

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

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

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PA-2021-01)	DECISION AND
Rivers Edge - Sargent)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on December 16, 2021, 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 applicants are Jerald & Ann Sargent 630 Valley Mall PKWY #431, East Wenatchee, WA 98802 (Lots 3-5 and the owner of Lot 6 is G & C Farms, LLC 50 Griggs Lane, Orondo, WA 98843.
2. The application is for a Plat Amendment within River's Edge Plat# 2021-01 (P-07--04) to: (1) extinguish the existing joint-use dock and access easement on Lots 3 & 4, (2) establish a new joint-use dock easement for Lots 3 and 4, (3) extend an access easement onto Lots 4 and 5, and (6) extend an overwater portion of the proposed easement modification for a future joint-use dock on Lot 6 as allowed per an existing easement. The subject properties (Lots 3, 4, and 5) are approximately 3.53 acres in size.
3. In addition to the proposed plat amendment request, the applicant has submitted a Shoreline Development Permit (SDP) to install a joint-use dock, a boatlift, an access trail and vegetation plantings (mitigation) within Lots-3-5 within the River's Edge subdivision. If this plat amendment is approved, the Habitat Management Mitigation Plan (HMMP) submitted with the SDP application materials will satisfy the riparian mitigation requirements associated with this proposed plat amendment. If the SDP is not approved, a HMMP will be required for this plat amendment request which has been included in the conditions of approval in this decision.
4. Location: The subject properties are located within a major subdivision, River's Edge Plat P#07-04 which encompasses Lots 1-6. The properties are located at 15 & 19 Ruby Lane and 6 Tieton Place, Orondo, WA 98843 within the Rural Recreation 5 (RR-5) zoning district

under Douglas County Code. The properties are within the shoreline designation of Rural Conservancy. The project is further described as being located within Sections 28, 29, Township 25N, Range 21E, W.M. The Assessor's Parcel Numbers are: 82900000300, 82900000400, & 82900000500; only the overwater portion of the dock will be located on Parcel Number 82900000600 (Lot 6).

5. SITE INFORMATION

Total Project Size:	3.53
No. of Lots:	6
Domestic Water:	Private / community well
Sewage Disposal:	On-site septic system.
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #2
Telephone Service:	Varied

6. Site Characteristics: Uses Adjacent to the subject properties:

North: Columbia River
South: Agricultural processing
East: Open space disturbed; orchards
West: Single family residence

7. Access: The subdivision is accessed from 6, 15, & 19 Ruby Lane and 6 Tieton Road.

8. Zoning and Development Standards: The subject property is located within the Rural Resource 5 acres (RR-5) Zoning District, which allows for subdivisions.

9. Major Subdivisions: The requirements of Title 17, "Subdivisions", Douglas County Code, apply to plat amendments.

10. The Douglas County Countywide Comprehensive Plan designates this property as Rural Resource 5 acres (RR-5). The following goals and policies set forth in the comprehensive plan are relevant to this development.

11. The following goals and policies set forth in the comprehensive plan are relevant to this development:

11.1 RURAL

11.1.1 POLICY RD-3: 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 habitat.

11.1.2 POLICY RD-6: Rural developments should consider and comply with the spirit, intent and requirements of all the chapters and section of this comprehensive plan, including but not limited to, the Resource Lands Element and resource and Critical Areas Conservation Element.

11.2 SHORELINE MASTER PROGRAM

11.2.1 The Washington State Shoreline Management Act (SMA; the Act) was passed by the legislature in 1971 and adopted by a vote of Washington's citizens in a 1972 referendum (RCW 90.58). The goal of the Shoreline Management Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The Act also recognizes that "shorelines are among the most valuable and fragile" of the state's resources.

11.3 SECTION 3.3 NATURAL ENVIRONMENT

11.3.1 POLICY 2: Preservation of the area's ecological functions, natural features and overall character must receive priority over other potential uses.

11.3.2 POLICY 7: Private and/or public enjoyment of natural shoreline areas should be encouraged and facilitated through low intensity recreation use, scientific, historical, cultural, and educational research uses, provide that no significant ecological impact on the area result from the proposed development.

11.4 SECTION 3.4 RURAL CONSERVANCY ENVIRONMENT

11.4.1 POLICY 2: Uses in the rural conservancy environment should be limited to those that sustain the shoreline physical and biological resources and uses of a temporary nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

11.5 SECTION 3.9 AQUATIC ENVIRONMENT

11.5.1 POLICY 1: Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

11.5.2 POLICY 4: All development and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

11.5.3 POLICY 6: Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

11.6 APPENDIX H SHORELINE CRITICAL AREA REGULATIONS. Chapter 3 Fish and Wildlife Habitat Conservation Areas - Appendix H Sec 3.060(D).

11.6.1 3.060 D. A habitat management and mitigation plan shall be required¹. 2: Designated habitat conservation areas and their associated buffers shall be delineated and disclosed on final plats, maps, documents, etc. as critical area tracts, non-buildable lots, buffer areas or common areas. Ownership and control may be transferred to a homeowner's association or designated as an easement or covenant encumbering the property. 3.060 D 3: All lots within a major subdivision, short plat or binding site plan shall be the outer edge of

¹ The applicant has submitted a Shoreline Development Permit (SDP) to install a joint-use dock, a boatlift, an access trail and native, vegetation plantings (mitigation) within Lots-3-5 within the River's Edge major subdivision. If this plat amendment is approved, the Habitat Management Mitigation Plan (HMMP) submitted with the SDP application materials will satisfy the riparian mitigation requirements associated with this plat amendment. If the SDP is not approved, a HMMP will be required for this plat amendment request which has been included in the conditions of approval in this staff report.

all required buffers clearly marked on site with permanent buffer edge markers. Buffer markers may be either buffer signs or steel posts painted with a standard color and label, as approved by the Administrator. The markers shall be field verified by the surveyor or biologist of record prior to final plat approval. Each lot shall contain a minimum of three buffer area markers located at the landward edge of the buffer perimeter for each habitat type; one located at each side property line and one midway between side property lines. Covenants for the subdivision shall incorporate a requirement stating that buffer area markers shall not be removed or relocated, except as may be approved by the Administrator.

- 11.6.2 4. Residential developments with the potential for two or more dwelling units shall disclose on the face of the plat whether the development will be served by a joint-use or community dock facilities or a combination thereof. Access easements and dock locations shall be identified by a qualified professional biologist who will address the standards of Section 3.037F of Appendix H. The identification of access easements and dock locations is not a substitute for permitting required in order to develop moorage facilities and in no way guarantees such an approval.

12. ENVIRONMENTAL REVIEW. After review of the 2007 SEPA DNS materials for the River's Edge P#07-04), Douglas County has determined there no substantial changes to initiate an additional SEPA review. An Addendum to the original 2007 SEPA DNS was issued on December 2, 2021 and sent to Ecology per WAC 197-11-800 with no comment period.

13. Agency comments:

Agency Notified	Response Received	Agency Notified	Response Received
US Corps of Engineers	NR	Douglas County Land Services	NR
Washington State Dept. of Fish & Wildlife	11/22/2021	Dept. of Arch. & Historical Preservation	NR
Douglas County PUD	11/23/2021	Colville Tribe	NR
Douglas County Fire Department	NR	Douglas County GIS	11/10/2021
Douglas County Transportation and Stormwater	10/25/2021		

14. In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

15. Comprehensive plan consistency: The proposal is consistent with the goals and policies of the Douglas County Countywide Comprehensive Plan.
16. Consistency with the provisions of Title 17, "Subdivision", DCC:
 - 16.1 The plat was recorded on October 22, 2014.
 - 16.2 The modification of plat elements must be approved via a plat amendment process. The applicant is request to: (1) extinguish the existing joint-use dock and access easement on Lots 3 & 4, (2) establish a new joint-use dock and access trail easement for Lots 3 and 4, (3) extend an access trail easement onto Lots 4 and 5, and (6) extend an overwater portion of the proposed easement modification for a future joint-use dock on Lot 6 as allowed per an existing easement. The subject properties (Lots 3, 4, and 5) are approximately 3.53 acres in size.
 - 16.3 Pursuant to DCC 17.42.030 Alteration of final plat, or final short plat or final binding site plan, Alteration of a final plat, final short plat or final binding site plan or any portion thereof shall meet all requirements of this chapter, as applicable, Chapter 58.09 RCW, RCW 58.17.035, 58.17.060, 58.17.215 through 58.17.218 and WAC 332-130-050(3), as applicable, except that alterations subject to the provisions of DCC Chapter 17.34, Boundary Line Adjustments, are exempt from the requirements of this section.
 - 16.4 The application materials for the plat amendment is consistent with 17.20.040 *Easements (B)* Access to the shoreline of the state shall conform to the requirements of the Douglas County Regional Shoreline Master Program.
 - 16.5 Pursuant to RCW 64.04.175 Easements established by dedication—Extinguishing or altering.
 - 16.6 Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.
 - 16.7 The applicant is required to provide signatures of the owners of Lot 6 (a portion of the joint-use dock "overhangs" into the water of an existing easement) for the processing of the plat amendment. As conditioned, the proposed plat amendment is consistent with the provision of this title.
 - 16.8 Pursuant to RCW 58.17.215 Alteration of subdivision—Procedure.
When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.
 - 16.9 Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided

for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

- 16.10 The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.
 - 16.11 After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.
 - 16.12 This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands.
 - 16.12.1 As conditioned, the proposal is consistent with the provisions of this chapter:
 - 16.13 Consistency with the provisions of the RR-5 Zoning District, Chapter 18.30, DCC:
The proposal is consistent with the provisions of this chapter. Residential use of the property is permitted by the district.
 - 16.15 Consistency with the provisions of DCC Chapter 20.34, Stormwater Drainage:
No alteration of the stormwater system nor drainages are being proposed.
 - 16.15.1 As conditioned, the proposal is consistent with the provisions of this chapter.
 - 16.16 Consistency with the provisions of DCC Title 12 Road Standard:
 - 16.16.1 No alteration of the existing infrastructure is being proposed.
17. The date of application was July 28, 2021
 18. The Letter of Completeness was issued on November 8, 2021
 19. The Notice of Application was issued on November 10, 2021
 20. The comment period was from November 12, 2021 to November 26, 2021
 21. SEPA DNS Addendum: December 2, 2021
 22. No public comments were received.
 23. After due legal notice and open record public hearing was held on December 16, 2021 via Zoom video conference.
 24. The entire Planning Staff file was admitted into the record at the public hearing.
 25. Appearing and testifying on behalf of the applicant was Larry Lehman. Mr. Lehman is the applicant's agent. Mr. Lehman indicated that the applicants had no objection to any of the proposed Conditions of Approval and agreed with all representations set forth in the staff report.

26. No member of the public testified at the hearing.
27. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
34. 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. The proposed plat amendment is consistent with the Comprehensive Plan.
3. The proposed plat amendment is consistent with the Regional Shoreline Management Program.
4. As conditioned, the plat amendment meets the goals, policies and implementation recommendations as set forth in the Douglas Countywide Comprehensive Plan and the Douglas County Regional Shoreline Master Program.
5. Public use and interests will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 17 "Subdivision", and Title 19 "Environment", of the Douglas County Code.
7. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
8. As conditioned, this proposal addresses concerns provided in agency comment.
9. Riparian impacts associated with easement modifications can adequately be mitigated upon approval of the SDP for installation of the joint-use dock, boatlift, access trail, and native plantings.
10. 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, the Hearing Examiner has determined that PA-2021-01 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. The project shall proceed in substantial conformance with the plans and application materials of file dated October 29, 2021 except as amended by the conditions herein.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
3. The final plat amendment 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.
4. All parties having an ownership interest in the subject property shall acknowledge the plat.
5. 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.
6. Pursuant to WAC 332-130-050 (3Ciii) A prominent note itemizing the changes to the original document needs to be included on the final plat.
7. Any and all plat notes that conflict with the extinguishment of the joint-use dock and access easement to establish a new joint-use and access easement shall be revised to accurately reflect the removal, as applicable.
8. The District (Chelan County PUD) has the right to flood and damage, and restrict development and re-contouring below the District's project boundary which is at an elevation of 725.5 above sea level on the subject property. The entire area within the joint use dock and access easement is within the District's project boundary. Therefore, establishing a new joint use dock and access easement within the project boundary will not provide the applicant with additional area for improvements below the project boundary. This may or may not be of consequence to the applicant's future plans, however the District felt it important for the applicant to be made aware of this at this time.
9. The applicant has submitted a SDP to install a joint-use dock, a boatlift, an access trail and native, vegetation plantings (mitigation) within Lots-3-5 within the River's Edge (P#07-04) major subdivision; a portion of the proposed joint-use dock will "overhang" into the "existing" Lot 6 easement. If this plat amendment is approved, the HMMP submitted with the SDP application materials will satisfy the riparian mitigation requirements associated with this proposed plat amendment. If the SDP is not approved, a HMMP will be required for this plat amendment prior to recording.
10. The access trail must not exceed 4 feet in width to comply with the SMP.

Dated this 21st day of December, 2021.

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.