

**STAFF REPORT  
KELLY CLARK  
SHORELINE VIOLATION MITIGATION WORK**

TO: Douglas County Hearing Examiner  
FROM: Douglas County Land Services Staff  
RE: Kelly Clark, SP-10-02  
DATE: April 5, 2010

**I. GENERAL INFORMATION**

Requested Action: 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.

Background: 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. This 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.

Location: 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.

**II. SITE INFORMATION**

Site Characteristics: The property slopes moderately to steeply down towards the river. A single family residence is located on the property.

Zoning and Development Standards: The subject property is located within the Rural Recreation (R-REC) Zoning District.

The purpose of the rural recreation (R-REC) district is to provide the opportunity for the development, redevelopment, and infill of existing intensely developed rural recreational areas for residential, recreation, and tourist related development consistent with the rural character in the vicinity. These areas provide a distinct rural lifestyle closely associated with the many natural amenities found within Douglas County.

**III. COMPREHENSIVE PLAN:**

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

RURAL:

POLICY RD-4: Development and recreational opportunities in rural shoreline and other rural areas shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.

**IV. SHORELINE MASTER PROGRAM**

The Douglas County Shoreline Master Program classifies this portion of the Columbia River shoreline as Rural Conservancy. The purpose of the rural conservancy environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities.

A listing of the applicable policies and regulations are found in the analysis section of this staff report.

WASHINGTON ADMINISTRATIVE CODE (WAC)

WAC 173-27 provides updated rules for administering the Shoreline Management Act (RCW 90.58) and the local master program. WAC 173-27-150, establishes minimum review criteria for substantial development permits. This criteria states that a substantial development permit shall be granted only when the proposed development is consistent with:

- The policies and procedures of the Act;
- The provisions of this regulations; and
- The applicable master program adopted or approved for the area.

**V. ENVIRONMENTAL REVIEW**

Douglas County issued a Determination of Non-significance on April 5, 2010 in accordance with WAC 197-11-355 (Optional DNS).

**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	N/R	WA Dept of Fish & Wildlife	N/R
Chelan County PUD	3/10/10		

\* N/R = No Reply

Agency comments have been included as Attachment A.

No public comments were received at the writing of this staff report.

## VII. PROJECT ANALYSIS

Upon review of the application materials, site plans, public and agency comments, the Greater East Wenatchee Area Comprehensive Plan, and applicable codes and requirements, planning staff offers the following analysis and recommendations for the subject application:

### Comprehensive plan consistency:

The activity that was performed is inconsistent with the comprehensive plan. The permit proposes work which will mitigate the impacts of the violation activity. Completion of the work proposed is consistent with policy to minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.

### Consistency with the Douglas County Shoreline Master Program

The activity proposed in the application is to correct and mitigate for unpermitted actions taken within shoreline jurisdiction.

#### 4.1 ECOLOGICAL PROTECTION AND CRITICAL AREAS

POLICY 1: Shoreline use and development should occur in a manner that assures no net loss of existing ecological functions and processes and protects critical areas. Uses should be designed and conducted to avoid, minimize, or to fully mitigate in so far as practical, any damage to the ecology and environment.

*The project will mitigate for the damage to shoreline and environment that resulted from the unpermitted activity.*

#### 4.2 WATER QUALITY

REGULATION 3: Best management practices (BMP's) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control plan, identified in the Stormwater Management Manual for Eastern Washington, as amended.

*As conditioned, the proposal is consistent with this regulation.*

#### 4.3 VEGETATION CONSERVATION

REGULATION 2: Where impacts to buffers are permitted under Section 4.1, Ecological Protection and Critical Areas, new developments shall be required to develop and implement a management and mitigation plan. When required, management and mitigation plans shall be prepared by a qualified biologist and shall be consistent with the requirements of Appendix H. Management and mitigation plans shall describe actions that will ensure no net loss of ecological functions. Vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the County Auditor.

*A fish and wildlife management and mitigation plan prepared by Grette & Associates was submitted in the application materials.*

## 5.8 FILLING, GRADING AND EXCAVATION

POLICY 1: Filling, grading, and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat is encouraged.

Excavation work is limited to removal of the fill placed behind the retaining wall and the restoration of the original grade after the walls are removed.

POLICY 4: Filling, grading and excavation should be located and developed so that water quality and hydrologic and runoff patterns are not altered.

*Runoff patterns and water quality will not be altered by the proposed project.*

REGULATION 1: Filling, grading, and excavation shall be minimized to the maximum extent practicable and only authorized along with approved shoreline use and development activities that are consistent with this program.

*The amount of excavation is the minimum necessary to remove the unauthorized fill and restore the original grade after the retaining walls are removed.*

### Appendix H, Chapter 3: Critical Areas – Fish and Wildlife Habitat Conservation Areas

The unpermitted activity has created impacts to the buffer area. A fish and wildlife habitat management and mitigation plan has been prepared that identifies the unpermitted actions, the actions necessary to correct the unpermitted activity and the measures necessary to mitigate the impacts of these actions.

As conditioned, the proposal is consistent with this section.

### Consistency with WAC 173-27 and RCW 90.58:

As conditioned below, the project appears consistent with the requirements and criteria of the Shoreline Management and Enforcement Procedures, and the Shoreline Management Act

### Agency comments:

Agency comments from the Chelan County PUD have identified mitigation or project design required for the shoreline permit. These comments have been included as conditions of approval to address these agency concerns.

## **VIII. RECOMMENDATION**

As conditioned below, this application does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 18 and 19 of the Douglas County Code, the Douglas County Countywide Comprehensive Plan, and the Douglas County Shoreline Master Program. Staff recommends approval of SP#10-02, subject to the following findings of fact and conditions:

## Suggested 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. 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. As proposed, revised, and conditioned, potential impacts of the project can be mitigated.
4. Public interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 18 "Zoning" and 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 submitted on January 28, 2010 except as amended by the conditions herein.
2. 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.
3. The applicant shall comply with all applicable local, state and federal regulations.
4. 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.
5. 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.
6. The project application shall proceed consistent with the Wetland Management and Mitigation Plan prepared by Grette & Associates, dated January 2010.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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