

**BEFORE the LAND USE HEARING EXAMINER for the  
CITY of DUVALL**

**DECISION**

FILE NUMBERS: SU08-001, <sup>1</sup> BLA08-002, and BLA08-003

APPLICANTS: CamWest Duvall LLC and Wonderland Holdings LLC

TYPE OF CASE: Consolidated: 1) Preliminary long subdivision (*Duvall Urban Village Division I*); and 2) Two (2) Boundary Line Adjustments

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF DECISION: GRANT subject to revised conditions

DATE OF DECISION: June 16, 2010

**INTRODUCTION <sup>2</sup>**

CamWest Duvall LLC (CamWest), 9720 NE 120<sup>th</sup> Place, Kirkland, Washington 98034, and Wonderland Holdings LLC (Wonderland), 600 University Street, Suite 2820, Seattle, Washington 98101, (collectively referred to as the Applicants), seek preliminary long subdivision approval of *Duvall Urban Village Division I*, a mixed-use subdivision of a 23.3 acre site. (Exhibits 2, 4a, and 4b <sup>3</sup>) The Applicants also seek concurrent approval of two Boundary Line Adjustments (BLAs) which adjust small portions of the perimeter of the subdivision site. (Exhibits 3a, 3b, and 4c)

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<sup>1</sup> File documents uniformly state that this preliminary long subdivision application's file number is SU08-001. However, that file number was previously assigned by City Staff to The 14320 LLC's preliminary long subdivision (*The 14320 Site*) which was initially filed as a binding site plan application on September 10, 2008, was converted to a preliminary long subdivision on May 22, 2009, was heard by the Hearing Examiner on July 21, 2009, and was approved by the Hearing Examiner on August 7, 2009. (Official notice) The Examiner discovered and advised City Staff of the file number duplication subsequent to the close of the open record hearing. City Staff has asked the Examiner to retain the assigned file number and footnote the duplication.

<sup>2</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

<sup>3</sup> Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

The Applicants filed the preliminary long subdivision application and the BLA applications on December 22, 2008. (Exhibits 4a – 4c <sup>4</sup>) The Duvall Planning Department (Planning) deemed the applications to be complete on January 20, 2009. (Exhibit 5)

The subject property straddles NE Big Rock Road between the Safeway Plaza on the west and, generally, the unopened 3<sup>rd</sup> Avenue NE right-of-way on the east. The southern boundary of the site is Old Big Rock Road (aka NE 140<sup>th</sup> Street).

The Duvall Hearing Examiner (Examiner) viewed the subject property on June 8, 2010.

The Examiner held an open record hearing on June 8, 2010. Planning gave notice of the hearing as required by the Duvall Municipal Code (DMC). (Exhibit 11)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 51: As enumerated in Exhibit 51, the Departmental Staff Report
- Exhibit 52: Applicants' PowerPoint presentation (23 slides)
- Exhibit 53: Applicant Requested Modifications to Conditions of Approval
- Exhibit 54: Applicants' Hearing Memorandum
- Exhibit 54.1: Letter, TraffEx to Applicants, June 1, 2010
- Exhibit 54.2: Letter, Flury-Wyrick to CamWest, June 4, 2010
- Exhibit 54.3: Letter, Raedeke to Wonderland, June 4, 2010
- Exhibit 55: Technical Memorandum, MSA to City of Duvall, February 26, 2010
- Exhibit 56: E-mail string: Benson-Booy, April 29, 2010
- Exhibit 57: E-mail with attachment, Benson-Booy, January 21, 2010
- Exhibit 58: *Curriculum Vitae*: Larry Hobbs
- Exhibit 59: *Curriculum Vitae*: Mark Flury
- Exhibit 60: *Curriculum Vitae*: G. Emmett Pritchard
- Exhibit 61: E-mail letter from Roger and Kerri Lange, June 1, 2010
- Exhibit 62: Old Big Rock Road Alternate Pedestrian Alignment

The City has not met the code-imposed processing time limits. (Exhibit 51) Planning provided to the Applicants the written explanation required by DMC 14.08.020(H)(2). (Exhibit 46)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

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<sup>4</sup> Many other documents in the record give application filing dates different from that contained in Exhibits 4a – 4c. The Examiner finds the December 22, 2008, "Received" date stamp on each of the actual application forms to be original data and, therefore, the most credible evidence available.

## ISSUES

Do the applications meet the criteria for Preliminary long subdivision and BLA approval as established within the DMC?

Although this is a complex proposal with many “moving parts,” only three topics remain in contention. In order of importance, they are: Whether the Applicants should be required to construct frontage improvements (a sidewalk) along approximately 620 feet of the north side of Old Big Rock Road; whether proposed Street “Y” should be stubbed to the north boundary of the development to allow for future northerly extension; and whether the proposal will adversely affect drainage conditions on properties to the south across Old Big Rock Road.

In addition, a number of significant changes to the Staff-recommended conditions of approval are necessary, primarily because of certain unique procedural situations which apply to this proposal.

This Decision will focus almost exclusively on those three topics and the needed changes to the conditions. Specific Findings of Fact and Conclusions of Law will be limited to those topics. The record is replete with documentation and analysis of all other aspects of these applications. Analysis and conclusions from documents in the record will be incorporated by reference where appropriate to conserve resources.

## FINDINGS OF FACT

### A. General

A.1. The Applicants propose to subdivide the subject property into seventy-five single family lots, five lots to be developed with 102 condominiums or other multi-family units, one lot to be developed with six live-work units, four commercial lots to be developed with approximately 92,692 square feet of commercial, retail, and office uses, and a lot for a one-acre community park which will be improved and dedicated to the City upon approval by the City Council. Common open space/recreation tracts and a large Native Growth Protection Area (NGPA) tract are also proposed to be created. (Exhibit 2)

The record contains numerous documents, some submitted by the Applicants, some prepared by City Staff, describing the proposal in detail and analyzing it against all applicable regulations and policies. (Exhibits 2 – 4, 7, 13 – 22, 22a, 23 – 25, 27 – 41, 44, 45, and 48 - 51) Since the record contains no challenge to the vast majority of that evidence, those exhibits are incorporated herein by reference as if set forth in full; provided, that to the extent Findings of Fact contained herein conflict with the content of any of the incorporated documents, the Findings of Fact control.

A.2. The subject property consists of a rough rectangle which is bisected from northwest to southeast by NE Big Rock Road, essentially dividing the subject property into two triangles. The portion south of NE Big Rock Road (the south portion) is bordered on the west by the Safeway Plaza shopping center

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(which has frontage on SR 203, NE Big Rock Road, and Old Big Rock Road) and on the south by Old Big Rock Road. (Exhibits 2, 22.15 {Att. 4}, and 52 {Slide 2})

The portion north of NE Big Rock Road (the north portion) is bordered on the west by a tract containing a replacement wetland and storm water control facility associated with the Safeway Plaza but owned by the City, and on the north by six acreage lots in *Rio Vista Ranchettes* (which front on NE 143<sup>rd</sup> Street). The unopened right-of-way of 3<sup>rd</sup> Avenue NE (aka 278<sup>th</sup> Avenue NE using County road naming convention) forms the eastern boundary of most of the north portion; a small area of about 1.65 acres lies to the east of that right-of-way. A single-family residence on an acreage parcel and undeveloped land lies further to the east. (Exhibits 2, 3b {Sheet 3 of 3}, 22.15 {Att. 4}, and 52 {Slide 2})

- A.3. The legal description of the subject property provided by the Applicants (Exhibit 13) presumes approval of two BLAs. Both involve the north portion of the subject property. The first, BLA08-002, would literally “tweak” the easterly 208 feet of the north property line west of the 3<sup>rd</sup> Avenue NE right-of-way, shifting it northward about 4.5 feet and straightening it out. (Exhibit 3a)

The second, BLA08-003, makes a more substantial adjustment to the boundaries of two parcels which abut the east side of the presently unopened 3<sup>rd</sup> Avenue NE right-of-way, both of which are owned by CamWest. That BLA will replace the two straight property lines which now separate the parcels with a compound, curvilinear line. Both existing parcels have direct frontage (452 feet for Parcel A and 172 feet for Parcel B) on the east side of the unopened 3<sup>rd</sup> Avenue NE right-of-way. If approved as proposed, Parcel A (the parcel that is within the current *Duvall Urban Village Division I* proposal) will have 624 feet of frontage on the existing right-of-way and Parcel B (which is outside of the current *Duvall Urban Village Division I* proposal) will have none: It will parallel the right-of-way edge at a distance of 3.5 feet for a linear distance of about 56 feet; the remainder of its western boundary is much further from the existing right-of-way. (Exhibit 3b)

- A.4. The Applicants propose to develop *Duvall Urban Village Division I* in several phases. The current plans envision seven phases: Three commercial phases (Phases A, F, and G) and four residential/live-work phases (Phases B – E), one of which (Phase C) will contain the proposed public park. (Exhibit 2, Sheet PP7)

Section 14.18.060 DMC states “the commercial and residential portions of a mixed use project shall be constructed concurrently unless the developer establishes a phasing plan through a development agreement.” Development agreements are a Type VI application: The Planning Commission reviews the proposed agreement and makes a recommendation to the City Council (Council) which exercises final decision making authority for the City. [DMC 14.08.010(C)(1) and (C)(2)] The terms and conditions of the required development agreement are thus outside the scope of this proceeding.

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The Applicants and Planning intend to present a development agreement for Planning Commission and Council consideration subsequent to issuance of this Decision by the Examiner. (Exhibit 51 and testimony)

- A.5. In July, 2007, the City and CamWest entered into a Pre-Annexation Agreement affecting some 56 acres located on the north side of NE Big Rock Road, lying east of the 3<sup>rd</sup> Avenue NE right-of-way and west of 275<sup>th</sup> Avenue NE. The northeast 1.65 acres of the subject property occupies a portion of the northwest corner of the area subject to the terms of the Pre-Annexation Agreement. (Exhibits 2, 3b, and 24)

The Pre-Annexation Agreement included provisions requiring the execution of a development agreement between CamWest and the City to which all development within the annexation area would be subject. (Exhibit 24, p. 3, § 3.4) The Pre-Annexation Agreement also includes a number of requirements regarding low-income housing, public park area, pedestrian connectivity, “low impact” development, and traffic impact mitigation. (Exhibit 24, pp. 3 - 7)

The City and CamWest followed up the Pre-Annexation Agreement by entering into a Development Agreement (CamWest Development Agreement) in December, 2007, subsequent to the August, 2007, annexation of the area into the City. The CamWest Development Agreement applies to the same 56 acres as did the Pre-Annexation Agreement. (Exhibit 25) Thus, the northeast 1.65 acres of the subject property lies within the area subject to the terms of the CamWest Development Agreement.

The CamWest Development Agreement vests development within the 56 acres to the land use regulations as they existed on December 14, 2007 (Exhibit 25, p. 3, § 4.a), requires submittal of a master plan and phasing plan for the entire 56 acres “with the development permit applications for the first phase of its development” (Exhibit 25, p. 4, § 6.a), requires CamWest to construct 3<sup>rd</sup> Avenue NE from NE 143<sup>rd</sup> Place south to NE Big Rock Road (the 3<sup>rd</sup> Avenue Extension) concurrent with development of the first phase of its project (Exhibit 25, p. 11, § 17.a.i), calls for the 3<sup>rd</sup> Avenue Extension to include westerly realignment of the 3<sup>rd</sup> Avenue NE right-of-way (Exhibit 25, p. 15, § 17.d), requires CamWest to utilize low impact development techniques (Exhibit 25, p. 18, § 21.a), and requires “All phases” of CamWest’s development within the 56 acres to include pedestrian connections to adjacent properties (Exhibit 25, p. 21, § 28.a).

CamWest and Planning have processed *Duvall Urban Village Division I* with the expectation that the Council will amend the CamWest Development Agreement to remove the northeast 1.65 acres of the subject property from coverage under the Agreement. (Exhibit 51)

- A.6. BLA08-003 relies upon City vacation of the present 3<sup>rd</sup> Avenue NE right-of-way and its replacement with the realigned and widened 3<sup>rd</sup> Avenue Extension right-of-way. Specifically the new right-of-way will be wider than the existing right-of-way (67 feet v. 60 feet), resulting in Parcel B having frontage on the east side of the replacement right-of-way, something which it would not have without the new right-

of-way. The proposed alignment will swing 3<sup>rd</sup> Avenue NE westerly as it passes through the subject property such that it will intersect with NE Big Rock Road at a right angle. (Exhibits 2 and 3b)

Right-of-way vacations are not considered land use applications. (See DMC 14.08.010(C): Right-of-way vacations are not listed within Table 1.) Right-of-way vacations are subject to the provisions of Chapter 35.79 RCW which vests the authority to act on such applications with the Council. Thus, consideration of the right-of-way vacation is outside the scope of this proceeding.

- A.7. Both the *Duvall Urban Village Division I* preliminary plat and BLA08-003 assume Council approval of the 3<sup>rd</sup> Avenue Extension vacation and realignment as proposed. (Exhibit 2)
- A.8. The Applicants have presented “Residential Architectural Concepts” for the residential units in Phases B – E. (Exhibit 30) The Applicants have no idea what commercial development will ultimately locate in Phases A, F, and G. <sup>5</sup> For planning purposes, they have assumed that about 93,000 square feet of commercial space would be developed in those phases. (Exhibit 51, pp. 9 and 29) Site plan review pursuant to DMC 14.08.010(C) and Chapter 14.62 DMC is required prior to actual development of the commercial areas. (Exhibit 51, p. 30)
- A.9. Duvall’s State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) for *Duvall Urban Village Division I* on March 3, 2010. The MDNS contains seven mitigation measures: Realignment of 3<sup>rd</sup> Avenue NE and signalization of the 3<sup>rd</sup> Avenue NE/NE Big Rock Road intersection; construction of “Sidewalk, bicycle, and pedestrian facilities ... to city standards”; grading controls; water utility improvements; stormwater and impervious surfaces requirements; sensitive areas preservation; and completion of a Development Agreement including phasing plans. (Exhibit 45) The mitigation measures within the MDNS have been carried forward by reference as a recommended condition of approval. (Exhibit 51, p. 39, Recommended Condition 4)
- A.10. The Applicants sought and obtained approval by staff of a total of 13 administrative engineering variances and/or administrative code deviations/departures:
- A. Administrative Engineering Variances. The Applicants requested and obtained City Engineer approval of the following variances from the City’s Development Design Standards (Standards <sup>6</sup>):
- i. Meandering sidewalk along Street “O”. (Exhibits 31 and 51 {p. 16})
  - ii. Private stormwater vaults in private roads, tracts, and easements. (Exhibits 32 and 51 {p. 22})

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<sup>5</sup> For a time, the King County Library System (KCLS) planned to occupy Phase A with a branch library. (E.g., see Exhibit 16) KCLS no longer plans to locate its library in *Duvall Urban Village Division I*. (Testimony)

<sup>6</sup> Section 1-1.02 of the Development Design Standards specifies that the shorthand name is simply “Standards”.

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- iii. A private road. (Exhibits 33 and 51 {p. 18})
  - iv. Reduced intersection spacing. (Exhibits 34 and 51 {p. 17})
  - v. 3<sup>rd</sup> Avenue NE slope exceeding standard. (Exhibits 35 and 51 {p. 10})
  - vi. Temporary cut and fill slopes in excess of 3H:1V. (Exhibits 37 and 51 {p. 24}; see also Finding of Fact A.10.B.iii, below.)
- B. Administrative Deviations/Departures. The Applicants requested and obtained Staff approval of the following deviations/departures from DMC provisions:
- i. Reduced off-street parking in commercial areas. (Exhibits 36 and 51 {p. 20}) Planning is authorized by DMC 14.44.040(B) to administratively reduce required off-street parking if certain requirements are met.
  - ii. Reduce number of loading spaces required by DMC 14.44.090. (Exhibits 36 and 51 {pp. 20 and 21}) (The DMC contains no authority for administrative relief from DMC 14.44.090.)
  - iii. Temporary cut and fill slopes in excess of 3H:1V. (Exhibits 37 and 51 {p. 24}) Subsection 14.34.030(B)(1)(c) DMC expressly authorizes Planning and Public Works to grant exceptions to this limitation. (See also Finding of Fact A.10.A.vi, above.) Subsection 14.34.010(E) DMC authorizes Planning to grant departures from Chapter 14.34 DMC, Design Guidelines, requirements.
  - iv. Common open space: Slope in excess of code limitations; and minimum dimension narrower than code standard. (Exhibits 38 and 51 {p. 25}). Subsection 14.34.010(E) DMC authorizes Planning to grant departures from Chapter 14.34 DMC, Design Guidelines, requirements.
  - v. Grassy slopes in excess of 4H:1V. (Exhibits 39 and 51 {p. 26}). Section 14.38.030 DMC authorizes Planning to vary requirements contained in Chapter 14.38, Landscaping Standards.
  - vi. Garages exceeding 50% of front façade. (Exhibits 40 and 51 {p. 31}) Subsection 14.34.010(E) DMC authorizes Planning to grant departures from Chapter 14.34 DMC, Design Guidelines requirements.

- vii. Reduced separation between like residential house models. (Exhibits 41 and 51 {pp. 31 and 32}) Subsection 14.34.010(E) DMC authorizes Planning to grant departures from Chapter 14.34 DMC, Design Guidelines, requirements.

A.11. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Drainage Impact Off-site to the South

- B.1. The owner of the property in the south quadrant of the NE Big Rock Road/Old Big Rock Road intersection (Pedferri) seeks assurance that development of *Duvall Urban Village Division I* will not result in storm water runoff flowing onto his property. Runoff water from land on the north side of Big Rock Road east of the 3<sup>rd</sup> Avenue NE right-of-way flows beneath Big Rock Road in a culvert onto the Pedferri property. It then flows southwesterly through the Pedferri property towards SR 203. (Exhibit 17 {Fig. 18} and testimony)

Pedferri stated that flows in that system have increased over the years, causing significant erosion on his property. Pedferri does not want his runoff problems exacerbated by development of *Duvall Urban Village Division I*. (Testimony)

- B.2. Drainage from the north portion of the subject property sheet flows overland to a roadside ditch along the north side of NE Big Rock Road, then westerly to enter Thayer Creek. Drainage from the south portion of the subject property sheet flows overland southwesterly into the Thayer Creek headwaters and wetlands system on the subject property, then northwesterly down Thayer Creek. (Exhibit 17, Fig. 18)

Although Exhibit 17, Fig. 18, indicates that Old Big Rock Road is the dividing line between the Thayer Creek drainage basin and the drainage basin to the south, subsequent work by the Applicants' consultants has identified a wetland area (of unknown size) immediately south of Old Big Rock Road which is connected to the Thayer Creek headwaters wetland on the north side of the road by a 12" culvert. (Exhibit 54.3, p. 2) It would appear from the evidence that the Thayer Creek headwaters area was bisected by the original construction of Old Big Rock Road. The water course identified by Pedferri does not connect to the Thayer Creek headwaters wetlands. (Testimony)

- B.3. The Applicants' preliminary drainage plan indicates that surface runoff from impervious surfaces within *Duvall Urban Village Division I*, except for some from roof-tops on the south portion which will directly recharge the on-site wetlands, will be collected, routed to one of five underground detention vaults, and then conveyed to a discharge location where Big Rock Road crosses Thayer Creek. (Exhibit 17, Fig. 20)
- B.4. The Applicants' engineer assured Pedferri and the Examiner that no runoff water would be diverted to or backed up onto the Pedferri property. (Testimony)

C. Stub-Out of Street "Y" to the North

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- C.1. Conceptual plans developed in 2006 – 2008 for the subject property did not contemplate extending a street stub to the north property line near the west edge of the site. (Exhibit 26) Application plans as late as October, 2009, did not contemplate such a street stub. (Exhibit 16; see the area of Street “Y” and then-Proposed Lots 76 and 77)
- C.2. Figure T-6 and Table T-6 of the 2006 Comprehensive Plan (2006 Plan) depict projects within the 20-year Transportation Capital Improvement Program. One of those projects is the 1<sup>st</sup> Avenue NE southerly extension. The 1<sup>st</sup> Avenue NE extension (from NE 145<sup>th</sup> Street to NE Big Rock Road), identified as Project No. 17 in Table T-6, notes that “alignment between NE 143<sup>rd</sup> Street and Big Rock Road will need to consider wetlands and property.” Figure T-1, Roadway Classifications, in the 2006 Plan shows the 1<sup>st</sup> Avenue NE extension alignment routed slightly to the east at NE 143<sup>rd</sup> street, closer to the 2<sup>nd</sup> Avenue NE alignment, while Figure T-6 shows the roadway along the 1<sup>st</sup> Avenue NE alignment. Both alignments, however, are within a wetland buffer.<sup>7</sup> The road extension alignment is in the City’s Transportation Capital Improvement Program and is eligible for Traffic Impact Fee credit. (Exhibits 42 {pp. 4 and 5} and 51 {p. 15})
- C.3. City staff asked the Applicants to revise the street layout to extend Street “Y” to the north property boundary as a collector arterial with a 53 foot wide right-of-way. In October, 2009, the Applicants objected strenuously to this request, arguing that it violated RCW 82.02.020. (Exhibit 42, pp. 5, 6, 9, and 10)
- C.4. The Applicants subsequently made a “business decision” to voluntarily agree (as allowed by RCW 82.02.020) to include the Street “Y” stub and extra right-of-way width in their development plan in exchange for a promise of Staff “agreement to support vesting of the current methodology of calculating credits to transportation impact fees in the development agreement for [*Duvall Urban Village Division I*] which must be approved by the City Council.” (Exhibit 54, pp. 2 and 3, and testimony)
- C.5. The proposed preliminary plat provides a 53 foot wide right-of-way for Street “Y” from Big Rock Road through the north portion of the subject property to stub-out at the north property boundary. The street stub is nearly centered on the common property line between tax parcels 7325800030 and 7325800040, two acreage lots in the *Rio Vista Ranchettes* subdivision. (Exhibit 2) This alignment is desired by City Staff due to the environmental considerations noted in Finding of Fact C.2, above. (Exhibit 51 and testimony)
- C.6. Tax parcels 7325800030 and 7325800040 are owned by Roger and Kerri Lange (the Langes). The Langes purchased those two approximate two-acre lots in 2004 and 2005 for development purposes. They initially intended to build a mini-storage facility on the property, but discovered that such a use

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<sup>7</sup> The Draft 2009 Transportation Element identifies the NE 143<sup>rd</sup> Place to Big Rock Road portion of this project as TIP project No. M-9, 2<sup>nd</sup> Avenue NE Extension. (Exhibit 51, p. 15) Draft policy and/or regulatory documents cannot legally be considered in deciding preliminary subdivision cases. The Examiner has not considered the impact of the 2009 proposal, if ultimately adopted, on *Duvall Urban Village Division I*.

was not allowed by current zoning. In 2008 they sought to sell the property to a church, but the prospective purchaser backed out of the deal because of steeple height limits and grading concerns. (Exhibits 47.c and 61)

- C.7. The Langes strenuously oppose existence of the Street “Y” stub on their south property line. They argue that it would be a precursor to requiring them to provide an arterial through their lots, a requirement which they believe would violate constitutional protections against “taking” of private property and would also violate appellate case law regarding “nexus” and “rough proportionality.” (Exhibits 47.c and 61 and argument of counsel)

D. Frontage Improvements along Old Big Rock Road

- D.1. The Old Big Rock Road right-of-way extends from SR 203 on the west to NE Big Rock Road on the east. (Exhibit 2) A two-lane, open ditch section, paved road exists within that right-of-way from NE Big Rock Road west to the Safeway Plaza which has two connections to Old Big Rock Road: One to the rear loading area of the Safeway store; the other to the main north-south drive lane in the Plaza parking lot, providing a connection between Old Big Rock Road and NE Big Rock Road. (Exhibits 2 and 52 {Slide 2}) Bollards block Old Big Rock Road just west of the second Safeway Plaza entrance. (Testimony)

Old Big Rock Road is situated on a fill embankment for most of the above-described section. The street consists of two approximate 11 foot wide travel lanes with minimal shoulders on each side. The total paved width varies between 24.25 and 25.25 feet. (Exhibits 22.14 and 52 {Slides 10 and 13})

Wetlands abut the street embankment on both the north (for a distance of about 400 feet) and the south (for a distance of about 300 feet). (Exhibits 18, 52 {Slides 16 – 22}, and 54.3)

- D.2. *Duvall Urban Village Division I*, as presently proposed, makes no vehicular connection to Old Big Rock Road. (Exhibits 2 and 52 {Slide 5})
- D.3. The traffic impact assessment prepared on behalf of the Applicants and accepted by the City does not project that any site-generated vehicular p.m. peak hour trips will use Old Big Rock Road. (Exhibits 22.5 and 54.1)
- D.4. The Applicants have voluntarily offered to construct a sidewalk along Proposed Lot 1’s (in Phase F) frontage on Old Big Rock Road. The west end of that sidewalk will connect to the south end of a soft-surface trail which the Applicants will construct through NGPA Tract 999. (Exhibits 2 and 52 {Slide 7})
- D.5. Public Works wants the Applicants to construct pedestrian walkway improvements along the remainder of the site’s frontage on Old Big Rock Road, a distance of some 620 feet. (Exhibit 51, pp. 10 – 14)

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- D.6. The City estimates that the additional Old Big Rock Road walkway improvements would cost approximately \$67,500. (Exhibit 22.14) The Applicants believe that the requested improvements would cost approximately \$332,250. (Exhibits 54.2 and 54.3)
- D.7. The City Staff believes that adopted policies, code provisions, Standards provisions, and MDNS mitigation measures require construction of the walkway along the north side of Old Big Rock Road. (Exhibit 52, pp. 10 – 14 and testimony) City Staff also believes that pedestrians from *Duvall Urban Village Division I* will use Old Big Rock Road to reach the Safeway Plaza. (Exhibit 22.16 and testimony)
- D.8. The Applicants believe that a requirement to construct a pedestrian walkway along Old Big Rock Road adjacent to NGPA Tract 999 lacks a “rational nexus” to project impacts, therefore lacks “rough proportionality,” violates limitations in RCW 82.02.020, and is unconstitutional. The Applicants also dispute the notion that *Duvall Urban Village Division I* residents will use Old Big Rock Road to reach the Safeway Plaza. (Exhibits 54 and 54.1 and testimony)
- D.9. If the Examiner finds that a “rational nexus” exists to justify mitigation, then the Applicants have offered an alternative to the City’s walkway requirement: 1) To construct a soft surface walkway within Tract 999 connecting the proposed walkway with the end of the existing Safeway Plaza sidewalk at the southwest corner of the subject property; and 2) To provide a full pavement overlay of Old Big Rock Road. (Exhibit 62 and testimony)
- D.10. The land south of Old Big Rock Road lies outside present City limits but within the City’s approved Urban Growth Area. The area is slated for eventual commercial development. (Testimony)

E. Approval Conditions

- E.1. City Staff recommends approval of all three applications subject to 80 conditions. (Exhibit 51, pp. 39 – 52)
- E.2. The Applicants take exception to Recommended Conditions 31, 35, and 38; the Applicants propose an additional condition (Condition 81) in the event the Examiner concludes that Street “Y” should not stub-out to the north property line. (Exhibit 53 and testimony)
- E.3. City Staff concurs with the Applicants’ changes to Recommended Conditions 31 and 35, opposes the Applicants’ changes to Recommended Condition 38, and concurs with the Applicants’ proposed Condition 81 in the event the Examiner concludes that Street “Y” should not stub-out to the north property line. (Testimony) The City’s position with respect to Recommended Condition 38 has been summarized in Section D, above.

## LEGAL FRAMEWORK <sup>8</sup>

The Examiner is legally required to decide this case within the framework created by the following principles:

### Authority

A preliminary long subdivision is a Type III application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [DMC 2.30.070(A)(2) and 14.08.010(C), Tables 14.08.010.C.1 and .2]

BLAs are normally Type I applications which are handled administratively by Planning. [DMC 14.08.010(C)] However, when “multiple applications are submitted concurrently, the city shall process [them] as a consolidated application unless notified otherwise by the applicant.” [DMC 14.08.010(B)(2)(a)] When consolidated, the applications are “processed collectively under the highest numbered procedure required for any part of the application”. [*Id.*] Therefore, the BLAs in this consolidated application are treated as Type III applications.

The examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the examiner finds necessary to make the application or appeal compatible with the DMC, state laws and regulations, including Chapter 43.21C RCW, and the regulations, policies, objectives, and goals of the Duvall comprehensive plan, the unified development regulations, and other official laws, policies and objectives of the city of Duvall.

[DMC 2.30.070(B)]

### Review Criteria

The primary review criteria for preliminary long subdivisions are set forth at DMC 14.66.040:

- A. Each proposed subdivision or short subdivision shall be reviewed to ensure that:
1. The proposal conforms to the goals, policies and plans set forth in the Duvall comprehensive plan;
  2. The proposal conforms to the site and design requirements set forth in this title. No final subdivision or short subdivision shall be approved unless the requirements are met;
  3. The proposed street system and pedestrian system conform to the Duvall comprehensive plan, DMC Chapter 14.34, Design Guidelines, and the public works development design standards, and is laid out in such a manner as to provide for the safe, orderly and efficient circulation of vehicular and pedestrian traffic;

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<sup>8</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

4. The proposed subdivision or short subdivision will be adequately served with city-approved water and sewer, and other utilities appropriate to the nature of the subdivision or short subdivision;

5. The layout of lots, and their size and dimensions, takes into account topography and vegetation on the site in order that buildings may be reasonably sited, and that the least disruption of the site, topography and vegetation will result from development of the lots;

6. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected.

B. Lack of compliance with the criteria set forth in subsection A of this section and DMC Section 14.66.050, Subdivision standards, shall be grounds for denial of a proposed subdivision or short subdivision, or for the issuance of conditions necessary to more fully satisfy the criteria.

In addition, DMC 2.30.210 contains additional requirements for preliminary long subdivisions:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

A. Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and

B. The public use and interest will be served by the platting of such subdivision and dedication.

A “consistency determination” is also required for every project permit application.

During project permit application review, [Duvall] shall determine whether the items listed in this section are defined in the development regulations applicable to the proposed project and if the proposed project meets the development regulations. In the absence of applicable development regulations, [Duvall] shall determine whether the items listed in this section are defined in [Duvall’s] adopted comprehensive plan and if the proposed project meets the comprehensive plan policies. This determination of consistency shall include, but is not limited to, the following:

- a. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
- b. The level of development, such as units per acre, floor area ratio, lot coverage, etc;
- c. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and

- d. Character of the development, such as development standards.

[DMC 14.08.040(A)(2)]

The review criteria for BLAs are set forth at DMC 14.66.120(B):

1. The proposed adjustment shall meet the exemption requirements provided in RCW 58.17.040(6);
2. The boundary line adjustment shall not result in the creation of any additional tract, lot, parcel, site or division;
3. The property being transferred within the boundary line adjustment shall be combined with the benefiting parcel and shall not be a separate parcel, which could be mistaken as a separate and distinct, conveyable tract without proper research;
4. The lots, tracts, or parcels resulting after the boundary line adjustment shall meet all dimensional requirements specified for the applicable zone as outlined in this title;
5. All lots modified by the boundary line adjustment procedures shall have legal access meeting the standards of the city of Duvall;
6. The boundary line adjustment shall not violate an applicable requirement or condition of a previous land use action, subdivision, short subdivision or binding site plan;
7. All boundary line adjustments shall be recorded surveys consistent with the requirements of Chapter 58.09 RCW and Chapter 332-130 WAC. All lot lines being adjusted shall be surveyed, and newly established lot corners shall be staked.

#### Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ....” [RCW 58.17.033]

#### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

#### Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

## CONCLUSIONS OF LAW

### A. General

- A.1. The state Supreme Court in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] has ruled that “[RCW 36.70B.030(1)] suggests . . . a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted]

- A.2. “An administrative tribunal, such as the hearing examiner in this case, has only the authority granted it by statute or ordinance.” [*HJS Development, Inc. v. Pierce Cy*, 148 Wn.2d 451, 471 (2003)] The Examiner has only that authority “conferred either expressly or by necessary implication.” [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984)]

Neither a Hearing Examiner nor a City Council have authority to rule on the constitutionality of a duly enacted ordinance. [*Exendine v. City of Sammamish*, 127 Wn. App. 574, 113 P.3d 494 (2005), rev. denied 156 Wn.2d 1018 (2006)]

Likewise, the Examiner has no authority to determine whether a duly enacted City regulation complies with statutory or case law. The Examiner is required to base his land use decisions upon duly adopted laws and ordinances, and may not consider equitable defenses. [*Chaussee* at 638] Whether those regulations conflict with statutory or case law is for a court of competent jurisdiction to decide.<sup>9</sup>

- A.3. “The word ‘shall’ is mandatory and the word ‘may’ is discretionary. The word ‘should’ is mandatory unless waived by the director due to special circumstances.” [DMC 14.04.060(D)]
- A.4. Where authority to make a decision administratively is conferred by the DMC on staff, as opposed to merely the authority to make a recommendation to a higher decision maker, a higher decision maker has no inherent authority to second guess that administrative decision absent clear authority to do so. For example, the code sections listed in Finding of Fact A.10, above, grant to either Planning or Public Works (or both) the authority to grant certain variances/deviations/departures from certain

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<sup>9</sup> If a regulation is vague or unclear, then the Examiner would most certainly weigh statutory and case law in seeking to understand and apply the regulation. If two regulations conflict, then the Examiner would most certainly apply case law regarding statutory construction to seek to resolve the conflict. If a regulation grants discretion to the decision maker, then the Examiner would most certainly apply the “rational nexus” and “rough proportionality” tests from case law, among others, in exercising that discretion.

specific DMC and Standards provisions. Nothing in the language of those sections suggests that Staff action is but a recommendation to the Examiner or that the Examiner has any authority to second guess the administrative action. The Examiner has no authority to review, affirm, or reject those administrative actions in the context of this consolidated proceeding.<sup>10</sup>

- A.5. The Staff Report (Exhibit 51) contains an exhaustive analysis of the three applications which make up this consolidated application. Since the record contains no challenge to the vast majority of that analysis, the conclusions within Exhibit 51 are incorporated herein by reference as if set forth in full; provided, that to the extent Conclusions of Law contained herein conflict with the content of any of the incorporated analysis, the Conclusions of Law control.
- A.6. The uncontested preponderance of the evidence demonstrates that both BLAs comply with all approval criteria with but one exception.<sup>11</sup> BLA08-002 can stand on its own as an independent application. Therefore, it can be approved without contingencies.

BLA08-003, on the other hand, is dependent upon vacation and rededication of 3<sup>rd</sup> Avenue NE right-of-way. If right-of-way vacation and realignment occur as proposed, each lot will have access to 3<sup>rd</sup> Avenue NE and will meet the access requirement of DMC 14.66.120(B)(6). However, until that occurs, Proposed Lot B (the lot which is not within *Duvall Urban Village Division I*) would be landlocked. Therefore, approval of BLA08-003 must be made contingent on the vacation/rededication process.

- A.7. As noted above, the administrative variances/deviations/departures requested in Exhibits 31 – 41 and approved in Exhibit 51 are not within the Examiner’s jurisdiction in this proceeding. Therefore, the Examiner accepts them as givens for the purpose of this Decision with one exception.

City staff appears to lack the authority to have granted one of those administrative variances/deviations/departures. This situation will be addressed further in Conclusion of Law E.6, below.

- A.8. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

B. Drainage Impact Off-site to the South

- B.1. The evidence indicates that *Duvall Urban Village Division I* will not direct any of its stormwater runoff towards the south. The record contains no evidence that the proposed development will discharge stormwater onto properties to the south. The evidence also indicates that the Applicants can comply with all applicable City stormwater control requirements.

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<sup>10</sup> If there is an appeal process in the DMC for those administrative actions, it must be used overtly, not by implication.  
<sup>11</sup> Planning confirmed in testimony that the statement on page 9 of Exhibit 51 that “one parcel [is] to be created by a [BLA]” was erroneous: No new parcels will be created by either BLA.

B.2. Given the above, no basis exists in the record to impose any additional or more stringent conditions regarding stormwater control.

C. Stub-Out of Street “Y” to the North

C.1. City Staff rely primarily on DMC 14.66.050(L)(5) as the basis for requiring Street “Y” to stub to the north property line:

Proposed streets should extend to the boundary lines of the proposed site plan or subdivision in order to provide for the future development of adjacent tracts unless prevented by natural or man-made conditions or unless such extension is determined to be unnecessary by the Public Works Director.

[Emphasis added] In accordance with DMC 14.04.060(C), quoted in Conclusion of Law A.3, above, “should” is mandatory. The code clearly places the authority to waive the mandatory requirement to extend streets to external property lines in the office of the Public Works Director, not in the Examiner. The Public Works Director has determined that the stub-out is necessary. (Exhibit 51, pp. 14 and 15) The Examiner must respect and apply that determination.

C.2. Stubbing-out Street “Y” to the north property line will not constitute a “taking” of any portion of the Lange’s abutting property: The stubbed-out right-of-way will lie entirely within the subject property and will not intrude onto or into the Lange’s property.

Whether extension of Street “Y” at some future time through the Lange’s property would constitute a “taking” is not ripe for adjudication, even if the question were within the Examiner’s purview to adjudicate, as no one in this proceeding is conditioning development of the Lange property on such an extension.

C.3. Proposed Condition 81 (See Exhibit 53.) is unnecessary in its offered form. (See Conclusion of Law E.7 for further discussion of Proposed Condition 81.)

D. Frontage Improvements along Old Big Rock Road

D.1. City Staff relies primarily on three DMC/Standards provisions as the basis for requiring a pedestrian walkway along the entire length of the north side of Old Big Rock Road:

When a subdivision is abutting an existing street(s) with a right-of-way of lesser width than specified by City ordinances or abuts a roadway(s) that is not built to City street standards, or abuts a roadway(s) that is in substandard condition, the applicant may be required as a condition of approval, to deed additional right-of-way width, and/or to improve the existing and additional right-of-way to the design specifications of the Public Works Director.

[DMC 14.66.050(L)(2), emphasis added]

When necessary for public convenience or safety, the developer shall improve and dedicate to the public accessways ... to provide for networks of public paths creating access to schools, parks, shopping centers, transit stops or other community services. The accessway shall be of such design, width and location as reasonably may be required to facilitate public use.

[DMC 14.66.050(R), emphasis added]

Any development abutting and impacting rights-of-way shall improve the frontage of those rights-of-way in accordance with these Standards as part of a development permit. The extent of improvements shall be based on these Standards and on an assessment of the impacts of the proposed land development by the City Engineer.

[Standards §1-1.21.B, emphasis added]

- D.2. Subsection 14.66.050(L)(2) DMC is discretionary (“may”), but vests exercise of that discretion in the Public Works Director, not in the Examiner.

Subsection 14.66.050(R) DMC includes both mandatory and discretionary elements. The requirement to provide “networks of public paths” to, among other destinations, “shopping centers” is mandatory (“shall”). Discretion is involved in determining the extent of the required paths in any given case. The DMC does not vest that discretion in any specific position, so it would fall to the Examiner as this is a preliminary subdivision requirement and the Examiner has decision making authority over preliminary subdivisions.

Standards §1-1.21.B parallels DMC 14.66.050(R) in its structure: The requirement is mandatory, but the extent of the requirement involves the exercise of discretion. Unlike DMC 14.66.050(R), Standards §1-1.21.B explicitly vests the authority to exercise that discretion in the City Engineer, not in the Examiner.

- D.3. Two of the three key regulatory provisions vest decision making authority in someone other than the Examiner: The Public Works Director and the City Engineer. They, not the Examiner, are vested with the authority to set the extent and nature of frontage improvements.<sup>12</sup> Both have determined that a walkway is required along the subject property’s entire Old Big Rock Road frontage. The Examiner must respect and apply that determination.
- D.4. Applicants-Recommended Replacement Condition 38 will not be used.

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<sup>12</sup> The Examiner reached this identical conclusion in the *Baisa-Khulan Short Plat* case, SU07-007, Decision issued March 7, 2008. The analogous code structure of Chapter 14.34 DMC (staff, not Examiner, authority to relax standards) was acknowledged in the Duvall Hardware site plan review case, SPR05-001, Decision issued February 27, 2006.

E. Approval Conditions

- E.1. Recommended Condition 5. This condition would have the Examiner mandate to the Council the content of a development agreement over which the Examiner legally has no jurisdiction. The Examiner declines to intrude into the Council's authority.

Staff's intent here, to put everyone on notice of topics which it believes need to be included in the required development agreement, is quite reasonable. However, having the Examiner tell the Council what it must put in a development agreement is equally unreasonable.

Because the Applicants propose to phase the development, and because the development includes commercial development, a development agreement is necessary. The extent of the Examiner legitimate interest is that the required agreement be negotiated and executed prior to submittal of construction drawings. The condition will be revised accordingly.

- E.2. Recommended Condition 6. Similar to Recommended Condition 5, the Examiner has limited legitimate interest in the content of a revised CamWest/City Development Agreement. The Examiner's sole interests are that the existing Agreement be revised to remove the overlapping property and that the amendment be completed prior to submittal of construction drawings. The condition will be revised accordingly. Allowing the overlap to exist until final plat recordation (as proposed by the Staff) would merely confuse matters as competing requirements would then apply to the northeast corner of the subject property.
- E.3. Recommended Condition 7. The second half of this condition purports to specify the zoning pattern which will result from realignment of the 3<sup>rd</sup> Avenue NE right-of-way. Rezones are Type IV proceedings in which the decision is made by the Council after recommendation from the Planning Commission, not by the Examiner. A Decision on a preliminary long subdivision application cannot tie the hands of the Type IV decision makers. The second half of the condition will be removed.
- E.4. Recommended Condition 11. The requirement that "lighting fixtures shall be the same or similar in character throughout the residential area" needs a minor, but important, clarification: The condition is intended to address external site lighting, not internal or even external-on-residences lighting. (Testimony) The modifiers "external site" will be added to remove any potential lack of clarity.
- E.5. Recommended Conditions 19 and 20. These conditions address two separate mid-block pedestrian crossings. Recommended Condition 20 expressly allows flexibility which is missing from Recommended Condition 19. Planning testified that the flexibility should be included in both conditions. The necessary changes will be incorporated to accomplish that objective and bring parallel construction to the two conditions.
- E.6. Recommended Condition 24. The Examiner declines to include the loading spaces "Administrative Deviation" in the Decision: The code does not authorize staff to approve such a deviation. The only vehicle known to the Examiner by which such a "deviation" could be initially considered by the

Examiner would be through a variance application under Chapter 14.70 DMC. The present consolidated application does not include any such application nor did the hearing notices indicate that the Examiner would be considering such an application. While the Examiner cannot rule on the request, it would be wrong to include its approval as a condition, implying that the Examiner accepted the Staff's action. The condition will simply be omitted.

- E.7. Recommended Condition 31. This condition, like Applicants-Proposed Condition 81, addresses Street "Y." As a starting point, the language addition proposed by the Applicants in Exhibit 53 is reasonable and will be included. However, restructuring the condition slightly will avoid the need to repeat the same new wording twice as now proposed by the Applicants.

Further, Applicants-Proposed Condition 81 is unnecessary as the Examiner has concluded that he lacks authority to determine whether Street "Y" must stub-out to the north property line. However, if prior to development of *Duvall Urban Village Division I* the City approves a development plan for the abutting property to the north which does not include a street stub on the Street "Y" alignment, then the developer of *Duvall Urban Village Division I* should not be required to provide the stub. (That only makes sense as it would be the same City officials making the decision on both properties: The most recent decision logically has to be considered as the controlling decision.) Recommended Condition 31 will be further modified to take that possibility into consideration.

- E.8. Recommended Condition 35. The minor change contained in Exhibit 53 will be incorporated into this condition.
- E.9. "Limitation on Preliminary Approval" statement. The Staff Report concludes with a paragraph explaining the approval limitations associated with preliminary subdivisions. The 2010 Washington State legislature amended the state law on which the cited DMC provision is based: The amendment extends the time in which a subdivision may be developed from five to seven years after preliminary approval. (The amendment includes a sunset clause reverting the language back on December 31, 2014.) The Examiner will add a footnote to apprise the reader of this change in state law.
- E.10. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 4 – 7, 9 – 23, 25 – 37, 38, 40, 42, 45 - 47, 49, 50, 53, 55 - 58, 61, 64, 66, 69, 70, and 76 - 80 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

## DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **APPROVES:**

- A. BLA 08-002.

- B. BLA08-003 **CONTINGENT UPON** approval by the City Council of the realignment of 3<sup>rd</sup> Avenue NE adjacent to the property subject to the BLA and dedication/deeding of the new right-of-way alignment so as to provide legal access to said right-of-way for both adjusted lots.
- C. The requested *Duvall Urban Village Division I* subdivision **CONTINGENT UPON** consummation of BLA08-002 and BLA08-003 (necessary to create the boundary of the property being subdivided) and **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued June 16, 2010.

\s\ John E. Galt (Signed original in official file)

John E. Galt  
Land Use Hearing Examiner

### **HEARING PARTICIPANTS**<sup>13</sup>

Bruce Knowlton	Walter Pedferri
Mark Flury	Michael Brooks
David Johnston (sworn counsel)	Ray Burhen
Marsha Martin (sworn counsel)	Larry Hobbs
Emmett Pritchard	Lara Thomas
Bruce Disend (sworn counsel)	Boyd Benson

### **NOTICE of RIGHT of RECONSIDERATION**

This Decision is final subject to the right of any party of record to file a written motion for reconsideration within 10 calendar days of the date this Decision was mailed to the parties. See DMC 2.30.240 for additional information and requirements regarding reconsideration.

### **NOTICE of RIGHT of APPEAL**

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of DMC 2.30.230

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<sup>13</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

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and 14.08.060(E). Any appeal must be filed within 21 days following the issuance of this Decision. See DMC 2.30.230 and 14.08.060(E) for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

**CONDITIONS OF APPROVAL**  
***Duvall Urban Village Division I***  
**SU08-001**

This preliminary long subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Duvall Municipal Code, standards adopted pursuant thereto, the Fire District #45, Public Works and Engineering, and Planning General Conditions as set forth in Exhibits 1a – 1c, and the following special conditions:

**General**

1. Exhibits 2 and 3 (a and b) are the preliminary plat (and associated master development plan) and boundary line adjustments, respectively, subject to conditions of approval.
2. Development shall occur as portrayed on the preliminary plat and as generally depicted on the conceptual master development plan.
3. The developer shall submit construction drawings consistent with the 2006 Duvall Comprehensive Plan, Duvall Municipal Code, Development Design Standards, and Fire District #45 requirements.
4. The developer shall comply with the Mitigated Determination of Nonsignificance dated March 3, 2010. (Exhibit 45)
5. A Development Agreement covering all the property within this preliminary subdivision shall be approved by the City Council pursuant to DMC 14.18.060 prior to submittal of the construction drawings. Subjects to be covered by said Agreement are beyond the scope of this Decision.
6. The existing CamWest development agreement (See Exhibit 25.) shall be revised by the City Council pursuant to DMC 14.18.060 prior to submittal of the construction drawings for the area east of the existing 3<sup>rd</sup> Avenue NE right-of-way to eliminate from its coverage all that property within this preliminary subdivision which lies to the east of the realigned 3<sup>rd</sup> Avenue NE corridor. Subjects to be covered by said revision are beyond the scope of this Decision.
7. Dedication of the new right-of-way location for 3<sup>rd</sup> Avenue NE shall be provided at the time of vacation of the existing 3<sup>rd</sup> Avenue NE right-of-way. The developer shall officially request right-of-way vacation/dedication of 3<sup>rd</sup> Avenue NE.

**Planning**

***General***

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8. The developer shall be allowed a maximum of 206 residential units and must provide a minimum of 143 residential units.
9. The combined commercial square footage for Lots 1, 2, 4, 5, and 81 as proposed is approximately 92,692 square feet. The combined commercial square footage for Lots 1, 2, 4, 5, and 81 shall be a minimum of 37,282 square feet.
10. The developer shall establish an Owner's Association. The developer shall submit the Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation for the Owner's Association to the Planning Department for review and approval prior to recording the final plat to the extent that it addresses those conditions specifically required to be included in the CC&Rs as conditions of plat approval.
11. The residential CC&Rs shall include the following requirements that shall apply to all residential lots: Landscaping shall be consistent, external site lighting fixtures shall be the same or similar in character throughout the residential area, fences shall be compatible in height and color, and other residential improvements shall be consistent within the project. The developer shall provide preliminary design concepts for review and comment prior to building permit application for single-family homes. Building design shall be consistent with DMC 14.34, Design Guidelines.
12. If the Tract 989 area does not meet open space requirements or the City Council does not approve the area as a park, the developer may request the area be treated as a separate lot/tract for which the developer may propose alternative uses, subject to compliance with City process and other applicable requirements.

***Sensitive Areas***

13. Prior to construction drawing approval, the developer shall submit a final wetland mitigation plan in accordance with the recommendations in the November 13, 2009, letter from the City's sensitive area peer review consultant, ESA Adolfson. (Exhibit 19)
14. In order for the trail within the sensitive area buffer to count towards the common open space requirement, the area shall also contain a small viewing area and/or seating area and interpretive signage, pursuant to DMC 14.64.240(D). The plans for the viewing/seating area and interpretive signage shall be submitted as part of the site plan review for Lot 3 and Tract 999. Access to the trail shall be provided from Lot 3 and the commercial Lots 1 and 2 proximate to the southwest extension of 3<sup>rd</sup> Avenue NE-Street "X".

***Landscaping***

15. The developer shall submit a final landscape plan consistent with DMC 14.38. A total of 3.22 acres of landscaped area is required outside of rights-of-way and sensitive area buffers. Temporary stormwater ponds shall be screened with 15 feet of Type V landscaping in accordance with DMC Table 14.38.090.

***Impervious Surfaces***

16. Covenants shall be included on the face of the final plat(s) indicating any reduced maximum allowable impervious surface for all residential lots and to put future residential purchasers on notice that future additions to residential structures and/or the addition of accessory structures may be limited or disallowed by the City due to impervious coverage limitations for the project and the amount of available detention volume within the stormwater vaults. These restrictions shall also be set out in the CC&Rs for the Owner's Association.

***Bus Stop***

17. Upon submittal of construction drawings, the developer shall contact Metro to discuss a potential location for a bus stop on NE Big Rock Road. The developer has no obligation to provide a bus stop or related facility. Any loss, due to provision of a bus stop or other facility voluntarily agreed to by the developer, of on-street parking spaces that the developer has currently proposed to count toward the required off-street parking spaces in the conceptual master plan shall be provided elsewhere.

***Site Plan Entitlement***

18. The developer shall apply for site plan entitlement for the multi-family residential lots (Lots 3 and 81-84), the commercial lots (Lots 1, 2, 4, and 5), and community park (Tract 989) before submittal of building permit applications on those lots.
19. At the time of site plan application for Lots 80 and 82, a 15-foot mid-block pedestrian pathway/access easement shall be provided approximately mid-point of these lots to provide pedestrian access through these lots from Street "V" to NE Big Rock Road, in accordance with DMC Figure 14.34.10 and Table 14.38.090, which require a 5 foot trail and 5 feet of landscaping on each side. The developer can request a reduction of up to 2 feet in width of the walkway in accordance with Chapter 14.34 DMC. No setback is required from edge of easement to adjacent development. The final site design shall be determined at the time of site plan review and design review of these residential lots.
20. At the time of site plan application for Lot 3, the developer shall modify the conceptual site plan for this lot in order to provide:
  - a. A 15-foot wide mid-block pedestrian pathway/access easement at approximately mid-point of the lot to provide pedestrian access from NE Big Rock Road to Street "X" in accordance with DMC Figure 14.34.10 and Table 14.38.090, which require a 5 foot trail and 5 feet of landscaping on each side.. The developer can request a reduction of up to 2 feet in width of the walkway in accordance with Chapter 14.34 DMC. No setback is required from edge of easement to adjacent development. The final site design shall be determined at the time of site plan review and design review of these residential lots.
  - b. Access to the midpoint of the trail in Tract 999.

21. At the time of site plan application for the commercial lots, the developer shall:
- a. Provide on-street parking stalls that are directly adjacent to the commercial use without crossing a street in order for these stalls to count toward the off-street parking requirement.
  - b. Consider proximity to the park on Tract 989 north of Lots 4 and 5 in designing and locating the plaza space for these lots to provide strong visual and physical connections.
  - c. Apply for an administrative deviation from DMC 14.34.052(H) if the developer chooses to provide/calculate the plazas aggregately for adjacent commercial buildings as shown on the proposed conceptual master plan,
  - d. Provide clear pedestrian connections within and to/from the commercial portions of the project to integrate the commercial development with the community park, common open space, residential development, and future development to the east.
  - e. Consider the visual impact of roof treatments, rooflines, and rooftop equipment for commercial buildings on Lots 4 and 5 due to the surrounding topography at the community park to the north and future college buildings to the east.
22. At the time of site plan application for Tract 989, the developer shall provide ten (10) on-street parking stalls on 3<sup>rd</sup> Avenue NE that are directly adjacent to the park without crossing the street. This parking requirement may also be met through the provision of parking stalls in Lots 4 and 5 (in addition to those required for the proposed commercial development), if developed prior to or concurrently with the park.

### ***Deviation Requests***

23. Administrative Deviation – Off Street Parking for Commercial Uses:

The City grants the requested administrative deviation to the commercial parking requirement as allowed under DMC 14.44.040(B), based on the mixed-use nature of the development. This deviation will compute the required off-street parking spaces at 1 space per 300 square feet for the entire commercial square footage. The City also grants an administrative deviation to allow up to 15 percent of the required off-street parking for commercial uses to be provided on the adjacent street, provided that the on-street parking stalls shall be directly adjacent to the commercial use without crossing a street.

24. Administrative Deviations – Common Open Space Slope and Dimensions:

In order to accommodate existing topography and to provide strategically located and readily accessible common open space areas which meet the design standards of DMC 14.34.050(A)(5)(b)(ii), the City grants the requested administrative deviation from the slope and dimension requirements for common open space. (DMC 14.34.050(A)(5)(b)(iii) and DMC 14.64.240(F) require that common open spaces be at least 25 feet wide; DMC 14.64.240(G) states that open space shall not have more than five percent grade, unless approved by the director.) At least 50 percent of the common open space area, however,

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shall have a grade of five percent or less. These areas shall be graded flatter than the existing topography and shall incorporate amenities such as an open lawn area, play structure, and a pedestrian/bicycle rest area. No common open space shall exceed 15 percent grade.

25. Administrative Deviation – Grassy Slopes:

In order to allow terraces for the proposed amphitheater, the City grants the requested administrative deviation to DMC 14.38.140(C) to allow grassy slopes in excess of a slope of 4H:1V. Since the City does not have the equipment to maintain/mow grass on slopes in excess of 3H:1V, the City will grant this deviation up to a maximum slope of 3H:1V within the amphitheater in order to provide for this unique park amenity. The granting of this deviation does not imply approval of the proposed park concept. The developer shall submit a feasible site design to City Council as part of the development agreement. The developer shall also apply for site plan approval of the community park in Tract 989 upon final plat approval/site plan approval of residential development north of NE Big Rock Road.

26. Administrative Deviation – Garage faces to exceed 50 percent of façade:

In order to provide the opportunity for side-by-side two-car garages in single-family homes on some small lots, the City grants the requested administrative deviation from DMC 14.34.050(A)(6)(a)(iv) to allow 75 percent of the lots within Lots 57-80 to have garages that occupy up to 75 percent of the ground level façade, if the Director determines that the visual mass of the garage is reduced through different building materials, additional modulation, and roof pitches.

27. Administrative Deviation – Less than 400 feet of separation between like models:

The City grants the requested administrative deviation from DMC 14.34.060(A)(2)(a)(ii) to allow any two of the same model and elevation of a home to be separated by a minimum of two homes, provided that the same model and elevation is not directly across the street, and different elevations of models incorporate different materials, window placement, porches, reversed floor plans, and different colors.

## **Public Works and Engineering**

### ***Roads***

28. NE Big Rock Road shall be designed and constructed as a Minor Arterial in accordance with Public Works Development Design Standards (Standards). The 79- to 83-foot wide right-of-way shall include vertical curb and gutter, 12-foot wide sidewalks within commercial areas or 5-foot wide sidewalks and 5-foot wide landscape strips within residential areas, two 11-foot wide travel lanes, 12-foot wide median with turn pockets, 5-foot bike lanes, and 7-foot wide parking lanes. The project shall include installation of a traffic signal and associated channelization at the 3<sup>rd</sup> Avenue NE intersection in accordance with the March 3, 2010, MDNS. Median, road, and channelization transitions will be required east and west of the project to provide smooth traffic transitions to the project.
29. A new 3<sup>rd</sup> Avenue NE alignment shall be constructed as a Collector Arterial west of the existing 3<sup>rd</sup> Avenue NE right-of-way. The 67- to 79-foot wide right-of-way shall include vertical curb and gutter, 10-foot wide sidewalks within commercial areas or 5-foot wide sidewalks and 5-foot wide landscape strips within residential areas, two 11-foot wide travel lanes, 12-foot wide turn lane at the NE Big Rock Road approach, 5-foot bike lanes, and 7-foot wide parking lanes. The road slope will be inclined at up to 12 percent to accommodate site topography and constraints in accordance with the Administrative Engineering Variance Request dated April 14, 2010. Access and channelization restrictions may be associated with the dedicated left turn lane at the NE Big Rock Road intersection depending on turn lane storage length.
30. Street "Y" shall be constructed as a collector arterial and extend from NE Big Rock Road to the north property line and the developer shall receive transportation impact fee credits for the Street "Y" right-of-way and road improvements. The 53-foot wide right-of-way shall include vertical curb and gutter, 5-foot wide sidewalks and 5-foot wide landscape strips, two 11-foot wide travel lanes, and 5-foot bike lanes. The developer's proposed road section does not include on-street parking. If prior to construction plan approval for Street "Y" the City Council removes Project 17 from the Capital Improvement Program or if the City approves a development plan for the property to the north which does not include a street stub to the south aligning with Street "Y", Street "Y" shall terminate at its intersection with Street "O," Street "Y" shall be constructed as a residential subcollector, Street "Y" shall not be eligible for Transportation Impact Fee credits, and the developer may add one additional residential lot north of Street "O."
31. Street "O" shall be constructed as a Residential Subcollector west of the 3<sup>rd</sup> Avenue NE alignment. The portion of the street east of 3<sup>rd</sup> Avenue NE may be constructed as a minimum ½ road improvement and shall be classified as a Neighborhood Collector based on the future access requirements as depicted in the proposed site plan for the CamWest development to the east of the project. The 53-foot wide right-of-way shall include vertical curb and gutter, 5-foot wide sidewalks and 5-foot wide landscape strips, two 10-foot wide travel lanes, and 6-foot wide parking lanes. Curb extensions shall restrict parking within 30 feet of a street intersection. The 30 foot restriction shall be measured from a projection of the lane edge or curb face. Curb extensions shall restrict parking within 10 feet of an alley intersection. The

10 foot restriction shall be measured from a projection of the alley pavement edge or curb face. A meandering sidewalk within a private tract owned and maintained by the Owner's Association may be located on the south side of the roadway west of 3<sup>rd</sup> Avenue NE to allow its incorporation into the common open space located in Tracts 988, 990, 996, and 997, if a public access easement is provided in accordance with the Administrative Engineering Variance Request dated March 11, 2010.

32. Street "V" shall be constructed as a Residential Subaccess Street. The 47-foot wide right-of-way shall include vertical curb and gutter, 5-foot wide sidewalks and 5-foot wide landscape strips, two 10-foot wide travel lanes, and parking on one side only as proposed. Curb extensions shall restrict parking within 30 feet of a street intersection. The 30 foot restriction shall be measured from a projection of the lane edge or curb face. Curb extensions shall restrict parking within 10 feet of an alley intersection. The 10 foot restriction shall be measured from a projection of the alley pavement edge or curb face.
33. Street "R" shall be constructed as a Residential Subcollector. The roadway may be constructed as a minimum ½ road improvement with a temporary cul-de-sac at the end of the roadway with a minimum 45-foot radius to accommodate future development to the east. The 55-foot wide right-of-way shall include vertical curb and gutter, 5-foot wide sidewalks and 5-foot wide landscape strips, two 10-foot wide travel lanes, and 6-foot wide parking lanes on both sides. Portions of the temporary cul-de-sac outside of the right-of-way shall be within an easement and temporary drainage and channelization measures shall be installed as part of construction. Curb extensions shall restrict parking within 30 feet of a street intersection. The 30 foot restriction shall be measured from a projection of the lane edge or curb face. Curb extensions shall restrict parking within 10 feet of an alley intersection. The 10 foot restriction shall be measured from a projection of the alley pavement edge or curb face.
34. Street "X" shall be constructed as a Private Residential Subaccess Street. The roadway improvements and associated limited common access elements will be privately owned and maintained by the Owner's Association in accordance with the Administrative Engineering Variance Request dated March 11, 2010. The roadway shall include vertical curb and gutter, 5-foot wide sidewalks and 5-foot wide landscape strips, two 10-foot wide travel lanes, and 6-foot wide parking lanes on one or both sides. The roadway includes limited common element access drives. The access drives associated with Street "X" shall be reviewed as part of the site plan review process. Curb extensions shall restrict parking within 30 feet of a street intersection. The 30 foot restriction shall be measured from a projection of the lane edge or curb face. Curb extensions shall restrict parking within 10 feet of an alley intersection. The 10 foot restriction shall be measured from a projection of the alley pavement edge or curb face.
35. Tract 992 shall be classified as a privately owned and maintained Private Access Tract serving a maximum of 4 units. The minimum tract width shall be 30 feet with a 20-foot travelway, and 0.5 dedicated guest parking stalls shall be provided per unit (2 stalls total based on 4 units) in dedicated pull-outs or other public parking locations distributed consistently within the tract in accordance with Standards §3-2.06.E. No parking will be allowed within the 20-foot wide travelway.

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36. Alleys shall be privately owned and maintained by the Owner's Association and shall provide a minimum of 16-feet of travelway. No parking will be allowed within alleys unless at dedicated parking areas outside of the travelway.
37. Install NE 140<sup>th</sup> Street (Old Big Rock Road) frontage improvements in accordance with City standards. Reduced frontage improvements adjacent to wetland buffers, including a minimum 20-foot wide travelway with full-width overlay and a minimum 4-foot wide concrete sidewalk with curb, gutter, and railing (as needed) within the existing roadway, will be allowed.
38. Commercial parking shall be provided as required by the DMC as modified by the approved variances. Any required parking lost due to channelization or other plan revisions shall be provided elsewhere on site.
39. The project includes relocation of the existing residential driveway located east of the site. The proposed driveway relocation shall be completed as part of this development and the grading and clearing limits adjusted accordingly. Access and grading constraints may require that the driveway access extend from the south end of the Street "R" temporary cul-de-sac.
40. Entering/exiting turning restrictions may be required at Lots 1, 2, 3, 4, and 5 and possibly elsewhere based on final median, turn lane, queuing, and sight distance restrictions.
41. An updated TIA shall be submitted, as necessary during construction drawing review, in connection with the site plan review approval issued by the Hearing Examiner for the commercial and multi-family residential lots and during construction review for the construction of the 3<sup>rd</sup> Avenue NE improvements. The updated TIA shall provide specific information as needed for these reviews which may include, but is not limited to, queuing information for roads and parking lots, channelization including storage lengths, evaluation of improvements for the 3<sup>rd</sup> Avenue NE/NE Big Rock Road intersection, and signalization of the intersection.
42. Transportation Impact Fee (TIF) credit up to, but not exceeding, TIF associated with development is available for roadways included in the TIP. The TIF credit may not exceed TIF associated with development and shall be based on the City's TIF cost and calculations method. TIF credit for dedicated 3<sup>rd</sup> Avenue NE right-of-way will not be available once the existing 3<sup>rd</sup> Avenue NE right-of-way is vacated. TIF credit is available for the following roadway improvements:
  - a. NE Big Rock Road.
  - b. 3<sup>rd</sup> Avenue NE.
  - c. Street "Y"/2<sup>nd</sup> Avenue NE Corridor (credit only available if improvements extend from NE Big Rock Road to the north property line to provide the required corridor).

***Clearing and Grading***

43. Internal temporary lot slopes may be steeper than 3H:1V (2H:1V maximum) based on an approved grading and TESC plan developed as part of the construction drawing review in accordance with the Administrative Engineering Variance Request dated March 11, 2010. All other slopes, including temporary slopes adjacent to neighboring properties and all permanent slopes, shall be less than or equal to 3H:1V.

### ***Variations***

44. Between the intersections with Street “V” and 3<sup>rd</sup> Avenue NE, the developer has requested an administrative engineering variance to allow a meandering sidewalk along the south side of Street “O”. This administrative variance request for meandering sidewalks is granted.

45. The developer has requested an administrative engineering variance from Standards §3-5.02 to allow temporary cut and fill slopes in excess of a 3H:1V slope. The preliminary grading shown on the preliminary plat drawings for the project includes temporary cuts and fills with slopes of 2H:1V. The City grants this administrative engineering variance for internal temporary lot slopes only in order to reduce erosion control issues with less earth disturbance and to reduce the truck trips entering and leaving the site. All other slopes, including those within slope easements on neighboring properties, shall be no steeper than 3H:1V. Adequate erosion control techniques for the temporary grading will be incorporated in accordance with DMC 14.38.140 and will include increased TESC (Temporary Erosion and Sediment Control) measures.

46. The developer has requested an administrative engineering variance to allow private stormwater vaults in private tracts. Portions of the Lot 3 vault are located beneath Private Street “X” because of topography, drainage path constraints, and the alignment of the Street “X”/Street “Y” intersection and NE Big Rock Road. A portion of the Tract 992 Vault is located beneath the access tract because of topography and drainage path constraints. These vaults shall be owned and maintained by the Owner’s Association and encumbered by an access easement and maintenance covenant to the benefit of the City of Duvall. The City grants this variance request.

47. The developer has requested an administrative engineering variance to allow for the use of Street “X” as a private street. The City has determined that the developer has met the variance criteria and the administrative variance is granted.

48. The developer has requested an administrative engineering variance to allow reduced intersection spacing along 3<sup>rd</sup> Avenue NE between NE Big Rock Road and Street “V”. 3<sup>rd</sup> Avenue NE is a collector arterial with a minimum intersection spacing of 300 feet according to Standards §3-2.10. The developer has demonstrated that the proposed 211-foot intersection spacing at this location provides sufficient stopping sight distance, vehicle storage length, and turning movement accommodations. The City has determined that the developer has met the variance criteria and the Administrative Variance Request for Intersection Spacing at Street “V,” submitted April 8, 2010, is granted.

49. The developer has requested an administrative engineering variance to allow up to a 12 percent longitudinal slope for 3<sup>rd</sup> Avenue NE for a distance of 260 feet. Based on the projected average daily traffic, the maximum allowable road grade for the 3<sup>rd</sup> Avenue NE collector arterial is 10 percent. However, Table 3-2.02, Note 3, of the Standards allows the maximum road grade to be exceeded for short distances (300 feet or less) when no practical alternative exists. Due to the existing topography of the site, the need for a landing at NE Big Rock Road, and a moderate grade at the western frontage of the commercial Lots 4 and 5, the City grants this administrative engineering variance to allow the road grade to transition to 12 percent for a short distance north of the commercial parking areas.

### ***Water***

50. Water mains served by the city water system shall extend across the full frontage of the property and shall be as set out in Mitigation Measure 4 in the SEPA determination dated March 3, 2010. The improvements shall include approved provisions for off-site water system expansion and improvement of deficiencies along the project frontage to mitigate modifications and impacts associated with the proposed development.

51. A preliminary evaluation has been completed to assess the available water pressure and flow for the project with respect to City requirements, fire requirements, and the most recent Comprehensive Water System Plan. Final evaluations shall be completed during construction drawing review if required for fire flow assessment by the City or Fire Department. Any improvements to provide the required water pressure and flow shall be completed by the developer as part of construction.

52. Water system improvements shall be completed to support the development. The existing 450-zone 10-inch diameter water main between NE Big Rock Road and NE 144<sup>th</sup> Place east of 3<sup>rd</sup> Avenue NE shall be rerouted as part of the project in accordance with the March 3, 2010, MDNS. The new water main shall include a 12-inch diameter section of main along 3<sup>rd</sup> Avenue NE from NE Big Rock Road to NE 144<sup>th</sup> Place. The new 12-inch diameter main shall originate upstream (east) of the existing PRV near the southeast corner of the site and the PRV lid revised to accommodate proposed site improvements. The new water main shall be connected to existing mains and services and fitted with appropriate valves and connections for future extensions. Additional water system improvements and/or extensions will be required if insufficient fire flow is available as provided in the SEPA determination.

53. The water system for the development shall be constructed of minimum 8-inch diameter ductile iron pipe and shall include air-vac, blow-off, and other appurtenances as required by the Public Works Department. A 12-inch diameter main shall be required on 3<sup>rd</sup> Avenue NE, and may be required on Street "Y", the Street "O"/Street "V" loop, and elsewhere if required for fire flow. The water system shall provide internal looping and circulation.

54. Fire hydrant locations shall be revised to provide a minimum of one (1) hydrant per intersection and additional residential and commercial coverage as required by the Standards. The number of water service and fire sprinkler taps shall be minimized by branching services as possible. Homes requiring

fire sprinklers shall be identified during construction drawing review and include additional required taps or branching.

### ***Sewer***

55. The sewer system shall be designed in accordance with the Standards, extend to the limits of the project, and shall include improvement of deficiencies along the project frontage and to the next downstream manhole to mitigate modifications and impacts associated with the proposed development.
56. The developer shall submit a sewer inspection video prior to performance and maintenance bond reduction or release.
57. Branched sewer side service shall be limited to a maximum of two homes. Conveyances serving more than two homes shall be constructed as a sewer main bounded at each end by sewer manholes.

### ***Storm Drainage***

58. The storm drainage system shall be designed in accordance with the Standards and the 2005 King County Surface Water Design Manual (KCSWDM). The storm system shall include approved provisions to provide for off-site stormwater system expansion and improvement of deficiencies along the project frontage to mitigate modifications and impacts associated with the proposed development.
59. A final Technical Information Report (TIR) shall be submitted during construction drawing review. The final TIR shall consider existing and future comments and address any downstream drainage issues or required improvements. The final TIR shall include any proposed provisions for reductions in maximum allowed impervious surface area.
60. Detention/water quality vaults shall be located within individual tracts or easements with associated building setbacks as required by the KCSWDM, the Standards, and the DMC. Vault B (Lot 3) may be located partially beneath private Street "X" and Vault D (Tract 992) may be located partially beneath private Access Tract 992 because of site and drainage constraints in accordance with the Administrative Engineering Variance Request dated March 11, 2010.
61. Removable vault panels (required for vaults with greater than 1,250 square feet of floor area) must be located outside of the travel lanes. Also, ventilation pipes located in the corners of the vault must be designed to accommodate H-20 traffic loading or preferably be located outside of the travel lanes.
62. Certification of as-built detention/water quality systems for each facility shall be provided and shall identify lots and other impervious areas served by each facility. Storm drainage for each lot shall be assigned to a specific stormwater facility.
63. Any temporary storm drainage ponds shall be designed and screened in accordance with the DMC and the Standards. Temporary ponds shall be removed and mitigated upon construction of permanent stormwater facilities.

64. The ownership, operation, and maintenance of stormwater facilities shall be the sole responsibility of the developer for the first two years of operation following final plat approval or until the stormwater facility maintenance bond is released, whichever is longer.
65. The ownership, operation, and maintenance of stormwater facilities shall be the sole responsibility of the Owner's Association, Commercial entity, or other private entity following approval and maintenance bond release. The developer shall submit language acceptable to the city during construction drawing review dictating how the Owner's Association, Commercial entity, or other private entity will take over ownership, operations, and maintenance of the private facilities, which language shall be included on the face and recorded as part of the final plat.
66. The City shall be granted an access easement for stormwater system inspection. Copies of the inspection and maintenance reports shall be submitted to the City annually on or before August 31st of each year to satisfy City and NPDES requirements. A stormwater system access and reporting agreement shall be developed and recorded prior to construction drawing approval.
67. The stormwater facilities shall successfully operate and shall remain free of defects in workmanship, materials, and design during the maintenance and performance bond periods. The developer shall clean the drainage system prior to the City's final inspection before the bonds are released. The City, at its sole discretion, has the right to demand prompt maintenance at the end of the bond periods to correct defects.

## **Fire**

### ***Hydrants***

68. New hydrants shall be installed by the developer at locations to meet the Standards.

### ***Access***

69. Any private road serving more than one residence shall be built to meet the Standards, shall be paved, and shall be at least 30 feet across. Exception: the access road may be as narrow as 20 feet across if one of the following conditions is met:
  - a. No portion of a served residence is more than 150 feet from a public road (at least 26 feet paved), measured along an approved pathway (reflecting how a fire hose would be extended).
  - b. Any served residence that does not meet the 150 foot requirement above shall have an approved automatic fire sprinkler system.

Based on this requirement, it appears that the residence on Lot 79 will have to be protected by an approved automatic fire sprinkler system.

70. Any residence accessed only by an alley shall have an approved automatic fire sprinkler system. Exception: No portion of a served residence is more than 150 feet from a public road (at least 26 feet

paved), measured along an approved pathway (reflecting how a fire hose would be extended). Based on this requirement, it appears that residences on Lots 34-43 will have to be protected by an approved automatic fire sprinkler system.

71. Any roads with an emergency vehicle drivable width (capable of supporting 25 tons) of less than 30 feet shall be posted "No Parking" on one side. Any roads with an emergency vehicle drivable width (capable of supporting 25 tons) of less than 26 feet shall be posted "No Parking" on both sides.
72. The developer shall provide a turnaround as defined in the Standards at the south end of Street "R."
73. Cul-de-sacs with less than 90-foot paved diameter (curb to curb) shall be signed "No Parking".
74. Required Fire Access Roads shall be constructed to a minimum of 20 feet wide with 13 feet 6 inches height clearance. They shall have a load capacity of 25 tons and be marked as a "Fire Lane" per City of Duvall standards. All turn radii shall be adequate for access by a ladder truck.

### ***Townhomes***

75. If buildings fall under the townhouse definition (IRC Rf202 defines Townhouse as "a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with open space on at least two sides".) and together are greater than 5,000 square feet, an approved automatic sprinkler shall be required. Most, if not all, of the multi-family residential units will require approved supervised automatic sprinklers.

### ***Commercial Buildings***

76. An approved supervised automatic sprinkler system is required in all new commercial buildings greater than 5,000 square feet. If a fire department connection is required, all openings will be provided with a Knox FDC Plug.
77. An approved Monitored Detection System is required pursuant to DMC 10.01 in all new buildings.
78. The developer shall provide and install an approved Knox key box in location(s) to be approved by the Fire Department.

### ***Fire Protection During Construction***

79. When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. (2006 International Fire Code 501.4)

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Final plat approval must be acquired within five years of preliminary approval, after which time the preliminary subdivision approval is void.<sup>14</sup> The Examiner may grant an extension for one year if the applicant has attempted in good faith to submit the final subdivision within the five-year time period; provided, however, the applicant must file a written request with the Examiner requesting the extension at least thirty (30) days before expiration of the five-year period. [DMC 14.66.060(D)]

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<sup>14</sup> Chapter 79 , 2010 Laws, Washington State Legislature, amends RCW 58.17.140, effective June 10, 2010, to extend the time period within which a preliminary subdivision must be recorded from five to seven years.