

**SHORELINE MANAGEMENT PERMIT
ACTION SHEET**

Application #: SP#07-08
Administering Agency Douglas County Transportation and Land Services

Type of Permit: Shoreline Substantial Development

Action: Approved Denied

Date of Action: January 28, 2008

Date Mailed to DOE/AG

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of Douglas County, a permit is hereby granted to:

William H. Pierre, Jr.
11525 Lake City Way NE
Seattle, WA 98125

Douglas J. & Elizabeth A. Dingman
32920 49th Pl SW
Federal Way, WA 98023-3326

Richard A. & Denise Rekdal
1325 4th Ave, Ste 1100
Seattle, WA 98125

To undertake the following development: For the purposes of excavating and regrading the shoreline landward of the Exhibit G-line of the Columbia River (718.26ft.) up to the top of the bank (between 722 ft. and 730ft.), within the Gala, and Ginger Gold short plats. The proposed regrade would provide a more gradual slope of the shoreline landward of the exhibit G-line. The proposal intends to improve recreational shoreline access and wildlife habitat. A mitigation and management plan has been submitted which proposes native riparian and shrub steppe planting within the graded areas of the buffer;

Upon the following property: In a portion of Section 12, Township 26 N., Range 21 E., W.M., more particularly described as the shoreline lots within the Gala, and Gingergold Short Plats. The site is located in the Rural Resource 5 (RR-5) Zoning District and the shoreline is designated as Rural by the Douglas County Shoreline Master Program. The Douglas County Assessor Numbers for the subject properties are 26211210032, 26211210033, 26211210034, 26211210036, 26211210037, and 26211210038;

Within 200 feet of Columbia River and/or its associated wetlands.

The project will be within a shoreline of state-wide significance (RCW 90.58.030). The project will be located within a Rural Resource 5 (RR-5) designation. The Douglas County Shoreline Master Program is applicable to this development.

Development pursuant to this permit shall be undertaken in conformance with the following terms and conditions:

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The Applicant shall obtain all permits required by all federal, state and local agencies with jurisdiction.
3. The Applicant shall comply with all federal, state and local laws and regulations.
4. Construction shall proceed substantially as shown and described in the application materials on file with the Douglas County Transportation and Land Services Department, except as modified by conditions below.
5. Prior to site work commencing, the applicant shall submit a dust control plan for review and approval by Douglas County Land Services.
6. Prior to site work commencing, the biologist of record shall verify that the boundaries of site disturbance have clearly been demarcated by silt fencing or straw bales. Written verification from the biologist of record shall be required prior to site operations commencing. Silt fencing or straw bales shall not be removed until seeding has grown sufficiently within disturbed areas to control erosion.
7. The Chelan County PUD Exhibit G Line must be surveyed on the site and staked at frequent intervals, with not greater than 20 lineal feet of separation. The Chelan County PUD shall be notified when the site has been marked and shall have 14 days to review the field survey. If the Chelan County PUD has a concern over the survey, they shall contact the applicant.
8. Vegetation disturbance shall not occur waterward of the Chelan County PUD G-Line. If vegetation in proximity of the G-Line would be disturbed, the excavation needs to begin further landward of the G-Line.
9. Debris removal waterward of the Exhibit G-Line may not impact native riparian vegetation and shall be limited to hand removal of solid waste. Removal of material waterward of the ordinary high water mark has not been reviewed by the subject application and is not authorized by this permit approval.
10. Removed rock and dirt material shall not be placed within the shoreline jurisdiction. If material is placed on the subject properties outside of the shoreline jurisdiction, engineered site monitoring shall be required to ensure proper compaction for future potential building placement.

11. A permanent means of irrigation shall be installed for the mitigation plantings that is designed by a professional meeting the requirements of Title 20 Douglas County Code. Said design should address the specific needs of riparian and shrub steppe vegetation.
12. Monitoring reports must include verification that the planting areas have less than 20% total non-native/invasive plant cover consisting of exotic and/or invasive species. Exotic and invasive species may include any species on the state noxious weed list which may be referenced on the web at, www.wa.gov/agr and www.nwcb.wa.gov, or considered as a noxious or problem weed by the Natural Resources Conservation Services Department or local conservation districts.
13. All mitigation must be installed within the next growing season falling after the completion of the grading on-site. A five year monitoring period shall commence upon placement of the planting materials and irrigation system. A performance surety agreement in conformance with Title 14 of Douglas County Code shall be entered into between the property owner and Douglas County Transportation and Land Services prior to any site work commencing. Douglas County must approve quotes for the cost of installation, delivery, plant material, soil amendments, permanent irrigation, seed mix, and 3 monitoring visits and reports by a qualified biologist, and the quotes shall include Washington State sales tax.
14. Onsite monitoring and monitoring reports shall be submitted to Douglas County Transportation and Land Services 1 year after mitigation installation; 3 years after mitigation installation; and 5 years after mitigation installation. Monitoring reports shall be submitted by a qualified biologist, as defined by Douglas County Code. The biologist must verify that the conditions of approval and provisions in the wetland management and mitigation plan submitted by Grette and Associates dated May 24, 2007, including the amendment submitted on November 28, 2007, have been satisfied.
15. Sequential release of funds associated with the surety agreement shall be reviewed for conformance with the conditions of approval and the mitigation and management plan. Release of funds may occur in increments of 1/3 for substantial conformance with the plan and conditions of approval. If the standards that are not met are only minimally out of compliance and contingency actions are actively being pursued by the property owner to bring the project into compliance, the County may choose to consider a partial release of the scheduled increment. Non-compliance can result in one or more of the following actions: carry over of the surety amount to the next review period; use of funds to remedy the nonconformance; scheduling a hearing with the Douglas County Hearing Examiner to review conformance with the conditions of approval and to determine what actions may be appropriate.
16. Site monitoring visits shall be completed between the time periods of June 1-September 15th, subject to the requirements of Condition # 14.
17. A copy of this permit and attached conditions shall be kept on-site and provided to the contractor and all others working within the shoreline area at all times. The applicant, contractor, machinery operators and all others working within the shoreline area shall have read this permit and attached conditions and shall follow its conditions at all times.

18. The conditions of approval apply to the shoreline substantial development permit of record.
19. The project shall be in compliance with the Shoreline Management Act (RCW 90.58), the Washington Administrative Code, the Douglas County Shoreline Master Program and the Douglas County Code.
20. The applicant shall comply with all applicable local, state and federal regulations and the applicant is responsible for securing any and all state and federal agency permits, as may be required.
21. Prior to entering the project area, all equipment shall be checked for leaks and cleaned free of any external petroleum products, hydraulic fluid, machinery coolant, dirt, weeds both aquatic and terrestrial, weed seeds, and/or any other deleterious materials.

FINDINGS OF FACT

1. The proposal is located in an area designated as a Rural Resource 5 land use designation by the Douglas County Countywide Comprehensive Plan.
2. The proposal is located in the Rural Resource 5, (RR-5), Zoning District. Single family dwellings and associated site improvements are permitted in all rural zoning districts and envisioned by the Douglas County Comprehensive Plan when consistent with critical area and shoreline policies and requirements.
3. The proposal is located within 200 feet of the ordinary high water mark of the Columbia River, a shoreline of statewide significance. The project can proceed only after a Shoreline Management Substantial Development Permit is issued.
4. The Douglas County Shoreline Master Program designates this area as a "Rural" Shoreline Environment.
5. Public notice of application for this proposal and notice of the public hearing was provided in conformance with Title 14 Douglas County Code and the provisions of the Douglas County Shoreline Master Program.
6. No public comments and five agency comments were submitted for the subject application.
7. The subject property is located on the shoreline of the Columbia River and contains riparian and wetland areas regulated under the provisions of Chapter 19.18B Critical Areas-Wetlands.
8. WAC 173-27-150, establishes minimum review criteria for Shoreline Management Substantial Development Permits. This criteria states that a substantial development permit shall be granted only when the development proposed is consistent with the policies and procedures of the Act; the provisions of this regulation; and the applicable master program adopted or approved for the area.

9. When classifying and/or assessing a wetland area, the Douglas County Comprehensive Plan establishes that historical information on the area in question, as well as the dynamic nature of the wetlands will be recognized and considered. The comprehensive plan further establishes that innovative techniques that enhance a wetland and promote it as a useful, functioning part of the development will be encouraged during the development review process.
10. Policy CA-15 of the Douglas County Comprehensive Plan states impacts of new development on the quality of land, wildlife and vegetative resources will be considered as part of the environmental review process and require any appropriate mitigating measures. Such mitigation may involve the retention and /or enhancement of habitats.
11. Chapter 19.18B, Wetlands, Douglas County Code, establishes standards of review that wetland management and mitigation plans must meet for project proposals. Plans must demonstrate that when implemented, there shall be no net loss of the ecological function or acreage of the wetland; and that the monitoring and contingency actions for continued maintenance of the wetland would be in place.
12. The applicant has submitted a wetland mitigation and management plan prepared by Grette and Associates, dated May 24, 2007, and a revision dated November 28, 2007, in order to address the requirements of D.C.C. 19.18B.035. The mitigation and management plan provides mitigation at a ratio of 1:1.
13. On January 4, 2008, Douglas County Transportation and Land Services issued a Determination of Non-significance in accordance with WAC 197-11-355 (Optional DNS Process), and RCW 43.21C.
14. Goal 5 of the Douglas County Shoreline Master Program states: Shoreline Use Goal- to assure that shoreline use and development in Douglas County is such that all uses are in harmony with each other and with the character and physical limitations of the land and water. To promote the best possible use of the shorelines which will maximize the potential without disrupting environmental quality.
15. Goal 6: Conservation Goal- To assure protection of the non-renewable shoreline resources of Douglas County, and to assure continued utilization and sound management of the renewable shoreline resources, to guarantee their availability in sufficient quality and quantity in the future to meet all foreseeable needs.
16. Goal 8 of the Douglas County Shoreline Master Program states: Restoration Goal- To encourage, where feasible and desirable, the restoration of blighted areas along the shorelines of Douglas County to a natural or rehabilitated condition.
17. Policy B, Section XII Residential Development, of the Douglas County Shoreline Master Program states: Residential development should be designed so as to adequately protect the water and shoreline aesthetic characteristics.
18. Policy D, Section XII Residential Development of the Douglas County Shoreline Master Program states: Residential developers should be required to preserve shore vegetation and control erosion during construction.

19. Policy B of Section XVI. Landfill, Douglas County Shoreline Master Program states: Shoreline fills or cuts should be designated and located so that significant damage to existing ecological values or natural resources, or alteration of local currents will not occur, creating a hazard or significant injury to adjacent life, property and natural resource systems.
20. Larry Lehman a biologist with Grette and Associates has indicated that:
 - “Based upon the existing conditions it is clear that as part of the old orchard practices the uplands were leveled and the majority of the soils were pushed towards the river. In addition the presence of rounded rock along the slope indicates that rocks from the orchard were continually pushed over the top of the bank when they were removed from the orchards. These activities have constructed a shoreline that is very steep and is comprised of upland material pushed from the orchard. The shoreline is very difficult to walk down due to the presence of larger rock and unconsolidated material, which also makes it difficult for larger trees and shrubs to colonize.”
 - “Overall the project would take a portion of steep shoreline with limited riparian vegetation and a disturbed buffer (orchard road at the top of the bank) and would replace it with a more gradual shoreline with a fully vegetated riparian area and buffer. This vegetated area would be left undisturbed as the only use of the shoreline would be passive recreation (trail to the boat docks. This project would eliminate the allowable disturbance within the buffer that is associated with the continued maintenance of the existing dirt orchard road. The result of the project would be a fully vegetated riparian buffer that is virtually non-existent along the Columbia River. The alternative would be that the buffer stays in the current condition and will provide minimal habitat as the slope is too steep and the maintenance of the dirt road would continually disturb the area.”
21. The wetland rating for the site has been identified as a Type IV Wetland with a 50’ buffer.
22. A cultural resource assessment was completed for the subject properties by Western Shore Heritage Services, Inc. on March 12, 2004. This report did not result in the identification of potentially significant cultural resources on the subject properties.
23. DCC 19.18B.035D &E9, require that monitoring, contingency planning, maintenance and surety programs be considered for the successful implementation of wetland management and mitigation plans.
24. An open record public hearing after legal notice was held on January 17, 2008. Appearing and testifying at the hearing on behalf of the applicant was Thom Vetter. No members of the public appeared at this hearing.
25. Mr. Vetter testified on behalf of the applicants that they did not have any objection to any of the proposed conditions of approval.

26. Submitted into the evidence by County staff were Exhibits 1 through 4 which were photographs of the subject area.
27. Testifying at the hearing was Larry Lehman of Grette and Associates. Mr. Lehman offered and was admitted into the record Exhibit 5 which was a series of eight photographs of the subject area. Mr. Lehman indicated that the project under review would restore the shoreline to a more habitat friendly mitigation area as it would include a three-tiered habitat area.
28. At the open record public hearing, the entire planning staff file was admitted into the record.
29. Public agencies with potential jurisdiction over this project were given an opportunity to review the proposal. Agencies that responded with comments were admitted into the record and considered by the Hearing Examiner in rendering this Decision.
30. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

CONCLUSIONS

1. The Hearing Examiner has been given 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 Comprehensive Plan and the Douglas County Shoreline Master Program.
3. Public interests will be served by approval of this proposal.
4. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" of the Douglas County Code.
5. The National Academy of Sciences (2004) issued a report evaluating the success of compensatory mitigation to achieve no net loss of functions in the nation's wetland resources. The conclusion of the report was that "The goal of no net loss of wetlands is not being met for wetland functions by the mitigation program." Recommendations within this report further stated that, "A critical element for determining the success and compliance of a mitigation project is to formally identify the purpose of the project (goals), the steps required to accomplish that purpose (objectives), and identify measurable indicators to determine that the purpose has been accomplished (performance standards)."
6. As conditioned, professional monitoring and surety agreement requirements will establish a commitment for implementation of the plans and project design.
7. As conditioned, potential impacts of the project can be mitigated.
8. Agency comments were considered in the attachment of conditions to the proposal.

9. The project is consistent with the review criteria of WAC 173-27-150, in that the project proposed is consistent with the policies and procedures of the Act; the rules for administrating shoreline master programs established by WAC 173-27; and the Douglas County Shoreline Master Program.
10. As conditioned, the proposal will not detrimentally affect the public health, safety and general welfare.
11. The proposal is an innovative technique that provides enhancement of a wetland buffer and promotes it as a useful, functioning part of the development.
12. The proposal provides for the restoration and enhancement of a degraded portion of the shoreline.
13. Given the depth to groundwater on the site, even with proposed grading, a permanent source of irrigation for long term plant survival is necessary.
14. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

This permit is granted pursuant to the Shoreline Master Program of Douglas County, as amended, and nothing in this permit shall excuse the applicant from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project, but not inconsistent with the Shoreline Management Act of 1971 (Chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN NOR IS AUTHORIZED UNTIL TWENTY-ONE (21) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

Substantial progress toward construction of the project for which this permit has been granted must be accomplished within two (2) years of the filing date of this permit. Authorization to conduct development activities granted by this permit shall terminate five (5) years from the filing date of this permit.

Approved this 28th day of January, 2008.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the “date of filing” as defined in WAC 461-08-305 and RCW 90.58.140(6) to file a petition for review with the Shorelines Hearings Board as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A
CONDITIONAL USE OR VARIANCE PERMIT**

Date received by the Department _____

Approved _____

Denied _____

This conditional use/variance permit is approved/denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

Date

Signature of Authorized Department Official