



DOUGLAS COUNTY
TRANSPORTATION & LAND SERVICES

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Date: June 8, 2009

To: Andrew Kottkamp, Douglas County Hearing Examiner

From: Douglas County Land Services

RE: June 18, 2009 Compliance Review Hearing for SP#69-A

On August 22, 2007, the Douglas County Hearing Examiner issued a decision of noncompliance for Shoreline Substantial Development Permit #69-A, and established a remediation process with benchmark dates and requirements to occur within a 16 month timeframe. On December 18, 2008, the Hearing Examiner considered agency requests to extend the initial 16 month timeline for an additional 6 month period in order for the permit holder, Calvin White, to submit additional engineering analysis for agency review and allow time for the agencies to further study changes in the draft remediation plan. On December 24, 2008, the Douglas County Hearing Examiner granted a 6 month extension with the concurrence of the permit holder and an open public review hearing regarding finalization of a remediation plan was set for June 18, 2009.

Following the Hearing Examiner's decision on December 24, 2008, Douglas County contacted Mr. White on January 14, 2009 by phone; and on February 11, 2009 with written correspondence to inquire on the applicant's progress to comply with the Hearing Examiner's order. On March 16, 2009, eighty-two (82) days after the Hearing Examiner's notice of decision and order, Mr. White resubmitted documents that were already in the file that did not address the request for information from the commenting agencies. Mr. White had been provided a CD copy of all of the application materials in the county's files prior to August 22, 2007.

On March 16, 2009 and May 26, 2009, Douglas County staff sent two additional written notices to Mr. White, reminding him of his obligations under the Hearing Examiner's decision and the time constraints. Douglas County is in receipt of a May 1, 2009 letter from Mr. White indicating that the requested geotechnical analysis and testing was going to be provided by Nelson Geotechnical but would most likely not be available until June 18, 2009. Douglas County Land Services staff was invited to observe the site testing (see enclosed photos).

In discussions with the Washington State Department of Fish and Wildlife (WDFW), it is Douglas County's understanding that WDFW may request an extension of the hearing process in order to consider the new engineering analysis. This request might be necessary if WDFW is to review documents submitted by Mr. White. However, it must be pointed out that Mr. White has been given considerable opportunities and leeway in the past to perform and he has failed at almost every juncture. This violation has been on-going since 2003; for nine years Mr. White has had the use and enjoyment of actions that are clearly unlawful and he has, to this point, shown little regard for the natural environment, the responsibility of Douglas County to enforce applicable regulations and the authority of the Hearing Examiner.

Douglas County might not object to a further continuance provided that specific milestones are identified, that strict consequences are identified should Mr. White fail to meet these milestones, that a performance bond be posted to cover the cost of remediation, and that Mr. White enter into an abatement agreement. If an extension is granted, we would recommend that:

1. The engineering analysis in the form and format required by WDFW be submitted not later than the June 18, 2009 hearing.
2. A formal notice of violation and order to abate, based on previous correspondence and the Hearing Examiner's Notice of Action resulting from the June 18, 2009 hearing will be recorded with the Douglas County Auditor.
3. Based upon the engineering analysis there could be two different courses for remediation, one of which would apply:

Assumption A. *Engineering analysis indicates that onsite retaining walls are necessary to maintain the integrity of the single family residence on the site.*

Actions-

1. *July 18, 2009, agencies with jurisdiction provide review comments, questions, and required revisions to proposed remediation plans.*
2. *August 18, 2009, the applicant's consultants provide revised remediation plans to address comments, questions and required changes.*
3. *Agencies with jurisdiction provide final comments for the hearing examiner's consideration by September 1, 2009.*
4. *The Douglas County Hearing Examiner shall hold a final compliance hearing on September 10, 2009.*

Assumption B. *Engineering analysis indicates that onsite retaining walls are not necessary to maintain the integrity of the single family residence on the site.*

Actions-

- 1. June 18, 2009, Calvin White's engineering consultant submits a geotechnical report.*
 - 2. July 18, 2009, agencies with jurisdiction provide review comments, questions, and required revisions to proposed remediation plans.*
 - 3. August 18, 2009, the applicant's consultants provide revised remediation plans to address comments, questions and required changes.*
 - 4. September 14, 2009, agencies with jurisdiction review required changes and direct any final revisions to the remediation plan.*
 - 5. October 2, 2009, the applicant's consultants provide final draft remediation plans for the hearing examiner's consideration.*
 - 6. Agencies with jurisdiction provide final comments for the hearing examiner's consideration by October 23, 2009.*
 - 7. The Douglas County Hearing Examiner shall hold a final compliance hearing on November 12, 2009.*
4. Site remediation is completed by January 31, 2010, with the exception of mitigation plantings. Mitigation plantings must be installed no later than May 15, 2010. Written verification that site remediation has occurred consistent with the approved remediation plans must be provided by the consulting engineer and biologist of record no later than June 1, 2010.
 5. An estimate of the cost of all remedial work shall be prepared by a contractor with qualifications and experience to perform the required work and who is not related to the permit holder. A performance bond shall be purchased in favor of Douglas County at 125% of the cost of the remedial work to assure its completion, no later than December 18, 2009.
 6. An additional surety will be necessary to guarantee the performance of the planting schema for a five year period following completion of the project. The performance surety must be completed no later than December 18, 2009.
 7. The property owner shall sign a statement authorizing Douglas County to enter the property to complete the remedial work should any of the milestones not be met, to be signed and notarized no later than December 18, 2009.

If an extension is not requested/granted; Douglas County Land Services requests that the Hearing Examiner rescind all permits related to and including Shoreline Permit SP 98-69 and SP 99-69-A, that were not necessary for the establishment of the single family residence, driveway and highway berm in their current location. Components of these permits which should then be rescinded along with addressing abatement of onsite violations include:

Potential permit components for rescission-

- Dock construction

- Grading for the placement of the beach volleyball court and contiguous lawn area by the dock, and pedestrian access to the dock.
- Placement of a rock retaining wall extending from the southern edge of the proposed home in the vicinity of the beach volleyball court to the southern property boundary.
- Vegetation onsite could be altered but replaced by the revegetation plan-mitigation management plan.
- Final grade of riparian area to follow mitigation plan.
- Graded slopes to be bioengineered in proximity to shoreline for erosion control and shoreline protection per mitigation plan.
- An existing boat access corridor is referenced in Shoreline Permit #69

Violations-

- Mitigation plan and approved grading plan not adhered to. A portion of the riparian buffer was leveled for lawn placement.
- Lawn was placed in areas dedicated for riparian planting in the buffers.
- Additional rock retaining walls added, extending from the southern edge of the home towards the northern property boundary. Retaining walls do not constitute a bioengineered approach to erosion control.
- A pedestrian trail was carved into the riparian area for the entire frontage.
- Light posts and speaker systems were placed within the riparian buffer area.
- Rock and sand fill was placed within the riparian buffer and waterward of the ordinary highwater mark.
- .16 acres of fill according to the property owner's submittal, was placed landward of the ordinary high water mark.
- Mitigation pursuant to the site plan has not been completed. Additional site grading which has occurred does not allow for the mitigation and management plan to be completed without amendments.
- Significant amendments to the mitigation and management plan were required to be approved by the Washington State Department of Fish and Wildlife, Douglas County and the Douglas County Hearing Examiner.

An order of rescission of said permits should include a requirement to remove all associated improvements, and abate onsite violations. The decision and order should forward the rescinded permits to the Douglas County Prosecutor to direct abatement of the violations in conformance with the provisions of the Douglas County Shoreline Master Program and Title 19 of Douglas County Code.

Douglas County Land Services requests that regardless of whether the Hearing Examiner grants a time extension for coordinated efforts to address onsite remediation or rescinds the shoreline permits of record, that the Hearing Examiner reiterate the August 22, 2007 Hearing Examiner's finding # 15 and conclusion #2. Douglas County Land Services further requests that the Hearing Examiner's final decision and order require that the violations onsite be abated, no later than May 15, 2010.