the City's 2020 Housing Needs Assessment, citing to the  
20 statistics discussed earlier. The proposed MDR8 zoning will allow for cottage housing and  
21 multi-family structures to help increase the City's housing diversity and provide affordable rental  
22 and ownership options.  
23

24 As to Rezone 2, nearby property to the south has undergone intensive development the  
25 past few years resulting in an increased need to assure appropriate transitioning between these

1 new residential neighborhoods and industrial/business development to the north. Similar to  
2 Rezone 1, this rezone would allow for more diverse affordable housing types as called for in the  
3 City's 2020 Housing Needs Assessment and the City's Housing Action Plan.

4 As to Rezone 3, the property lying south of this site was also extensively developed in the  
5 last few years into single-family neighborhoods which warrant rezoning this property to ensure  
6 an appropriate transition between those residential neighborhoods and business/industrial  
7 property to the north. As with Rezones 1 and 2, the rezone would allow for additional housing  
8 and more diverse affordable housing types as called for in the City's 2020 Housing Needs  
9 Assessment and the 2021 Housing Action Plan.

11 **B6. The reclassification does not reflect special treatment of the subject property.**

12 There is no special treatment. The rezone is required to address consistency of the sites'  
13 zoning with their future land use designation in the Comprehensive Plan.

14 **B7. The reclassification will promote the general health, safety and welfare of the**  
15 **community.**

16 As to Rezone 1, the rezone is consistent with and furthers the City's Comprehensive Plan;  
17 is consistent with and furthers the County-wide Planning Policies, the Multi-County Planning  
18 Policies and the Growth Management Act goals; addresses housing needs identified in the City's  
19 2020 Housing Needs Assessment and the 2021 Housing Action Plan including the need to  
20 diversify the housing stock to allow increased rental-occupied housing; permits needed housing  
21 options such as multi-family housing, cottage housing and senior housing; there is a  
22 demonstrated need for housing locally, regionally, and statewide; added housing will encourage  
23 future investment and employment opportunities; and the rezone will create a better transition  
24 between residential properties to one side and future B/IP developed properties to the other.  
25

1 As to Rezones 2 and 3, they will promote the general health, safety and welfare in the  
2 same ways as Rezone 1, and, in addition, significantly reduce PM Peak Hour Trips as compared  
3 to their current B/IP zoning.

4 The Applicant completed its presentation with the testimony of Jeff Schramm, a Traffic  
5 Engineer with 29 years experience. Mr. Schramm addressed transportation issues and confirmed  
6 that the Trip Generation Analyses performed for these properties were premised on the sites  
7 being allowed up to twelve lots per acre. As earlier noted, these properties have a maximum  
8 density of eight lots per acre as they are not receiving properties for TDRs. Mr. Schramm  
9 explained how this will significantly reduce the traffic impacts of the rezones. For example,  
10 Rezone 1 had been estimated to result in an additional 155 PM Peak Trips as compared to the  
11 site's current R4 zoning. When the calculations are adjusted for only eight lots per acre instead  
12 of twelve, the result is an increase of only 77 PM Peak Trips instead of 155. This small of an  
13 increase has no appreciable impact upon the City's transportation system. Similarly, Rezones 2  
14 and 3 would have even greater reductions in traffic impact than had been earlier calculated, thus  
15 offering significant traffic benefits over their current B/IP zoning.  
16

17 Mr. Schramm concluded his testimony by confirming that Rezone 3 is dependent upon  
18 construction of the Pipeline Road which, although it does not yet exist, is a requirement for  
19 further development of Ten Trails and is "certain to happen".  
20

### 21 **PUBLIC TESTIMONY**

22 A considerable amount of public comment has been received in response to these  
23 applications, first in response to SEPA review and later in advance of and during the public  
24 hearing. Most comments have been in opposition to the rezonings.  
25

1 All of the public comments received in response to SEPA review, as well as comments  
2 received in advance of the public hearing, are in writing. Similarly, virtually all of the comments  
3 received during the public hearing were presented in a written form as well as orally. As a result,  
4 the Council is able to review nearly all of these comments directly which allows the Hearing  
5 Examiner to describe them in less detail.

#### 6 Comments Received During SEPA Review

7 A large number of written comments were received in August 2022 in response to SEPA  
8 review. Responses were generally in opposition but included some support:

9 Christy Sorenson and four others (Exhibit 4A.). Supports the proposed rezones. As an  
10 adjoining neighbor to the south, would prefer residential development over an industrial park  
11 next to the neighborhood. Also prefers the reduced traffic resulting from the change to  
12 residential use.  
13

14 Allison Ostrer and eighteen others (Exhibit 4B). Oppose the rezones as inappropriate and  
15 having adverse impacts on Rock Creek and Lake Marjorie. Also have negative impacts on  
16 transportation, safety, schools, utilities, public services and environment. The parcels should  
17 remain lower density to benefit wildlife and maintain a smalltown feel.

18 Friends of Black Diamond and twenty-one others (4C). Oppose the rezones as they will  
19 negatively impact roads and pedestrian safety and further burden the proposed Pipeline Road and  
20 will cause adverse impacts to Rock Creek and Lake Marjorie.  
21

22 Muckleshoot Tribe (Exhibit 4D). Concerns over water quality and the protection of Rock  
23 Creek as a salmon producing tributary to Lake Sawyer. Seeks assurance that stormwater will be  
24 properly managed so as to avoid environmental impacts.  
25

1        City of Maple Valley (Exhibit 4E). Concerns with traffic impacts as most new residents  
2 will travel through Maple Valley on their way to and from work. [Note: Maple Valley later  
3 appealed the SEPA Determination but had their appeal dismissed by the Hearing Examiner.]

4        Friends of Black Diamond and seven others (Exhibit 4F). A 24-point argument in  
5 opposition to the rezoning for both procedural reasons (adequacy of the SEPA review process,  
6 inadequate notice, etc.) along with substantive reasons: impacts on the City's smalltown feel;  
7 preservation of rights-of-way for conversion to trail; protection of wildlife, habitat and open  
8 space; protection of sensitive areas, wetlands and streams; stormwater impacts; mine  
9 reclamation; geotechnical concerns; potential contaminations; impact on public services;  
10 maintaining a balance between housing and available jobs; impact upon public services including  
11 schools, government facilities, police, fire and others; impacts to parks; impacts to the  
12 transportation system both inside and outside the City; impacts to the neighborhood to the south  
13 of Rezone 3 if a road connection is made between the two; impacts to traffic on Roberts Drive;  
14 and added burden to the City's utilities.

16        Geoff Bowie (Exhibit 4G). Opposes the rezoning as the City already has more housing  
17 than it needs; the City has no jobs for new residents; the development will harm Lake Marjorie,  
18 Rock Creek and local wildlife; the rezoning will further burden the local transportation system,  
19 utilities and schools; and water and sewer service cannot be assured.

21        Cindy Wheeler (Exhibit 4J). Is opposed to Rezone 2 due to potential impacts to Lake  
22 Sawyer.

23        John Nelson and Stefan Cordova (Exhibit 4J). Are opposed to Rezone 3 to the extent that  
24 it might connect Bruckner's Way and Sunny Lane to the development.

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

Bill Kombol (Exhibit 11). Supports the rezones as the City is well positioned to accept additional growth and construction of the Pipeline Road will provide the needed east-west arterial to service the new areas. Meanwhile, the current B/IP zoning is unhelpful as the City has large amounts of similar zoned property available yet little business/industrial development has occurred. The properties would be better used to increase population so as to then encourage business and industrial growth.

Vinny Bevins (Exhibit 11). Supports the rezone as its residential development would provide a better view from his residence along Sunny Lane than would industrial development. It would also better transition between his residential neighborhood and industrial activity further north. He is concerned, however, that Sunny Lane might be connected to the development - something he would oppose.

*Findings of Fact and Conclusions  
of Law and Recommendations to  
City Council - 26*

**CITY OF BLACK DIAMOND HEARING EXAMINER**  
**299 N.W. CENTER ST. / P.O. BOX 939**  
**CHEHALIS, WASHINGTON 98532**  
**Phone: 360-748-3386/Fax: 748-3387**

1 population will also entice retailers and other business activity to come to the City, lessening the  
2 need to travel to Maple Valley for basic services.

3 Paul Engelhardt (Exhibit 11). Also supports the rezone as providing a better transition  
4 between residential and future industrial development; to increase the City's population in order  
5 to have a greater say in the regional school system; and as a means of encouraging retail  
6 development which, in turn, would produce needed sales tax.

7 Walter Nadybal (Exhibit 11). Is the owner of a local business and believes that his  
8 business and others are dependent upon population growth and he therefore supports the  
9 rezoning to assist in that need. He also believes that the area currently zoned for  
10 Business/Industrial Park is too large and would result in a eyesore as well as additional traffic  
11 problems, while rezoning would provide a better transition to surrounding residential  
12 neighborhoods. He adds that his employees cannot afford to live in the City and must commute  
13 due to limited housing opportunities.

14 Greg and Cecilia Morris (Exhibit 11). Support the rezones on the belief that the City  
15 simply has too much land zoned Business/Industrial Park and that it is underutilized and  
16 undesired. Instead, the City should strengthen and expand its retail opportunities through added  
17 population growth.

18 Sam and Linda Heather (Exhibit 11). Oppose the rezone as it will further burden local  
19 schools; use of the property for light industrial would help City revenues; the current  
20 Transportation Plan does not accommodate added residential growth; emergency services would  
21 be challenged and existing neighborhoods would be burdened by passthrough traffic.

22 Haley Platt (Exhibit 11). Supports the rezones. As a nearby resident, she is concerned  
23 that the existing zoning would allow much taller and less attractive buildings as well as  
24

1 significantly greater traffic She doubts that the City is a sufficient draw for industrial  
2 development and the use of this property for residential purposes would help to encourage  
3 businesses and retailers to move to the area

4 Brett Morris (Exhibit 11). Supports the rezoning for many of the same reasons  
5 mentioned by Ms. Platt but adds that the type of industrial and business activity envisioned by  
6 the B/IP zoning designation would require greater infrastructure to support the movement of  
7 freight and heavy trucks - the kind of transportation grid the City currently does not have.

#### 8 Public Hearing Comments

9  
10 As noted earlier, a relatively large crowd attended the public hearing with seventeen  
11 members of the public asking to testify. The vast majority of witnesses offered written versions  
12 of their testimony as well. The testimony of witnesses who offered written exhibits is therefore  
13 abbreviated as the City Council is able to review their written comments. The testimony of those  
14 who did not leave written comments will be given greater detail. Notably, all those who wished  
15 to testify spoke in opposition to the project:

16 Rosanne and Donald McPherson (Exhibit 31). Oppose the rezoning as the City has not  
17 demonstrated managed or responsible growth and lacks the infrastructure and services for added  
18 population. Traffic is already problematic, crime is increasing, and the City does not have the  
19 schools, police, etc. for more residents.

20  
21 Stefan Cordova (Exhibit 28). Is concerned that Rezone 3 would be allowed to connect to  
22 Bruckner's Way and Sunny Lane as this would overburden these streets and lead to unsafe  
23 conditions.

24 Susan Harvey (no written comments). Shares Maple Valley's concerns over impacts to  
25 regional traffic. Not enough attention is being given to how the City's development is affecting

1 neighboring cities. The City is already deeply impacted by the Ten Trails development, in effect,  
2 creating two different cities, and the proposed rezones will only add to this division.

3 Ruslan Sorochuck (Exhibit 22). Asserts that the rezonings fail to meet the requirements  
4 of BDMC 18.12.020(B)(4) and that the Applicant has not demonstrated adequate water services  
5 for this development, and that City Staff has not proven that water is available in sufficient  
6 quantities.

7 Anna Sorochuck (Ruslan's Spouse - Exhibit 22(A)). Believes that the Applicant has not  
8 demonstrated sufficient transportation grid for the added traffic; that it will overburden the police  
9 department; and that it will convert existing forested areas into developed neighborhoods  
10 resulting in impacts to local wildlife, all in violation of Natural Environment Policies NE-2  
11 through NE-14 which discourage development causing impacts to wildlife.

12 Gretchen Buet (Exhibit 23). Believes that the rezonings fail to satisfy BDMC  
13 18.12.020(B)(5) in that there is no "demonstrated need for additional land within the proposed  
14 zoning classification" as the City's growth plans already contain more residential areas than the  
15 City can manage and still remain compliant with regional and countywide planning policies. She  
16 also asserts that the rezonings fail to satisfy BDMC 18.12.020(B)(7) as the rezoning will not  
17 promote the general health, safety and welfare of the community as it will further worsen the  
18 City's need to establish emergency housing which is calculated upon its total population, that is,  
19 the greater the City's population the greater its need for the development of emergency housing  
20 yet the City is not prepared to develop this needed housing.

21 Tim O'Brien (no written comments). Is primarily concerned with traffic impacts. He is  
22 also worried that the City needs good jobs such as tech and that by allowing the rezones the City  
23 is surrendering opportunities for new business to come to town. Additional concerns include

1 impacts to schools; remaining environmental impacts of past mining operations; potential harm  
2 to critical areas from added development; and unresolved coal mine hazards.

3 Lisa Winters (no written comments). Fears that the rezoning will have tremendously  
4 negative impacts upon natural resources as well as wildlife. Lake Marjorie is likely to be  
5 impacted; existing wildlife will be pushed further away from the City; and Rock Creek will be  
6 threatened as will its supply of salmon. She contends that the rezoning would be inconsistent  
7 with the Natural Environment (NE) Goal of the Comprehensive Plan and Policies NE2-14.

8 Bernie O'Donnell (no written comments). Previously served as a council member and  
9 believes that the rezones do not satisfy all seven criteria. In particular, the rezones do not satisfy  
10 Subsection B(3) in that a lot of residents living near these properties will be negatively impacted  
11 by their development; the rezones do not satisfy Subsection B(4) as the City's transportation  
12 system is inadequate for the added traffic, and that it is not enough to say that this issue will be  
13 addressed at the development stage; and the rezoning does not satisfy Subsection B(5) as there  
14 has been no recent change in circumstances in the City that justifies additional residential  
15 development.  
16

17 Geoff Bowie (no written comments but he presented 460 pages of attachments),  
18 (Exhibit 32). Previously served as a council member and notes that: Pipeline Road is not  
19 constructed and therefore cannot be relied upon to provide the required road system, especially  
20 for Rezone 3; the City's sewer system has limited capacity; the school district's voters have  
21 overwhelmingly rejected school bonds for needed additional schools; and the City's various  
22 agreements with developers, whether they be Ten Trails or the Applicant, have not been fulfilled  
23 and further development should not be allowed.  
24

1 All remaining public testimony was presented by members of the Friends of Black  
2 Diamond in a well-organized and focused presentation wherein each member expressed a  
3 collective position in opposition but then addressed a specific, different issue justifying this  
4 opposition:

5 Kristen Bryan (Exhibit 24). Asserts that the rezoning fails to satisfy BDMC  
6 18.12.020(B)(5) in that the Applicant has not shown "a demonstrated need for additional land  
7 within proposed zoning classification." She notes that the City has approved 6,050 units of  
8 housing in its Master Planned Developments with additional housing elsewhere. This exceeds  
9 regional growth targets and is causing regional infrastructure difficulties with roads, schools, and  
10 public services. Rather than add additional residential zoning, the City should focus on its  
11 existing residential zones and avoid worsening infrastructure problems.

13 Ms. Bryant also notes separately that the first clause of BDMC 18.12.020(B)(5) requires  
14 that the proposed reclassification be *warranted* due to a change in circumstances and that, while  
15 the 2019 update to the Comprehensive Plan designates these properties as MDR, their current  
16 rezoning to MDR8 is not *warranted* as the City lacks jobs and other reasons to encourage added  
17 population.

18 Ms. Bryant further asserts that the rezonings do not satisfy the requirements of  
19 Subsection B(1) in that they are not consistent with the Goals and Policies of the Comprehensive  
20 Plan. She asserts that the rezones are inconsistent with LU Goal 12; Policy LU-53; and LU-54,  
21 all relating to coordinating land use and development activities with regional jurisdictions in a  
22 manner consistent with the Growth Management Act and County-wide Planning Policies.

24 Ms. Bryant further argues that the rezonings fail to satisfy the requirements of Subsection  
25 B(7) as they do not promote the general health, safety and welfare of the community. Contrary

1 to the claims that rezoning would assure a more diverse housing inventory, neither the Applicant  
2 or the City have demonstrated that the new residential zones would be used to provide affordable  
3 housing, or to serve people with disabilities, or to assist seniors.

4 Gary Kohl (Exhibit 25). Contends that the rezonings fail to satisfy the requirements of  
5 Subsection B(4). In particular, he asserts that there has been no demonstration that the regional  
6 school system can support the added growth as new schools required by Master Planned  
7 Development Agreements have not be constructed, while the Enumclaw School District voters  
8 have failed to approve school bonds that would have aided in the construction of new schools in  
9 Black Diamond. The result is that no schools are presently funded for the Enumclaw School  
10 District and that its existing schools are at or near capacity.

11 Tom Ekberg (Exhibit 26). Contends that the rezonings fail to satisfy the requirements of  
12 Subsection B(4) as well as Subsection B(7) for the reason that the City does not have adequate  
13 fire protection, EMS service or law enforcement needed to serve this new development, nor does  
14 it have a plan as to how to increase its operational capacity to meet this future growth. He argues  
15 that the City's emergency services are already underfunded and that additional residential  
16 development will only exacerbate this problem. Added operational expenses that should have  
17 been borne by developers will instead be assumed by taxpayers.

18 Phil Acosta (Exhibit 27). Contends that the rezonings fail to satisfy the requirements of  
19 Subsections B(3), (4) and (6). These arguments are collectively premised on the fact that the  
20 Pipeline Road has not been constructed across the Applicant's property as has long been  
21 promised and that this is not the proper time to add residential zoning dependent upon that  
22 unbuilt road; that, even if constructed, the Pipeline Road was intended to service existing  
23 neighborhoods, not new ones; and that by allowing these rezones when the promised road has  
24  
25

1 not been constructed (or even dedicated), is granting the Applicant special treatment. Mr. Acosta  
2 notes in particular that the Ten Trails Development Agreement has recently been amended to  
3 defer dedication and construction of the Pipeline Road until a substantially later date than had  
4 earlier been agreed, such that these rezonings are proposed long before the Pipeline Road is  
5 likely to be dedicated and constructed

6 Renee Mix (Exhibit 29). Argues that the proposed amendments fail to satisfy the  
7 requirements of Subsections B(4) and (7) as the new residential zoning will generate significant  
8 additional traffic, making pedestrian travel even less safe and with no funds available to remedy  
9 this problem. She adds that it is inappropriate to compare the difference in traffic between the  
10 proposed new zoning and the existing zoning as the real comparison should be between the  
11 proposed new rezoning and there being no current use of the property. When measured that way,  
12 the rezones will increase overall traffic in a significant way and overburden the local  
13 transportation system.

14 Gary and Sherrie Jones (Exhibit 30). Assert that the zoning amendments fail to satisfy  
15 the requirements of Subsections B(3), (4), (5), (6) and (7) collectively on the basis that the City  
16 lacks the needed public services and capital facilities to provide for the additional growth,  
17 especially with respect to fire services.

18 William Bryant and Kelley Sauskojus (Exhibit 33). Contend that the rezonings fail to  
19 satisfy the requirements of Subsections B(4) and (7) due to inadequate transportation facilities  
20 needed to serve new residential use. Relying on a somewhat complicated analysis, they contend  
21 that all traffic estimates found in the current Comprehensive Plan assume no traffic coming from  
22 these three sites and that, even so, the Plan envisioned that one or more important regional  
23 intersections would operate at a failure level even without this additional residential  
24  
25

1 development. They therefore argue that the traffic impacts should not be measured as the  
2 difference between the two zoning designations, but between there being no traffic (per the  
3 Comprehensive Plan) and the new traffic generated by MDR8 zoning. When this becomes the  
4 measurement, the Applicant cannot demonstrate that "adequate services and facilities, including  
5 transportation facilities, will be available to serve the range of uses permitted".

6 At the conclusion of all public comment the Hearing Examiner announced that the City  
7 and the Applicant would be given until the following Monday at 5:00 p.m. to provide written  
8 responses to all of the comments received.  
9

10 Responses to Public Comment by the City and the Applicant.

11 As requested by the Hearing Examiner, the City and the Applicant provided detailed  
12 written responses to public comment within the allowed time.

13 City's Responses.

14 The City's response (Exhibit 35) begins by reiterating that the three rezones do not  
15 propose any development but merely seek rezoning in a manner consistent with their land use  
16 designation in the Comprehensive Plan.

17 • **Environmental Concerns.** Contrary to some arguments made by members of the  
18 public, the issue is not whether some specific development might have impact upon the  
19 environment but rather whether the requested rezoning is likely to have greater environmental  
20 impact than the current zoning. The City responds that it will not. Development under MDR8  
21 standards is no less stringent than development under the property's current zoning designations,  
22 and sensitive environmental areas will be no less protected than if developed under their current  
23 zoning.  
24  
25

1       ●     **Housing.** Contrary to comments made by the public, Black Diamond will exceed  
2 its housing targets with the full buildout of the City's Master Planned Developments and is  
3 therefore in need of other housing opportunities. Meanwhile, the State, the County, PSRC and  
4 the City are committed to meeting current and future housing needs, especially middle housing.  
5 Recent State legislation, Vision 2050, the City's Comprehensive Plan and the City's recently  
6 adopted Housing Action Plan all speak to the need for additional, varied and more affordable  
7 housing. Rezoning these three sites to MDR8 will allow for greater housing types while also  
8 creating additional opportunities for senior housing and other types of assisted care.  
9

10       ●     **Infrastructure and Public Services.** City Staff reiterates that the three rezones  
11 will not cause any appreciable increase in traffic over their existing zoning and instead will result  
12 in significantly less traffic than development under the B/IP zoning in Rezones 2 and 3. Further  
13 traffic analyses will be required at the time any development is proposed. Importantly, the City  
14 adds that any application to develop any part of Rezone 3 would be conditioned on the developer  
15 dedicated and constructing the Pipeline Road if it has not already been constructed as required by  
16 The Villages MPD Development Agreement.

17       As to traffic and pedestrian safety, City Staff responds that its roads are safe for all users.  
18 Any future developments within the rezoned properties will be subject to transportation safety  
19 requirements.  
20

21       City Staff echoes its earlier testimony and Staff Reports with respect to the adequacy of  
22 water, sewer and other utilities. The City announces that it has adequate water, adequate sewer  
23 and adequate stormwater for the anticipated development resulting from rezoning. The  
24 Applicant will not be reserved any of this capacity but must instead demonstrate its continued  
25 availability at time of development.

1 City Staff believes that adequate capacity within the Enumclaw School system has been  
2 demonstrated for purposes of this rezoning. At the time of any future development, the  
3 developer will be required to prove that adequate capacity continues to exist or else provide a  
4 suitable solution. The same is true of police and fire services. Each future development will be  
5 examined based upon its own specific impacts and will be conditioned accordingly.

6 In conclusion, City Staff continues to believe that all three requested rezones satisfy the  
7 seven criteria of BDMC 18.12.020(B)  
8

9 Applicant's Response.

10 The Applicant's response to public comment is very detailed and includes many complex  
11 responses which are not easily summarized. The Hearing Examiner therefore invites the City  
12 Council to review the Applicant's response in its entirety (Exhibit 36). Nonetheless, the  
13 following is a summary of its key points:

14 • **School Capacity.** BDMC 18.12.020(B)(4) requires that the Applicant  
15 demonstrate that adequate services and facilities will be available to serve the range of uses  
16 permitted in the new zone. With respect to schools, this requires the Applicant to demonstrate  
17 that the Enumclaw School District has sufficient capacity for the additional students resulting  
18 from a rezoning to MDR8. The Applicant's response contains a three-page explanation of how  
19 this requirement is met. Briefly, the School District's Capital Facilities Plan identifies its total  
20 capacity being 5,127 students, with the current population being 4,236 students, leaving a current  
21 surplus of 913 students. This is sufficient capacity for the students projected to be added as a  
22 result of these rezones except for a very minor discrepancy in the middle school grades of just a  
23 few students. Whether that capacity will continue to exist at the time of proposed development  
24 is unclear but, if there is no longer sufficient capacity, the proposed development will either not  
25

1 be granted or will be required to provide a remedy. Data indicates that the more multi-family  
2 housing developed in these sites the fewer students per residential unit, suggesting that the  
3 rezones' impact on schools may be less than forecasted. In addition, any development within  
4 these properties is at least a few years away, allowing added time to address school needs.  
5 Again, the City Council is encouraged to examine the Applicant's response for additional detail.

6       •       **Water.** The City has announced that it has adequate water capacity for this  
7 project. The Applicant is not required to prove that the City's water is currently available to the  
8 site but merely that it is generally available, which it is. The City's 2019 Comprehensive Plan  
9 declares that the City has a total water supply of 986.9 MG of water per year, while 2035  
10 demand accounts for only 509.9 MG of use, leaving more than sufficient was capacity for the  
11 rezones. It should also be remembered that the appropriate analysis is the amount of water used  
12 if the property is rezoned as compared to the amount that might be used under the current zoning.  
13 The Applicant explains that water use under the MDR8 zoning would likely be *less* than what  
14 would be used by Business/Industrial Park.

15       •       **Sewer.** Again, the City Staff has declared that the City has adequate sewer  
16 capacity for the rezones. The City's Comprehensive Plan confirms this and states that: "Routing  
17 new flows to the western portion of the City to meet growth will provide the system with  
18 adequate capacity to meet the needs of infill within areas currently served by sewer." Future  
19 development within the three rezones may require improvements to piping and other system  
20 components but that has no bearing on the sewer system's *capacity* to add the rezoned properties.

21       •       **Housing.** Several members of the public have declared that the City has more  
22 than enough approved residential lots - indeed has too many lots - to meet its forecasted needs.

23       The Applicant responds that the City's official position is far different: In 2020, the City

1 completed a Housing Needs Assessment which then led to the City's Housing Action Plan,  
2 approved in 2021. Contrary to the assertions made by opponents, the Housing Action Plan  
3 declares that the City is in great need of new opportunities for affordable housing for all  
4 incomes, with senior housing having the greatest unmet need followed by housing for low  
5 income homeowners. The Plan further acknowledges the need to encourage more diverse types  
6 of housing development including various forms of middle housing. The MDR8 zoning  
7 proposed for these three sites will offer the greatest opportunity to achieve the Goal and Policies  
8 of the City's Housing Action Plan.

9  
10 • **Changed Circumstances are Demonstrated.** The Applicant correctly notes that  
11 opponents have interpreted BDMC 18.12.020(B)(5) as requiring proof of both changed  
12 circumstances and the demonstrated need for additional land within the proposed zoning  
13 classification, but this criterion is clearly stated in the alternative, not the conjunctive, and only  
14 one of the requirements must be met, not both. Nonetheless, the Applicant asserts that both are  
15 satisfied: The requirement of changed circumstances is satisfied by the need to update the City's  
16 zoning to be consistent with the 2019 Comprehensive Plan. This alone is more than a sufficient  
17 change in circumstances. Even so, the winding down of mining operations and the need to put  
18 the property to a new use is an equally compelling change. Further, the recent rapid appreciation  
19 in housing prices is driving the need for more affordable options including those allowed in the  
20 MDR8 zone. Finally, the rapid development of new neighborhoods in adjoining properties  
21 increases the need for better transitional properties between those new neighborhoods and  
22 industrial properties to the north. The MDR8 zoning will provide this transition.

23  
24 As to demonstrated need, please refer to the City's recently enacted Housing Action Plan  
25 discussed earlier. The Applicant adds that the City currently has almost no multi-family units

1 and almost no rental properties such that those who work in the City cannot afford to live there.

2 There is a clearly demonstrated need to remedy this problem.

3       ●       **Police and Fire.** The Applicant wishes to once again remind the City Council  
4 that when determining whether public services are adequate as required by BDMC  
5 18.12.020(B)(4), the correct analysis is whether the rezoning will have a greater impact on public  
6 services than the current zoning. When examined in that manner, the proposed rezones are more  
7 likely to result in a *reduced* need for police and fire than what would be required under the  
8 properties' current zoning, as studies have demonstrated that police and fire services for  
9 commercial properties are likely to be greater than those for residential properties. In addition,  
10 development under the B/IP zoning would almost certainly require more specialized fire fighting  
11 equipment that would be unnecessary for residential development. And as has been stated many  
12 times, issues relating to police and fire should be addressed during any future development  
13 applications when the specifics of the proposed development are known and the actual impacts  
14 can be determined and mitigated.

16       ●       **BDMC 18.12.080(B)(7) - General Health, Safe and Welfare.** The Applicant  
17 again correctly notes that many public comments have compared the potential development  
18 under the proposed rezoning to the current undeveloped state of the properties in order to  
19 advance arguments that the rezoning will fail to promote the general health, safety and welfare of  
20 the community. This type of analysis is legally flawed: The proper, legal analysis is to  
21 determine whether the proposed rezones will promote the general health, safety and welfare of  
22 the community as compared to the properties' current zoning. When properly examined, the  
23 rezones are demonstrated to help solve the City's recognized housing issues and, at the same  
24

1 time, provide important transitional zones between residential neighborhoods and commercial  
2 properties, all in a manner that is beneficial to the public.

### 3 ANALYSIS

4 In 2019, the City Council declared in its updated Comprehensive Plan that the best use of  
5 these three properties would be for Medium Density Residential development. That  
6 determination is fixed for the purpose of this matter and is not subject to debate. As the City  
7 Council has also declared that the MDR8 zoning classification is the only zoning designation  
8 consistent with the MDR land use designation in the Comprehensive Plan, the issue is not  
9 *whether* these properties should be rezoned MDR8, but *when*. The current issue before the City  
10 Council, then, is whether the Applicant currently satisfies all seven criteria in BDMC  
11 18.12.020(B) as to each of the three rezones. If so, the rezones must be approved. If all criteria  
12 are not currently met then the rezones must be deferred until the conditions are met - or until the  
13 City Council changes their land use designation.  
14

15 The findings of the City's 2020 Housing Needs Assessment are, to the Hearing Examiner,  
16 staggering. The Hearing Examiner is unfamiliar with any other municipality where nearly all  
17 housing is single-family owner-occupied and where other, affordable alternatives are nearly  
18 nonexistent. Much like a Sun Valley, Idaho, those who work in the City cannot afford to live  
19 there, while those who live in the City work elsewhere. Recognizing these discrepancies, the  
20 City's 2021 Housing Action Plan calls for more varied housing; for senior housing; and for more  
21 affordable housing options. The MDR8 zoning designation is meant to address these types of  
22 housing issues.  
23

24 But it is not enough that the proposed rezoning would help address the City's housing  
25 needs. New housing - even housing specifically designed to address current housing limitations

1 - must be accompanied by sufficient infrastructure capacity so that one problem (the need for  
2 more diverse housing) is not simply replaced by another problem (overwhelmed infrastructure).  
3 Recognizing this, the City enacted BDMC 18.12.020(B) as a means of balancing the benefits and  
4 burdens of rezoning to better ensure that the end product is not simply a new problem.

5         Of the seven requirements for rezoning found in BDMC 18.12.020(B), the two most at  
6 issue are B(4) and B(7), both of which require evidence that the rezoning's benefits outweigh its  
7 burdens. They require a demonstration that, as compared to the property's current zoning, the  
8 new zoning will not overwhelm the City's infrastructure including its water, sewer, stormwater,  
9 transportation, schools, police, fire, etc. Opponents of the rezoning certainly recognize this and  
10 have focused their attentions primarily on these two criteria. Opponents argue that the City lacks  
11 sufficient water, sufficient sewer, sufficient transportation capacity, sufficient schools, and  
12 sufficient police and fire to handle more residential units - even ones that might otherwise assist  
13 with the City's Housing Action Plan.

14         After reviewing hundreds of pages of reports and technical memos prepared by City Staff  
15 and the Applicant, and after having reviewed hundreds more pages of public comments and  
16 attachments, the two clear issues are:  
17

- 18         1.       Is there adequate school capacity for the rezoning?
- 19         2.       Is there an adequate road/transportation system for the rezoning?

20         Both will be discussed more fully below. As to all other infrastructure issues (water,  
21 sewer, stormwater, police, fire) I conclude that there is adequate *capacity*. It is important to  
22 remember that "capacity" in the context of rezoning is viewed broadly: For example, water  
23 capacity does not require evidence that water is currently available to the site but rather that the  
24 City's water system has sufficient water which could be made available to the site if development  
25

1 is sought. Viewed in that context, the evidence demonstrates that the City does have adequate  
2 water, sewer and stormwater capacity, as well as the capacity to provide police, fire, parks, etc.  
3 Again, this leaves the issues of school capacity and transportation capacity.

4           **1.       Is there adequate school capacity?**

5           Even the Applicant admits that the issue of school capacity is a close call. Evidence  
6 amply demonstrates that the Enumclaw School District would benefit from additional schools  
7 and yet voters are hostile to this idea, leaving existing schools to operate close to their capacity.  
8 But the Applicant's carefully prepared response demonstrates that the District has remaining  
9 capacity as required by these rezones. This does not guarantee that that remaining capacity will  
10 still exist when development of these properties is someday proposed. It merely finds that it  
11 currently exists as is required by BDMC 18.12.020(B)(4) and (7).  
12

13           **2.       Is there adequate capacity in the City's transportation system?**

14           The issue of transportation capacity has two subsections: (a) is there adequate capacity in  
15 the transportation network? and (b) are the properties sufficiently connected to this transport  
16 network?

17                   (a)       Is there sufficient capacity in the transportation network? City Staff and  
18 the Applicant have repeatedly pointed out that this question should be addressed in the context of  
19 whether the proposed rezoning has a greater impact than the current zoning. Measured in that  
20 context, Rezone 1 has only a slightly traffic impact, while Rezones 2 and 3 would have a  
21 significant beneficial impact. Opponents argue that the City's current planning doesn't recognize  
22 any traffic coming from these properties and so the proper measurement is between the current  
23 absence of traffic and that created by Medium Density Residential development. Viewed in that  
24 context, Rezone 1 would again have relatively little impact but Rezones 2 and 3 would have  
25

1 more significant impacts. I conclude that the City's analysis is correct and that, measured in this  
2 way, there is adequate transportation capacity.

3 (b) Are the rezones adequately connected to the transportation system? The  
4 final, and most troubling, question is whether all three rezones are adequately connected to the  
5 City's system of roads. Rezones 1 and 2 clearly are, both being adjacent to Lake Sawyer Road,  
6 an important arterial. Conversely, Rezone 3 is currently not connected to any road and,  
7 according to the Applicant, its connection to roads to the south (Bruckner's Way and Sunny  
8 Lane) is practically impossible due to the steep slope in between. This leaves only a connection  
9 to the proposed Pipeline Road, but the Pipeline Road does not exist and, more importantly, has  
10 not yet been dedicated to the City. As a result, its future is not certain, and is made less certain  
11 by the City's recent decision to amend the Ten Trails Development Agreement to substantially  
12 defer the date by which the Pipeline Road must be dedicated. In other words, under present City  
13 Planning Rezone 3 will not be connected to any dedicated public right-of-way for years to come.  
14 I conclude that this does not satisfy the requirements of BDMC 18.12.020(B)(4) with respect to  
15 Rezone 3.  
16

17 City Staff and the Applicant may argue that there is simple remedy: As the land upon  
18 which Pipeline Road is to be constructed belongs to the Applicant, any proposed development  
19 within Rezone 3 can simply be conditioned upon dedicating and constructing the road in advance  
20 of Ten Trails doing so. While that may be a simple remedy, the fact remains that Rezone 3  
21 presently has no connection to the City's transportation network and is not assured of a  
22 connection. And, nothing prevents the Applicant from splitting ownership of its properties such  
23 that the owner of Rezone 3 is not the owner of the Pipeline Road property, and cannot compel  
24 that owner to construct it. Further, although the Applicant declares that connecting to existing  
25

1 roads to the south is practically impossible, it is not *physically* impossible and the Applicant  
2 could simply choose to undertake this engineering challenge in lieu of constructing the Pipeline  
3 Road.

4 For these reasons, it is the Hearing Examiner's recommendation to the City Council that  
5 is either deny Rezone 3 on the basis that it lacks a connection to the City's transportation grid or,  
6 in the alternative, that it (1) defer the Rezone 3 application until the Pipeline Road right-of-way  
7 has been dedicated, or (2) condition approval of Rezone 3 on it not being implemented until the  
8 Pipeline Road right-of-way has been dedicated.  
9

10 The City Council may be sufficiently satisfied that the Pipeline Road is guaranteed to be  
11 dedicated and constructed that the Hearing Examiner's recommendation can be disregarded and  
12 Rezone 3 can be approved. If so, it is perhaps worth adding that Rezone 3 would appear to be  
13 the most beneficial of the three rezones in terms of providing a useful transition between  
14 residential development to the south and business/industrial development to the north, as  
15 evidenced by its support from many of the nearby residents to the south.

16 One final note regarding the public comment opposing rezoning on the basis that the  
17 property should be preserved in its current undeveloped state. This suggestion, while perhaps  
18 sounding appropriate, is unconstitutional. The City Council is not free to refuse a proposed  
19 rezoning application which is otherwise found to satisfy all criteria solely to ensure that it  
20 remains undeveloped. To do so would result in an unconstitutional taking of private property to  
21 achieve a public benefit.  
22

23 In summary:

24 • Rezone 1 is straightforward and can easily be recommended for approval. It  
25 would serve as a useful transition between residential development to the west and north and

1 industrial development to the east and south. It would also increase residential density in the  
2 manner proposed by the City's new Housing Action Plan. It would also offer the ability to  
3 cluster residential development in a manner that is more protective to Lake Marjorie. At the  
4 same time, its incremental increase in population would have no appreciable effect on  
5 infrastructure.

6       •       Rezone 2 would offer a similar benefit in transitioning between surrounding  
7 single-family neighborhoods to the south, west and east and industrial development to the north.  
8 Its development would allow for more diverse housing consistent with the City's Housing Action  
9 Plan while also increasing the City's population which, in turn, may encourage more retail and  
10 other commercial development. As explained above, the City has sufficient capacity in its  
11 infrastructure to accommodate the rezone and it should therefore be approved.

12       •       Rezone 3 would serve as a helpful transition between single-family residential  
13 neighborhoods to the south and industrial development to the north. It would also provide  
14 improved aesthetics over commercial uses allowed under the B/IP zone. Its development would  
15 offer the same benefits as Rezone 2. With the exception of the issue of access to the City's  
16 existing road system, its impacts would be the same as those resulting from Rezone 2 and can be  
17 accommodated by the City's infrastructure. But Rezone 3 lacks any assured access to public  
18 roads and, unless/until that access is assured, cannot be recommended for approval.

19  
20       Based upon this Analysis, the Hearing Examiner makes the foregoing Findings of Fact  
21 and Conclusions of Law with respect to the seven criteria set forth in BDMC 18.12.020(B):  
22  
23  
24  
25

1           B1.    **The proposal is consistent with the Goals and Policies of the Comprehensive**  
2 **Plan and with the Future Land Use Map.**

3           Findings of Fact:

4           1.1    The proposed rezone is clearly consistent with the Future Land Use Map. MDR8  
5 is the only zoning classification consistent with the MDR land use designation in the  
6 Comprehensive Plan.

7           1.2    Opponents of the rezoning argue that it is inconsistent with the Goals and Policies  
8 of the Comprehensive Plan including all Goals and Policies relating to the Natural Environment  
9 as well as those requiring regional coordination in land use planning (LU Goal 12, Policies LU-  
10 53 and 54). Conversely, City Staff finds that the rezones are consistent with the long list of  
11 Goals and Policies listed earlier. The Applicant concurs with City Staff and asserts that an even  
12 longer list of Goals and Policies are consistent with the proposed rezones. The Hearing  
13 Examiner concurs with City Staff and finds that the proposed rezones are consistent with the  
14 Goals and Policies identified by City Staff.

15           Conclusions of Law:

16           1.1    Rezone 1 is consistent with the Goals and Policies of the Comprehensive Plan and  
17 with the Future Land Use Map.

18           1.2    Rezone 2 is consistent with the Goals and Policies of the Comprehensive Plan and  
19 with the Future Land Use Map.

20           1.3    Rezone 3 is consistent with the Goals and Policies of the Comprehensive Plan and  
21 with the Future Land Use Map.

1           B2.     **The subject property is suitable for development in conformance with the**  
2 **standards applicable to the requested zoning designation.**

3           Findings of Fact:

4           2.1     City Staff finds that all three properties can be developed in conformance with  
5 development standards applicable to MDR8. Future development will have to go through  
6 additional review and will need to meet applicable sections of the code. This Finding is  
7 unchallenged.

8           Conclusions of Law:

9           2.1     Rezone 1 is suitable for development in conformance with the standards  
10 applicable to their requested zoning designation.

11           2.2     Rezone 2 is suitable for development in conformance with the standards  
12 applicable to their requested zoning designation.

13           2.3     Rezone 3 is suitable for development in conformance with the standards  
14 applicable to their requested zoning designation  
15

16           B3.     **The proposal will not be materially detrimental to properties in the**  
17 **immediate vicinity or the community based on the range of uses allowed in the proposed**  
18 **zoning classification.**

19           Findings of Fact:

20           3.1     Staff finds that the proposed rezones, including uses allowed in the MDR8 zone,  
21 will not be materially detrimental to properties in the immediate vicinity or the community.  
22

23           3.2     Rezone 1 is adjacent to arterial roads and serves as a transition between existing  
24 residential neighborhoods and properties zoned Business/Industrial Park. Rezone 1 will improve  
25 the transition between these two conflicting zones.

1           3.3     Rezone 2 is adjacent to arterial roads and is located between residential  
2 neighborhoods to the west and south and properties zoned Business/Industrial Park to the north.  
3 The rezone will serve as a helpful transition between these conflicting zones while also reducing  
4 visual impacts otherwise caused by development as B/IP property.

5           3.4     Rezone 3 is located between residential neighborhoods to the south and properties  
6 zoned Business/Industrial Park to the north and will serve as a beneficial transition between the  
7 two conflicting zones. The rezone will also reduce visual impacts and noise as compared to the  
8 B/IP zone.

9           3.5     Opponents to the rezonings have generally not challenged compliance with this  
10 requirement with the exception that several individuals have voiced concern should Rezone 3 be  
11 connected to the existing residential streets to the south. The Applicant has indicated that it has  
12 no intention to connect Rezone 3 to roads to the south as the connection would be highly  
13 impractical due to the steep slope.

14           Conclusions of Law:

15           3.1     Rezone 1 will not be materially detrimental to properties in the immediate  
16 vicinity or the community based on the range of uses allowed in the MDR8 zoning classification.

17           3.2     Rezone 2 will not be materially detrimental to properties in the immediate vicinity  
18 or the community based on the range of uses allowed in the MDR8 zoning classification.

19           3.3     Rezone 3 will not be materially detrimental to properties in the immediate vicinity  
20 or the community based on the range of uses allowed in the MDR8 zoning classification.  
21  
22  
23  
24  
25

1           B4.     **Adequate services and facilities, including transportation facilities, will be**  
2 **available to serve the range of uses permitted in the proposed zoning classification.**

3           Findings of Fact:

4           4.1     Opponents argue that there are not adequate services and facilities, including  
5 transportation facilities, available to serve the rezones. They contend that the City has  
6 inadequate water and sewer services for the rezones; that the City has inadequate transportation  
7 facilities and that the City's transportation system cannot absorb the additional traffic; that the  
8 Enumclaw School District has inadequate capacity for additional students from the rezones; and  
9 that the City's police, fire and other emergency services cannot adequately address the added  
10 population resulting from the rezones.  
11

12           4.2     City Staff finds that the City has adequate capacity in its water, sewer and  
13 stormwater systems to serve the range of uses permitted in the MDR8 zone. The Applicant  
14 provides further support of this Finding in its response to public comment (Exhibit 36). The  
15 Hearing Examiner concurs.

16           4.3     When compared to its existing R4 zoning, Rezone 1 would result in an increase of  
17 only 77 PM Peak Hour Trips. This minor increase will not cause significant adverse impacts to  
18 the transportation system.

19           4.4     When compared to its existing zoning of B/IP, Rezone 2 will result in a decrease  
20 of PM Peak Hour Trips of at least 434 trips as compared to industrial uses and at least 1,597 trips  
21 as compared to General Office use. These calculations are based upon Rezone 2 being allowed  
22 12 units per acre when it will only be allowed 8, and the resulting decrease in PM trips will be  
23 even greater than calculated.  
24  
25

1           4.5     When compared to its existing zoning of B/IP, Rezone 3 will result in a decrease  
2 of PM Peak Hour Trips of at least 476 trips as compared to industrial uses and at least 1,754 trips  
3 as compared to General Office use. These calculations are based upon Rezone 3 being allowed  
4 12 units per acre when it will only be allowed 8, and the resulting decrease in PM trips will be  
5 even greater than calculated.

6           4.6     Rezones 1 and 2 are adjacent to arterial roads and thus connected to the City's  
7 transportation system. Rezone 3 is not connected to any existing arterial road and is physically  
8 disconnected from adjoining roads to the south by a steep slope. The only means of access to  
9 Rezone 3 is by way of the proposed Pipeline Road which has yet to be dedicated or constructed.  
10 The City has recently approved an amendment to the Ten Trails Development Agreement which  
11 allows the dedication of the Pipeline Road to be deferred for a substantial period of time. Rezone  
12 3 is therefore without any assured connection to the City's system of roadways as discussed more  
13 fully in the Analysis section.

14           4.7     City Staff finds that the Enumclaw School District has adequate capacity to serve  
15 the proposed rezones. The Applicant concurs and provides a detailed analysis in support  
16 (Exhibit 36). The Hearing Examiner concurs and adopts the Applicant's analysis as his own  
17 Findings.

18           4.8     City Staff finds that the City has adequate police, fire and other resources  
19 necessary to serve the rezones. The Applicant concurs and provides additional supporting  
20 evidence that fire and police services need for the MDR8 zoning are likely to be less than those  
21 required by development under the existing B/IP zoning, and with less specialized equipment  
22 needed to provide services (Exhibit 16). The Hearing Examiner concurs and adopts the Findings  
23 of both City Staff and the Applicant.

1        Conclusions of Law:

2            4.1        There are adequate services and facilities, including transportation facilities,  
3 available to serve the proposed MDR8 zoning classification for Rezone 1.

4            4.2        There are adequate services and facilities, including transportation facilities,  
5 available to serve the proposed MDR8 zoning classification for Rezone 2.

6            4.3        With the exception of transportation facilities, there are adequate services and  
7 facilities available to serve the proposed MDR8 zoning classification for Rezone 3. There are  
8 currently insufficient transportation facilities for the proposed Rezone 3 as it has no connection  
9 to the City's system of streets and the proposed Pipeline Road has yet to be dedicated or  
10 constructed, with the City having recently approved a substantial delay in its dedication.  
11

12            B5.        **The proposed reclassification is warranted because of a change in**  
13 **circumstances, or because of a demonstrated need for additional land within the proposed**  
14 **zoning classification.**

15        Findings of Fact:

16            5.1        Opponents have suggested that the rezones must satisfy both clauses of this  
17 requirement, that is, that the proposed classification be shown to be the result of a change in  
18 circumstances and that there is a demonstrated need for additional land within the MDR8 zoning  
19 classification. This interpretation is incorrect as this requirement is stated in the alternative and  
20 requires one or the other, but not both.  
21

22            5.2        Opponents assert that, even if there has been a change in circumstances, the  
23 change does not *warrant* the rezone as additional housing is unnecessary.  
24  
25

1           5.3     Appellant's separately argue that the Applicant has failed to demonstrate need for  
2 additional land within the MDR8 zoning classification as the City already has a sufficient  
3 number of approved residential lots to meet its anticipated growth for the foreseeable future

4           5.4     The City finds that the 2019 update to the Comprehensive Plan in which the three  
5 properties were given a land use designation of MDR is, itself, a sufficient change in  
6 circumstances to warrant the requested rezones. The Applicant concurs. The Hearing Examiner  
7 concurs.

8           5.5     City Staff finds that the City is set to exceed its housing target with a full buildout  
9 of the City's Master Planned Developments while, at the same time, the State, county and  
10 regional governments, as well as the City, have committed to make sufficient provision for  
11 middle housing, all of which is confirmed in the City's Comprehensive Plan; the City's recent  
12 adopted Housing Action Plan, Vision 2050, and recent House Bill 1110. The MDR8 zoning  
13 classification would help the City meet these goals. The Hearing Examiner concurs.

14           5.6     The MDR8 zoning classification allows for a greater variety of housing types,  
15 multi-family housing, senior housing, assisted elderly housing, group homes, and cluster  
16 development. There is a demonstrated need for these additional types of housing as  
17 demonstrated by the Findings of the City's 2020 Housing Initiative and as declared in the City's  
18 2021 Housing Action Plan.

19           Conclusions of Law:

20           5.1     Rezone 1 is warranted because of a change in circumstances. In addition, there is  
21 a demonstrated need for more land in the MDR zoning classification.

22           5.2     Rezone 2 is warranted because of a change in circumstances. In addition, there is  
23 a demonstrated need for more land in the MDR zoning classification.

1           5.3     Rezone 3 is warranted because of a change in circumstances. In addition, there is  
2 a demonstrated need for more land in the MDR zoning classification.

3           B6.     **The reclassification does not reflect special treatment of the subject property.**

4           Findings of Fact:

5           6.1     Opponents have suggested that the proposed rezones reflect special treatment  
6 toward the Applicant but have not provided a factual support for this assertion.

7           6.2     The requested rezones are consistent with the 2019 update to the City's  
8 Comprehensive Plan and the properties' change in land use designation to MDR. The processing  
9 of applications needed to bring consistency between the land use designation and zoning  
10 designation does not constitute special treatment but is instead required.  
11

12          Conclusions of Law:

13          6.1     The reclassification of Rezone 1 does not reflect special treatment of the subject  
14 property.

15          6.2     The reclassification of Rezone 2 does not reflect special treatment of the subject  
16 property.

17          6.3     The reclassification of Rezone 3 does not reflect special treatment of the subject  
18 property.

19          B7.     **The reclassification will promote the general health, safety and welfare of the**  
20 **community.**

21          Findings of Fact:

22          7.1     Opponents argue that the proposed rezones will fail to promote the general health,  
23 safety and welfare of the community for the same reasons that they fail to satisfy the  
24 requirements of BDMC 18.12.020(B)(4). Opponents assert that the proposed rezones will  
25

1 overwhelm the City's infrastructure; will impair its water, sewer and stormwater facilities; will  
2 worsen the school district's challenges with finding sufficient facilities for its students; will  
3 threaten wildlife; will exceed the City's transportation capacity; and will overburden the City's  
4 police, fire and other emergency services.

5         7.2     The City Staff and the Applicant respond in the same manner as their response to  
6 compliance with Subsection B(4). The Hearing Examiner concurs.

7         7.3     City Staff finds, and the Applicant concurs, that the proposed rezones are  
8 consistent with and further the City's Comprehensive Plan and therefore promote the general  
9 health, safety and welfare of the community. The Hearing Examiner concurs.

10         7.4     City Staff finds, and the Applicant concurs, that the proposed rezones further  
11 implement County-wide Planning Policies, Multi-County Planning Policies, including Vision  
12 2050, the Growth Management Act goals and most importantly, the goals of the 2021 Housing  
13 Action Plan. The Hearing Examiner concurs.

14         7.5     The rezones will permit greater housing options as noted earlier, consistent with  
15 the demonstrated needs shown by the City's 2020 Housing Needs Assessment.

16         7.6     As noted in earlier Findings, the rezones will provide improved transition between  
17 residential neighborhoods on one side and commercial development on the other while also  
18 offering improved aesthetics and less noise, all of which promotes the general health of the  
19 community.

20         7.7     The proposed Rezones 2 and 3 will also significantly reduce traffic resulting from  
21 their development as compared to development under the current B/IP zoning.

7.8 Any proposed development of the rezoned properties will undergo environmental and land use review to assure concurrency with needed infrastructure, compliance with environmental protections, and conformance with all land use regulations.

### Conclusions of Law:

7.1 Reclassification of Rezone 1 will promote the general health, safety and welfare of the community.

7.2 Reclassification of Rezone 2 will promote the general health, safety and welfare of the community.

7.3 Reclassification of Rezone 3 will promote the general health, safety and welfare of the community.

Any other Findings of Fact contained in the foregoing sections of this Decision are hereby adopted by the Hearing Examiner as his own Findings of Fact.

Any other Conclusions of Law contained in the foregoing sections of this Decision are hereby adopted by the Hearing Examiner as his own Conclusions of Law.

## FINAL CONCLUSIONS OF LAW

1. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)1-7) have been met with respect to Rezone 1.

2. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)(1-7) have been met with respect to Rezone 2.

3. The Applicant has met its burden of demonstrating that all requirements of BDMC 18.12.020(B)(1-7) have been met with respect to Rezone 3 **with the exception** that the Applicant has not adequately demonstrated that there are adequate transportation facilities to

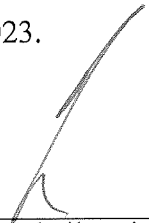
1 serve the range and uses permitted by the proposed MDR8 zone for the reason that the property  
2 is not connected to the City's road system as more fully described above.

3 **RECOMMENDATIONS**

4 Based upon the foregoing discussion and the Hearing Examiner's Findings of Fact and  
5 Conclusions of Law, the Hearing Examiner recommends the following:

- 6 1. That Rezone 1 be **approved** without conditions.  
7  
8 2. That Rezone 2 be **approved** without conditions.  
9  
10 3. That Rezone 3 be: (a) **not approved** on the basis of not meeting all requirements  
11 of BDMC 18.12.020(B)(4) with respect to transportation facilities; or (b) that the application be  
12 **deferred** until such time as Pipeline Road has been dedicated; or (c) that the application be  
13 **approved but subject to the condition** that rezoning shall not be implemented until the Pipeline  
14 Road has been dedicated.

15 DATED this 28 day of November, 2023.

16  
17   
18 \_\_\_\_\_  
19 Mark C. Scheibmeir  
20 City of Black Diamond Hearing Examiner  
21  
22  
23  
24  
25

## EXHIBIT "A"

| Exhibit Number                                                                          | Description                                                                                    |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Exhibit 1A                                                                              | Cover Letter for All Rezones                                                                   |
| Exhibit 1B                                                                              | Site Maps for All Rezones                                                                      |
| Exhibit 1C – Rezone 1                                                                   | SEPA Checklist for <b>Rezone 1 Only</b>                                                        |
| Exhibit 1C – Rezone 2                                                                   | SEPA Checklist for <b>Rezone 2 Only</b>                                                        |
| Exhibit 1C – Rezone 3                                                                   | SEPA Checklist for <b>Rezone 3 Only</b>                                                        |
| Exhibit 2A – Rezone 1                                                                   | Notice of Application for <b>Rezone 1 Only</b>                                                 |
| Exhibit 2A – Rezone 2                                                                   | Notice of Application for <b>Rezone 2 Only</b>                                                 |
| Exhibit 2A – Rezone 3                                                                   | Notice of Application for <b>Rezone 3 Only</b>                                                 |
| Exhibit 2B – Rezone 1                                                                   | Affidavit of Publication for Notice of Application for <b>Rezone 1 Only</b>                    |
| Exhibit 2B – Rezone 2                                                                   | Affidavit of Publication for Notice of Application for <b>Rezone 2 Only</b>                    |
| Exhibit 2B – Rezone 3                                                                   | Affidavit of Publication for Notice of Application for <b>Rezone 3 Only</b>                    |
| Exhibit 3                                                                               | Noticing Map for All Rezones                                                                   |
| Exhibit 4A                                                                              | Public Comments for All Rezones – Letters of Support                                           |
| Exhibit 4B                                                                              | Public Comments for All Rezones – Emailed Comments Against Rezones                             |
| Exhibit 4C                                                                              | Public Comments for All Rezones – Comment Letters Against Rezones                              |
| Exhibit 4D                                                                              | Public Comments for All Rezones – Email Comments from DFW                                      |
| Exhibit 4E                                                                              | Public Comments for All Rezones – Comment Letter from Maple Valley                             |
| Exhibit 4F                                                                              | Public Comments for All Rezones – Citizen Group Comment Letters                                |
| Exhibit 4G                                                                              | Public Comments for All Rezones – Additional Public Comments                                   |
| Exhibit 4H                                                                              | Public Comments for All Rezones – Email Comment from King County Wastewater Treatment Division |
| Exhibit 4I                                                                              | Public Comments for All Rezones – One Additional Letter of Support                             |
| Exhibit 4J – Rezone 2                                                                   | Public Comments for <b>Rezone 2 Only</b>                                                       |
| Exhibit 4J – Rezone 3                                                                   | Public Comments for <b>Rezone 3 Only</b>                                                       |
| <i>NOTE: NO EXHIBIT 4J FOR REZONE 1, AS THERE WERE NO COMMENTS SPECIFIC TO REZONE 1</i> |                                                                                                |
| Exhibit 5 – Rezone 1                                                                    | Traffic Memo for <b>Rezone 1 Only</b>                                                          |
| Exhibit 5 – Rezone 2                                                                    | Traffic Memo for <b>Rezone 2 Only</b>                                                          |
| Exhibit 5 – Rezone 3                                                                    | Traffic Memo for <b>Rezone 3 Only</b>                                                          |
| Exhibit 6A – Rezone 1                                                                   | Criteria for <b>Rezone 1 Only</b>                                                              |
| Exhibit 6A – Rezone 2                                                                   | Criteria for <b>Rezone 2 Only</b>                                                              |
| Exhibit 6A – Rezone 3                                                                   | Criteria for <b>Rezone 3 Only</b>                                                              |
| Exhibit 6B                                                                              | Applicant Response to Public Comments for All Rezones                                          |
| Exhibit 6C                                                                              | TENW Memo for All Rezones                                                                      |
| Exhibit 7A                                                                              | Affidavit of Mailing for the three separate DNS for All Rezones                                |
| Exhibit 7B – Rezone 1                                                                   | Affidavit of Publication for DNS for <b>Rezone 1 Only</b>                                      |
| Exhibit 7B – Rezone 2                                                                   | Affidavit of Publication for DNS for <b>Rezone 2 Only</b>                                      |
| Exhibit 7B – Rezone 3                                                                   | Affidavit of Publication for DNS for <b>Rezone 3 Only</b>                                      |
| Exhibit 7C                                                                              | Affidavit of Posting for the three separate DNS for All Rezones                                |
| Exhibit 8                                                                               | Appeal of DNS for All Rezones                                                                  |
| Exhibit 9                                                                               | Order Dismissing Appeal on DNS for All Rezones                                                 |
| Exhibit 10A                                                                             | Affidavit of Mailing for Notice of Public Hearing for All Rezones                              |
| Exhibit 10B – Rezone 1                                                                  | Affidavit of Posting for Notice of Public Hearing for <b>Rezone 1 Only</b>                     |
| Exhibit 10B – Rezone 2                                                                  | Affidavit of Posting for Notice of Public Hearing for <b>Rezone 2 Only</b>                     |
| Exhibit 10B – Rezone 3                                                                  | Affidavit of Posting for Notice of Public Hearing for <b>Rezone 3 Only</b>                     |
| Exhibit 11                                                                              | Public Comments Received 10/25/23 to 11/2/23 for All Rezones                                   |
| Exhibit 12                                                                              | Public Comments Received 11/3/23 to 11/6/23 for All Rezones                                    |
| Exhibit 13                                                                              | Staff Report for <b>Rezone 1 Only</b>                                                          |
| <i>Findings of Fact and Conclusions of Law and Recommendations to City Council - 57</i> | <b>CITY OF BLACK DIAMOND HEARING EXAMINER</b>                                                  |

299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

|    |                                                        |                                                                |
|----|--------------------------------------------------------|----------------------------------------------------------------|
| 1  | Exhibit 14                                             | Staff Report for <b>Rezone 2 Only</b>                          |
|    | Exhibit 15                                             | Staff Report for <b>Rezone 3 Only</b>                          |
| 2  | Exhibit 16                                             | Applicant Technical Memorandum for All Rezones                 |
|    | Exhibit 17                                             | Applicant Presentation for All Rezones                         |
| 3  | Exhibit 18                                             | Southward Site Picture for <b>Rezone 3 Only</b>                |
|    | Exhibit 19                                             | Topographic Map for <b>Rezone 3 Only</b>                       |
| 4  | <i>NOTE: NO EXHIBITS 18 AND 19 FOR REZONES 1 AND 2</i> |                                                                |
|    | Exhibit 20                                             | David Toyer Resume                                             |
| 5  | Exhibit 21                                             | Jeff Schramm Resume                                            |
|    | Exhibit 22                                             | Ruslan Sorochnikov Comments for All Rezones                    |
| 6  | Exhibit 22A                                            | Anna Sorochnikov Comments for All Rezones                      |
|    | Exhibit 23                                             | Gretchen Buet Comments for All Rezones                         |
| 7  | Exhibit 24                                             | Kristen Bryant Comments for All Rezones                        |
|    | Exhibit 25                                             | Gary Kohl Comments for All Rezones                             |
| 8  | Exhibit 26                                             | Tom Ekberg Comments for All Rezones                            |
|    | Exhibit 27                                             | Philip Acosta Comments for All Rezones                         |
| 9  | Exhibit 28                                             | Stefan Cordova Comments for All Rezones                        |
|    | Exhibit 29                                             | Renee Mix Comments for All Rezones                             |
| 10 | Exhibit 30                                             | Gary Jones Comments for All Rezones                            |
|    | Exhibit 31                                             | Donald McPherson Comments for All Rezones                      |
| 11 | Exhibit 32                                             | Geoff Bowie Comments for All Rezones                           |
|    | Exhibit 33                                             | William Bryant Comments for All Rezones                        |
| 12 | Exhibit 34                                             | City's TDR Map                                                 |
|    | Exhibit 35                                             | City Response to Public Hearing Testimony for All Rezones      |
| 13 | Exhibit 36                                             | Applicant Response to Public Hearing Testimony for All Rezones |