

**STAFF REPORT  
CONSIDERATION OF A RESCISSION OF SP#06-14**

TO: Douglas County Hearing Examiner  
FROM: Douglas County Land Services Staff  
RE: SP#06-14  
DATE: July 17, 2008

**I. GENERAL INFORMATION**

**Requested Action:** Douglas County Land Services has requested that the Douglas County Hearing Examiner review shoreline substantial development permit SP#06-14, pursuant to RCW 90.58.140(8), to determine whether the permit approval should be rescinded or partially rescinded.

Steven K. Smith and Barbara K. Robinson received shoreline substantial development permit approval for the construction of a 2 party joint use dock on Lot 2 of the Plat of Riesling within the Columbia River shoreline; additionally a restoration/access plan was approved for the site. Permit approval was granted by the Douglas County Hearing Examiner on March 27, 2007. On March 14, 2008, Steven K. Smith and Barbara K. Robinson recorded an approved consolidation of parcels application for Lots 1 and 2 of the Plat of Riesling. Owners of the consolidated parcel are Steven K. Smith and Barbara K. Robinson.

The provisions of the Douglas County Shoreline Master Program, Douglas County Code, the Plat of Riesling, and SP#06-14 require joint use dock facilities vs. single use dock facilities be developed on the shoreline. The consolidation of Lot 1 and 2 of the Plat of Riesling establishes that the joint use dock facility will now only serve one lot and one residence, and therefore would be considered a single use dock facility. Douglas County Land Services has requested that the Douglas County Hearing Examiner determine whether the permit approval for SP#06-14 should be rescinded or modified since the dock facility can no longer be considered a joint use dock facility.

**Location:** The subject property is located in a portion of Section 8, Township 26 N., Range 22 E., W.M., more particularly described as lot 1 and 2 of the Riesling Plat. 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.

**Components of Approval of SP#06-14:** A shoreline substantial development permit approval was granted to Steven K. Smith and Barbara K. Robinson for the construction of a 2 party joint use dock on the Columbia River. The dock is proposed to be constructed on Lot 2 of the Riesling Plat. The dock would be a 4' x 40' pier with a 3' x 30' ramp, and two 8' x 20' floats bolted together. Access is proposed by a 4' wide path extending through the wetland buffer. A wetland management and mitigation plan was approved which outlines proposed mitigation for the dock facility and ramp, access corridor, and proposed 3,200 square foot lawn area within the wetland buffer. The application approval proposes a 60/40 restoration-use plan that provides for 40% of the wetland buffer to provide for shoreline access and recreation; and 60% of the wetland buffer to include a habitat restoration area. Habitat functions in the existing wetland buffer are limited on site given the past agricultural use of the site. In total, a 5,200

square foot mitigation area is proposed for the project to address wetland and riparian area impacts.

**Timeline of associated permit actions and process:**

1. Final plat approval for the Plat of Riesling- September 7, 2005
2. Shoreline Substantial Development Permit#06-14 Approval- March 27, 2007
3. Lot consolidation- A lot consolidation was requested by Steven K. Smith and Barbara K. Robinson for the purposes of consolidating Lot 1 and 2 of the Plat of Riesling. The consolidation was recorded March 14, 2008
4. Building permit application for a single family home issued- A residential building permit was issued to Steven K. Smith on May 30, 2008 for the construction of a single family residence. This residence crossed over the extinguished property line between Lot 1 and 2 of the Plat of Riesling.
5. Building permit application for joint use dock submitted- May 28, 2008
6. Notice of incomplete building permit application for the joint use dock/hearing notice for rescission consideration of SP#06-14- June 12, 2008

**II. APPLICABLE STANDARDS AND CONDITIONS**

**1. Shoreline substantial development permit SP#06-14 specifically approved the following:**

*“To undertake the following development: for the construction of a 2 party joint use dock on the Columbia River. The dock is proposed to be constructed on Lot 2 of the Riesling Plat. The dock would be a 4’ x 40’ pier with a 3’ x 30’ ramp, and two 8’ x 20’ floats bolted together. Access is proposed by a 4’ wide path extending through the wetland buffer. A wetland management and mitigation plan has been submitted outlining proposed mitigation for the dock facility and ramp, access corridor, and proposed 3,200 square foot lawn area within the wetland buffer. The application proposes a 60/40 restoration-use plan that provides for 40% of the wetland buffer to provide for shoreline access and recreation; and 60% of the wetland buffer to include a habitat restoration area. Habitat functions in the existing wetland buffer are limited on site given the past agricultural use of the site. In total, a 5,200 square foot mitigation area is proposed for the project to address wetland and riparian impacts.”*

The conditions of approval further state that, “3. The applicant shall comply with all federal, state and local laws and regulations.” As well as condition number 18, “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.”

2. **Plat note #4, of the Plat of Riesling requires:** “Dock facilities for the subdivision shall be limited to joint use dock facilities. Single-use docks shall be prohibited within

*the subdivision. A shoreline substantial development permit, in addition to all applicable federal, state, and local permits shall be required prior to dock placement.”*

3. **Douglas County Code, Wetlands, DCC 19.18B.060.A.3:** *“For all land divisions, dock/facilities shall be designed, designated and constructed for joint use.”*
4. **Douglas County Shoreline Master Program:** *SECTION XXI PIERS AND DOCKS, POLICY B: Priority should be given to the use of community piers and docks. In general, encouragement should be given to the cooperative use of piers and docks.*
5. **RCW 90.58.140(8) establishes the following:** *“Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.”*
6. **Lot consolidation:** declaration and acknowledgement #3, “The resulting consolidated parcel shall be considered a single parcel of real property, shall be assigned one tax parcel number, and may be hereafter segregated, partitioned or otherwise divided only after full compliance with state law and the Douglas County Code.”

### **III. AGENCY AND PUBLIC COMMENTS:**

Notice of the potential rescission of the shoreline substantial development permit of record was sent to surrounding property owners, the property owner and applicable local, state and federal agencies. No comments were submitted at the time of staff review and analysis.

### **IV. ANALYSIS**

Upon review of existing permit approvals and conditions, and standards of applicable codes and statutes, planning staff offers the following analysis and recommendations:

1. **Shoreline substantial development permit SP#06-14 specifically approved the following:**

*“To undertake the following development: for the construction of a 2 party joint use dock on the Columbia River. The dock is proposed to be constructed on Lot 2 of the Riesling Plat. The dock would be a 4’ x 40’ pier with a 3’ x 30’ ramp, and two 8’ x 20’ floats bolted together. Access is proposed by a 4’ wide path extending through the wetland buffer. A wetland management and mitigation plan has been submitted outlining proposed mitigation for the dock facility and ramp, access corridor, and proposed 3,200 square foot lawn area within the wetland buffer. The application proposes a 60/40 restoration-use plan that provides for 40% of the wetland buffer to*

*provide for shoreline access and recreation; and 60% of the wetland buffer to include a habitat restoration area. Habitat functions in the existing wetland buffer are limited on site given the past agricultural use of the site. In total, a 5,200 square foot mitigation area is proposed for the project to address wetland and riparian impacts.”*

The conditions of approval further state that, “3. *The applicant shall comply with all federal, state and local laws and regulations.*” As well as condition number 18, “*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.*”

**Analysis:** The proposed dock facility would serve one residence and one lot. The resulting dock would be single use, inconsistent with the approval provided for under SP#06-14, serving two lots. If the dock permit approval is rescinded, staff does not recommend rescission of the restoration/access approval component of the shoreline permit of record. Condition #18 requires consistency with County Code and the Shoreline Master Program. Analysis below will discuss that the proposed dock no longer meets County Code or the Douglas County Shoreline Master Program.

2. **Plat note #4, of the Plat of Riesling requires:** *“Dock facilities for the subdivision shall be limited to joint use dock facilities. Single-use docks shall be prohibited within the subdivision. A shoreline substantial development permit, in addition to all applicable federal, state, and local permits shall be required prior to dock placement.”*

**Analysis:** The proposed dock would serve one lot with one home, constituting a single use dock. The proposed building permit for a dock facility violates the plat note requirement mandating joint use dock facilities within the boundaries of the plat.

3. **Douglas County Code, Wetlands, DCC 19.18B.060.A.3:** *“For all land divisions, dock/facilities shall be designed, designated and constructed for joint use.”*

**Analysis:** The proposed dock would serve one lot with one home and therefore be inconsistent with the above standard which requires joint use dock facilities within subdivisions.

4. **Douglas County Shoreline Master Program: SECTION XXI PIERS AND DOCKS, POLICY B:** *Priority should be given to the use of community piers and docks. In general, encouragement should be given to the cooperative use of piers and docks.*

**Analysis:** The Douglas County Shoreline Master Program establishes that priority should be given to community piers and docks. The proposed dock facility would not be a shared dock facility but would instead be limited to one single family residence. The proposal is inconsistent with the Douglas County Shoreline Master Program. RCW 90.58.908 has the effect of giving shoreline master program policy significant deference, similar to regulations.

5. **RCW 90.58.140(8) establishes the following:** *“Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing*

*authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.”*

**Analysis: Request for hearing examiner review and notice provisions have been followed in accordance with the Shoreline Management Act. Given the lot consolidation recorded for Lot 1 and 2 of the Plat of Riesling, the conditions of approval for the shoreline permit cannot be met. Douglas County Land Services is requesting partial rescission of SP#06-14, to rescind only dock facility approval and not affect the proposed access/restoration mitigation and planting plan.**

6. **Lot consolidation:** declaration and acknowledgement #3, “The resulting consolidated parcel shall be considered a single parcel of real property, shall be assigned one tax parcel number, and may be hereafter segregated, partitioned or otherwise divided only after full compliance with state law and the Douglas County Code.”

**Analysis: lot consolidations are exempt actions under RCW 58.17, not subject to a public review process. The applicant requested the consolidation of Lot 1 and Lot 2 of the Plat of Riesling and was granted that request. The declaration and acknowledgements signed by the owners clearly state that the two lots have now been combined into “a single parcel of real property”. The declaration further clarifies that the lot may only be split again if consistent with the provisions of state law and County Code. The applicant has begun construction of a single family home which crosses the former boundary line between lot 1 and lot 2 of the Plat of Riesling.**

## V. RECOMMENDATION

The above noted discussion does not provide an analysis on the feasibility of potential remedies for the property owner. Should the dock component of SP#06-14 be rescinded, the property owner could research other alternatives and the County would be available to meet with the owner to discuss permit standards and processes.

As proposed, given the consolidation of Lots 1 and 2 of the Riesling Plat, Land Services staff is unaware of how an issuance of a building permit for a dock facility could be in compliance with the existing shoreline permit of record, county code and the Douglas County Shoreline Master Program. Planning staff recommends that Shoreline Substantial Development Permit SP#06-14 be partially rescinded to remove the approval for a joint use dock facility. Suggested conditions below list modifications to existing conditions of approval for SP#06-14, necessary to still accommodate the

restoration/access plan component. Suggested findings of fact and conclusions of law have been included in support of this recommendation.

**This recommendation is supported by the following suggested findings of fact:**

1. The proposal is located within 200 feet of the ordinary high water mark of the Columbia River, a shoreline of statewide significance.
2. The Douglas County Shoreline Master Program designates this area as a "Rural" Shoreline Environment.
3. Final plat approval for the Plat of Riesling was issued on September 7, 2005.
4. Shoreline Substantial Development Permit#06-14 was granted approval by the Douglas County Hearing Examiner on March 27, 2007. Permit approval included the following components:

*"To undertake the following development: for the construction of a 2 party joint use dock on the Columbia River. The dock is proposed to be constructed on Lot 2 of the Riesling Plat. The dock would be a 4' x 40' pier with a 3' x 30' ramp, and two 8' x 20' floats bolted together. Access is proposed by a 4' wide path extending through the wetland buffer. A wetland management and mitigation plan has been submitted outlining proposed mitigation for the dock facility and ramp, access corridor, and proposed 3,200 square foot lawn area within the wetland buffer. The application proposes a 60/40 restoration-use plan that provides for 40% of the wetland buffer to provide for shoreline access and recreation; and 60% of the wetland buffer to include a habitat restoration area. Habitat functions in the existing wetland buffer are limited on site given the past agricultural use of the site. In total, a 5,200 square foot mitigation area is proposed for the project to address wetland and riparian impacts."*

5. A Consolidation of parcels and certification of legal descriptions with associated acknowledgements and declarations was submitted by Steven K. Smith and Barbara K. Robinson for the purposes of consolidating Lot 1 and 2 of the Plat of Riesling. The consolidation was recorded March 14, 2008. Declaration and acknowledgement #3 states, "The resulting consolidated parcel shall be considered a single parcel of real property, shall be assigned one tax parcel number, and may be hereafter segregated, partitioned or otherwise divided only after full compliance with state law and the Douglas County Code."
6. A residential building permit was issued to Steven K. Smith on May 30, 2008 for the construction of a single family residence. This residence crossed over the extinguished property line between Lot 1 and 2 of the Plat of Riesling.
7. A building permit application for a dock facility was submitted on May 28, 2008 by the property owners of consolidated Lot 1 and 2 of the Plat of Riesling.
8. No public or agency comments were submitted for the review of SP#06-14 at the time of staff analysis.

9. Condition 3 of SP#06-14 states, *“The applicant shall comply with all federal, state and local laws and regulations.”* Condition number 18 states further that, *“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.”*
10. *SECTION XXI PIERS AND DOCKS, POLICY B* of the Douglas County Shoreline Master Program states, *“ Priority should be given to the use of community piers and docks. In general, encouragement should be given to the cooperative use of piers and docks.”*
11. Plat note #4, of the Plat of Riesling lists the following requirement: *“Dock facilities for the subdivision shall be limited to joint use dock facilities. Single-use docks shall be prohibited within the subdivision. A shoreline substantial development permit, in addition to all applicable federal, state, and local permits shall be required prior to dock placement.”*
12. Douglas County Code, Wetlands, DCC 19.18B.060.A.3 requires that, *“For all land divisions, dock/facilities shall be designed, designated and constructed for joint use.”*
13. RCW 90.58.140(8) establishes that, *“Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.”*
14. Notice has been provided to surrounding property owners, the property owners, applicants, and applicable agencies in conformance with RCW 90.58.140(8).

**This recommendation is supported by the following suggested conclusions of law:**

1. The exempt application for a consolidation of Lot 1 and 2 of the Plat of Riesling by the property owners, recorded under AFN#3121485, establishes an inconsistency with the conditions of approval of SP#06-14, which require joint use dock facilities.
2. The building permit for the dock facility would provide dock facilities to one single family residence and one lot, which would not constitute a joint use dock facility. The dock building permit application submitted by the property owners would be considered a single use dock facility.

3. Partial rescission of SP#06-14, removing the approval for a joint use dock facility, is necessary as established by RCW 90.58.140(8).
4. The building permit submitted for the dock facility may not be issued given the inconsistency with Douglas County Code, the conditions of approval of SP#06-14, plat note #4 of the Plat of Riesling and the provisions of the Douglas County Shoreline Master Program.

**Suggested amended conditions of approval for SP#06-14:**

1. Dock and ramp mitigation identified within the wetland management and mitigation plan prepared by Grette and Associates shall not be required as a condition of the development of the restoration/access proposal.
2. Conditions 21, 22, 27, and 30 are hereby stricken. All remaining conditions of approval shall apply except as amended herein.
3. Reference to a dock shall be removed from condition number 10.
4. The joint use dock facility and ramp shall be removed as a listed component of approved actions in SP#06-14.

Respectfully Submitted,

Glen A. DeVries, A.I.C.P.  
Planning Manager