

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WA 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P 2017-01)	DECISION AND
Skeels Road)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 24, 2017, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is Double D Vineyards LLC, 18725 164th Ave NE, Woodinville WA.
2. General Description: An application for a 7 lot cluster subdivision. Proposed residential lots are 1 acre. Lots are proposed to be served by a private water system and on-site septic.
3. Location: The subject property is Lot 10 of the Plat of Desert Shores located within Section 21, Township 26 N., Range 21 EWM, Douglas County, WA. The Douglas County Assessors Number is 96700001000.
4. Site Information:

Total Project Size:	52.8 acres
No. of lots	7
Domestic Water:	Well
Sewage Disposal:	On-site septic
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #4
Telephone Service:	Frontier
5. Site Characteristics: The property was formerly in orchard. An agricultural storage building is present.

6. The Comprehensive Plan Designation is Rural Recreation and Commercial Agriculture 10 acres.
7. The subject property is located in the R-REC and AC-10 zoning districts which allows for subdivisions as permitted uses.
8. The Columbia River Shoreline section of the subject property is designated as “Rural Conservancy” by the Douglas County Shoreline Master Program.
9. RCW 58.17.110(2) requires that appropriate and adequate provisions be made for streets or roads, alleys or other public ways.
10. The subdivision will access Skeels Rd. The proposal includes a private road which will be constructed to county and International Fire Code standards. All roadway improvements would be the responsibility of the developer.
11. A Riparian Buffer Assessment dated November 16, 2017 from Grette & Associates was performed for the subject property. The assessment determined that the subject property met the criteria in the shoreline master program for the 100 foot Zone 1 buffer.
12. A Wetland Assessment and Rating, dated September 26, 2016 from Grette & Associates was performed for the subject property. The assessment identified a Type 2 wetland in the southern portion of the shoreline. Section 2.050.B of Appendix H of the Douglas County Regional Shoreline Master Program indicates that Type 2 wetlands shall have a 100 foot buffer from the wetland edge for low-moderate intensity development.
13. The applicant submitted a dock assessment from Grette & Associates dated May 5, 2009 for the purpose of identifying a location for a community dock and dock access corridor that is least environmentally impacting both waterward and landward of the Ordinary High Water Mark.
14. The Fire Marshall has identified that the application is exempt from fire flow requirements pursuant to DCC 15.28.040 with the proposed lot sizes greater than 1 acre in size and the conditioned plat note requiring all structures maintain a minimum of 50 feet of separation.
15. The reserve lot size is 90% of the portion of the parcel zoned AC-10.
16. The project meets the Cluster Division standards found in DCC 18.16.046.
17. Public comment received during the comment period:
 - Desert Shores Homeowners Association, Neil Zimmer President
18. The Washington State Department of Ecology – Air Quality Division has jurisdiction over air quality in Douglas County.
19. The Chelan Douglas Health District that a report for soil/site evaluation/feasibility review for placement of onsite sewage systems from Towner Designs dated 10/31/2016 was submitted.

Based on this evaluation, all lots meet or exceed the state minimum lot size based upon soil type and source of domestic water supply.

20. Frontage Improvements are addressed in Chapter 12.50.150 Transportation System and Frontage Improvements, of the DCC and EWMC. Skeels Road is designated as Rural Local Access Road. Figure 3-2 Rural Local Access Road is the applicable road standard. Skeels Road from the US-97/Skeels Road intersection up the section of existing pavement (approximately 3,700 feet) does not appear to meet the current Douglas County Standard.
21. A request for Waiver of Skeels Road Improvements was submitted on May 3, 2017 from Pacific Engineering. The County Engineer reviewed and accepted and the Board of County Commissioner concurred, with a waiver of Skeels Rd improvements on May 11, 2017.
22. Section 17.04.040(A), D.C.C., authorizes dedications of right-of-way and improvements to the area directly affected by the development.
23. A Preliminary Storm Drainage Report (Pacific Engineering, Dave PE) dated January 25, 2017, revised May 25, 2017 was provided in response to a request for additional information.
24. Preliminary Road, Grading & Storm Plans (Pacific Engineering, Davy PE), initially issued January 25, 2017, revised May 25 2017 was provided in response to a request for additional information.
25. An e-mail from Keith Tower (Tower Designs) was included within the Preliminary Storm Drainage Report. The email discussed a meeting to review the location of the existing drainfield and reserve serving the existing Desert Shores Subdivision.
26. County staff requested concurrence from the Chelan Douglas Health District regarding compatibility of the proposed stormwater system and associated impacts to the proposed Lot 5, Lot 6 and Reserve Tract C (Open Space), including easements for drain fields. Based upon the information included in the application materials provided a clear determination from the Chelan Douglas Health District with regards to possible impacts to the drain field and reserve was unable to be provided. It was recommended that the applicant engineer/stormwater designer provide clarification and analysis of impact and mitigation to assure compatibility between the stormwater design and the drain field and reserve.
27. The Washington State Department of Transportation has commented that the Skeels Rd. intersection with US 97 is capable of handling the additional traffic generated by the proposal without improvements.
28. Soil mapping from the USDA Natural Resource & Conservation Service indicate the presence of steep and severe building soils on the subject property. A Geotechnical Engineering Evaluation and Geologic Hazard Assessment from Nelson Geotechnical Associates, dated November 18, 2016 was submitted for the application. This Evaluation was updated by an Additional Clarification Memo from Nelson Geotechnical Associated, dated May 4, 2017. The documents meet the requirements of Chapter 19.18D and provides an analysis of the geologic hazards and geotechnical opinions and recommendations regarding proposed site development.

29. The geotechnical reports state that residential construction within the proposed building envelopes is generally feasible provided proper geotechnical investigation and recommendations are completed prior to construction.
30. In order to meet the state requirements for Enhanced 911 service, all lots within this plat will be addressed prior to final plat approval.
31. Comments from reviewing agencies have been considered and addressed where appropriate.
32. Douglas County issued a Determination of Nonsignificance on August 9, 2017 pursuant to WAC 197-11-355 (Optional DNS).
33. 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.
34. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
35. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
36. Section 17.24.150 of the Douglas County Code requires that every subdivision shall be served by a water supply system approved and installed to meet the requirements and standards of the Chelan Douglas Health District.
37. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
38. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
39. An open record public hearing after due legal notice was held on August 24, 2017.
40. The entire Planning Staff file was admitted into the record at the public hearing.
41. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
42. Appearing and testifying on behalf of the applicant was Martin Davy. Mr. Davy testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Davy indicated that other than those concerns set forth in his email dated August 17, 2017 to Mr. Lillquist, that the applicant had no objections to any of the proposed Findings of Fact or Conditions of Approval.

43. Douglas County Transportation and Land Services submitted an August 24, 2017 Memorandum to the Douglas County Hearing Examiner setting forth their response to the Applicant's concerns set forth in Mr. Davy's email dated August 17, 2017.
44. Douglas County also submitted into the record an August 24, 2017 inter-office memo from Jennifer Lange, PE to Mr. Lillquist and the Douglas County Hearing Examiner.
45. Based upon the comments from the Applicant and from Douglas County, the Hearing Examiner has modified Conditions of Approval number 8 and 31.
46. No member of the public appeared at the hearing.
47. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
48. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
49. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
50. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. 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 Regional Shoreline Master Program.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 17 "Subdivision", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
7. As conditioned, the proposal does conform to the standards specified in Douglas County Code.

8. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
9. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
10. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application P 2017-01 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

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 dated January 25, 2017, and May 26, 2017 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. A plat certificate showing parties of interest from a title company must be submitted with the blueline drawings.
5. The final plat map shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
6. All parties having an ownership interest in the subject property shall acknowledge the plat.
7. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.

8. All improvements shall be in place prior to plat finalization or a subdivision agreement must be entered into between the applicant and the County. The subdivision agreement shall specify surety, time frames, etc. If the developer elects to enter into a subdivision improvement agreement, an appropriate financial security such as a surety bond or irrevocable standby letter of credit shall accompany said agreement in conformance with D.C.C. 14.90.
9. The following notes shall appear on the face of the plat:
 - 9.1 A site and project specific geotechnical evaluation from a licensed geotechnical engineer shall be performed for each building permit that takes into account the specific home design and all site development plans (i.e. grading, utilities, driveways). This evaluation shall be submitted with the building permit application.
 - 9.1.1 For lots 5 & 6: A site and geotechnical evaluation from a licensed geotechnical engineer shall be performed for each building permit that takes into account specific home design and all site development plans (i.e. grading, utilities, driveways.) This evaluation shall be submitted with the building permit application.
 - 9.1.2 For Lots 1-4 and Lot 7: Site development and building plans shall conform to the recommendations in the November 18, 2016 Geotechnical Engineering Evaluation and Geologic Hazard Assessment from Nelson Geotechnical Associates, Inc. recorded under AFN _____.
 - 9.2 Based on historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. The Washington State Department of Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the MTCA cleanup levels, the Washington State Department of Ecology recommends that potential buyers be notified of their occurrence. This note shall not be required to be placed on the final plat, if the soils are sampled by a professional with adequate credentials to verify that the site does not contain lead and arsenic and organochlorine pesticides at concentrations above the MTCA cleanup levels.
 - 9.3 The subject property is located within or near designated agricultural lands, forest lands or mineral resource lands on which a variety of activities may occur that are not compatible with residential or other type of development for certain periods of limited duration. Such activities may include but are not limited to noise, dust, smoke, odors and hours of operation resulting from harvesting, planting, fertilizing, pest control and other resource-related activities associated with usual and normal resource management practices which, when performed in accordance with county, state and/or federal law, shall not be subject to legal action as public nuisances.
 - 9.4 Property in this plat is subject to flowage easements in favor of the Public Utility District No. 1 of Chelan County, recorded April 21, 1959, AFN 128673 (K-Line) and November 16, 1992, AFN 280572 (G-Line).

- 9.5 Until such time as adequate water for fire protection is provided a minimum 50 foot separation must be maintained between all structures on or off premise.
- 9.6 The reserve lot shall only be utilized for the purposes identified by Section 18.16.046, and as specifically identified by the reserve lot management plan recorded under AFN# _____. Amendment to the management plan may be considered under the provisions of Section 18.16.046. Structures shall be allowed on the reserve lot only in conformance with the approved reserve lot management plan.
- 9.7 The combined water use by all the wells in this development may not exceed 5000 gallons per day or be used to irrigate more than ½ acre unless a ground water withdrawal permit is obtained from the Department of Ecology (RCW 90.44.050).
10. During construction, all work associated with the proposed project shall occur between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday. Construction activities on Sunday shall not commence before 8:00 a.m. and shall conclude by 7:00 p.m.
11. The 100 foot Riparian Buffer shall be labeled on the face of the final plat.
12. The Wetland and 100 foot Wetland Buffer shall be labeled on the face of the plat
13. Permanent buffer markers shall be installed per the requirements of Section 3.060.D.3 of Appendix H of the Douglas County Regional Shoreline Master Program on for the Riparian Buffer and per 2.060.A.3 of Appendix H for the wetland buffer whichever is furthest landward.
14. The subdivision shall have one community dock to serve all 7 lots. Access easements shall be provided from all lots to the dock. The dock and easements shall be located in accordance with the Dock Assessment, from Grette & Associates, dated May 5, 2009.
15. The final plat shall show the location of all easements serving or encumbering the subject property.
16. The appropriate flowage easements and language shall be depicted on the final plat drawing. Written verification shall be provided from the Chelan County PUD that the flowage easements and language meets the PUD's requirements.
17. To facilitate efficient emergency response affecting public health and safety, an addressing plan shall be assigned by the Douglas County Geographic Information System Coordinator during blue line review of the final plat. Addresses for each lot shall be shown on the face of the final plat mylar prior to final plat approval. The proposed road names must be approved prior to submitting blue line drawings for review.
18. The location of existing utilities (i.e. power, sewer, water and irrigation lines, etc.) and utility and private access road easements shall be depicted on the face of the final plat.

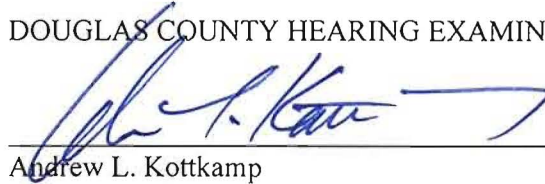
19. Written verification from the Douglas County PUD that easements and improvements have been addressed to their satisfaction, shall be required prior to final plat approval.
20. Written verification from the Douglas County Fire Marshal that adequate fire protection measures meeting the International Fire Code and DCC 15.28 and International Fire Code Appendices B and C are in place. Roadways shall meet Chapter 15.24.030 Fire Apparatus Access and International Fire Code Appendix D, Fire Apparatus Access Roads for emergency access.
21. Written documentation from the Chelan Douglas Health District must be provided verifying that all of the district's requirements regarding water and septic service to the project have been met. The district has provided these requirements, including required plat notes, in their July 17, 2017 revised comments.
22. The following language must appear with the Health District signature line:
 - 22.1 "The Health District makes no representation as to the legal availability of water to this plat."
23. Private roads shall be designed, constructed and established in accordance with Douglas County Code 12.52.020(B)(1-10).
24. Design and construction and acceptance of the private road improvements shall be in accordance with applicable Douglas County Code, including Title 12, Chapter 15.36 (Grading and Excavation Standards), International Fire Code and the Geotechnical Engineering Evaluation and Geologic Hazard Assessments/Reports as well as any additional geotechnical information provided through the design and construction plans, the geotechnical engineer (Nelson Geotechnical Associates) shall review the plans and provide written confirmation that the plans submitted have been prepared in accordance with the recommendations contained within the submitted geotechnical reports. This includes recommendations associated with access and stormwater design/construction elements.
25. A final stormwater drainage plan and report prepared by a professional engineer licensed in the State of Washington shall be submitted to and approved by Douglas County prior to construction. Construction and post-construction stormwater elements shall be addressed in accordance with Douglas County Code 20.34 and 20.36 and the Stormwater Management Manual for Eastern Washington-SWMMEW (Ecology). Measures to address stormwater infiltration during frozen soil conditions shall be included, including provisions for overflow. The stormwater plan shall have supporting calculations and final as-built drawings shall be delivered to Douglas County prior to final plat approval. Any modifications to the system during construction shall be analyzed by the engineer and the results provided to the County to demonstrate the constructed facilities meet the conditions of approval. Recommendations and/or requirements contained within the Final Drainage Analysis shall be incorporated into final project approval, including but not limited to the addition of plat notes and recording of operation and maintenance agreements and/or easements. The designer shall specifically address access for maintenance and inspection in addition to the Site Suitability Criteria included within the SWMMEW.

26. Proposed discharges and/or overflow to the Columbia River (flow control exempt) shall be addressed specifically within the design report, including analysis and certification that the proposed discharge satisfies State regulations with respect to discharges to Waters of the State, including as applicable water quality treatment.
27. The Stormwater Design report shall specifically address potential impacts and mitigation measures incorporated to assure the stormwater system for the proposed subdivision is compatible with the existing drainfield and reserve area.
28. Stormwater detention facilities are typically required to be located on a separate tract, under the functional control of the homeowners association with each lot having an equal and undivided interest in the tract(s). In lieu of providing separate tracts, facilities may be located within easements clearly identified on the final plat map. Provisions, including easements for access for inspection, maintenance and repair shall be addressed during construction plan preparation and identified on the final plat map. The plat map shall identify the Homeowners Association and agencies having jurisdiction regarding maintenance of stormwater facilities as having rights to access the easements for inspection, maintenance and repair. Restrictions, including but not limited to grading and fencing within the easements for stormwater facilities, including access easements shall be clearly identified on the face of the plat and within the Homeowners Association documents.
29. Prior to final approval, the geotechnical engineer (Nelson Geotechnical Associates) shall provide written certification that the access and stormwater facilities have been completed in accordance with the submitted geotechnical reports.
30. The Engineer of Record shall provide certification that the system has been completed in accordance with the accepted plans, as well as applicable Douglas County Code and the Stormwater Management Manual for Eastern Washington.
31. Prior to final plat approval, Private Stormwater Operation and Maintenance Agreement(s) must be executed, recorded and AF# referenced on the face of the final plat for the private stormwater facilities. Said agreement shall be executed on standard forms approved by Douglas County. It shall be clearly noted on the face of the plat that Douglas County will not maintain the private stormwater facilities (tracts). The agreement shall specify the homeowners of the subdivision as having responsibility for the long term maintenance of the private stormwater drainage system within the development.
32. As applicable, the following plat notes (or similar) may be required on the face of the plat to address stormwater associated with the development of the proposed lots. Based upon the Preliminary Stormwater Design report these notes may be applicable to Lot 5 and Lot 6.
 - 32.1 At time of building permit, a site specific engineered stormwater site plan, providing for collection and conveyance of runoff from site development to the stormwater stub shall be submitted and accepted by Douglas County.

- 32.2 Prior to occupancy, certification shall be submitted by the Engineer of Record that the private stormwater improvements and site development have been completed consistent with the accepted stormwater plan and report.
- 32.3 Prior to occupancy, a Private Stormwater Operation and Maintenance Covenant Agreement (county standard form) shall be executed for the individual stormwater systems and recorded with the County Auditor.
33. Infiltration testing shall be performed in accordance with the guidance provided in the Stormwater Management Manual for Eastern Washington and Geotechnical Evaluations prior to acceptance of the final construction plans and stormwater report in order to verify the suitability of the site to accommodate the proposed system.
34. Erosion control measures shall be designed in accordance with the Stormwater Management Manual for Eastern Washington (SWMMEW) and the recommendations contained within the geotechnical engineering evaluation and geotechnical hazard assessment prepared by Nelson Geotechnical Associates. Best management practices shall be employed to prevent runoff from flowing over the site slopes. Disturbed areas shall be re-vegetated and maintained throughout construction. Final grading shall incorporate permanent erosion control measures which routes stormwater runoff away from site slopes and directs the collected water to appropriate discharge locations.
35. Erosion control measures shall be located outside of all Aquatic Habitat and Wetland Buffers.
36. Individual/common plan of development for this proposal exceeds 1 acre of disturbed ground. This meets the threshold used by the Washington State Department of Ecology in administering their General Permit to Discharge Stormwater Associated with Construction Activity. If required, the permit shall be obtained prior to beginning groundbreaking activities. Acquisition of permits is the responsibility of the applicant.
37. Preliminary approval shall expire 5 years from the date of Notice of Action by the Douglas County Hearing Examiner. Final plat approval after the expiration will require the submittal of a new preliminary application and approval based on applicable documents and codes in effect at the time of re-application.
38. The applicant shall coordinate with the Desert Shores Homeowners Association to craft CC&R language to identify the community drainfield area and provide protection measures. A copy of the CC&R shall be provided to the County during blue line review.
39. Fencing shall be installed along the proposed shoreline access trail pursuant to the design sheet dated received July 27, 2017. Fencing shall be located landward of the Aquatic Habitat and/or Wetland Buffer.

Dated this 5th day of September, 2017.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.