

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-14-01)	DECISION AND
Beebe Orchards)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on June 26, 2014, 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: Lots 26 & 27 – John & Dana Tubbesing, 3202 51st Pl SW Everett WA; Lot 28 – James & Lisa Meade, 24377 NE 101st Ct. Redmond WA.
2. General Description: This is a plat amendment application for Lots 26-28, Beebe Orchard Tracts. The application proposes to relocate the platted riparian/wetland buffers.
3. Location: The subject property is Lots 26-28, Block 2, Plat of Beebe Orchard Tracts and is further located in Section 16, Township 27 N., Range 23 E.W.M., Douglas County, WA.
4. Site Characteristics: The subject properties are located within a cluster subdivision.
5. The Comprehensive Plan Designation is Rural Resource 5 acres.
6. The subject property is located in the RR-5 zoning district which allows for subdivisions as permitted uses.
7. The shoreline environment designation is Rural Conservancy.
8. The application materials for the Plat of Beebe Orchard Tracts included a Sensitive Areas Study by The Watershed Company dated 16 July 2004. The wetlands assessment identified a Type III Wetland located on Lot 27. The applicable code (DCC 19.18B) at the time of plat approval required a 75 foot buffer, measured from the edge of the wetland. The buffer encumbered property on Lots 26, 27, and 28.

9. The Plat of Beebe Orchard Tracts was recorded on January 10, 2006.
10. RCW 58.17.170 establishes that the plat shall be governed by the regulations in effect at the time of approval for a period of seven years after recording.
11. The applicant submitted a new Wetland Assessment for Lots 26, 27, and 28, Plat of Beebe Orchard Tracts, from Grette & Associates dated March 18, 2013. This assessment concludes after a detailed analysis of the subject property that the platted wetland area contains wetland vegetation but lacks true hydrology and soils to be classified as a wetland. This conclusion has not been refuted and the Hearing Examiner adopts this as a Finding of Fact.
12. The applicant submitted a Riparian Buffer Assessment for Lots 26, 27 and 28, Plat of Beebe Orchard Tracts, from Grette & Associates dated April 3, 2014. The assessment determines that in accordance with Appendix H of the Douglas County Regional Shoreline Master Program that a 100 foot buffer from OHWM is the appropriate buffer. The Hearing Examiner agrees with this determination.
13. Douglas County issued a Determination of Nonsignificance on June 11, 2014 pursuant to WAC 197-11-355 (Optional DNS).
14. 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.
15. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
16. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
17. An open record public hearing after due legal notice was held on June 26, 2014.
18. The entire Planning Staff file was admitted into the record at the public hearing.
19. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
20. Appearing and testifying on behalf of the applicant was Larry Lehman. Mr. Lehman testified that he was an agent authorized to appear and speak on behalf of the applicants and property owners. Mr. Lehman testified that all of the proposed conditions of approval were acceptable to the applicants. Mr. Lehman testified that the G-Line still applied to the subject property and that there would be no fill, structure or roadway built within that area. This includes the small gully that is on one of the subject properties.
21. Testifying from the public was Jan Fowler. Ms. Fowler testified consistent with her written comments already part of the record. Ms. Fowler's primary concern is changes in the gully that would impact their views and use of their property.

22. 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.
23. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
24. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
25. 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.
3. Public use and interests will be served by approval of this proposal.
4. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 17 "Subdivision", and Title 19 "Environment", of the Douglas County Code.
5. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
6. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
7. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
8. 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.
9. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
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, Application PA-14-01 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 April 30, 2014 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 blue-line 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. The 100 foot Riparian Buffer shall be depicted on the plat.
9. Permanent buffer markers shall be relocated per the requirements of Section 3.060.D.3 of Appendix H of the Douglas County Regional Shoreline Master Program.
10. The 19 plat notes listed on the current plat shall be copied onto the plat amendment with the following changes:
 - 10.1 Note 4 shall be amended to read "Building heights within 200' of the ordinary high water mark shall be limited to 30', as measured by the standards of the Douglas County Shoreline Master Program, Except as may be amended."
 - 10.2 Note 12 shall be deleted.
 - 10.3 Note 15 shall be amended to read "No native vegetation removal may occur within the Riparian Buffer unless a Fish and Wildlife Habitat Management & Mitigation Plan consistent with the requirements of the Douglas County Shoreline Master Program, as amended, is approved by Douglas County Land Services.
11. Preliminary approval shall expire 7 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.

Dated this 2nd day of July, 2014.

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.