

STAFF REPORT
HURST LANDING SHORES SHORELINE VIOLATION MITIGATION

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: Hurst Landing Shores, SP-06-01A
DATE: July 21, 2008

I. GENERAL INFORMATION

Requested Action: Dr. Thomas Hurst has submitted an application for an amendment to a shoreline substantial development permit for the installation of mitigation measures to mitigate code violation activities along the shoreline. Mitigation measures include restoration of the natural character of the shoreline; slope stabilization and revegetation of the area of rock replacement, vegetation removal and slope disturbance, and permanent irrigation to support mitigation plantings.

Background: On August 23, 2006, the Douglas County Hearing Examiner issued a Notice of Action for P-06-02 and SP-06-01 and establishing conditions of approval. These permits authorize the development of a 13 lot cluster subdivision and the construction of a 12 slip community dock to serve the subdivision. On January 8, 2008, the County received a building permit application for the construction of a 12 slip community dock. On February 15, 2008, Douglas County determined that unpermitted shoreline activity including, vegetation removal, fill at or below the Ordinary High Water Mark (OHWM) and the alteration of the natural character of the shoreline by constructing rock walls and stairways within the shoreline jurisdiction and at OHWM. These actions are in violation of DCC Title 19, Douglas County Shoreline Master Program and Conditions of Approval for P-06-02 and SP-06-01. The majority of the activity took place on shorelines owned by Chelan County PUD. County Staff, WA Dept of Ecology, Army Corps of Engineers, WDFW, and Chelan County PUD met with Dr. Hurst and biologist Aaron Bosworth at the site on February 21, 2008 to discuss the violation and potential solutions. On February 29th, 2008, Douglas County sent a letter to Dr. Hurst identifying the issues that would need to be addressed in a mitigation plan. On May 28, 2008, Dr. Hurst submitted application materials to amend SP-08-01 to include mitigation measures relative to the violation.

Location: The property is located on the Columbia River Shoreline at the intersection of Hurst Landing Road and SR 28. The property is further described as being located within Section 26, Township 22 North, Range 21 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 41600002302, 41600002401, 41600002402, 41600002404, and 64100001100.

II. SITE INFORMATION

Site Characteristics: The subject property is characterized as sloping down gently to the south and then drops off sharply near the water. Approximately half of the site is planted in orchard. The rest of the site is covered with native vegetation with a small section in pasture grass and trees at the northwest corner. A residence, barn, shop, mobile home and riding arena are located on the site. On the steep slopes leading down to the Columbia River, the extensive vegetation has been removed. A rock structure has been constructed on a small portion of the steep slopes leading down to the OHWM with

a rock stairway on each end of the structure. A low rock wall has been constructed at the OHWM for a portion of the shoreline.

Zoning: The subject property is located within the Rural Resource 2 acres (RR-2) Zoning District. The purpose of the RR-2 rural resource district is to provide an area for low density, rural residential lifestyles that require only rural levels of service for utilities and infrastructure. Clustering of residential lots will be permitted.

Applicable provisions and requirements of D.C.C., Chapter 19.18B, "Wetlands"
The southern property boundary fronts the Columbia River. The wetland and riparian areas of the Columbia River are designated as critical areas and are regulated under Chapter 19.18B "Wetlands". Development, including vegetation removal, occurring within this area and associated buffer areas must develop a wetland management and mitigation plan consistent with the provisions of DCC 19.18B.035.

Applicable provisions and requirements of D.C.C., Chapter 19.18C, "Fish and Wildlife Habitat Conservation Areas"
The Columbia River is designated as critical areas and is regulated under Chapter 19.18C "Fish and Wildlife Habitat Conservation Areas". Development, including vegetation removal, occurring within this area and associated buffer areas must develop a fish and wildlife habitat management and mitigation plan consistent with the provisions of DCC 19.18C.037.

Applicable provisions of D.C.C., Chapter 14.92 "Enforcement"
No person, corporation, partnership, association or other legal entity shall fail or refuse to comply with, or interfere with or resist the enforcement of the provisions of Titles 15, 17, 18, 19 and/or 20 of the DCC and/or any condition of approval imposed by the board of county commissioners, planning commission, director, zoning adjustor or hearing examiner, or a lawful land use order or directive of a county official. Any such act or failure to act shall constitute a violation under this chapter.

Applicable provision of WAC 173-27-260
Enforcement action by the department or local government may be taken whenever a person has violated any provision of the act or any master program or other regulation promulgated under the act. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

III. COMPREHENSIVE PLAN:

The Douglas County Countywide Comprehensive Plan designates this property as Rural Resource 2. The following goals and policies set forth in the comprehensive plan are relevant to this development:

CRITICAL AREAS – WETLANDS

GOAL: Douglas County's wetlands will be protected to the greatest extent reasonable because they provide important functions that help define the quality of life in Douglas County.

POLICY CA-1: Protection and preservation of wetlands shall be preferred to alteration and mitigation of impacts to wetlands.

POLICY CA-5: Wetlands will be protected as much as reasonable from alterations due to land use changes that may create adverse impacts to the wetland.

POLICY CA-11: Activities or uses that would strip the shoreline of vegetation cover, cause substantial erosion or sedimentation, or significantly, adversely affect aquatic life will be prohibited.

POLICY CA-13: A wetland buffer area of adequate width will be maintained between wetlands and adjacent new development to protect the functions and integrity of the wetland. The ultimate width of the established buffer should be based on the function and sensitivity of the wetland, the characteristics of the existing buffer, the potential impacts associated with the adjacent and proposed land use, as well as other existing regulations which may control the proposed activity.

CRITICAL AREAS – FISH AND WILDLIFE HABITAT CONSERVATION AREAS

GOAL 2: Protect fish and wildlife habitat areas as an important natural resource for Douglas County, particularly in regard to their economic, aesthetic and quality of life values.

POLICY CA-14: 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.

POLICY CA-15: The maximum amount of vegetation should be maintained in its natural state and be disturbed only as minimally necessary for the development. Disturbed areas should be re-vegetated with native vegetation as soon as possible. Re-vegetation will be maintained in good growing conditions, as well as being kept free of noxious weeds.

POLICY CA 16: If a development proposal is located in or near a habitat conservation area shown on the reference maps, a consultation and subsequent mitigation measures, if needed, should be encouraged from the WDFW or other appropriate agency.

POLICY CA-19: Proper riparian management that maintains existing riparian habitat and is consistent with best agricultural management practices should be encouraged.

POLICY CA-20: Ensure that land uses adjacent to naturally occurring wetlands and other fish and wildlife habitat areas will not negatively impact the habitat areas. If a change in land use occurs, adequate buffers will be provided to the habitat areas.

POLICY CA-21: Activities allowed in fish and wildlife habitat conservation areas and open space will be consistent with the species located there, including all applicable state and federal regulations and/or best management practices for the activity regarding that species.

IV. SHORELINE MASTER PROGRAM

The Douglas County Shoreline Master Program classifies this portion of the Columbia River shoreline as an Urban Environment. The Urban Environment is defined as those areas that are to be used for intensive development, such as commercial, industrial and residential. They are to provide for intensive public use of the shorelands, and development should be managed to insure quality as well as a high multiplicity of urban uses. The following goals, policies and requirements of the Master Program address the above referenced activity:

SHORELINE GOALS

GOAL 5: 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.

GOAL 6: 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.

SECTION XII RESIDENTIAL DEVELOPMENT

POLICY A: Residential development should be designed so as to adequately protect the water and shoreline aesthetic characteristics.

POLICY D: Residential developers should be required to preserve shore vegetation and control erosion during construction.

SECTION XVI LANDFILL

POLICY A: 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.

POLICY B: All perimeters of fills should be provided with suitable means for erosion prevention and control when necessary.

POLICY : Fill materials should be of such quality that will not cause problems of water quality. Shoreline areas should not be used for sanitary landfills or solid waste disposal.

V. ENVIRONMENTAL REVIEW

Douglas County issued a Determination of Non-significance on July 16, 2008 in accordance with WAC 197-11-340(2).

VI. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. The following agencies have been sent copies of the proposal and have commented as indicated below:

Agency Notified	Response Received	Agency Notified	Response Received
WA Department of Ecology	7/10/08	United States Army Corps of Engineers	7/14/08
WA Department of Fish & Wildlife	7/14/08	Chelan County PUD	7/14/08
NOAA Fisheries	N/R	Douglas County Building Official	N/R
US Fish & Wildlife	N/R		

* N/R = No Reply

Agency comments have been included as Attachment A.

Debbie Knaub – Army Corps of Engineers

In Mrs. Knaub’s comments, she indicated that the ACOE found another area of fill was noticed on the shoreline and inquired if it was on the subject property. Preliminary investigations do not identify that additional fill was placed on the subject property. Research is ongoing into this inquiry and appropriate code enforcement action will be taken if a violation is found to exist.

No public comments were submitted on this proposal at the time of staff review.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, shoreline master program, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff’s analysis and consistency review for the subject application.

Comprehensive plan consistency:

Critical area policies place preference on the protection of and preservation of wetlands over the alteration and mitigation of impacts to wetlands. The activity that was performed is inconsistent with the comprehensive plan. The permit amendment proposes work which will mitigate the impacts of the violation activity. Completion of the work proposed is consistent with the wetland and fish and wildlife habitat protection established by the comprehensive plan.

Consistency with the provisions and requirements of D.C.C., Chapter 19.18B, “Wetlands”:

DCC 19.18B.050(B)(3) requires that except as otherwise allowed, buffers shall be retained in the natural condition. Additionally Section 19.18B.0509A) requires that wetlands will be left undisturbed, unless the development proposal involves appropriate mitigation and enhancement measures as determined on a site-specific basis. 50 and

75 foot wetland buffers were established during preliminary approval as a result of the wetland delineation and rating that was performed for the subdivision application. The wetland area and buffer was identified on the preliminary plat and subsequent blue-line drawings. Additionally buffer markers and notices on the blue-line drawings, plat mylar and in the covenants identify that the buffer area is not to be disturbed unless a management and mitigation plan has been approved by Douglas County.

As is shown in the photographs included with the code enforcement file, the shoreline was vegetated with mature trees and vegetation. During the course of project development, the trees and vegetation was removed. These activities were not identified in the original management and mitigation plan nor permitted by the subdivision or shoreline permit approvals. The actions necessary to mitigate the impacts on the wetlands and buffer area and correct the code violation include the preparation and approval of a management and mitigation plan and the implementation of that plan.

A Habitat Management and Mitigation Report from The Watershed Company was submitted on May 28, 2008 which identifies the violation activity and the impacts of the activity. The report then identifies the measures necessary to mitigate the activity. The mitigation measures include removal of the rock retaining wall, stairway and rock structures at OHWM, restoration of the natural character of the shoreline, slope stabilization, and revegetation of approximately 35,935 square feet. A more detailed description of the measures can be found in the Description of Mitigation Measures section (Page 4) of the report.

Erosion Control:

The applicant has proposed a native seedmix and planting plan and a monitoring protocol for its growth. In the interim period of excavating the site, the potential exists for sediment to runoff into the water during rain events. The use of mechanical equipment during the dry period may provide for dust control issues for neighbors and impacts to aquatic habitat. A dust control plan should be in place prior to site disturbance. Straw bales silt fencing should be in place between the area to be cleared and grubbed and around the construction area for the stairs, and remain in place until the seeding has established itself as an effective means to prevent onsite erosion.

Monitoring: County code requires a detailed discussion of on-going management practices which will protect the wetland after the project site has been fully developed, including proposed monitoring, contingency, maintenance and surety programs. Planning staff has several recommended conditions which have assisted with the successful implementation of mitigation sites.

The report and mitigation measures meet the requirements of this section.

Consistency with the provisions and requirements of D.C.C., Chapter 19.18C, "Fish and Wildlife Habitat Conservation Areas":

The applicant has submitted a Fish/Wildlife Habitat Management and Mitigation report, on May 28, 2008, completed by the Watershed Company. The plan meets the requirements of Chapter 19.18C, DCC. As conditioned the proposal appears to meet the requirements of this chapter.

Consistency with the Douglas County Shoreline Master Program

The goals and policies of the master program place emphasis on the protection of the shoreline and associated water resources. The proposed mitigation plan will restore the natural character of the shoreline. The revegetation plan and erosion control will protect the water resource during the restoration activity. The proposed permit amendment will correct the work performed outside of shoreline permit approvals and appears consistent with the goals, policies and regulations found in the Douglas County Shoreline Master Program.

VIII. RECOMMENDATION

As conditioned below, this application amendment does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 19 of the Douglas County Code, the Douglas County Countywide Comprehensive Plan, and the Douglas County Shoreline Master Program. Staff recommends approval of SP#06-01A, subject to the following findings of fact and conditions:

Suggested Findings of Fact

1. The applicant is Dr. Thomas Hurst, 1120 Grant Road, East Wenatchee WA.
2. General Description: An application for an amendment to a shoreline substantial development permit for the installation of mitigation measures to mitigate code violation activities along the shoreline. Mitigation measures include restoration of the natural character of the shoreline; slope stabilization and revegetation of the area of rock replacement, vegetation removal and slope disturbance, and permanent irrigation to support mitigation plantings.
3. The property is located on the Columbia River Shoreline at the intersection of Hurst Landing Road and SR 28. The property is further described as being located within Section 26, Township 22 North, Range 21 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 41600002302, 41600002401, 41600002402, 41600002404, and 64100001100.
4. The Comprehensive Plan Designation is Rural Resource 2 acres.
5. The subject property is located in the RR-2 zoning district.
6. The Columbia River Shoreline section of the subject property is designated as "Urban Environment" by the Douglas County Shoreline Master Program.
7. On August 23, 2006, the Douglas County Hearing Examiner issued a Notice of Action approving P-06-02 and SP-06-01 and establishing conditions of approval.
8. A Category Type IV wetland was established for the plat except for a portion of the shoreline on proposed lots 7, 8, and 9 which is listed as Category Type III wetlands. DCC Chapter 19.18.050(B)(7) establishes a 50 foot buffer area for Type IV wetlands and a 75 foot buffer area for Type III wetlands, as measured from the edge of the wetland.
9. The vegetation removal and rock wall/stairway work was performed within the wetland buffers established with the plat.
10. On February 15, 2008, Douglas County identified that unpermitted shoreline activity had been undertaken on the subject property including; removal of vegetation at the OHWM and within the established wetland buffer, placement of

- fill at or below the OHWM and within shoreline jurisdiction, and altering the natural character of the shoreline by construction of rock walls and stair systems. As a result code enforcement action (File # CE-08-03) was initiated.
11. As a result of an active code enforcement action the following permits were placed on hold pending resolution of the code enforcement action: P-06-02, SP-06-01, and BPR-08-05.
 12. 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.
 13. Policy CA-5 of the Douglas County Comprehensive Plan states that wetlands will be protected as much as reasonable from alterations due to land use changes that may create adverse impacts to the wetland.
 14. Policy CA-11 of the Douglas County Comprehensive Plan states that activities or uses that would strip the shoreline of vegetation cover, cause substantial erosion or sedimentation, or significantly, adversely affect aquatic life will be prohibited.
 15. Policy CA-15 of the Douglas County Comprehensive Plan states that the maximum amount of vegetation should be maintained in its natural state and be disturbed only as minimally necessary for the development. Disturbed areas should be re-vegetated with native vegetation as soon as possible. Re-vegetation will be maintained in good growing conditions, as well as being kept free of noxious weeds.
 16. Goal 5 of the Douglas County Shoreline Master Program assures 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.
 17. Goal 6 of the Douglas County Shoreline Master Program assures the protection of the non-renewable shoreline resources of Douglas County, and assures the 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.
 18. 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.
 19. The applicant submitted an amended Fish/Wildlife Habitat Management and Mitigation Report from the Watershed Company, dated May 23, 2008. This report details the violation activity, the impacts of the activity and the measures necessary to mitigate the impacts.
 20. Comments from reviewing agencies have been considered and addressed where appropriate.
 21. Douglas County issued a Determination of Non-significance on July 16, 2008 in accordance with WAC 197-11-340(2).
 22. 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.
 23. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.

24. 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.
25. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. 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.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. Public use and interests will be served by approval of this proposal.
4. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 19 "Environment" of the Douglas County Code.

Suggested Conditions of Approval

1. The project shall proceed in substantial conformance with the plans and application materials of file date stamped May 28, 2005 except as amended by the conditions herein.
2. Prior to clearing the code enforcement action, 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. A copy of these permits shall be submitted to the County.
3. The applicant shall comply with all applicable local, state and federal regulations.
4. Prior to commencing any rock removal or excavation activity, appropriate erosion control barriers shall be installed. Erosion control shall be installed per ACOE, WDFW, and WDOE permit requirements and shall remain in place until the applied native seed mix has grown to a sufficient height for erosion control.
5. A dust control plan shall be submitted to and approved by the County prior to commencing any rock removal or excavation activity.
6. All mitigation work identified in the mitigation plan from the Watershed Company Dated May 23, 2008 must be completed and site monitoring commenced prior to the issuance of any building permits on property within P-06-02.
7. 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.
8. Riparian planting as shown on the mitigation planting plan date stamped May 28, 2009 shall be planted. A five year monitoring period shall commence upon placement of the plantings. 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 building permit issuance. Douglas County must approve quotes for the cost of installation,

- delivery, plant material, soil amendments, irrigation, seed mix and 3 monitoring visits and reports by the biologist or record and Washington State sales tax.
9. The mitigation site shall be maintained to ensure the management and mitigation plan objectives are successful. Maintenance shall ensure 100% survival after the first year and 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.
 10. If at the conclusion of the 5 year monitoring period, 80% survivability is not achieved, then corrective actions as outlined in Condition #12 shall be taken and yearly monitoring shall continue until 80% survivability can be demonstrated from the previous year.
 11. Onsite mitigation monitoring and monitoring reports shall be submitted to Douglas County Transportation and Land Services; 1 year after installation; 3 years after installation; and 5 years after installation. Monitoring reports shall be submitted by the biologist of record and must verify that the provisions in the Fish/Wildlife Habitat Management and Mitigation plan submitted by The Watershed Company, dated May 23, 2008 have been satisfied.
 12. 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.
 13. 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.
 14. 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.

Respectfully Submitted,

Curtis Lillquist, A.I.C.P.
Senior Planner

Attachments