



# DOUGLAS COUNTY

## TRANSPORTATION & LAND SERVICES

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### STAFF REPORT JAMES DIR SHORELINE REVISION

TO: Douglas County Hearing Examiner  
FROM: Douglas County Land Services Staff  
RE: James Dir Shoreline Revision SR-2018-01  
DATE: June 14, 2021

#### GENERAL INFORMATION

Requested Action: An application for a shoreline revision to a shoreline substantial development permit issued September 28, 2017 (#SP-15-05). The shoreline access trail and slope retention approved under #SP-15-05 was installed in a manner differing from the approved plans of #SP-15-05.

Location: The subject property is located on the Columbia River north of Beebe Bridge and is zoned Rural Resource 5 (RR-5) under Douglas County Code. The property is located within the Rural Conservancy shoreline environment and is further described as Lot 38; Block 2 of the Beebe Orchard Tracts located within the NW Quarter of Section 16, Township 27N, Range 23E., W.M., Douglas County, Washington. The Douglas County Assessor's Number is 45700203800

Project Proposal: The applicant proposes to revise the existing shoreline permit for the access trail through the riparian buffer on the applicant's property in the Beebe Plat on the Columbia River. The existing shoreline permit for the access trail (SP-15-05) was issued September 28, 2017 and the trail was installed in early 2018. Following the installation of the access trail, Douglas County visited the property to inspect the project in the spring of 2018. This site visit resulted in the issuance of a Notice of Code Violation and Order to Comply (Notice) on May 21, 2018, which stated that the shoreline access trail was installed in a manner contrary to the approved permit and the provisions of the Douglas County Code. Specifically, the Notice identified three actions that were not completed as approved. The first action was the installation of a row of verti blocks (textured concrete blocks) instead of 1- 2 man rock. The second action was the trail was constructed out of concrete instead of asphalt. The third action was the installation of a 5 ft access trail instead of a 4 ft wide access trail. The Notice also mentions that in addition to installing different materials, the materials installed do not "protect the natural character", "blend in with the natural character", and "minimize the design". This proposed revision to the shoreline permit will address all of the County's concerns and will allow the project to "protect the natural character", "blend in with the natural character", and "minimize the design". In addition, the proposed revision will also install an additional row of rock to repair the shoreline from damage from high river flows and protect the toe of the slope and access trail.

## COMPREHENSIVE PLAN

The Comprehensive Plan analysis from the original Staff Report and Hearing Examiner Decision from the Shoreline Substantial Development Permit (SP-15-05) issued September 28, 2017 remains valid for this Shoreline Revision to correct a Notice of Violation.

## SHORELINE MASTER PROGRAM

Excepting the following augmentation, the Douglas County Regional Shoreline Master Program analysis from the original Staff Report and Hearing Examiner Decision from the Shoreline Substantial Development Permit (SP-15-05) issued September 28, 2017 remains valid for this Shoreline Revision to correct a Notice of Violation.

Pursuant to Shoreline Master Program Section 6.14 Permit revisions, the following standards are applicable:

1. A permit revision is required whenever the applicant/proponent proposes substantive changes, as determined by the Administrator, to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program or the Act. Changes that are not substantive in effect do not require a permit revision.
2. Revisions to permits must be reviewed and processed in accordance with WAC 173- 27-100, "Revisions to Permits", as amended.

## ENVIRONMENTAL REVIEW

Douglas County issued a Determination of Non-Significance for the original project in accordance with WAC 197-11-355 (Optional DNS) on August 4, 2016.

## 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
WA Department of Ecology - Shorelines	N/R	Douglas County - PUD	06/25/2020
US Army Corps of Engineers	N/R	Colville Confederated Tribes	N/R
		Dept of Arch. & Historical Preservations	N/R

\* N/R = No Reply

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

## PROJECT ANALYSIS

Upon review of the application materials, site plans, agency comments, the Douglas County Countywide Comprehensive Plan, the Douglas County Regional Shoreline Master Program and other applicable codes and requirements, planning staff offers the following analysis and recommendations for the subject application:

### Comprehensive Plan consistency:

The Comprehensive Plan analysis from the original Staff Report and Hearing Examiner Decision from the Shoreline Substantial Development Permit (SP-15-05) issued September 28, 2017 remains valid for this Shoreline Revision to correct a Notice of Violation.

### Consistency with the Douglas County Shoreline Master Program

Excepting the following augmentation, the Douglas County Regional Shoreline Master Program analysis from the original Staff Report and Hearing Examiner Decision from the Shoreline Substantial Development Permit (SP-15-05) issued September 28, 2017 remains valid for this Shoreline Revision to correct a Notice of Violation.

Pursuant to Shoreline Master Program Section 6.14 Permit revisions, the following standards are applicable:

3. A permit revision is required whenever the applicant/proponent proposes substantive changes, as determined by the Administrator, to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program or the Act. Changes that are not substantive in effect do not require a permit revision.
4. Revisions to permits must be reviewed and processed in accordance with WAC 173- 27-100, "Revisions to Permits", as amended.

In brief, WAC 173-27-100 establishes criteria and process for revisions to permits.

- a. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
- b. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.
  - i. If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.
  - ii. "Within the scope and intent of the original permit" means all of the following:
    1. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
    2. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;

3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
  4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
  5. The use authorized pursuant to the original permit is not changed; and
  6. No adverse environmental impact will be caused by the project revision.
- c. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the department. In addition, local government shall notify parties of record of their action.
  - d. The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection (6) of this section, upon final action by the department.

Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the local government's action by the department or, when appropriate under subsection (6) of this section, the date the department's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

Within the JARPA, and August 10, 202 & May 18, 2021, Habitat Management and Mitigation Plans prepared by Grette Associates, the applicant addresses WAC 173-27-100.

## **RECOMMENDATION**

As conditioned below, this application appears to provide correction to the violation of the original permit. Staff recommends approval of SR-2018-01, subject to the following findings of fact and conditions:

### **Suggested Findings of Fact**

1. Code Enforcement Case No. CE-2018-046 was initiated on May, 7, 2018 regarding "Shoreline trail not built as approved by SP-15-05. Trail restricted to 4-foot wide asphalt; it is 5 feet wide concrete; wall restricted to 1-2 man rock; it was constructed of ecology blocks."
2. The applicants and property owners are James & Kim Dir (71 North Shore Drive, Orondo, WA 98843).
3. On June 21, 2018, the applicants submitted an application for a shoreline revision to a shoreline substantial development permit issued September 28, 2017 (#SP-15-05). The shoreline access trail and slope retention approved under #SP-15-05 was installed in a manner differing from the approved plans of #SP-15-05.
  - a. Specifically, the applicant proposes to revise the existing shoreline permit for the access trail through the riparian buffer on the applicant's property in the Beebe Plat on the Columbia River. The existing shoreline permit for the access trail (SP-15-05) was issued September 28, 2017 and the trail was installed in early 2018. Following the installation of the access trail, Douglas County visited the property

to inspect the project in the spring of 2018. This site visit resulted in the issuance of a Notice of Code Violation and Order to Comply (Notice) on May 21, 2018, which stated that the shoreline access trail was installed in a manner contrary to the approved permit and the provisions of the Douglas County Code. Specifically, the Notice identified three actions that were not completed as approved. The first action was the installation of a row of verti blocks (textured concrete blocks) instead of 1- 2 man rock. The second action was the trail was constructed out of concrete instead of asphalt. The third action was the installation of a 5 ft access trail instead of a 4 ft wide access trail. The Notice also mentions that in addition to installing different materials, the materials installed do not “protect the natural character”, “blend in with the natural character”, and “minimize the design”. This proposed revision to the shoreline permit will address all of the County’s concerns and will allow the project to “protect the natural character”, “blend in with the natural character”, and “minimize the design”. In addition, the proposed revision will also install an additional row of rock to repair the shoreline from damage from high river flows and protect the toe of the slope and access trail.

- b. In order to resolve the Violation, the applicant is proposing several actions to address the County’s Notice of Violation. The proposed actions to resolve the Notice will include the staining of the existing concrete access trail. The concern with using concrete instead of asphalt is the color of the concrete. Concrete is light gray and although the color changes over time, it tends to get lighter. Asphalt was originally proposed due to the fact that when asphalt ages, it tends to lighten to a color that will more likely blend in with the natural character of the adjacent shorelines. The proposed staining of the concrete will darken the color of the concrete and allow it to blend in with the adjacent substrates. The pallet of colors that can be applied to the concrete will allow the concrete to blend in with the natural character of the shoreline much better than the proposed asphalt. In order to maintain the stain or paint, the concrete will be sealed following application.
- c. The width of the shoreline access trail was originally permitted at 4 ft; however, the access trail was installed at a width of approximately 5 ft wide (4’10” to 5’). The increase in width was something that developed during the installation of the forms for the concrete. This was done in error and to resolve this the proposed project would result in cutting the concrete to a width of 4 ft. this area was originally proposed to be planted with native vegetation and following the removal of the concrete it will be part of the mitigation planting area.
- d. The final element of the notice was the verti blocks that were installed. The approved permit allowed for the placement of a single row of rock (1-2 man; ~2 ft high). Instead of installing the rock, the Dirs installed a single row of verti block. The verti blocks and ~2 ft tall and ~2.5 ft deep. The top of the verti blocks (portion sticking out of the substrates) is ~1 ft wide. The substrates landward of the verti blocks were backfilled allowing only the ~1 ft deep to be visible. The purpose of the row of rock was to hold back the slope, minimize the overall impacts to the buffer, and protect the trail. The single row of rock was proposed in order to maximize the stability and ensure that the row of rock does not look like a retaining wall. The proposed revision to the shoreline permit includes several actions to minimize the appearance of the verti blocks ensuring that the verti block will “protect the natural character”, “blend in with the natural character”, and “minimize the design”. The actions proposed include the staining and/or painting of the verti block, the placement of additional material immediately landward of the verti blocks, and the planting of native vegetation immediately landward of the block that will grow over the face of the blocks. The staining and/or painting of the blocks would be the same process as proposed with the access trail. The colors selected would match the color scheme of the surrounding substrates. The

staining and/or painting would minimize the impacts associated with the color of the concrete. The placement of fill and native vegetation immediately landward of the blocks would help to minimize the impacts associated with the size and configuration of the blocks. The verti blocks result in very uniform appearance within the shoreline, which is not consistent with the shoreline conditions. The vegetation proposed would either consist of kinnickinnick or clematis. Both of these species are expected to grow over the face of the blocks, breaking up the appearance of the blocks. The painting and/or staining and installation of native vegetation to grow over the face of the block will significantly reduce the visual impacts associated with the blocks and will “protect the natural character”, “blend in with the natural character”, and “minimize the design”.

- e. In addition to the proposed revisions to the installed trail, the applicant is proposing to install another small section of native rock
4. The subject property is located on the Columbia River north of Beebe Bridge and is zoned Rural Resource 5 (RR-5) under Douglas County Code.
5. The property is located within the Rural Conservancy shoreline environment
6. The property is described as Lot 38; Block 2 of the Beebe Orchard Tracts located within the NW Quarter of Section 16, Township 27N, Range 23E., W.M., Douglas County, Washington. The Douglas County Assessor’s Number is 45700203800.
7. A Letter of Completeness was issued on July 18, 2018
8. The Notice of Application was issued on July 26, 2018
9. The comment period commenced on August 1, 2018 and concluded on August 31, 2018
10. On September 7, 2018, Douglas County allowed an extension to the comment permit: The Chelan County PUD (CCPUD) requested additional review time, until close of business on September 17, 2018, in order to sufficiently evaluate your proposed project below the Rocky Reach Pool “G” line.
11. A Notice of Additional Information was transmitted on September 20, 2018.
12. On January 10, 2019, Douglas County transmitted a letter stating: “Douglas County requested additional information be submitted with your application for a substantial development permit revision to request resolution of the open code enforcement case on your property. To date, no information/materials have been submitted.”
13. On August 10, 2020, Douglas County received the Habitat Management And Mitigation Plan prepared by Grette Associates and JARPA.
14. On August 10, 2020, a second Notice of Additional Information was transmitted to the applicant regarding: A) The application lacks a mitigation sequencing analysis (Section 4.1 Regulation 1. of the Shoreline Master Program) comparing the approved permit with the revision. A narrative response is necessary in regards to criteria WAC 173-27-100 with the SMP mitigation sequence; and B) A stormwater and engineering analysis I certification is required for the new wall. This will need to address both stormwater and slope stabilization.
15. On May 18, 2021, Douglas County received the revised Habitat Management And Mitigation Plan prepared by Grette Associates, a stormwater and engineering analysis certification for the new wall prepared by Eric Smith, PE and, JARPA.
16. WAC 173-27-100 establishes criteria and process for revisions to permits.
  - a. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
  - b. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.

- c. If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.
  - d. "Within the scope and intent of the original permit" means all of the following:
    - i. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
    - ii. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
    - iii. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
    - iv. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
    - v. The use authorized pursuant to the original permit is not changed; and
    - vi. No adverse environmental impact will be caused by the project revision.
  - e. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the department. In addition, local government shall notify parties of record of their action.
  - f. The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection (6) of this section, upon final action by the department.
  - g. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the local government's action by the department or, when appropriate under subsection (6) of this section, the date the department's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.
17. According to Douglas PUD, "the District accepts the proposed actions and agrees with the County's determination to resolve the violation."
  18. The mitigation proposed in the plans and/or studies meets the requirements of the Douglas County Regional Shoreline Master Program.
  19. The applicant has provided a JARPA and other support materials.
  20. With mitigation, substantive compliance can be achieved.
  21. Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
  22. No public comments were received at the writing of this staff report
  23. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
  24. As conditioned, the correction to the violation limits adverse effects on the general public, health, safety and general welfare.

**Suggested Conclusions:**

1. As proposed, revised, and conditioned, potential impacts of the correction can be mitigated.
2. Public interests will be served by approval of this proposal.

3. The revision to the existing violation will resolve the Notice and result in no net loss of habitat functions and values.
4. The revision will satisfy the County's Order to Comply, which allows for the modification to the existing unpermitted concrete blocks and path.
5. The correction to the violation will reduce visual impacts associated with the use of different materials.
6. 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 conformance with the existing Shoreline Substantial Development Permit (SP-15-05) issued September 28, 2017 except as amended by the conditions herein.
2. The applicant shall comply with all applicable local, state and federal regulations.
3. No additional row of rock will be allowed.
4. The concrete trail shall be cut to a width of 4 ft. Applicant and/or Contractor shall utilize Best Management Practices (BMP) during concrete cutting, so no water from saw cutting enters Columbia River. The BMP for this work shall be included in the Spill, Prevention, Control, and Countermeasures Plan
5. All exposed concrete shall be stained to darken the color of the concrete and allow it to blend in with the adjacent substrates.
6. Plantings shall be augmented with additional mitigation as outlined within the original and revised Habitat Management and Mitigation Plans prepared by Grette Associates dated August 10, 2020 and May 18, 2021.
7. The trail footing shall the use native rock instead of blocks.
8. Mitigation shall be completed by the end of the first planting cycle from the dated of this Exemption issuance.
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 & Land Services within 30 days of the issuance of this Revision or prior to commencing work. 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.
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.
12. Onsite 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 fish and wildlife habitat management and mitigation plan prepared by Grette Associates, LLC, 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. Best management practices (BMP), which may include turbidity curtains, shall be installed to limit the extent of turbidity caused by the corrective actions.
15. The project shall be designed using the Washington State Department of Ecology's 2019 Stormwater Management Manual for Eastern Washington. Stormwater runoff generated from impervious surfaces created by the proposal will be controlled onsite through limited impact development including sheet flow through native vegetation.
16. Prior to site disturbance, the applicant shall submit a temporary erosion and sediment control plan. Correction activities shall be conducted in accordance with a temporary erosion and sediment control plan. The Contractor shall monitor conditions and ensure that these practices and preventive measures are undertaken.
17. As applicable, the contractor shall inspect fuel hoses, oil or fuel transfer valves, and fillings on a regular basis for drips or leaks in order to prevent spills or runoff of deleterious materials into the surface water.
18. Prior to site disturbance and as applicable, the applicant shall prepare a Spill Prevention, Control, and Countermeasures Plan. The Plan shall be on-site and available, and correction actions shall comply with the Project-specific Spill Prevention, Control, and Countermeasures Plan. In addition, the Spill Prevention, Control, and Countermeasures Plan would outline roles and responsibilities, notifications, inspections, and response protocols to be implemented in the event of a spill.
19. Excess or waste materials shall not be disposed of or abandoned within the shoreline jurisdiction nor allowed to enter Waters of the State.
20. All project corrections 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.
21. Non-compliance can result in an immediate written certified citation pursuant to DCC 14.92.120.

Respectfully Submitted, Land Services Department

Attachments / File of Record