

**SHORELINE MANAGEMENT PERMIT  
ACTION SHEET**

**Application #:** SP 15-05  
**Administering Agency** Douglas County Transportation and Land Services  
**Type of Permit:** ■ Shoreline Substantial Development  
**Action:** ■ Approved    □ Denied  
**Date of Action:** September 28, 2017

**Date Mailed to DOE/AG**

Pursuant to Chapter 90.58 RCW and the Douglas County Regional Shoreline Master Program, a permit is hereby granted to:

**James & Kim Dir,  
71 N. Shore Dr.,  
Orondo, WA 98943**

To undertake the following development: Shoreline Substantial Development Permit application 15-05 is for a shoreline wheelchair access trail and mooring buoy.

Upon the following property: 71 N. Shore Dr., Orondo, WA.

Within 200 feet of Columbia River and/or its associated wetlands.

The project will be within a shoreline of state-wide significance (RCW 90.58.030). The project will be located within a Rural Conservancy Shoreline designation. The Douglas County Regional Shoreline Master Program is applicable to this development.

Development pursuant to this permit shall be undertaken in conformance with the following terms and conditions:

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 on file submitted on October 7, 2015 except as amended by the conditions herein.
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 be 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. A temporary erosion and sediment control plan shall be submitted with the mitigation installation quotes and shall be approved prior to approval of the performance surety.
6. The buoy shall be marked with reflectors to prevent unnecessarily hazardous conditions for water surface users during day or night. Documentation shall be provided to the County.
7. The buoy shall be permanently marked with name, address, telephone number and date of installation. Documentation shall be provided to the County.
8. The project application shall proceed consistent with the Fish & Wildlife Habitat Management and Mitigation Plan prepared by Grette Associates, dated September 2015.
9. Where necessary, a permanent means of irrigation shall be installed for the mitigation plantings that are designed by a landscape architect or equivalent professional. Said design shall meet the specific needs of riparian and shrub steppe vegetation.
10. Mitigation planting as shown on the mitigation planting plan, sheets 6 and 7 of 7, dated 9-15-2015 shall be planted upon completion of the project.
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 Douglas County Code shall be entered into between the property owner and Douglas County Transportation and Land Services upon approval of the shoreline permit. 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.
12. The mitigation site shall be maintained to ensure the management and mitigation plan objectives are successful. Maintenance shall ensure 100% survival for the first year and 80% survival for each of the 4 years following 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.
13. 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 Habitat Management and Mitigation Plan submitted by Grette Associates, dated September 2015, have been satisfied.
14. 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.

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. Prior to installation of the project, copies of approval from applicable agencies, including the Chelan County PUD, must be submitted to the County.
17. Construction of the project for which this permit has been granted must be commenced within two (2) years of the effective 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.

### **FINDINGS OF FACT**

1. The applicants are James & Kim Dir, 71 N. Shore Dr., Orondo, WA 98943.
2. Shoreline Substantial Development Permit application 15-05 is for a shoreline wheelchair access trail and mooring buoy.
3. The project is proposed to serve 71 N. Shore Dr., Orondo, WA. The property is described as being Lot 38, Block 2 of the Beebe Orchard Tracts plat. The property is further described as being located in the Northwest Quarter of Section 16, Township 27N, Range 23 EWM, Douglas County, Washington.
4. The Douglas County Assessor's number is 45700203800.
5. The Comprehensive Plan Designation is Rural Resource 5 Acres.
6. The subject property is located in the RR-5 zoning district.
7. The Columbia River Shoreline section of the subject property is designated as "Rural Conservancy" by the Douglas County Regional Shoreline Master Program.
8. Comments from reviewing agencies have been considered and addressed where appropriate.
9. A letter addressing stormwater was submitted by Eric Smith, PE of Erlandsen, Inc. on April 7, 2016.
10. Engineered trail drawings were submitted by Erlandsen, Inc. on April 27, 2016.
11. Douglas County issued a Determination of Non-significance on August 4, 2016 in accordance with WAC 197-11-355 (Optional DNS).
12. 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.

13. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
14. This application was originally denied in January of 2017. The applicant's appealed this decision to the Shoreline Hearing Board. In June 2017, the Board rendered a decision stating that although it did not "have jurisdiction to review the denial of the SSDP application at issue" because the basis of that denial was lack of compliance with ANSI standards, the Board nevertheless reversed the Hearing Examiner's decision denying the application and remanded this matter back to the Douglas County Hearing Examiner.
15. The Hearing Examiner interprets the Shoreline Hearing Boards decision as holding that the ANSI development standards do not apply to the Douglas County Regional Shoreline Master program because they are not specifically adopted by the Douglas County Regional Shoreline Master Program.
16. An open record public hearing after legal notice was held on September 21, 2017. Appearing and testifying at the hearing on behalf of the applicant were the following individuals:
  - 16.1 Larry Lehman. Mr. Lehman testified regarding facts supporting his opinions that the project would not result in a net-loss of ecological functions and values and that the proposed trail surfacing is complementary to the surround environment. Mr. Lehman testified that the design of the project minimized buffer impacts and maximized mitigation efforts. He testified that the asphalt service is necessary to make safe wheelchair access. Grass, gravel and dirt would not be adequate due to the slope of the trail. He also testified that there would be minimal visual impacts from the river and that the majority of the native habitat would not be disturbed. The asphalt surfing is complementary to residential use and that there are other asphalt trails and stairs within the general project area. Me. Lehman also testified that all of the Conditions of Approval were acceptable. Mr. Lehman submitted Exhibit 1 into the record which was the September 21, 2017 Technical Memorandum prepared by Mr. Lehman.
  - 16.2 Dave Dormier. Mr. Dormier is an Engineer with Erlandson and Associates. He also testified that he was authorized to appear and speak on behalf of the property owner. Mr. Dormier testified that the plan provides safe wheelchair access and allows for resting areas on the trial. The stormwater plan is designed to keep sediment out of the river. He testified that if there was a gravel or dirt surface that this would result in more sediment entering the river. He stated that the asphalt and associated vegetation plantings would hold the water and disburse it along the area of the trial.
  - 16.3 Providing legal argument on behalf of the applicant was attorney Devan Gray.
17. The Hearing Examiner finds that the criteria for approval of this project are specific to this site and may not be applicable to any other site in Douglas County.
18. The applicant has chosen to proceed with this project without complying with ANSI standards that would be applicable to this project but for the fact that this project is subject to the Douglas County Regional Shoreline Master Program. Accordingly, as between the applicant and Douglas County, the applicant bares sole responsibility for any damages to any person whatsoever that may be caused by the applicant's failure to comply with the otherwise applicable ANSI standards.
19. No member of the public appeared at the hearing.

20. At the open record public hearing, the entire planning staff file was admitted into the record.
21. Public agencies with potential jurisdiction over this project were given an opportunity to review the proposal. Agencies that responded with comments were admitted into the record and considered by the Hearing Examiner in rendering this Decision.
22. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

### CONCLUSIONS

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. As proposed, revised, and conditioned, potential impacts of the project can be mitigated.
5. Public interests will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" of the Douglas County Code.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

**This permit is granted pursuant to the Douglas County Regional Shoreline Master Program, as amended, and nothing in this permit shall excuse the applicant from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project, but not inconsistent with the Shoreline Management Act of 1971 (Chapter 90.58 RCW).**

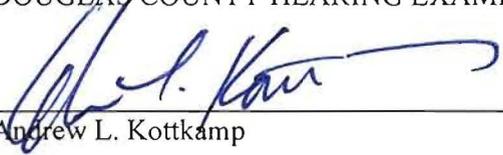
**This permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.**

**CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN NOR IS AUTHORIZED UNTIL TWENTY-ONE (21) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).**

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 this permit shall terminate five (5) years from the filing date of this permit.

Approved this 28<sup>th</sup> day of September, 2017.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

**Anyone aggrieved by this decision has twenty-one (21) days from the “date of receipt” as defined in RCW 43.21B.001 to file a petition for review with the Shorelines Hearings Board as provided for in Washington law.**

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A  
CONDITIONAL USE OR VARIANCE PERMIT**

Date received by the Department \_\_\_\_\_

Approved \_\_\_\_\_

Denied \_\_\_\_\_

This conditional use/variance permit is approved/denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Department Official