

**DOUGLAS COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

140 19<sup>th</sup> Street NW  
East Wenatchee, WAS 98802-4109

**BEFORE THE DOUGLAS COUNTY HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
P-2021-03	)	<b>DECISION AND</b>
Downes – Wiggins Cluster Subdivision	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 19, 2021, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. FINDINGS OF FACT**

1. The applicant is Mark Wiggins, 2025 N. Stagecoach Dr., Post Falls, ID 83854.
2. The owner of the property is Michael Downes, 64 Van Winkle Rd., Orondo, WA 98843.
3. This is an application for a 6 lot major subdivision. The subdivision will be processed under DCC 18.16.046 – *Cluster Divisions*. The subdivision will consist of five lots that range in size from 1.1 acres to 1.6 acres, and one remainder lot that is approximately 19.8 acres in size. The subject properties were originally created by the Downs Short Plat (SS-87-09).
4. The subject property is located at 64 Van Winkle Rd, Orondo WA. The property is located in the Rural Resource 5 (RR-5) zoning district under Douglas County Code and is further described as being located within Section 28, Township 26N, Range 21E, W.M. The Assessor’s Parcel Numbers are 26212820005, 26212820006, 26212820007, and 26212820008.
5. Site Information/Characteristics: The subject property includes one single family home, accessory storage structures, and existing orchard.

Total Project Size:	23.3 acres
No. of lots	6
Domestic Water:	Domestic wells
Sewage Disposal:	On-site septic systems

Power/Electricity: Douglas County PUD  
Fire Protection: Douglas County Fire District #4  
Telephone Service: Varied

6. Surrounding Property:  
North: Single family homes, agriculture  
South: Single family home, agriculture  
East: Agriculture  
West: Columbia River
7. Access: The subdivision will be accessed via Ribbon Cliff Road, or as approved alternative.
8. Zoning and Development Standards: The subject property is located within the Rural Resource 5 (RR-5) zoning district under Douglas County Code, which allows for the subdivision of land.
9. Major Subdivisions: The requirements of Title 17, “Subdivisions” Douglas County Code, apply to the design and review requirements for approval of major subdivisions of 9 or more lots, parcels or tracts.
10. The Douglas County Countywide Comprehensive Plan designates this property as Rural Resource 5 (RR-5). The minimum lot size permitted in the RR-5 zoning district is 5 acres, however the cluster division provision will allow for 1 acre lots with the requirement for a remainder lot. The purpose of the RR-5 rural resource district is to provide an area for a variety of rural lifestyles, hobby farms, densities, and open space, while protecting the rural and resource characteristics in the vicinity. This district provides an opportunity for compatible rural land uses, and is sensitive to the site’s physical characteristics. Areas may be located adjacent to urban growth areas or existing development of higher densities and, where appropriate, may serve as a transition and buffer area between commercial agricultural areas and other land uses. This district is also appropriate for areas that currently have a range of rural densities or land parcel sizes generally less than twenty acres in size and/or have adequate rural levels of services available such as roads, schools, and fire protection. Clustering or other innovative techniques for residential lots are encouraged; provided, that the density does not encourage urban levels of service and provides significant open space corridors and protection of critical areas. The following goals and policies set forth in the comprehensive plan are relevant to this development.
  - 10.1 GENERAL LAND USE.
    - 10.1.1 POLICY G-9: Rural developments should only occur where adequate access to transportation systems, rural levels of utilities and facilities are available. Appropriate facilities/services may include domestic water, sewage disposal, fire and police protection, schools, and power, etc. depending on the scale and impact of the development
  - 10.2 RURAL LAND USE:
    - 10.2.1 GOAL: Provide a balance between maintaining the existing, traditional pattern of uses in the rural areas of Douglas County, including agricultural activities, while still providing opportunities for future, compatible development.

- 10.2.2 POLICY R-4: Concentrations of development will be encouraged in designated Master Planned Resorts (MPRs), fully contained communities, cluster developments and/or in designated rural service centers
- 10.2.3 POLICY R-6: Encourage development in rural areas to be served by rural levels of service.
- 10.3 RURAL DEVELOPMENT:
- 10.3.1 GOAL: Provide opportunities for continued smaller scale developments outside UGAs that will be compatible with and continue to preserve, maintain and enhance the vital agricultural uses in the County
- 10.3.2 POLICY RD-3: Development and recreational opportunities in rural shoreline and other rural areas shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.
- 10.3.3 POLICY RD-4: Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or an acceptable operation capacity.
- 10.3.4 POLICY RD-6: Rural developments should consider and comply with the spirit, intent and requirements of all the chapters and sections of this comprehensive plan, including but not limited to, the Resource Lands Element and Resource and Critical Areas Conservation Element.
- 10.3.5 POLICY RD-7: Buffers for clustering or other development activities may be required between the rural development and the resource activity or any critical areas when clustering development. Buffers will be provided by the development, as opposed to being on the resource lands or critical areas of adjacent property ownerships unless specifically approved through the development process.
- 10.4 TRANSPORTATION:
- 10.4.1 GOAL: Provide efficient use of existing and future transportation facilities through a systematic approach of monitoring and maintaining the road system, integrating all types of transportation systems and facilities, by coordinating transportation facilities planning with other elements of the comprehensive plan, and coordination with other federal, state and local agencies.
- 10.4.2 POLICY T-26: Development shall provide improvements adjacent to their development in accordance with adopted design standards and approved traffic studies. Where deficiencies are present, these issues would have to be addressed prior to development occurring in order to protect the public's health, safety and general welfare consistent with the policies of the comprehensive plan, standard engineering principals, and adopted standards. Improvements necessary to maintain adopted levels of service shall be in place at the time of development, or a financial commitment agreed to by county and the applicant must be in place to complete the improvements or strategies within six years.
- 10.5 UTILITIES:
- 10.5.1 GOAL: Development in Douglas County will only occur in conjunction with the availability of adequate, cost effective provision of utilities. The installation and expansion of utilities will be coordinated to minimized cost and disruption of normal activities.

- 10.5.2 POLICY U-4: Require that development take into account the timely and concurrent provision of adequate and efficient utility systems.
  - 10.5.3 POLICY U-9: The cost of on-site utility improvements or site preparation for developments will be the responsibility of the development benefiting from the improvement.
  - 10.5.4 POLICY U-10: Promote the continued use, maintenance, development and revitalization of existing utilities whenever possible.
11. DOUGLAS COUNTY REGIONAL SHORELINE MASTER PROGRAM: The Douglas County Regional Shoreline Master Program designates the subject property Rural Conservancy. The purpose of the rural conservancy environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of appropriate uses include but are not limited to low impact outdoor recreation uses, agricultural uses, aquaculture, low intensity residential development, and other natural resource based low intensity uses.
- 11.1 POLICY 1: The Master Program is the primary guide for the location, type, density, and distribution of uses in the shoreline residential environment designation. Local comprehensive plans and development regulations also provide guidance and standards for development which occurs within shorelines of the state.
  - 11.2 POLICY 3: Multi-family, multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
  - 11.3 POLICY 4: Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
12. ECOLOGICAL PROTECTION AND CRITICAL AREAS:
- 12.1 POLICY 1: Shoreline use and development should occur in a manner that assures no net loss of existing ecological functions and processes and protects critical areas. Uses should be designed and conducted to avoid, minimize, or to fully mitigate in so far as practical, any damage to the ecology and environment.
  - 12.2 POLICY 3: Development standards for density, lot frontage, setbacks, lot coverage, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. Review of shoreline development should consider potential impacts associated with proposed shoreline development when assessing compliance with this policy.
  - 12.3 POLICY 4: Except where development is otherwise exempt, the cities and the county should seek input and coordinate with federal, state, local and tribal agencies with expertise for development occurring within or near wetlands or fish and wildlife habitat.
  - 12.4 REGULATION 1: Mitigation sequencing – applicants shall demonstrate all reasonable efforts have been taken to mitigate potential adverse impacts in the following prioritized order:
    - 12.4.1 Avoiding the impact altogether by not taking a certain action or parts of an action;
    - 12.4.2 Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative

- steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- 12.4.3 Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- 12.4.4 Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- 12.4.5 Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- 12.4.6 Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- 12.5 REGULATION 2: The provisions of this section and Appendix H shall apply to any use, alteration or development within shoreline jurisdiction, whether or not a shoreline permit or written statement of exemption is required.
- 12.6 REGULATION 3: Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to Appendix H and all other applicable provisions of this Program.
- 12.7 REGULATION 5: The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

13. WATER QUALITY:

- 13.1 POLICY 1: The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long-term.
- 13.2 POLICY 3: Appropriate buffers along all wetlands, streams, and lakes should be provided and maintained in a manner that avoids the need for chemical treatment for vegetation management and be consistent with critical areas ordinances and best management practices.
- 13.3 REGULATION 1: Appropriate buffers along all wetlands, streams, and lakes should be provided and maintained in a manner that avoids the need for chemical treatment for vegetation management and be consistent with critical areas ordinances and best management practices.
- 13.4 REGULATION 2: New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that offsite facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
- 13.5 REGULATION 4: To avoid water quality degradation by malfunctioning or failing septic systems located in the shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards.
- 13.6 REGULATION 7: Permanent stormwater management systems serving property within the shoreline shall be designed using best management practices ensuring water quality treatment in compliance with the Stormwater Management Manual for Eastern Washington to prevent stormwater runoff from degrading or adding to the pollution of recipient waters or adjacent properties. Maintenance of storm drainage

facilities on private property shall be the responsibility of the property owner(s). This responsibility and the provision for maintenance shall be clearly stated on any recorded subdivision, short plat, or binding site plan map, building permit, property conveyance documents, maintenance agreements and /or improvement plans.

14. VEGETATION CONSERVATION:

- 14.1 POLICY 1: Native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Disturbance of native plant communities should be avoided. Disturbed areas should be revegetated with native plant species appropriate to the soil and hydrologic conditions.
- 14.2 REGULATION 1: Shoreline developments shall address conservation and maintenance of vegetation through compliance with the critical area standards in Section 4.1 Ecological Protection and Critical Areas.
- 14.3 REGULATION 2: Where impacts to buffers are permitted under Section 4.1, Ecological Protection and Critical Areas, new developments shall be required to develop and implement a management and mitigation plan. When required, management and mitigation plans shall be prepared by a qualified biologist and shall be consistent with the requirements in Appendix H. Management and mitigation plans shall describe actions that will ensure no net loss of ecological functions. Vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the County Auditor.
- 14.4 REGULATION 6: Vegetation removal not associated with a development permit application requires the submittal and approval of a management and mitigation plan prepared by a qualified biologist, and must be consistent with the provisions of Section 4.1, Ecological Protection and Critical Areas.

15. ARCHEOLOGICAL AND HISTORICAL RESOURCES:

- 15.1 POLICY 1: Prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian Tribes, and the Washington State Department of Archaeology and Historic Preservation.
- 15.2 POLICY 2: The jurisdictions should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.
- 15.3 POLICY 3: Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.
- 15.4 POLICY 4: Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this Program.
- 15.5 REGULATION 1: If archaeological resources are uncovered during excavation, developers and property owners shall immediately stop work and notify the local

government, the Washington State Department of Archaeology and Historic Preservation and affected Indian tribes.

- 15.6 REGULATION 3: If a cultural resource site assessment identifies the presence of significant historic or archaeological resources, a cultural resource management plan shall be prepared by a professional archaeologist or historic preservation professional. In addition, a permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to RCW 27.44 and RCW 27.53 may apply.

16. RESTORATION:

- 16.1 POLICY 2: Mitigation associated with shoreline development projects shall be designed to achieve no net loss of ecological function.
- 16.2 POLICY 5: Encourage public and private shoreline owners to promote the proliferation of native, noninvasive wildlife, fish and plants.

17. MOORAGE: DOCKS, PIERS, WATERCRAFT LIFTS, MOORING BUOYS, FLOATS

- 17.1 POLICY 5: Moorage should be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. The length, width and height of piers and docks should be no greater than necessary for safety and functional use.
- 17.2 POLICY 7: Moorage facilities should not be constructed of materials that will adversely affect water quality or aquatic plants and animals.
- 17.3 POLICY 9: Multiple agencies have permitting standards, requirements or limitations for the use and development of moorage facilities. Many of these agencies have specific ownership or easement rights. The county and cities should coordinate with federal, tribal, state and local agencies during the review of shoreline permits. The granting of a shoreline permit does not relieve a project from compliance with the standards of other agencies.
- 17.4 REGULATION 1: Shared moorage to serve new residential development shall be limited to the amount of moorage needed to serve lots within the development.
- 17.5 REGULATION 3: If moorage is to be provided as part of a new residential development of two or more dwelling units, moorage facilities shall be joint use or community docks. New residential developments shall contain a restriction on the face of the plat and restrictive covenants prohibiting individual docks and requiring joint use or community dock facilities. Community dock facilities should be encouraged. A site for shared moorage should be owned in undivided interest by property owners or managed by the homeowner's association as a common easement within the residential development. Community dock facilities should be available to property owners in the residential development for community access. If shared moorage is provided, the applicant/proponent shall file at the time of building permit submittal for the dock a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
- 17.5.1 Provisions for maintenance and operation;
- 17.5.2 Easements or tracts for community access; and
- 17.5.3 Provisions for joint or community use for all benefiting parties
- 17.6 REGULATION 10: Private docks shall not encroach into the required side yard setbacks for residential development (both onshore and offshore); provided that, a shared moorage may be located adjacent to or upon a side property line of the

affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

18. RESIDENTIAL:
  - 18.1 POLICY 1: New residential development should be planned and built in accordance with the policies and regulations of this Program, including without limitation Section 4.1 Ecological Protection and Critical Areas.
  - 18.2 POLICY 3: Residential development, including appurtenant structures and uses, should be set back an adequate distance from steep slope areas and shorelines vulnerable to erosion to ensure that shoreline and/or soil stabilization structures will not be needed to protect the residential use. (E.g. bulk-heads, rip rap or other shoreline or slope stabilization structures.)
  - 18.3 POLICY 7: Allowable density of new residential development should comply with applicable comprehensive plan goals and policies, zoning restrictions and shoreline environment designation standards.
  - 18.4 REGULATION 4: Minimum required setbacks from critical area buffers and side property lines, maximum height limits and density standards are contained in Section 5.13 Shoreline Bulk and Dimensional Standards.
  - 18.5 REGULATION 5: Residential development shall make provisions for vegetation conservation in conformance with Section 4.3 Vegetation Conservation.
  - 18.6 REGULATION 9: Non-conforming residential uses shall meet the sections standards.
  
19. SHORELINE BULK AND DIMENSIONAL STANDARDS:
  - 19.1 POLICY 1: Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes, and should preserve the existing character of the shoreline, consistent with the purpose of the shoreline environment designations.
  - 19.2 REGULATION 2: Bulk and dimensional standards shall be coordinated with locally adopted zoning and development standards to protect the natural character of the shoreline and ensure no net loss of shoreline ecological functions and processes consistent with the purpose of the environment designation. In the event the provisions of this Program conflict with provisions of federal, state, county or city regulations, the more Chapter 5 76 protective of shoreline resources shall prevail, when consistent with Shoreline Management Act policy.
  - 19.3 REGULATION 10: Lot frontage standards of underlying zoning districts and/or development standards of each jurisdiction may be more restrictive. The most restrictive lot frontage standard shall apply. Lot frontage refers to the minimum lot frontage for any division or exempt parcel transfer, or parcel boundary modification permitted by a local jurisdiction on the shoreline. Lot frontage shall be measure at right angles along a horizontal distance, between the side lot lines, at the most landward point of the ordinary high water mark. Lot frontage requirements are measured in feet.
  
20. Douglas County issued a Determination of Non-Significance on April 27, 2021 in accordance with WAC 197-11-355 (Optional DNS).

21. Applicable agencies have been given the opportunity to review this proposal. The following are agency comments:

<b>Agency Notified</b>	<b>Response Received</b>	<b>Agency Notified</b>	<b>Response Received</b>
Chelan-Douglas Health District	05/03/2021	Washington Department of Fish and Wildlife	04/26/2021
Douglas County PUD	04/14/2021	Douglas County GIS	07/12/2021
WA State Dept. of Ecology	N/R	Douglas County Assessor	04/14/2021
Douglas County Fire Marshal	04/15/2021	Chelan County PUD	07/09/2021
Dept. of Arch. & Historical Preservation	04/28/2021	Douglas County Transportation & Storm Water	07/20/2021
Douglas County Land Services	07/06/2021	Colville Confederated Tribes	05/13/2021
WSDOT	04/19/2021	Douglas County Treasurer	04/14/2021

22. Comprehensive Plan consistency: The proposal is consistent with the goals and policies of the Douglas County Countywide Comprehensive Plan. The proposed lot sizes meet the density standards for residential lots. Policy G-9 requires that rural development be served by adequate transportation facilities and infrastructure. The development will be served by adequate transportation facilities and infrastructure.
23. Douglas County Regional Shoreline Master Program consistency: As conditioned, the proposal is consistent with the policies and regulations of the Douglas County Regional Shoreline Master Program.
24. Consistency with the provisions of Title 17, "Subdivisions", DCC: As conditioned, the proposal is consistent with the provision of this title.
25. Consistency with the provisions of the RR-5 Zoning District, DCC Chapter 18.30: The RR-5 district allows cluster subdivisions as a permitted use. As conditioned, the proposal is consistent with the provisions of this chapter.
26. Consistency with the provisions of DCC Chapter 20.34, Stormwater Drainage: As conditioned, the proposal is consistent with the provisions of this chapter.
27. Consistency with the provisions of DCC Title 12 Road Standards: As conditioned, the proposal is consistent with the provisions of this chapter.

28. The subject property is located in the Rural Resource 5 (RR-5) zoning district which allows for subdivisions as a permitted use.
29. The subject property meets the minimum development standards of the Rural Resource 5 (RR-5) Zoning District.
30. According to DCC 18.30.080 Density. The maximum density in the RR-5 district shall be one dwelling unit per five acres, except as provided in DCC Chapter 18.16 for accessory dwelling units, accessory agricultural housing, family farm support divisions, and limited land segregations. This density may be increased by fifty percent for cluster divisions created pursuant to DCC Section 18.16.046. The non-submerged land is approximately 22 acres. According to 18.30.080, the density may be increased by fifty percent for cluster divisions created pursuant to DCC Section 18.16.046 which allows for an adjusted density (cluster) of 6 lots.
31. According to the WA State Department of Archaeology & Historic Preservation, "Our statewide predictive model indicates that there is a high probability of encountering cultural resources within the proposed project area. This is due, in part, to the proximity of the proposed project area to the Columbia River, a resource known to have been historically important to Native American groups and/or settlers in the area. Further, the scale of the proposed ground disturbing actions would destroy any archaeological resources present. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. Therefore, we recommend a professional archaeological survey of the project area be conducted prior to ground disturbing activities. We also recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.
32. The applicant has the required cultural resource survey.
33. The application materials reviewed by Douglas County Transportation and Land Services include the following:
  - 33.1 Civil plans prepared by Erlandsen, received March 9, 2021.
  - 33.2 Preliminary Stormwater Report prepared by Erlandsen, received March 9, 2021.
  - 33.3 Preliminary Plat prepared by the applicant, received July 6, 2021.
  - 33.4 Narrative prepared by the applicant, received March 9, 2021
  - 33.5 Soil Evaluation prepared by Tower Designs, received March 9, 2021.
  - 33.6 Reserve Lot Management Plan prepared by the applicant, received March 9, 2021.
34. Preliminary Civil Plans: The plans submitted depict construction of an internal access road with emergency vehicle turnaround and associated drainage infrastructure. The plans indicate the intention to tie into an existing private road located on adjacent private property.
35. Preliminary Stormwater Report: The preliminary stormwater report adequately demonstrates feasibility of stormwater management for the proposed project.

36. A request for additional information was issued May 13, 2021 by Douglas County Transportation and Stormwater. The request for additional information included a request from the Transportation and Stormwater Department for the applicant to provide proof of legal access for the use of the proposed ingress and egress located on adjacent private property. On July 19, email correspondence was received by Douglas County Transportation and Stormwater in regards to the request for additional information. The email stated that the applicant believes that they have an easement for ingress and egress on the adjacent private property and that should that prove to be false they would relocate the road completely onto the development property. The email further requested that this be covered through the Conditions of Approval for the project.
37. The applicant has addressed the non-conforming structure.
38. A preliminary Reserve Management Plan has been submitted.
39. Comments from reviewing agencies have been considered and addressed where appropriate.
40. Douglas County issued a Determination of Non-Significance on April 27, 2021 pursuant to WAC 197-11-355 (Optional DNS).
41. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
42. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
43. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
44. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
47. An open record public hearing was held on August 19, 2021 via Zoom video conferencing.
48. At this hearing, the entire Planning Staff file was admitted into the record at the public hearing.
49. Appearing and testifying on behalf of the Applicant was Dan Beardslee. Mr. Beardslee testified that he is the agent of the Applicant/property owner, and was authorized to speak on their behalf. Mr. Beardslee indicated that the cultural resource survey had already been completed, as well as soil evaluations, both of which are referenced in the suggested Conditions of Approval. He wanted to confirm that the existing residence would not be subject to suggested Condition of Approval No. 11(h) and that it would be allowed to remain as non-conforming structure. Finally, in regard to suggested Condition No. 53, Mr. Beardslee indicated that the existing short plat could not be terminated until the new subdivision is

recorded, and that use of the term “vacated” implies a different process to be utilized. Mr. Beardslee indicated the Applicant had no objection to any of the other proposed Conditions of Approval.

50. No members of the public testified at the hearing.
51. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Plan Comprehensive Plan and Douglas County Regional Shoreline Master Program.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 17 “Subdivisions”, Title 18 “Zoning”, Title 19 “Environment”, and Title 20 “Development Standards”, of the Douglas County Code.
6. Any Finding of Fact that is more correctly Conclusion of Law is hereby incorporated as such by this reference.

## **III. DECISION**

Based on the above Findings of Fact and Conclusions of Law, review of all applicable files, including the Planning Department staff file, and after an open record public hearing, the Hearing Examiner has determined that P-2021-03 is hereby **APPROVED** subject to the following Conditions of Approval.

## **IV. CONDITIONS OF APPROVAL**

All Conditions of Approval shall apply to the applicant, and the applicant’s heirs, successors in interest and assigns.

1. The project shall proceed in substantial conformance with the plans and application materials of file dated 03/09/2021 and 07/06/2021 except as amended by the conditions herein.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

3. A plat certificate showing parties of interest, from a title company, must be submitted with the blue-line drawings.
4. The final plat shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
5. All parties having an ownership interest in the subject property shall acknowledge the plat.
6. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
7. During construction, all work associated with the proposed project shall occur between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday. Construction activities on Sunday shall not commence before 8:00 a.m. and shall conclude by 7:00 p.m.
8. The final plat shall show the location of all easements serving or encumbering the subject property.
9. The preliminary Reserve Management Plan shall be revised to comply with the DCC and be recorded with the Douglas County Auditor's office. The plan shall identify permitted uses and management of the reserve lot so that it maintains its designated functions and provides for the protection of the reserve lot. The management plan shall identify the responsibility for maintaining the reserve lot. The plan shall also include a description of any construction activities (trails, fencing, recreation, buildings or similar improvements) and vegetation clearing that may occur on-site. All subsequent activities must be conducted in conformance with the approved management plan. Management plans may be modified pursuant to DCC Section 14.10.020. The AFN shall appear on the face of the plat. A note shall appear on the face of the plat:
  - 9.1 The reserve lot may not be further subdivided until such time as the zoning of the area would allow further subdivision and in compliance with DCC.
  - 9.2 Prior to any earth disturbance, the applicant shall submit a cultural resource survey prepared by a qualified archeologist. No earthwork shall commence until the Washington State Department of Archeology and Historic Preservation have reviewed the survey, concurred with the findings, and authorized disturbance.
  - 9.3 The applicant shall comply with the Shoreline Master Program, to include but not limited to:
    - 9.4 Utilities serving new development shall be located underground.
    - 9.5 The shoreline buffer shall be clearly annotated.
    - 9.6 New residential developments shall contain a restriction on the face of the plat and restrictive covenants prohibiting individual docks and requiring joint use or community dock facilities.
    - 9.7 The applicant/proponent shall file at the time of permit submittal for the dock a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
      - 9.8 Provisions for maintenance and operation;
      - 9.9 Easements or tracts for community access; and

- 9.10 Provisions for joint or community use for all benefiting parties.
  - 9.11 With the exception of the existing non-conforming residence onsite, any non-compliant improvements within the Shoreline Jurisdiction shall be removed, or converted to compliant improvements with permits and mitigation.
  - 9.12 New or expanded public or private utilities should be located inland from the water, preferably out of shoreline jurisdiction
  - 9.13 The preliminary plat shows the conceptual locations of shared docks and easements. In the event of perfecting the easements and/or pursuing access, the applicant shall comply with the Shoreline Master Program above and include: The applicant shall submit a Habitat Management and Mitigation Plan, provide mitigation areas, comply with Geologically Hazardous Area and other regulations to ensure slope stabilization, prepare and record Douglas County approved maintenance documents, and any other requirement of the SMP.
- 10. A note shall appear on the face of the plat:
    - 10.1 Individual docks are prohibited. Joint use docks or a single community dock is required for placement of moorage.
  - 11. The location of existing utilities (i.e. power and irrigation lines, domestic wells, septic system for the existing residence, etc.) and utility easements shall be depicted on the face of the final plat.
  - 12. The applicant shall label the Chelan County PUD G-Line "Chelan County PUD Exhibit G-line (see note #"-)" A Corresponding note shall be provided on the face of the plat that states "Chelan County PUD Supplemental Easement, AFN 287450, recorded August 11, 1993".
  - 13. A complete Private Water System Review application (for each well) including copies of:
    - 13.1 Well Log
    - 13.2 Current Nitrate testing
    - 13.3 Current Coliform Bacteria Testing
    - 13.4 Copy of Declaration of Covenant and/or Restrictive Covenants to be recorded
    - 13.5 Pump/drawdown testing (shared well)
    - 13.6 Joint Use Agreement (shared well)
    - 13.7 Water line easements (shared well)
  - 14. A system user agreement for the well must be created if sharing the well between two new lots.
  - 15. Any existing or proposed private wells must be shown on the plat drawing including at least a 50' sanitary control radius around the well head. Each well point must have (1) recorded protective covenant(s) with the owners of all properties covered by the 50' sanitary control radius or (2) for well points that the plat developer can't secure protective covenants, a variance granted by the Health District. Any variance granted will require a Notice to be recorded against that lot's title and the reduced sanitary control radius, as it actually exists, shown on the final plat. Please contact the Health District if a well site variance will be necessary.

16. All necessary easements and covenants for access and protection of the water supply must be shown or described on the final plat drawing. The Health District has more information and examples of the following protective covenants and variance notice to title. A Restrictive Covenant is necessary for that part of the 50' sanitary control radius that falls outside the well owner's property and is recorded to the neighboring property owner's parcel. A Declaration of Covenant is necessary for that part of the 50' sanitary control radius that falls completely within the well owner's property and is owned in fee simple by the well owner. Some wells will have both protective covenants. The Health District recommends the plat developer consult an attorney about these covenants. Protective covenants for each well point must be declared in the dedicatory language on the plat as follows:
  - 16.1 "A Restrictive Covenant recorded with [name of county here] as AFN: \_\_\_\_\_ establishes a sanitary control area with a 50' radius around the domestic well shown [as well tag # \_\_\_\_\_]. No source of contamination may be constructed, stored, disposed of, or applied within the sanitary control area without the specific recorded permission of the well owner(s)."
  - 16.2 "A Declaration of Covenant recorded as a notice to title with [name of county] as AFN: \_\_\_\_\_ establishes a sanitary control area with a 50' radius around the domestic well shown [as well tag # \_\_\_\_\_]. No source of contamination may be constructed, stored, disposed of, or applied within the sanitary control area."
  - 16.3 A variance regarding the Sanitary Control Area around the domestic well shown [as well tag # \_\_\_\_\_] is described in the Declaration of Covenant recorded as a notice to title with [name of county] as AFN: \_\_\_\_\_. This variance allows a reduced sanitary control area. No source of contamination may be constructed, stored, disposed of, or applied within the sanitary control area.
17. Operation and maintenance agreements not declared on the plat will require a blank for referencing the document, such as:
  - 17.1 "Well maintenance and operation agreement filed with the County Auditor, No. \_\_\_\_\_."
18. The dedicatory language on the final plat shall carry these notes:
  - 18.1 "The Health District has not reviewed the legal availability of water to this plat development"
  - 18.2 "The combined water use by all the wells in this development may not exceed 5000 gallons per day or be used to irrigate more than ½ acre unless a ground water withdrawal permit is obtained from the Department of Ecology (RCW 90.44.050)."
19. If determined by the County to still be necessary, a soil/site evaluation for placement of onsite sewage systems for each proposed lot, as per previous development comments, shall be provided. This requirement can be found in WAC 246- 272A-0320 subsection (2) (c). This evaluation can be completed by the Chelan-Douglas Health District or a state licensed septic system designer or professional engineer. Soil information gleaned from a Geotechnical Report is not acceptable.
20. The dedicatory language on the final plat shall contain this statement:

- 20.1 "Site evaluations may be required at the time of application for individual septic system construction permits."
21. A 10' utility easement is required adjacent to Van Winkle Rd.
  22. An estimate for service to the project must be paid to the Douglas County PUD prior to final plat approval.
  23. Written approval from the Douglas County PUD is required prior to final plat approval.
  24. Lots greater than one (1) acre are EXEMPT from fire flow requirements PROVIDED that all structures maintain no less than 50 feet of separation utilizing the closest and most direct path as measured from eave to eave.
  25. All access longer than 150 feet must end in an approved Turn Around. The Turn Around must not be a part of a garage approach, must not be counted as parking, must not be counted as a storage area, must account for seasonal snow accumulation, and must be capable of supporting the weight of emergency apparatus in all weather conditions.
  26. Where applicable, all access longer than 150 feet must end in an approved Turnout every 300-450 feet. The turnout must be no less than 20 wide and 50 feet long. The Turnout must not be counted as parking, must not be counted as a storage area, must account for seasonal snow accumulation, and must be capable of supporting the weight of emergency apparatus in all weather conditions.
  27. Maximum grade for any graveled access is 10%. Grades greater than 10% but not greater than 12% must be paved. Grades beyond 12% are typically not allowed unless approved by the Fire Marshal on a case-by-case basis.
  28. Final construction plans designed by a Professional Engineer licensed in the State of Washington shall be submitted to and accepted by Douglas County prior to construction. Construction plans shall be prepared in accordance with the requirements of Douglas County Code.
  29. Half-street improvements are required along the frontage of the parcel in accordance with Figure 3-2, including but not limited to: widening and storm ditch.
  30. The orchard trees located within Douglas County right of way shall be removed (stumps included) prior to final plat acceptance. The applicant shall verify the right of way limits in advance of performing this work.
  31. A storm ditch shall be installed along the frontage of Van Winkle Road and the tributary runoff shall be mitigated in accordance with the current edition of the Stormwater Management Manual of Eastern Washington (SWMMEW).
  32. Access to the proposed lots shall be via access easement (min. 30') from Van Winkle Road. The pre-application materials appear to indicate the intent to utilize the access along the

- northern property line (A/K/A "Ribbon Cliff Road"). This access is private and was constructed to serve the subdivision to the north. The applicant shall provide proof of legal access for this road prior to construction plan acceptance or alternatively shall construct access to the property entirely on the development property.
- 32.1 Driveways serving three or more lots shall have a minimum improved width of 20 feet.
  - 32.2 The minimum surfacing shall be six inches of compacted gravel base, crushed surfacing base course, or crushed surfacing top course.
  - 32.3 All dead end access easements greater than 150 feet in length shall be improved with an approved turnaround for emergency vehicles.
  - 32.4 The maximum grade shall be 10 percent for gravel surfacing and 12 percent for paved.
33. The location of any cluster mailbox units proposed for the subdivision shall be shown on the construction plans. Location to be accepted by the County Engineer and USPS Postmaster prior to plan acceptance; additional right of way may be required.
  34. Five-foot utility easements (min.) are required along all lots or tracts with County road frontage in accordance with applicable road standards. Utility purveyors may require easements in excess of five feet.
  35. All existing and proposed easements shall be clearly delineated with the Auditor's File Number(s) noted as necessary on the final plat.
  36. A Private Access Operation and Maintenance Agreement shall be prepared, executed, and recorded by the applicant; the Auditor's File Number(s) shall be noted on the final plat map. A note shall be included on the face of the plat which states:
    - 36.1 "Douglas County shall not be responsible for the maintenance of roadway and appurtenant improvements, including storm drainage structures and pipes located on private property."
  37. Prior to final plat acceptance and/or release of financial security, the Engineer of Record shall provide written certification that the internal roads, utility infrastructure, stormwater systems, and grading have been constructed/completed in accordance with the Conditions of Approval, applicable codes, and the accepted construction plans. Monitoring shall be required as determined appropriate by the Engineer of Record and in accordance with the Road Standards, with final reports submitted to Douglas County along with the certification.
  38. Final acceptance shall be processed in accordance with Douglas County Code (DCC) Section 12.56.110 Final Acceptance and a Warranty Assurance Agreement shall be completed per DCC 12.50.110 prior to final plat acceptance.
  39. Final acceptance shall be processed in accordance with Douglas County Code (DCC) Section 12.56.110 Final Acceptance and a Warranty Assurance Agreement shall be completed per DCC 12.50.110 prior to final plat acceptance.

40. Per DCC Chapter 12.24, all new or revised accesses onto a County road (including temporary accesses) require an approved access permit.
41. Utility installation/replacement/upgrade within the Douglas County right-of-way shall be approved by Douglas County. A permit to perform work in the right-of-way shall be obtained prior to construction. Damage to existing roads resulting from construction activities (including utility extensions required to provide necessary services to the proposed development) shall be repaired to the satisfaction of Douglas County, by the applicant. The extent of repair and/or replacement will be determined during construction plan review and during field inspection of the proposed work within the right-of-way.
42. A final site-specific stormwater plan and report prepared by a Professional Engineer (PE) licensed in the State of Washington that conforms to Douglas County Code and the 2019 Stormwater Management Manual for Eastern Washington (SWMMEW) shall be submitted to and accepted by Douglas County prior to construction.
43. A note shall be included on the face of the final plat which states:
  - 43.1 “At the time of building permit submittal, an engineered site specific stormwater plan and report shall be submitted that conforms to Douglas County Code and the current edition of the Stormwater Management Manual for Eastern Washington. The Engineer of Record shall provide certification that the private on-site stormwater system has been completed in accordance with the accepted plans. A private stormwater operation and maintenance covenant, prepared with standard Douglas County forms, shall be executed and recorded with the Douglas County Auditor.”
44. Stormwater facilities shall be located on a separate tract(s) and/or easement(s) under the functional control of the Homeowners’ Association (HOA) and/or Lot Owner’s, as applicable, with each lot having an undivided ownership, interest, and responsibility for the tract(s).
45. Provisions to provide access for inspection and maintenance of the stormwater facilities shall be addressed within the design plans, report, and on the face of the final plat.
46. Prior to any on-site grading occurring or prior to construction plan acceptance (whichever comes first), a Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control Plan (TESC Plan) shall be submitted to and accepted by Douglas County. The SWPPP and TESC Plan shall be kept on-site at all times and updated as necessary to address and prevent sediment and sediment laden water from leaving the project site.
47. As applicable, registration of facilities that are regulated under the Washington State Department of Ecology’s Underground Injection Control Program shall be completed prior to construction.
48. The Engineer of Record shall monitor construction and shall provide as-built drawings and report as necessary along with certification that the improvements have been completed in accordance with the applicable codes, regulations, and accepted plans. UIC registration shall be provided as applicable.

49. As applicable, prior to final plat acceptance, a Private Stormwater Operation and Maintenance Agreement shall be executed on standard Douglas County forms. The site plan, details, certification, and operation and maintenance recommendations are provided to the County. County staff then prepares the agreement for signature and recording by the applicant. A note shall be included on the face of the final plat which states:
- 49.1 “Douglas County will not maintain the private stormwater facilities located within this subdivision. Responsibility for the long term maintenance of the private stormwater facilities is described within the Declaration of Stormwater System Maintenance Covenants recorded under AFN \_\_\_\_\_.”
50. Individual/common plan development for this proposal exceeds 1-acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (WSDOE) in administering their general permit to discharge stormwater associated with construction activity. The applicant is responsible for acquisition of all applicable permits prior to beginning ground breaking activities, including but not limited to: Construction Stormwater General Permit, Sand & Gravel Stormwater General Permit, and/or Industrial Stormwater General Permit. Compliance with the Washington State Department of Ecology’s regulations is the responsibility of the applicant.
51. The underlying Downes Short Plat (SS-87-09) shall be automatically terminated upon the recording of this final plat.

Dated this 23<sup>rd</sup> day of August, 2021.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

**Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner’s decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.**

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.**