

**DOUGLAS COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

140 19<sup>th</sup> Street NW  
East Wenatchee, WAS 98802-4109

**BEFORE THE DOUGLAS COUNTY HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
PA-2023-03	)	<b>DECISION AND</b>
Desert Shores Plat Amendment	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on January 18, 2024, 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 and owner is Brad Rickman, et al., P.O. Box 212, Orondo, WA 98843.
2. This application is for a plat amendment to modify conditions of approval for the Desert Shores Subdivision (PA-2023- 03), Orondo, Washington 98843. The applicant proposes to modify note #16 on the face of the plat which requires all structures to be built 100' back from the ordinary high-water mark. The proposed modification would allow pools and ground-level decks/ patios to be built up to the required riparian buffer per the Douglas County Shoreline Master Program. In this location, the required riparian buffer is 75' from the ordinary high-water mark. The project includes multiple properties located along Desert Shores Drive in Orondo, Washington. The subject properties are located in the Rural Recreation (R-REC) zoning district and Rural Conservancy shoreline designation. The subject property is further described as being located within Section 21, Township 26N, Range 21W, E.W.M. Douglas County Assessor's Parcel Numbers: 96700000100, 96700000200, 96700000300, 96700000400, 96700000500, 96700000600, 96700000700, 96700000800, 96700000900.
3. Location: The applicant's property is located at 180 Desert Shores Drive, Lot # 9, Parcel # 96700000900 within the platted Lots 1 -9 of Desert Shores. The Desert Shores Subdivision is further described as being located within Section 2, Township 26N, Range 21W, E.W.M. Douglas County Assessor's Parcel Numbers: 96700000100, 96700000200, 96700000300, 96700000400, 96700000500, 96700000600, 96700000700, 96700000800, 96700000900.

4. Site Characteristics: There are existing seven (7) SFR buildings on Lots 1-9. Uses adjacent to the subject properties:  
 North: Vacant land (Rural Resources 20); Greater Wenatchee Irrigation District Facility  
 South: Rural Recreation (R-Rec) and Commercial Agricultural uses  
 East: Commercial Agricultural uses and some cluster residential developments  
 West: Columbia River
  
5. Site Information:  

Total Project Size:	Total Acres	6.34 (9.35 calculated acres included land under water)
No. of lots		9
Domestic Water:		Private well
Sewage Disposal:		Waste Management
Power/Electricity:		Douglas County PUD
Fire Protection:		Douglas County Fire District #4
Telephone Service:		Varied
  
6. Access: The subdivision is accessed via an internal roadway Desert Shores Drive off of Skeels Road which is connected to US Highway 97. All roadway improvements and requirements if any will be subject to the original conditions of approval with the recorded Plat AFN 3014022.
  
7. Zoning and Development Standards: The subject properties (Lots 1-9) are located within the shorelines of the Columbia River and designated as a Rural Recreation (R-Rec) Density zoning district which among other uses, allows for single-family residential homes (permitted uses) and subdivisions of land. The purpose of the rural recreation (R-REC) district is to provide the opportunity for the development, redevelopment, and infill of existing intensely developed rural recreational areas for residential, recreation, and tourist-related development consistent with the rural character in the vicinity. These areas provide a distinct rural lifestyle closely associated with the many natural amenities found within Douglas County. These areas are identifiable as existing intensely developed rural recreational developments where a logical boundary can be delineated and as set by the built environment.
  
8. Major Subdivisions: The requirements of Title 17, "Subdivisions" DCC, apply to the design and review requirements for approval of major subdivisions of 10 or more lots, parcels or tracts.
  
9. Comprehensive Plan: The Douglas County Comprehensive Plan 2021, Section 4.3 designates this property as Rural Development. Residential Low Density -Measures governing rural development are dependent on a number of factors including the type of rural development activity and the intensity of rural development anticipated. Conditions for rural development include provisions that protect the rural character and visual compatibility with the surrounding rural areas; reducing the inappropriate conversion of rural lands to sprawling low-density development; protecting against conflicts with designated agricultural, forest, and mineral resource lands; and protecting critical areas. It is the intent of this comprehensive plan to balance resource uses, the natural environment, and rural development opportunities. Rural land use designations include Rural Recreation, Rural Resource 2, Rural Resource 5,

and Rural Resource 20. The following goals and policies outlined in the comprehensive plan are relevant to this Rural Development Goals and Policies:

- 9.1 4.3.1 GOAL: Provide opportunities for continued smaller-scale developments outside UGAs that will be compatible with and continue to preserve, maintain, and enhance the vital agricultural uses in the County.
  - 9.2 Policy RD -1: Designated rural areas will be utilized to reduce the inappropriate conversion of agricultural lands, prevent sprawling low-density development and assure that rural development is compatible with surrounding rural and agricultural areas. A variety of innovative techniques may be utilized including clustering, density transfer, design guidelines and conservation easements to protect rural character.
  - 9.3 Policy RD -2: Rural scale developments of very low density for residential purposes may be allowed on rural lands, subject to development criteria and open space requirements to protect rural values and buffer adjacent resource use/critical areas. Whenever feasible, rural developments will be encouraged to utilize community systems for domestic water and sewage disposal in order to reduce environmental impacts and to more efficiently and cost-effectively provide these needed services.
  - 9.4 Policy RD - 4: Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or an acceptable operation capacity.
  - 9.5 Policy RD - 5: The costs associated with implementing a rural development and providing the necessary utilities, facilities, and/or services will be borne by the developer.
  - 9.6 Policy RD - 6: Rural developments should consider and comply with the spirit, intent and requirements of all the chapters and sections of this comprehensive plan, including but not limited to, the Resource Lands Element and Resource and Critical Areas Conservation Element.
  - 9.7 Policy RD -7: Buffers for clustering or other development activities may be required between the rural development and the resource activity or any critical areas when clustering development. Buffers will be provided by the development, as opposed to being on the resource lands or critical areas of adjacent property ownerships unless specifically approved through the development process.
  - 9.8 4.3.2 Implementation: Land classified as rural will be considered in the context of the overall comprehensive plan and many other factors such as the availability of some existing public facilities /services, such as roads, fire service, schools, accessibility, critical areas and natural features.
10. Rural Recreation: The purpose of this designation is to provide the opportunity for the development, redevelopment, and infill of existing intensely developed rural recreational areas for residential, recreation, and tourist development consistent with the rural character in the vicinity. Uses may include intensification of existing residential development or new development of small-scale recreational or tourist uses, provided uses rely on a rural location and setting and do not encourage urban-type development or services.
- 10.1 Areas are clearly identifiable as existing intensely developed rural recreational developments where a logical boundary can be delineated and set by the built environment.

- 10.2 Boundaries do not permit or encourage a new pattern of sprawling low-density or urban-type development; and/or
- 10.3 The predominant parcel size is generally less than one acre in size
- 11. Transportation:
  - 11.1 GOAL: Provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety, economy, and efficiency.
  - 11.2 GOAL: Ensure adequate and safe access to property via a system of public and private roads.
  - 11.3 POLICY T-6: As public and private development occurs, ensure that transportation system improvements have adequate streets, sidewalks, and walkways; and are consistent with the transportation and adopted system design.
- 12. Environmental Review: Douglas County issued a Determination of Non-Significance on January 2, 2024, in accordance with WAC 197-11-355 (Optional DNS). This SEPA determination was not appealed.
- 13. Applicable agencies have been given the opportunity to review this proposal. Agency comments have been included as conditions of approval, as applicable:

Agency Notified	Response Received	Agency Notified	Response Received
Chelan County PUD	N/R	Douglas County Treasurer	Outstanding taxes due 11/9/2023
WA State Dept. of Ecology	N/R	Douglas County GIS/Addressing	11/15/2023
Douglas County Fire Marshal/ Building Official	N/R	Douglas County Assessor	N/R
Chelan Douglas Health District	No objection 11/22/2023	Public Comments	Jeffrey Christenson 11/16/2023
Douglas County Land Services	01/08/2024	Douglas County Transportation & Storm Water	11/21/2023

- 14. One public comment was received from Jeffrey Christenson on November 16, 2023.
- 15. The Desert Shores Subdivision final plat, Lots 1-9 was approved in 1998 and currently there are seven (7) existing homes or structures built out of the nine (9) buildable lots where the 100-foot setback from the shoreline was set in the Plat. The Douglas County Regional Shoreline Master Program sets a 75' setback from the ordinary high-water mark for all structures.
- 16. The Applicant is requesting a modification or revision to the original note #16, which original note states: "building envelopes for each lot fall between setback lines as shown hereon."

The applicant is proposing replacing the existing language from note #16 with the following language:

“Building envelopes for each lot fall between setback lines as shown hereon. Pools and ground-level patios or decks may be lakeward of the building envelope. Although subject to Douglas County Shoreline Master Plan including all future amendments.”

17. Comprehensive Plan Consistency: Although the request for a revised reduced setback does not trigger the Comprehensive Plan consistency review per se, the Desert Shores Final Plat did go through the Douglas County review in 1998 and was deemed approved. Therefore, a detailed analysis is not required as the subdivision is consistent with the goals and policies of the Douglas County Comprehensive Plan 2021. The proposed lot sizes meet the density standards for residential lots. Per Comprehensive Plan Policy RD -2: *Rural scale developments of very low density for residential purposes may be allowed on rural lands, subject to development criteria and open space requirements to protect rural values and buffer adjacent resource use/critical areas.*
  - 17.1 Consistency with the provisions of Title 17, “Subdivision”, Douglas County Code. As conditioned, the proposed subdivision is consistent with the provision of this title.
  - 17.2 Consistency with the provisions of DCC Chapter 20.34, Stormwater Drainage. As conditioned, the proposal is consistent with the provisions of this chapter.
  - 17.3 Consistency with the provisions of DCC Title 12 Road Standards. As conditioned, the proposal is consistent with the provisions of this chapter.
18. The applicant has submitted the following:
  - 18.1 Land Use Master Application prepared by the applicant, dated October 16, 2023.
  - 18.2 Staff Report
  - 18.3 Remainder of Planning Staff File.
19. 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 14.12.
20. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
21. After due legal notice and open record public hearing was held on January 18, 2024.
23. The entire Planning Staff file was admitted into the record at the public hearing.
24. The following exhibits were admitted into the record at the hearing:
  - 24.1 Ex. A Staff Report and File of Record;
  - 24.2 Ex. B Email and letter correspondence between the County and Applicant;
  - 24.3 Ex. C Email correspondence between Jeffrey Christenson and Tanner Ackley, and between Tanner Ackley and James Mitchell.
25. Appearing and testifying on behalf of the Applicant was Brad Rickman. Mr. Rickman testified that he is the Applicant and one of the property owners in the Desert Shores plat. Mr.

- Rickman provided a history regarding their request to amend the plat. He stated that they had received signatures from six out of the nine lot owners supporting the plat amendment.
26. Testifying from the public was Jeff Christenson. Mr. Christenson is also a lot owner in the Desert Shores plat. He stated that he does not object to the pool, but he thought there was a conflict between what the County was proposing and RCW 58.17.04.
  27. The Hearing Examiner does not have any authority to interpret, enforce, or modify private covenants.
  28. The original plat note #16 states: [B]uilding envelopes for each lot fall between the setback lines shown herein." The plat demonstrates that the setback line is 100' from the ordinary high-water mark.
  29. No evidence was submitted as to the date this plat was filed and recorded.
  30. The Douglas County Code DCC 14.98.111 defines "building", in relevant part, to mean "any combination of materials constructed, placed, or erected permanently on the ground or attached to something having a permanent location on the ground, for the shelter, support, or enclosure of persons, animals or property, or supporting any use, occupancy, or function...".
  31. DCC 14.98.114 defines building envelope as: "building envelope means the area of a lot that delineates the limits of where a building(s) may be placed on a lot."
  32. Per the public comment letter from Jeff Christenson, he states that the Desert Shore covenants state: "[T]he building setback from the ordinary high-water mark shall be a minimum of 100 feet." The Hearing Examiner has not seen these covenants. The Hearing Examiner has no knowledge as to whether or not there is any definition within those covenants of "building" or "envelope or building setback". However, as found above, the Hearing Examiner does not have the authority to interpret, modify, or enforce private covenants.
  33. There was no testimony at the hearing as to when these private covenants, assuming they exist, were filed or recorded with Douglas County Auditor.
  34. The Hearing Examiner finds that plat note #16 controlled a restriction of "building envelopes" on each lot, as that term is defined in the Douglas County Code. As stated above, the term "building envelopes" relates to the defined term "building".
  35. The Hearing Examiner finds that as used in the Douglas County Code, the term "building" does not include swimming pools or ground level decks. There has been no evidence to show that swimming pools or ground level decks are for the shelter, support, or enclosure of persons or animals or property. It is clear to the Hearing Examiner that the definition of "building" in DCC 14.98.111, relates to structures such as a residence, garage, boathouse, or other such buildings.
  36. The Hearing Examiner specifically finds that the term "building" as used in plat note #16, as well as in the definition contained in DCC 14.98.111, does not define the act of constructing a structure, but instead relates to the end result of combining materials to erect a structure.
  37. Based upon the above findings, the Hearing Examiner finds that the requested plat amendment is consistent with RCW 58.17.215 in that the proposed plat amendment is not, on its face, inconsistent with the covenant described by Mr. Christenson.

38. Plat note #16 is hereby altered to read in its entirety as follows: “Building envelopes for each lot shall fall between setback lines as shown hereon. Pools and ground-level patios or decks may be lakeward of the building envelope. Although, subject to Douglas County Shoreline Master Plan, including all future amendments.”
39. 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, this proposal is consistent with applicable federal and state laws and regulations.
3. As conditioned, the proposal is consistent with Title 17 “Subdivisions”, Title 19 “Environment”, and Title 20 “Development Standards”, of the Douglas County Code.
4. RCW 58.17.215 does not prohibit this plat amendment.
5. Swimming pools and ground-level decks are not a “building” as defined in the Douglas County Code.
6. Any Finding of Fact that is more correctly 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-2023-03 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 conformance with Title 17 of the Douglas County Code (Subdivision), and the revised plat and application materials on file except as amended by the Hearing Examiner and conditions herein.
2. The applicant is responsible for compliance with all applicable local, state, and federal rules and regulations, and must obtain all appropriate approvals and permits.
3. A plat certificate showing parties of interest, from a title company, shall be submitted with the blueline drawings.
4. The final plat 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.
5. All parties having an ownership interest in the subject property shall acknowledge the plat.
6. It is the responsibility of the applicant to contact the Douglas County Assessor’s and Treasurer’s offices to confirm all taxes and assessments are current prior to final plat approval.

7. The final plat shall show the location of all easements serving or encumbering the subject property.
8. The project shall comply with all the requirements of the original plat except as modified by this amendment.

Dated this 19 day of January, 2024.

DOUGLAS COUNTY HEARING EXAMINER



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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.**