

**SHORELINE MANAGEMENT PERMIT
ACTION SHEET**

Application #: SP-10-02
Administering Agency Douglas County Transportation and Land Services

Type of Permit: Shoreline Substantial Development Permit
Action: Approved Denied

Date of Action: April 16, 2010

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:

**Kelly Clark
PO Box 2060
Kingston WA 98346**

To undertake the following development: For the installation of mitigation measures to mitigate code violation activities along the shoreline. Mitigation measures include removal of retaining walls and fill and the revegetation of riparian buffer areas;

Upon the following property: The subject property is located at Lot 2 of Columbia Pointe. The property is further described as being located within the Southwest Quarter of Section 6, Township 26N., Range 23 E., W.M., Douglas County, Washington;

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 Conservatory 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 project shall proceed in substantial conformance with the plans and application materials of file submitted on January 28, 2010 except as amended by the conditions herein.

3. Prior to building permit issuance, the applicant shall obtain all necessary permits from agencies with jurisdiction. This may include, but is not limited to: the Washington State Department of Fish and Wildlife (Hydraulic Project Approval), the United States Army Corps of Engineers Regulatory Branch (Section 10 &/or 404) the Washington State Department of Ecology (Section 401 Water Quality Certification), Washington State Department of Natural Resources Aquatic Use Authorization.
4. The applicant shall comply with all applicable local, state and federal regulations.
5. 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.
6. The erosion control fencing shall remain in place and be maintained until the installed vegetation has taken hold to protect the buffer from erosion and siltation.
7. The project application shall proceed consistent with the Wetland Management and Mitigation Plan prepared by Grette & Associates, dated January 2010.
8. 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.
9. Riparian planting as shown on the mitigation planting plan, sheet 6 of 6, dated January 25, 2010 shall be planted upon completion of the excavation and wall removal.
10. A performance surety agreement in conformance with Title 14, D.C.C. shall be entered into between the property owner and Douglas County Transportation and Land Services prior to commencing work. Douglas County must approve quotes for the cost of installation, delivery, plant material, soil amendments, irrigation, seed mix and necessary monitoring visits and reports by the biologist of record and Washington State sales tax.
11. The mitigation site shall be maintained to ensure the management and mitigation plan objectives are successful. Maintenance shall ensure 80% survival during the 5 year monitoring period and shall include corrective actions to rectify problems, include rigorous, as-needed elimination of undesirable plants; protection of shrubs and small trees from competition by grasses and herbaceous plants, and repair and replacement of any dead plants.
12. 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. 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.

13. 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 & Associates, dated January 2010 have been satisfied.
14. Sequential release of funds associated with the surety agreement shall be reviewed for conformance with the conditions of approval and the management and mitigation 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.
15. If at the conclusion of the 5 year monitoring period, 80% survivability is not achieved, then corrective actions as outlined in Condition #8 shall be taken and yearly monitoring shall continue until 80% survivability can be demonstrated from the previous year.
16. Where a condition imposed herein may be found inconsistent with the requirements of the Washington State Department of Fish and Wildlife, HPA Permit, or permitting issued by the United States Army Corps of Engineers, the Douglas County Land Services Director shall have discretion to allow for project redesign consistent with the approvals granted by said agencies; if the redesign can be found consistent with the Douglas County Code, the Shoreline Master Program, and the Shoreline Management Act.
17. 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 the permit shall terminate five (5) years from the filing date of the permit.

FINDINGS OF FACT

1. The applicant is Kelly Clark, PO Box 2060, Kingston WA.
2. General Description: An application for a shoreline substantial development permit for the installation of mitigation measures to mitigate code violation activities along the shoreline. Mitigation measures include removal of retaining walls and fill and the revegetation of riparian buffer areas
3. The subject property is located at Lot 2 of Columbia Pointe. The property is further described as being located within the Southwest Quarter of Section 6, Township 26N., Range 23 E., W.M., Douglas County, Washington.

4. The Comprehensive Plan Designation is Rural Recreation.
5. The subject property is located in the R-REC zoning district.
6. The Columbia River Shoreline section of the subject property is designated as "Rural Conservancy" by the Douglas County Shoreline Master Program.
7. 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.
8. A notice of code violation (file # CE-09-52) was issued for the property on April 9, 2009 for the construction of a concrete wall and pad within the shoreline jurisdiction without first obtaining a valid shoreline substantial development permit.
9. The notice of code violation was appealed (APP-09-01) to the Douglas County Hearing Examiner. The hearing examiner affirmed the notice of violation in a decision dated August 26, 2009.
10. A fish and wildlife habitat management and mitigation plan dated January 2010 was performed for the project by Grette & Associates.
11. The determined that a total of 1,055 square feet of square feet of plantings would be necessary to mitigate the impact to the riparian buffer. A planting plan is proposed on page 6 of 6 of the diagrams in the plan.
12. Comments from reviewing agencies have been considered and addressed where appropriate.
13. Douglas County issued a Determination of Non-significance on April 5, 2010 in accordance with WAC 197-11-355 (Optional DNS).
14. 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.
15. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
16. WAC 173-27-090 requires that construction must be commenced within 2 years of the effective date of the shoreline permit and that authorization for construction shall terminate 5 years after the effective date of the shoreline permit.
17. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.

18. An open record public hearing after legal notice was held on April 15, 2010. Appearing and testifying at the hearing on behalf of the applicant was Larry Lehman. Mr. Lehman testified that he was an agent authorized to appear and speak on behalf of the applicant. He testified that the applicant agreed with all of the proposed findings of fact and conditions of approval contained within the staff report. Mr. Lehman further testified that it is his understanding that Mr. Clark wanted to remove the retaining wall as soon as possible this year and then depending upon timing, to either put in the proposed landscaping this year or next year at the very latest.
19. No member of the public testified at this hearing.
20. At the open record public hearing, the entire planning staff file was admitted into the record.
21. 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.
22. 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 granted authority to render this Decision.
2. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
3. 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.
4. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
5. As proposed, revised, and conditioned, potential impacts of the project can be mitigated.
6. Public interests will be served by approval of this proposal.
7. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" of the Douglas County Code.
8. 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).

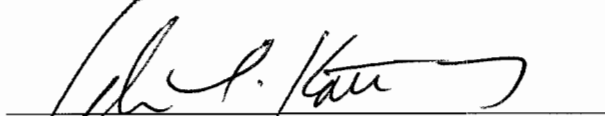
This permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

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 16th day of April, 2010.

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