



## NOTICE OF DECISION

**Project Name: Collins Reasonable Use and Boundary Line Adjustment Review (RU18-001 BLA-002)**

**Project Location:** 26474 NE 143rd Place in Duvall, Washington 98019

**To all parties of record:** The Hearing Examiner issued a Decision on **October 21, 2020** granting:

A. Approval of the requested: Reasonable Use and Boundary Line Adjustment subject to conditions.

This approval is based upon the Hearing Examiner's Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing held on May 21, 2020.

This decision will become final and effective: **November 11, 2020** unless an appeal is filed.

The Hearing Examiner's decision is appealable to King County Superior Court by the applicant or any Party of Record and must be submitted within 21 calendar days after the decision. Appeals are subject to DMC 14.08.

**Appeal Closing Deadline:** November 11, 2020

**Application Submittal Date:** May 1, 2018

**Notice of Complete Application:** December 28, 2018

**Days to Hearing:** 237

**Days to Decision:** 239

**Threshold Determination Issued:** January 14, 2020

**Date of this Notice:** October 21, 2020

**Attachments:**

- Hearing Examiner Findings of Fact, Conclusions of Law, and Decision – Issued June 16, 2020.

**Notice:** Per RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

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

**DECISION**

FILE NUMBERS: RU18-001; BLA18-002

APPLICANT: Cynthia Collins, as Successor Trustee of The Beverly J. Ryan Decedent's Trust  
11015 Geneva Ford Drive  
San Antonio, TX 78254

TYPE OF CASE: Consolidated: 1) Reasonable Use Exception; and 2) Boundary Line Adjustment

STAFF RECOMMENDATION: Approve both applications subject to conditions

EXAMINER DECISION: GRANT Reasonable Use Exception, APPROVE Boundary Line Adjustment, both subject to consolidated conditions

DATE OF DECISION: October 21, 2020

**INTRODUCTION <sup>1</sup>**

Cynthia Collins, as Successor Trustee of The Beverly J. Ryan Decedent's Trust ("Collins"), seeks a Reasonable Use Exception <sup>2</sup> ("RUE") and a Boundary Line Adjustment ("BLA") to make possible construction of a single-family residence on each of two abutting lots which are heavily encumbered with a large wetland and its required buffer.

Collins filed Master Permit, RUE, and BLA Applications on November 27, 2018. (Exhibits 2 - 4 <sup>3</sup>) The Duvall Planning Department ("Planning") deemed the applications to be complete when filed. (Testimony) Planning issued a Notice of Application on January 8, 2019. (Exhibit 20)

The subject property is composed of two abutting acreage parcels on the south side of NE 143<sup>rd</sup> Place. The assigned addresses for the parcels are 27027 and 27043 NE 143<sup>rd</sup> Place. Their Assessor's Parcel Numbers are 7325800130 ("Lot 13") and 7325800140 ("Lot 14"), collectively referred to as the "Ryan Trust Property." (Exhibit 2)

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<sup>1</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>2</sup> Exhibit 1 consistently uses the word "Exemption." City code uses the word "Exception." The Examiner will use City code terminology.  
<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 Duvall Land Use Hearing Examiner (“Examiner”) viewed the Ryan Trust Property on September 22, 2020.

The Examiner held an open record hearing on October 19, 2020. The hearing was conducted remotely using the “Zoom” platform due to assembly restrictions attendant to the current COVID-19 pandemic. Planning gave notice of the hearing as required by the Duvall Municipal Code (“DMC”). (Exhibits 35 - 37)

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

Exhibits 1 - 41: As enumerated in Exhibit 1, the Departmental Staff Report

The Examiner held the hearing record open for up to 11 days (October 30, 2020) to allow City staff and Collins to discuss frontage improvement-related proposed conditions. Documents resulting from those discussions could be entered into the record during that period. The following documents are entered under that authority:

Exhibit 42: Memorandum, Public Works to Collins, October 19, 2020, filed October 20, 2020  
Exhibit 43: E-mail string, Collins-Polanco-Hearing Examiner, October 20, 2020 (Concurrence with and transmittal of Exhibit 42), filed October 20, 2020

The record closed on October 20, 2020, with receipt of Exhibit 43.

Section 14.08.020(G) DMC generally requires that decisions on preliminary subdivisions be issued within 90 days of application completeness and that decisions on all other applications which require a quasi-judicial hearing be issued within 120 days of application completeness. The Examiner’s hearing was held on or about day 237. (Exhibit 1, p. 2) Collins agreed to allow an extension of the 120-day review period as permitted by DMC 14.08.020(H)(2). (Exhibit 27)

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.

## FINDINGS OF FACT

1. The Ryan Trust Property consists of Lots 13 and 14 in the *Rio Vista Ranchettes*, a 1968 large-lot subdivision. Together they have approximately 362 feet of frontage on the south side of NE 143<sup>rd</sup> Place, one (acreage) lot west of 272<sup>nd</sup> Place NE. Their north-south dimension varies from 520 feet to 483 feet. Lots 13 and 14 are side-by-side along the south side of NE 143<sup>rd</sup> Place. Lot 13, the westerly of the two lots, contains 2.04 acres; Lot 14, the easterly lot, contains 2.1 acres. (Exhibits 6; 7, 4<sup>th</sup> and 5<sup>th</sup> unnumbered pages after p. 9; 9)

2. Lots 13 and 14 used to be owned by George and Beverly Ryan. In 1991 they established The George N. Ryan and Beverly J. Ryan Revocable Living Trust and placed Lots 13 and 14 into the Trust. When Beverly Ryan passed in or around 1998, her portion of the original trust passed to The Beverly J. Ryan Decedent's Trust, of which George Ryan was the Trustee; at about the same time, George transferred all of the original Trust's interest in Lots 13 and 14 to The Beverly J. Ryan Decedent's Trust, making that Trust sole owner of Lots 13 and 14. (Exhibit 7, 2<sup>nd</sup> and 3<sup>rd</sup> unnumbered pages after p. 9)

George passed in 2010; Cynthia Collins is the Successor Trustee of that Decedent's Trust. Collins, as Trustee, is working to dispose of all the properties in the Trust so that the estate may be closed and the proceeds distributed to the heirs. Lots 13 and 14 are the last lots in the Trust. Collins will not be developing the Ryan Trust Property. (Testimony)

3. The Ryan Trust Property is part of a substantial area of Duvall which is zoned R8. (Exhibit 38) The R8 zone is a residential zone which calls for a development density between 6 and 8 dwelling units per acre. The minimum allowed lot size is 4,000 square feet ("SF"). The maximum floor area ratio ("FAR") is 50%. <sup>4</sup> (Exhibit 1, p. 6, citing DMC Table 14.12.080.C) Planning has waived the minimum density requirement due to the extensive wetland and buffer which encumber both lots. (Exhibit 40)
4. The Ryan Trust Property is undeveloped and essentially undisturbed. Lot 13 is almost entirely encumbered by a portion of a large Category III wetland. That wetland also encumbers approximately the southern quarter of Lot 14 and continues off-site to the east, south, and west. The DMC requires a 105-foot buffer plus a 10-foot building setback from the outer edge of that wetland. The required buffer encumbers the remainder of Lots 13 and 14 except for a small irregular area in the northeast corner of Lot 14. (Exhibits 12; 13)
5. The wetland exhibits a dense forested and scrub-shrub plant community. (Exhibit 12)  
  
The non-wetland buffer areas of the Ryan Trust Property are also densely wooded. (Exhibits 13 – 16)
6. The extent of the wetland and its required buffer renders Lot 13 completely unbuildable due to wetland and wetland buffer restrictions and leaves only a small area in the northeast corner of Lot 14 not restricted from development. (Exhibit 13) However, there are several "exceptional" trees located in and immediately adjacent to that northeast corner area whose critical root zones would be harmed were that small area to be developed. (Exhibits 15 – 17)
7. Collins and her consultants worked with City staff and its consultants to develop a plan that would preserve two legal lots with one building site for each lot while minimizing wetland, wetland buffer,

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<sup>4</sup> "Floor Area (gross)—Residential' means the maximum permitted gross floor area allowed, expressed as a percentage of the lot size (gross floor area/lot size = FAR). FAR calculations exclude garages and basements." [DMC 14.06.060 – F Definitions]]

and “exceptional” tree impacts. The result of that effort is a BLA as depicted on Exhibit 9, an RUE site plan as depicted on Exhibit 8, and a tree retention/protection plan as depicted on Exhibit 15, Alternative 3. (Exhibits 1; 12; 15; 16; 17; 18; 19)

The proposed BLA rotates the common boundary between Lots 13 and 14 90°, from a north-south line to an east-west line. A 20-foot wide access and utilities easement, which includes a chicane so that it avoids the “exceptional” trees in the northeast corner of Lot 14, provides access from NE 143<sup>rd</sup> Place across the northern lot (“Lot A”) to the southern lot (“Lot B”). Maintenance of the shared driveway within the easement will be shared by the owners of Lots A and B. Lot A will contain 1.50 acres and Lot B will contain 2.65 acres. (Exhibit 9)

The RUE site plan provides one 5,505 SF buildable area within Lot A and one 5,303 SF buildable area within Lot B. The most northern tip of Lot A’s buildable area will be some 50 feet south of the NE 143<sup>rd</sup> Place right-of-way. Storm water runoff from each buildable area will be fully dispersed into the wetland buffer west of the buildable areas. The remainder of Lots A and B outside of the buildable areas and the access easement will be subject to Native Growth Protection Easement (“NGPE”) restrictions. A draft of those restrictions requires that vegetation (except for dead or dying vegetation) within the NGPE must remain undisturbed in perpetuity. On-site mitigation for loss of part of the wetland buffer (no impact to the actual wetland is proposed) is not possible as the buffer is composed of a satisfactory mix and density of native vegetation. Therefore, credits within an established wetland mitigation bank will be purchased. (Exhibits 1; 8; 10; 19; and testimony)

The tree retention plan preserves all trees within the wetland and its buffer except for two non-viable trees near NE 143<sup>rd</sup> Place and trees within the easement. Trees within the two small development areas will have to be removed in order for residences to be built. Forty coniferous trees will be planted along the western edge of the Ryan Trust Property as compensation for those removed within the two development areas. (Exhibits 1, pp. 7 – 9, § III.B.4; 8; 15, Alternative 3)

8. Duvall’s State Environmental Policy Act (“SEPA”) Responsible Official issued a Mitigated Determination of Nonsignificance (“MDNS”) on July 23, 2020. (Exhibit 24) The MDNS was not appealed.<sup>5</sup> (Exhibit 1, p. 13, § IV.7) Mitigation measures within the MDNS require purchase of credits in the Snohomish Basin Wetland Mitigation Bank, require stormwater control to meet current standards, require use of low impact development measures, limit the size of the two development areas as stated above, and limit light “trespass” onto the NGPE, plus other requirements. The mitigation measures within the MDNS are effectively conditions of approval.
9. The City staff recommends approval subject to seven conditions from Planning, 18 conditions from Public Works, and one condition from the Fire Marshal. (Exhibit 1, pp. 14 – 18)

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<sup>5</sup> The right to an administrative appeal of SEPA threshold determinations is optional at local government discretion. [WAC 197-11-680(3)(a)] Duvall has legislatively elected to provide for local administrative appeal of threshold determinations associated with Type I and II applications, but not those associated with Type III – VI applications. [DMC 14.08.060(C)]

Collins raised concerns about the wording of several Public Works recommendations associated with frontage improvements and related matters. Collins was concerned about the lack of specificity and time-of-performance aspects of Public Works Recommended Conditions 1, 2, and 9. The primary area of concern was the timing of required improvements, especially given that The Ryan Trust will not be developing either lot. (Testimony) The Examiner left the hearing record open so that Collins, her consultants, and City staff could seek agreement on the areas of concern.

10. The result of that post-hearing process is Exhibit 42, a memorandum from Public Works to Collins, filed on October 20, 2020. Collins agrees with the clarified wording of Public Works Recommended Conditions 1, 2, and 9 as contained in Exhibit 42. (Exhibit 43)

The revisions link clearing and grading to issuance of building permits for either Lot A or Lot B,<sup>6</sup> link completion of frontage improvements to occupancy of residences on Lots A and B, and clarify the nature of limited frontage improvements designed to minimize impacts to the sensitive areas on and adjacent to the Ryan Trust Property. (Exhibit 42)

11. No testimony or evidence was entered into the record by the general public in opposition to the application. One neighbor sought and received information during the hearing about the future development potential of the Ryan Trust Property. The witness's concerns were allayed upon learning that the NGPE would prevent further development in perpetuity. (Testimony)
12. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### **LEGAL FRAMEWORK <sup>7</sup>**

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

#### Authority

An RUE is a Type III, quasi-judicial application; a BLA is a Type I, administrative application. Collins opted to consolidate both applications for processing. (Testimony) When consolidated, both are processed as Type III applications. Type III applications are 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]

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,

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<sup>6</sup> The Memorandum refers to the lots after BLA approval as "Lot 1" and "Lot 2." (Exhibit 42) The actual proposed BLA refers to the lots after BLA approval as "Lot A" and "Lot B." (Exhibit 9) The Examiner will use the labelling from the actual proposed BLA.

<sup>7</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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

#### *Reasonable Use Exception*

The review criteria for an RUE are set forth at DMC 14.42.070(B):<sup>8</sup>

Reasonable Use Exception. If the application of the sensitive area regulations would deny all reasonable use of the property; development may be allowed if the development is consistent with the general purposes of the sensitive area regulations, is in the public interest, and a hearing examiner approves a reasonable use permit. To approve a reasonable use the city must find that the proposal is consistent with all of the following criteria:

1. There is no portion of the site where the provisions of the sensitive area regulations would not allow reasonable economic use, without a reasonable use permit, including agricultural use or continuation of legal nonconforming uses;

2. There is no feasible on-site alternative to the proposed use or activities that will provide reasonable economic use, including location on any contiguous parcel that has been under the ownership or control of the applicant since the effective date of this chapter; other allowed uses; continuation of legal nonconforming uses; reduction in size, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to sensitive areas and associated buffers;

3. The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and/or creating the condition of lack of use after the effective date of this chapter;

4. All reasonable methods to avoid or reduce adverse effects on sensitive area functions and values have been employed, including locating activities as far as possible from sensitive areas and design that will result in the minimum alteration of sensitive areas and associated buffers, existing topography, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions. Where both sensitive areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the sensitive area;

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<sup>8</sup> The Staff Report states:

Criteria for Reasonable Use [Exceptions] are listed in both DMC Chapter 14.74 (Reasonable Use [Exception]) and within Section 14.42.070.B of DMC Chapter 14.42 (Sensitive Area Regulations). Staff evaluated the proposal for conformance with the Reasonable Use [Exception] criteria of Section 14.42.070.B because [those] criteria [were] more comprehensive [than] the criteria set forth in Chapter 14.74 and [are] the most recent criteria adopted by the City.

(Exhibit 1, p. 11, § III.B.8) The Examiner concurs.

5. The project includes compensatory mitigation for unavoidable sensitive area and buffer impacts in accordance with the mitigation requirements of this chapter;
6. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the State of Washington, or be inconsistent with an adopted recovery plan;
7. The proposed activities will not result in damage to nearby public or private property and are not a threat to the health or safety of people on or off the site;
8. The proposed activities will not lead to degradation of groundwater or surface water quality and will comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal.

#### *Boundary Line Adjustment*

The review criteria for a BLA 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.

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)]

### Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

Neither RUE nor BLA applications are the subject of any state vesting statute. If Duvall had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law.

Under the most current case law, there is no vesting for RUE or BLA applications because there is no statutory provision providing vesting for such applications.<sup>9</sup>

### 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

1. The BLA and the RUE are deeply intertwined: A BLA would not be required were it not for the City’s critical areas regulations which render development of Lots 13 and 14 as they currently exist effectively impossible; the need to minimize critical area impact in order to comply with RUE criteria drives the configuration of the BLA. Each component of this consolidated application has a

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<sup>9</sup> Statutory vesting exists for subdivision applications. [RCW 58.17.033] By definition, a BLA is not a subdivision because it does not create any new lots. Therefore, subdivision vesting does not apply to BLA applications.

lengthy list of approval criteria. Compliance with those criteria will be addressed separately, beginning with the RUE.

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

*Reasonable Use Exception Approval Criteria*

3. The Collins proposal complies with RUE Criterion 1. The RUE process is a regulatory tool, found in most municipal codes, designed to avoid a “regulatory taking.” The concept is to allow at least minimal economic use of a parcel which would otherwise be undevelopable because of regulatory limitations. The Ryan Trust Property is a quintessential example of property which deserves approval of an RUE: Given the site characteristics and the provisions of the City’s critical areas regulations, neither Lot 13 nor Lot 14 could be developed for anything, much less at the established minimum density of 6 dwelling units per acre. Here, the minimal economic use is one single-family residence on each acreage parcel.
4. The Collins proposal complies with RUE Criterion 2. The collaborative process that led to Exhibit 15, Alternative 3, exemplifies the concept of minimizing impact to the critical areas. The proposal totally avoids impact to the wetland itself, keeps impact to the wetland buffer limited to the outer edges of the buffer, minimizes the size of the buildable areas to minimize impact to the buffer, and avoids harm to as many “exceptional” trees as possible, including some on the property to the east.
5. The Collins proposal complies with RUE Criterion 3. The inability to develop either Lot 13 or 14 under current regulations is not the fault of Collins. *Rio Vista Ranchettes* was platted over 50 years ago, long before current critical areas regulations were enacted. Lots 13 and 14 have remained undeveloped ever since.
6. The Collins proposal complies with RUE Criterion 4. The collaborative process that lead to Exhibit 15, Alternative 3, exemplifies the concept of minimizing impact to the critical areas. The proposal totally avoids impact to the wetland itself, keeps impact to the wetland buffer limited to the outer edges of the buffer, minimizes the size of the buildable areas to minimize impact to the buffer, and avoids harm to as many “exceptional” trees as possible, including some on the property to the east.
7. The Collins proposal complies with RUE Criterion 5. On-site buffer impact mitigation is not possible since the part of the buffer that will be protected by the NGPE does not need enhancement. Therefore, some form of off-site mitigation is required. Collins will be purchasing credits from an established wetland mitigation bank.
8. The Collins proposal complies with RUE Criterion 6. No evidence exists in the record of any “adverse effects on endangered or threatened species as listed by the federal government or the State of Washington”. Nor is there any evidence of any “adopted recovery plan” involving the Ryan Trust Property.

9. The Collins proposal complies with RUE Criterion 7. The proposal will not damage nearby public or private property. On the contrary, the proposal has been designed to avoid adverse impact to abutting property.
10. The Collins proposal complies with RUE Criterion 8. The proposal has been designed to and will be conditioned to comply with all current stormwater control regulations.

*Boundary Line Adjustment Approval Criteria*

11. The Collins proposal complies with BLA Criterion 1. The subdivision exemption requirements of RCW 58.17.040(6) read in full as follows:

A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

The proposed BLA is between two platted lots, does not create any additional lot(s), and results in two lots, each of which not only meet the dimensional and area requirements of the R8 zone, but which contain a buildable area.

12. The Collins proposal complies with BLA Criterion 2. There are two lots now; there will be two lots after the BLA.
13. The Collins proposal complies with BLA Criterion 3. The BLA will result in two lots with new legal descriptions. There will be no third legal description.
14. The Collins proposal complies with BLA Criterion 4. The lots as adjusted will more than meet the minimum dimensional and lot area requirements of the R8 zone.
15. The Collins proposal complies with BLA Criterion 5. Both resulting lots will have legal access via the 20-foot wide access easement.
16. The Collins proposal complies with BLA Criterion 6. The record contains no evidence of any “requirement or condition of a previous land use action, subdivision, short subdivision or binding site plan” affecting The Ryan Trust Property.
17. The Collins proposal will be conditioned to comply with BLA Criterion 7. Criterion 7 is a requirement to be met after approval of a BLA, not before approval. Recommended Planning Condition 5 (Exhibit 1, p. 15) requires fulfillment of this requirement.

*Other Matters*

18. The proposal passes the “consistency” test: Single-family residences are a permitted use in the R8 zone; the allowable density of development will not be altered by the BLA (in fact, the resulting

density will be far below the code-permitted maximum due to the extensive wetland and buffer encumbrance of the Ryan Trust Property); there is no evidence of inadequate infrastructure; the character of these lots will remain more rural than any of the surrounding lots due to the extensive wetland and buffer encumbrance of the Ryan Trust Property.

19. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
- A. As presented, the recommended conditions have overlapping numbering: Planning Conditions 1 – 7 and Public Works/Fire Conditions 1 – 19. Duplicate numbering is not desirable and will, therefore, be eliminated.
  - B. Recommended Planning Condition 2. This condition references only the RUE. The Examiner believes that future building permits should conform to both the RUE and the BLA. The condition will be augmented accordingly.
  - C. Recommended Public Works Conditions 1, 2, and 9. The revised wording of these three recommended conditions in Exhibit 42 is a substantial improvement in clarity, timing intent, and extent of expected frontage improvements. Since Collins and Public Works developed the wording in Exhibit 42 through negotiation, the Examiner accepts the wording as proposed except that the BLA lots will be referred to as “Lot A” and “Lot B,” not “Lot 1” and “Lot 2.”
  - D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Planning Condition 7 and Recommended Public Works Conditions 1 (Revised), 2 (Revised), and 17 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:

- A. **GRANTS** the requested Reasonable Use Exception; and
  - B. **APPROVES** the requested Boundary Line Adjustment,
- both **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued October 21, 2020.

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

John E. Galt  
Land Use Hearing Examiner

**HEARING PARTICIPANTS**<sup>10</sup>

Wesley Collins  
Troy Davis  
Thomas Marshall

Tom Redding  
Larissa Polanco  
John Altmann

**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 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.”

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<sup>10</sup> The official Parties of Record register is maintained by the City’s Hearing Clerk.

**CONDITIONS OF APPROVAL  
RU18-001 & BLA18-002  
THE RYAN TRUST PROPERTY**

This consolidated Reasonable Use Exception and Boundary Line Adjustment are subject to compliance with all applicable provisions, requirements, and standards of the Duvall Municipal Code, standards adopted pursuant thereto, and the following special conditions:

FROM PLANNING

1. Building permits shall conform to all applicable requirements of DMC Tile 14, Design Standards, and the City's 2015 Comprehensive Plan.
2. Building permits shall be in substantial conformance with the conditions of this Reasonable Use Exception Permit and Boundary Line Adjustment.
3. The Hearing Examiner's Final Decision shall be recorded with King County against Lot A and Lot B following the recording of the Boundary Line Adjustment.
4. **Exhibit 8** is the approved **Reasonable Use Exception Site Plan** subject to the following conditions:
  - a. The building envelope shown on each lot shall also reflect applicable Critical Root Zones from retained trees.
  - b. The location and species of replacement trees shall be identified on the site plan submitted with the building permit for each lot and not on the Reasonable Use Exception Site Plan as currently shown.
  - c. Once the above conditions for Exhibit 8 are met, as determined by the City, the Applicant shall record the Reasonable Use Exception Site Plan with King County against each lot following the recording of the Boundary Line Adjustment.
5. **Exhibit 9** is the approved Boundary Line Adjustment subject to the following conditions:
  - a. The Applicant shall provide the Boundary Line Adjustment, in a form acceptable to the King County records office, to the City for signatures.
  - b. Once the Applicant has obtained City signatures on the Boundary Line adjustment, the Applicant shall be responsible for recording the Boundary Line Adjustment with King County.

- c. Once the Applicant has recorded the Boundary Line Adjustment, all adjusted lot lines shall be surveyed, and newly established lot corners staked.
6. **Exhibit 12** is the approved Wetland Delineation subject to the following condition:
  - a. The Wetland Delineation shall be recorded with King County against each lot.
7. **Exhibit 15, Alternative 3, and Exhibit 16** are the approved Tree Protection Plan subject to the following conditions:
  - a. All Significant Trees to be removed shall be replaced at a 1:1 ratio and all Exceptional Trees to be removed shall be replaced at a 3:1 ratio on a lot by lot basis.
  - b. The location, species, and size of all replacement trees shall be identified on the site plan submitted for building permit.
  - c. Replacement trees shall be monitored by the property owner for a period of five years in accordance with DMC 14.40.090.
  - d. The Critical Root Zones and Inner Critical Root Zones shall be shown on the site plan submitted with Building Permit.
  - e. No structure (except for a fence) shall be constructed within an Inner Critical Root Zone.
  - f. All areas where work will occur within a Critical Root Zone shall be identified. Arborist oversight and approval shall be required for all work done within the Critical Root Zones of retained trees.
  - g. Tree Critical Root Zones and tree protection fencing shall be included in the building permit plans with the tree protection specifications referenced.
  - h. Prior to land clearing, tree protection fencing shall be located outside of all Critical Root Zones and silt fencing shall be located on the outside of all tree protection fencing. Hog fuel or wood chip mulch at an eight-inch depth shall be utilized for TESC where needed in areas behind tree protection fencing.
  - i. A full set of details and specifications for tree protection measures in accordance with the requirements of DMC 14.40.080 shall be provided.

FROM PUBLIC WORKS/ENGINEERING

**General**

8. Prior to building permit issuance for either Lot A or Lot B created by BLA 18-002, a Clear and Grade permit shall be required to complete utilities and mass grading improvements to accommodate these single-family lots. The Clear and Grade permit work must be completed prior to final occupancy of the first lot submitted.
9. Prior to occupancy of single-family homes on Lot A and Lot B of BLA18-002, frontage and road improvements shall be completed. Any improvements within the right-of-way (ROW) will require a ROW use permit and “construction drawings” for City review detailing frontage improvements required that satisfy the City’s obligations for the project. Construction of home building and frontage improvements may be completed concurrently with Public Works Director approval.
10. Construction plans shall be developed in accordance with the Public Works Development Design Standards (PWDDS), as amended, Duvall Municipal Code (DMC), King County Fire District #45 requirements, SEPA Determination (Exhibit 24).
11. As-builts with NAVD 1988/NAD 83 datum shall be provided, reviewed, and approved prior to Street Performance Bond release. As-builts shall include all frontage improvements and shall be provided in Mylar and electronic formats upon approval by the City Engineer.
12. All utility connections shall be located below ground and be brought to the project site underground. All overhead utilities and utility poles along the frontage shall be removed and replaced with underground utilities to the nearest off-site pole consistent with DMC 14.66.050(J) and PWDDS.
13. Mailbox units (MBU’s) shall be installed as part of the building permit. Coordinate with the Post Office and Public Works on placement.
14. If moisture sensitive soils are present at the site soil admixtures, such as kiln dust, fly ash, or cement will not be allowed without a City-approved application and monitoring plan along with any other associated Washington State Department of Ecology requirements.
15. Payment of recovery contract fees may be required prior to water and sewer service tie-in.

**Roads**

16. Frontage improvements shall include a minimum 11-foot travel lane, drainage, curb/gutter and sidewalk in accordance with PWDDS. Staff support changes to the frontage improvements required and they may be modified by the City Engineer. Sensitive area minimization is supported by Public Works to reduce impacts to trees and sensitive areas as supported by the DMC.

17. Frontage improvements on NE 143<sup>rd</sup> Place are eligible for Traffic Impact Fee credit. Credits will be determined by the City Engineer prior to building permit issuance.
18. All road pavement sections shall include a minimum 2-inch thickness overlay of ½” HMA over a 4-inch thickness of ½” HMA over and a 12-inch thickness of crushed rock over suitable firm and unyielding subgrade or compacted structural fill.
19. All curb/gutter and sidewalk shall be underlain by a minimum 6-inch thickness of crushed rock over suitable firm and unyielding subgrade or compacted structural fill per PWDDS.

***Water***

20. Water service and required fire sprinkler taps to the main line shall be minimized by branching services as possible and installed in accordance with PWDDS.
21. Fire sprinkler system requirements shall be determined prior to building permit issuance.

***Sewer***

22. Sewer services shall be installed in accordance with PWDDS.

***Storm Drainage***

23. All surface and stormwater management shall comply with the most recent version of the King County Surface Water Design Manual and city requirements.
24. All lot-specific Low Impact Development (LID) Best Management Practices (BMPs) shall be recorded on individual lot title that the LID BMP is the homeowners responsible to keep and maintain and shall not be removed, modified, filled or used for any other purpose than the design intent. It shall be the responsibility of the applicant to disclose this maintenance obligation to the future homeowner at sale.
25. Any stormwater improvements in the right-of-way shall successfully operate and shall remain free of defects in workmanship, materials, and design during the maintenance and defect bond periods. The applicant shall clean the drainage system prior to the City’s final inspection and before the bonds are released.

**FROM FIRE DEPARTMENT**

26. 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 residential and/or commercial building construction.

LAND USE HEARING EXAMINER DECISION  
RE: RU18-001 & BLA18-002 (Collins Property RUE & BLA)  
October 21, 2020  
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