

Wheeler Ridge Habitat Management and Mitigation Plan (HMMP)

FINAL Report

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Project Location

The Project Site is a 260-acre orchard project located on private property owned by Wheeler Ridge, LLC in the Township 21N; Range 20 E; Section 17 (*Figure 1*). The site is located on Wheeler Ridge, within the Stemilt Basin, Chelan County, Washington State. Proposed offsite impacts include upgrading an existing County road and extension of underground utilities from Section 9, and across Section 16 east of the Project Site at Section 17. The Project Site plus the area defined by the improved road and utility easement will be referred to as the Project Area (*Figure 1*).

Proposed Development

Site Development Plan

The Project consists of the construction of three orchards on Section 17 (T21N, R20E), including seasonal housing for workers, associated orchard processing buildings, gas pumps and loading docks. To prepare the orchard areas for planting, forest trees will be harvested under a Forest Practices permit. Other activities include:

- Construction of irrigation facilities in an existing easement extending from Section 9 to Section 17; (Exempt from HMMP per CCC 11.78.020(2))
- Construction of irrigation pipeline facilities in an existing easement in Section 16 (Exempt from HMMP per CCC 11.78.020(2)). The irrigation pumping station will be located in Orchard Unit 1, within the 2 acre area including the seasonal housing, shop, and gas pumps (*Figure 1*), which identifies the area as "Seasonal Housing/Shop Area. The irrigation pumps will operate June to September.
- Construction of a new 9.9-acre reservoir for irrigation (filled from the existing reservoir on Section 9) and irrigation pipelines connecting between orchard polygons; (Exempt from HMMP per CCC 11.78.020(2))
- Preserving and rehabilitating two existing Ns stream crossings, including culvert update/replacement as needed;
- Improvement of and relocation of 2.3 total miles of County road
 - Maintenance, reconstruction and repair on Section 16 (1.3 miles) and Section 17 (0.27 miles) (Exempt from HMMP per CCC 11.78.020(5))
 - Relocation of ~1.0 mile of road in Section 17 (not exempt from HMMP);
- Rock Crushing Facilities - Page 9 of the SEPA item B.1.e. states: "Source of rock and gravel will come from local sources not to exceed 2 acres; total cubic yards of rock for the entire project is estimated to be 20,900 cubic yards. An estimated 17,000 cubic yards will be used for the initial public and private road building with an estimated 3,900 cubic yards for ongoing maintenance." Locations for the potential rock pits are shown on *Figure 1* and labeled "Potential Rock Locations". The Potential Rock Location on Section 9 is not scheduled for further rock crushing as the rock was crushed previously. Rock Crushing will occur for a 1-3 month season between the months of June and November.
- Construction of an 8-Foot "Deer" Fence around orchards - Fence will be approximately 25,000 lineal feet and constructed from woven-wire and 4 to 5 inch treated wood posts spaced 32 feet on center and steel stakes spaced alternately with the wood posts at 32' on center. The details for the fence construction are included in the Chelan County Building Permit 190169 and as Appendix IV of this HMMP.

- Grading: Grading Quantities are described on page 9 of the May 20, 2020 SEPA Checklist, item B.1.e (which contains the following *Table 3*.)

Table 3. Grading estimates for proposed orchard development.

Location	Acre	Square Feet	Depth (Ft)	Cubic Feet	Cubic Yards
Orchard Unit 1	120	5,227,200	0.75	3,920,400	145,200
Orchard Unit 2	80	3,484,800	0.75	2,613,600	96,800
Orchard Unit 3	60	2,613,600	0.75	1,960,200	72,600
S16/S17 Main Road Repair (1.3 miles)	3	137,280	0.5	68,640	2,542
S16/S17 Main Road Relocation (1 mile)	2	105,600	1	105,600	3,911
Abandoned Road Grading (1 mile)	1	52,800	0.33	17,424	645
Irrigation Reservoir	1	43,560	2	87,120	3,227
Total CY					324,925

Although the irrigation facilities/pipelines and road maintenance are exempt from the requirements of CCC 11.78.020 and are not included in the determination of required mitigation, they are included in the analysis of effects.

Orchard operations will include spring maintenance each year -- i.e. spraying, pruning, irrigation, mowing, weed control and a period dedicated to harvest fruit at the end of August or early September each summer. Bird dissuasion techniques will be utilized per the Mitigated Determination of Non-Significance (MDNS – Chelan County 2020) throughout the orchard to deter seed eating birds from the orchard during late summer and fall. Fall maintenance each year will involve pruning, topping, compost application, fertilizing, and etc. in preparation for the next summer growing season. No seasonal construction or orchard activity restrictions have been proposed. Applicant has provided a phasing plan and summaries of short-term (construction) and long-term (operation) activities that will comprise the project. Please see the May 20, 2020 SEPA Checklist page 4, item 6 regarding activity timing and page 6, item 11 regarding a phased project description.

Signs will be installed to mark habitat or habitat buffer areas to prevent disturbance and text will be approved by Chelan Country prior to installation.

Mitigation Actions include:

- Wetland, stream and buffer restoration in previously disturbed areas;
- Designation of a permanent Conservation Area (~355-acres)
- ATV and logging road abandonment and restoration (~1.2 miles) to protect and enhance elk habitat
- Enhancing existing forested and grassland areas for wildlife cover and forage through thinning, seeding and riparian area restoration;
- Providing for wildlife corridors through orchard areas to connect to habitat concentrations on and offsite

Plan Development

Habitat Management Plan Regulations (County)

Chelan County Code, Chapter 11.78, Fish and Wildlife Habitat Conservation Areas, Section 11.78.100, Critical Areas Ordinance, requires a wildlife habitat management and mitigation plan to be reviewed by the Washington State Department of Fish and Wildlife (WDFW). This report is organized to align with Section 11.78.100 requirements. Per Chelan County Code 11.78.060, the Project Area has been classified as a Minor Development within Class II Wildlife Habitat Conservation Area.

The Critical Areas Report (SCJ Alliance 2018) submitted to Chelan County provided an initial analysis of resource impacts and describes a wetland, stream and buffer mitigation plan and an elk habitat mitigation plan. Although some of that detail and additional information is included in this HMMP, the HMMP approach has been modified relative to elk habitat mitigation. This HMMP also includes cross-referencing to demonstrate consistency with the FINAL MDNS (Chelan County December 30, 2020) and was developed in consultation with Washington Department of Fish and Wildlife (FINAL MDNS 15.).

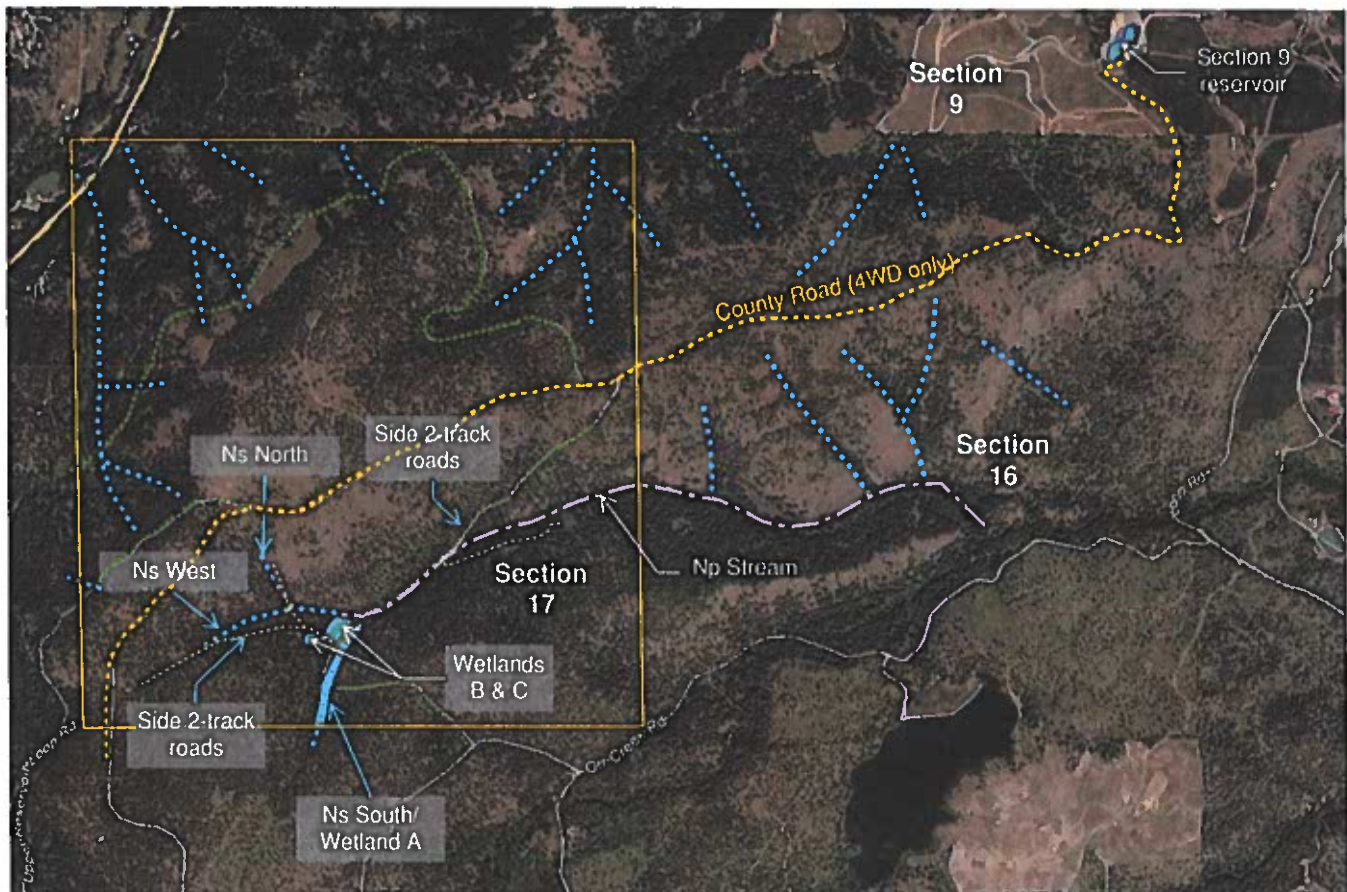


Figure 2. Existing Conditions across the Project Area.

Existing Conditions (Baseline Data)

The proposed project is located in Section 17 on Wheeler Ridge, approximately 8 miles from the City of Wenatchee. There are no current structures on Section 17. There is an existing Chelan

County Road that runs through part of Section 9 (northeast of Section 17), and crosses through Section 16 (east of Section 17). This road runs along Wheeler Ridge and crosses through the Project Site in Section 17. This ridgeline road bisects the site, with the surface generally sloping northwest and southeast from the ridge.

The road is currently deeply rutted, eroded, and not maintained across both Section 16 and 17. There is an existing reservoir associated with orchards and developed access roads in the southeastern portion of Section 9, adjacent to Section 16 (Figure 2). Approximately half of Section 17 along the southern side of Wheeler Ridge is flat to gently sloped. The terrain northwest and northeast of Wheeler Ridge is steeper (>50% slope) (Schellhaas, 2015). There have been two major logging entries, one in about 1935 and again in about 1996. Both entries removed most of the large Ponderosa pine and left behind many relic logging roads. Many of the relic roads are highly eroded with significant ruts where seasonal snowmelt water from upslope sheet flows into the ruts and is conveyed downgradient. These rutted roads cut off or diverted the historic hydrologic flow patterns in some areas. Many of these roads have been further damaged from ATV use.

Vegetation Community

Forested Vegetation Community

According to Schellhaas (2015), approximately 80% of the Project Area has a mature forest community. The dominant tree species are Ponderosa pine and Douglas fir (Figure 3).

Mixed Upland & Grassland Vegetation Community

Mixed shrub, grass and forb communities occur across uplands on Section 17 and along the Section 16 road and utility easements. Species include wildrye, native bunchgrasses, wildflowers, annual grasses and native forbs such as Bingen lupine, arrow-leaf balsamroot, violet, wild geranium, bleeding heart, trillium and buckwheats growing between bitterbrush, big sage brush, and trees.

Trees associated with these understory communities are primarily Ponderosa pine, red alder, and in some areas, quaking aspen. Other shrubs include Oregon grape, ocean spray, snowberry, and wild rose (Figure 4).



Figure 3. Upland forest vegetation, Section 17, 2018.



Figure 4. Meadow adjacent to forested stands

Riparian & Wetland Meadow Vegetation Community

These wet areas and their buffers primarily support three dominant trees species, quaking aspen (usually in the buffer), red alder (in both wetland and buffer), and Ponderosa pine (only in the buffers). The dominant shrub and herbaceous species include several different willows, twinberry, red osier dogwood, wild crabapple, and wild rose. Herbs, ferns and vine species include water parsley, wild columbine, yellow lily, wild iris, sedge species, coltsfoot, small-fruited bulrush, horsetail, spike rush, and spreading buttercup. The vegetation from within to outside of the wetland areas reflect a fast transition from wetland to upland conditions (Figure 5). For a comprehensive list of wetland and riparian or upland buffer species, refer to Wetland Summary Report (SCJ 2020).



Figure 5. Scrub-Shrub Wetland (Wetland A).

Streams

The Project Area spans a drainage divide between two watersheds, the Stemilt Creek watershed to the southeast and the Squilchuck Creek watershed to the northwest. Both watersheds drain to the Columbia River about 6.5 miles north of Section 17. Stream typing (WADNR and WDFW) verified three Non-fish bearing seasonal (Ns) tributaries in the southern half of section 17 (vicinity of proposed orchard project) that combine to form a Non-fish bearing perennial (Np) stream. The most southerly Ns tributary in the south-central portion of Section 17 has a narrow band of associated Category III riparian wetlands.

There are two existing wetland/stream road crossings in the proposed orchard area which will be preserved and rehabilitated to eliminate existing erosion and flow diversion problems. Details are provided in the Wetland Mitigation Plan discussion below. There are no stream crossings along the Section 16 roads and utility easements.

Wetlands

There are three Category III wetlands associated with the three Ns stream sections in the southern portion of Section 17 adjacent to proposed orchard areas. The wetlands were delineated, rated and described in the Final Wetland Summary Report (updated in August 2020, SCJ Alliance). Two of the wetlands are connected by a diverted stream (Stream Ns West) which currently drains from Wetland C to Wetland B in ruts down a logging road. The entire area at the confluence of the three Ns streams directly downslope from Wetland B and west of Wetland A is severely impacted from past ATV use. This area will be blocked from future ATV access and restored as a wetland and buffer area. There are no wetland impacts in the Section 16 easement area.

Chelan County Code defines wetland protection standards in Chapter 11.80 Wetland Areas Overlay District (WOD), which includes requirements for rating the wetland and making buffer width determinations based on rating score results. Wetlands associated with the project site were rated according to the 2014 WRSEW (Ecology Publication #14-06-030). Wetlands identified as part of this project were classified according to the USFWS Cowardin classification system (Cowardin et al. 1979) and the USACE Hydrogeomorphic (HGM) classification system (Brinson 1993). Orchard development is considered a low intensity activity in Chelan County code, and per code, wetland

buffers were assigned relative to the Wetland Category rating results. The Chelan County code buffer table is provided below in **Table 1**. Chelan County code wetland standard buffer widths per wetland category with orchard development classified as low intensity development. (See *SCJ Alliance Critical Areas Report and Wetland Assessment for additional detail*).

Table 1. Chelan County code wetland standard buffer widths per wetland category with orchard development classified as low intensity development.

Wetland Category	Buffer Width (feet)	
	High Intensity (feet)	Low Intensity (feet)
Category 1	300	200
Category 2	200	100
Category 3	150	75
Category 4	50	50

However, SEPA review by Ecology resulted in a recommendation for a 110 ft buffer (FINAL MDNS 15.g.), based on Ecology guidance from 2006¹, described in Appendix 8-D Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Eastern Washington Wetland Rating System. Specifically, in addition to having different wetland buffer width recommendations, Ecology classifies agriculture as moderate intensity development, a category that does not exist in the Chelan County CAO, which considers orchard development as a moderate impact use, and which recommends buffering based on the habitat score rather than the Category rating. The wider 110 ft buffer recommended by Ecology has been applied to all maps.

There is no scientific or technical justification for increasing the wetland buffer widths beyond 110 feet under either CCC 11.80.080 or Ecology guidance. Under Chelan County code, there must be appropriate documentation that the standard buffer is not sufficient and must be increased, including consideration of the following three criteria.

- (A) The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

RESPONSE: There are no listed species on site, and elk are the only priority species known to use the project site (mostly from May to June), but elk are not a wetland dependent species. There is no specific wetland buffer width recommendation for this upland species.

- (B) The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

¹ Interagency guidance document, Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance, Version 1, March 2006, Publication #06-06-011a.

RESPONSE: The adjacent land is well-vegetated with native plants, and it is not susceptible to severe erosion, except in areas where past ATV impacts have damaged the wetlands. Full wetland and buffer restoration is proposed in those damaged areas.

- (C) The adjacent land has minimal vegetative cover or slopes greater than thirty percent that would directly impact wetland functions and values

RESPONSE: Adjacent lands are well vegetated with native species, and none of the wetland buffer areas have slopes greater than 30%.

Ecology guidance and recommendations for widths of buffers assume that:

- The wetland has been categorized using the Washington State Wetland Rating System for Eastern Washington: 2014 Update, Department of Ecology Publication #14-06- 030, October 2014. The buffer is vegetated with native plant communities that are appropriate for the ecoregion or with a plant community that provides similar functions.
- If the vegetation in the buffer is disturbed (grazed, mowed, etc.), proponents planning changes to land use that will increase impacts to wetlands need to rehabilitate the buffer with native plant communities that are appropriate for the ecoregion, or with a plant community that provides similar functions.

RESPONSE: The wetlands were rated using the correct Rating System, and the buffers are vegetated with native plant communities appropriate to the bioregion. Where there are traces of old logging or recreation roads in the buffers, the applicant already proposes to revegetate such surfaces with locally appropriate native species.

The importance of specific buffers widths to wildlife in general is not well-studied or defined, mainly because wildlife studies are usually species-specific and general rules don't apply. Wetland buffer studies nearly always focus on wetland dependent species, which require wetland conditions to support a critical part of the target species life cycle – such as amphibians or ducks, which nest in or near wetlands, but may travel away from the wetland edge during other parts of their life cycles.

There are no guidelines for assigning buffer widths for non-wetland dependent upland species, such as elk. However, this project will set aside and protect over 300 acres of elk habitat in a Conservation Site, most of which is well outside of the standard 110 ft wetland buffer. Therefore, the effective wildlife buffer for these systems will be hundreds of feet wide.

In sum, Ecology's November 20, 2020 letter stated: "Due to the habitat score and proposed land use intensity, Ecology recommends the County require a wider buffer (110') to properly protect wetland habitat functions." Ecology's recommended 110-foot standard buffer is based on Ecology's determination that this width is adequate to provide protection for these functions. There is no scientific or other basis for any further increased buffer width.

There is also no scientific or technical justification for increasing the buffer width for elk habitat under either CCC 11.80.080 (which applies to wetlands) or under Ecology guidance. In fact, there is no such thing as an elk habitat buffer in the code.

Habitat Management and Mitigation Plan

This HMMP addresses habitat management during and following project implementation, as well as mitigation requirements for project impacts resulting from the conversion of forest land to orchard development, in accordance with Chelan County Code, including:

- Sections 11.78.015: Mitigation sequencing, 11.78.080: Class II wildlife habitat conservation standards, subsection (3) Minor development within Class II wildlife conservation areas; and
- 11.80.110: Mitigation plan (wetlands).

The HMMP will be implemented to mitigate for the loss of native vegetation and associated elk habitat in Section 17 as a result of Project implementation and to restore degraded wetland and riparian areas as a conservation action. A condition of the Chelan County Mitigated Determination of Non-significance required that the "HMMP shall mitigate for the permanent loss of 260 acres of upland forest elk habitat, nearby impacts to elk habitat from the development proposal, and other impacts to local and regional wildlife habitats." No impacts to listed species, such as spotted owl and salmonids, are expected at the Project Site, and therefore no mitigation is proposed for those species. The HMMP was guided by WDFW POL-M5002 Requiring or Recommending Mitigation (1999) (see Appendix I) and is organized as follows:

- Mitigation Plan Goals
- Mitigation Sequencing Protocols
- Wetland and Riparian Areas
- Elk Habitat
- Mitigation Performance Standards
- Schedule of Mitigation Actions

Although the focus of the HMMP is on riparian/wetland restoration and improvement of elk habitat, the mitigation actions will benefit other local and regional wildlife species in the area by improving vegetation and limiting disturbance.

Mitigation Plan Description

Because impacts to wetlands and streams must also be reviewed and permitted under a U.S Army Corps of Engineers (USACE) federal JARPA process, the Mitigation Plan is described in two sections. The Wetland and Riparian Areas Mitigation Plan section is written to fulfill prescriptive requirements for federal and state JARPA review and permitting process, as well as Chelan County regulations regarding wetland, stream and buffer mitigation requirements. The Elk Habitat Mitigation Plan will reference the wetland mitigation section (which will provide for elk habitat restoration in riparian areas) but will also describe other upland habitat restoration and enhancement plans outside of the wetland and stream buffers.

Wetland and Riparian Areas Mitigation Plan Goals

The goal is to enhance and restore riparian and wetland areas that were damaged from past logging and recreational uses. This goal will be accomplished by the following plan components:

1. Removing and rehabilitating certain sections of illegal two-track roads and old logging roads in the wetland and stream buffers and other upland areas adjacent to orchard units #1 and #3. This work will eliminate and prohibit future public access from these roads and will reduce or eliminate current erosion problems in the roadbeds;

2. Improving and maintaining two degraded seasonal stream crossings and moving associated existing roads out of buffers to provide critical orchard access while mitigating impacts from past and future road use;
3. Restoring Ns West stream flow into its original channel from where it currently flows down a deeply rutted and gullied old logging road south of the natural stream channel;
4. Implementing erosion and hydrological control measures in severely degraded sections of Ns West and Ns North;
5. Removing and restoring natural hydrology and wetlands at an existing crossing in the Np stream;
6. Planting native species and controlling weedy species in currently degraded wetlands and riparian areas;
7. Monitoring restoration success in wetlands, and riparian areas following prescriptive federal permit requirements.

Elk Habitat Management and Mitigation Plan Goals

The goal of the Elk Habitat Management and Mitigation Plan is to mitigate for the permanent loss of ~260 acres of low to moderate quality upland forest elk habitat. The wetland and stream enhancement plans described above will also provide for improvement of riparian habitat areas used by elk. Mitigation for elk will also benefit other wildlife species.

The HMMP identifies habitat mitigation area(s) with similar functions and values to orchard conversion areas, providing a minimum of a 1:1 habitat mitigation replacement ratio, as required by Chelan County Code (FINAL MDNS 15.), and WDFW Policy (POL-M5002). Habitat mitigation area(s) were identified by considering slope and foraging attributes and avoided areas with slopes in excess of 60 degrees. This goal will be accomplished by the following plan components:

1. Long-term protection of elk habitat in a designated ~355-acre Conservation Area;
2. Enhancement of elk habitat and improved forest health through thinning upland habitats and restoring riparian habitats;
3. Improving security habitat by blocking and rehabilitating surfaces of certain existing illegal roads to prohibit future public access to protected Conservation Area habitats;
4. Planting native species in newly disturbed areas, i.e. impacted areas adjacent to improved access roads and the utility corridor, etc.;
5. Controlling weeds in restored area;
6. Monitoring restoration success across the Conservation Area.

Mitigation Sequencing

The orchard development plans were designed following standard Mitigation Sequencing -- “avoid, minimize, and mitigate”, per Chelan County Code 11.80.015. These concepts are listed below:

- (1) *Avoiding the impact altogether by not taking a certain action or parts of an action;*
- (2) *Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation or timing, to avoid or reduce impacts;*
- (3) *Rectifying the impact to fish and wildlife conservation areas by repairing, rehabilitating, or restoring the affected environment to the historic conditions or the conditions at the time of the initiation of the project;*

- (4) Minimizing the impact by restoring or stabilizing the area through engineered or other methods;*
- (5) Reducing the impact over time by preservation and maintenance operation during the life of the action;*
- (6) Compensating for the impact by replacing, enhancing or providing substitute resources or environments; and*
- (7) Monitoring the required mitigation and taking remedial action when necessary. (Res. 2007-97 (part), 7/2/07).*

Wetland and Riparian Area Mitigation Plan

Wetlands and Stream Systems Overview

Three seasonal streams (called Ns North, Ns West and Ns South), one non fish-bearing perennial stream (called Np Stream), and three associated wetland areas (Wetlands A, B and C) are targeted for restoration and enhancement in the Project Area (*Figure 6*). The three seasonal streams are the headwaters of the perennial stream. The standard Ns Stream buffer is 50 ft; the standard Np stream buffer is 100 ft, and the standard wetland buffer for Wetlands A, B and C is 110 feet.

Ns North is a seasonal stream that starts about 500 feet downslope from the top of the mid-site ridge and slopes south-southeast. Its primary hydrology source is from snow melt, but will also collect early season runoff from precipitation. The stream runs dry by mid-May in most years. The base of the stream was used as a road by logging trucks in the past, which caused the stream to become more linear, and has resulted in a few spots with severe gully erosion. Stream flow is periodically discontinuous, dropping to flow subsurface through very gravelly substrates, and typically no more than 1 ft wide and less than 3 inches deep. The stream base formed a ravine as deep as 3-4 ft in a few places due to severe erosion. The riparian area can be characterized as sparsely vegetated with young upland forest trees, shrubs and grasses.

Ns West is a seasonal stream that starts about 700 feet from the south edge of Section 17, downslope from an offsite continuation of the mid-site ridge. It flows east-northeast. Like Ns North, its primary hydrology source is from snow melt, but also collects seasonal precipitation runoff from surrounding slopes. Like Ns North, the stream runs dry by mid-May in most years. There is a broad flat area at the headwaters that appears to have been a landing. Flow from the original natural channel of Ns West has jumped to a logging road that parallels to the south. The natural channel is dry, and seasonal snowmelt runoff combined with spring storms has created deep ravines in the logging road ruts. Sediment and runoff from the erosion impacts downslope wetlands (described in more detail below). The riparian area is sparsely to densely vegetated with young upland forest trees, shrubs and grasses.

At Ns West, both the natural channel and the diverted channel are temporarily buffered until such time as the natural flow pathway can be restored. Once restored, the Ns West buffer will be adjusted to include only the natural flow pathway. These buffers define the edge of the adjacent orchard.

Sediment-laden flow from the Ns West logging road continues downslope and crosses between two small Category III wetlands, Wetland B and Wetland C, then into a highly disturbed area east of Wetland B that was originally a logging road, but has been severely impacted from past use by ATV enthusiasts.

Ns South is a seasonal stream that enters the site about midway on the southern edge of Section 17 and flows north. Its primary hydrology source is also from snow melt, and also from collection of seasonal precipitation runoff from surrounding slopes. Ns South also runs dry by mid-May in most years but has flow a little longer than Ns West and Ns North. Ns South has an associated riparian wetland (called Wetland A) which forms a narrow strip, only 1-2 feet wide along the edge of the stream, sometimes on one side and then on the other, for about 1200 ft onsite. This wetland is dominated by native shrubs.

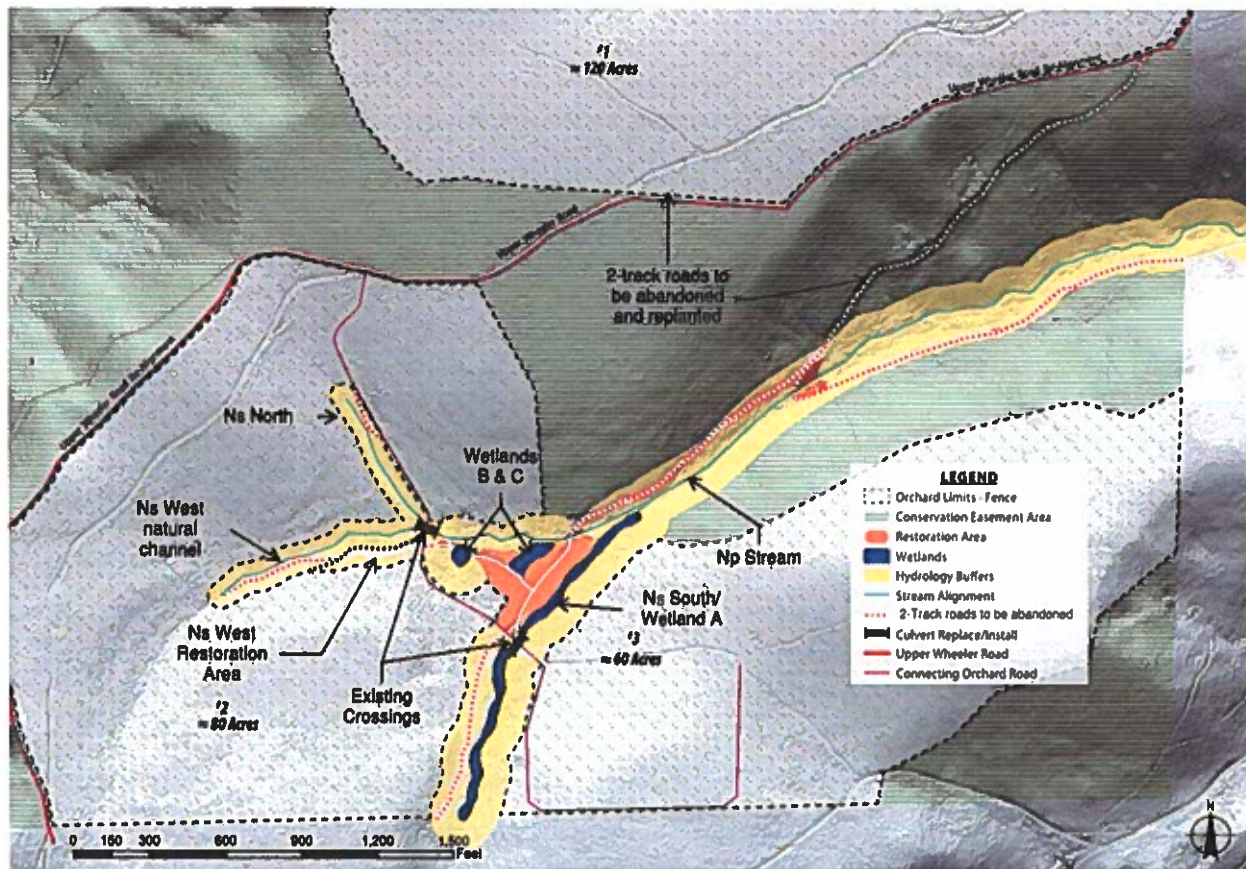


Figure 6. Delineated wetlands, streams and buffers in the Project Area.

Surface flow in Ns South stream is typically no more than 1.5 ft wide, and less than 4 inches deep. The riparian area is vegetated with upland forest trees, shrubs and grasses. An existing logging road crosses this stream and wetland; the crossing will be preserved and upgraded for use to access the orchards, but the haul road will be realigned to run outside of buffers.

The three Ns streams converge, and their combined flow creates the Np Stream which flows east and exits Section 17 about midway along the eastern border. The Np stream only had aboveground flow during Spring and early Summer in 2018 or 2019. It is designated as a perennial stream, but does not typically have year-round flow onsite. It flows in the base of a ravine with slopes of about 20-30 degrees on either side for the first 900 feet, then widens slightly farther downstream (*Figure 6*). There is an existing logging road crossing (not culverted) at the transition from ravine to wider flow which has blocked the stream, backing up seasonal water temporarily which flows down the road for about 50-80 feet, then back into the main channel. That logging road continues along the southern side of the stream in the buffer zone for about 1,700 feet from the crossing to the eastern

boundary of Section 17 (*Figure 2*). Another logging road runs east from the Ns streams' confluence along the north side of the Np Stream for about 1,300 feet, then slowly climbs for another 1,800 feet to meet the ridge road at the eastern boundary of Section 17.

The Np Stream has associated narrow riparian wetlands farther downstream (Category II and III wetlands), which are not directly impacted by this project and thus were not studied in great detail. The stream buffer extends 100 feet on either side of the Np stream, and wetland buffers would extend 110 feet from either side of the wetlands. These systems and their buffers are embedded within the designated Conservation Area.

Proposed Impacts (See Table 2 and Figure 6)

Existing road crossings at the confluence of Ns North and Ns West and at Ns South (Wetland A) will be repaired and improved to support a critical orchard haul road and irrigation pipelines which will connect the two southern orchards to the mid-site ridge haul road. The haul road is needed to support basic orchard operations, and these unavoidable crossings were chosen partly because they are existing impacts, and partly because they are relatively narrow crossing areas.

At the Ns North/ West crossing, the total crossing length is estimated to be 162 feet (approx. 3,240 sqft permanent and 1,620 sqft of temporary impacts). Direct stream impact at the crossing, including a new 24 inch culvert installation extending 5 feet from both side of the 20 ft wide road crossing is estimated to be no more than 90 sqft. The rest of the impact is to stream buffer area, and includes the diverted section of Ns West stream flow, which may also require a temporary culvert until such time as that flow diversion is repaired.

At the Ns South/ Wetland A crossing, the total length is estimated to be 255 feet (approx. 5,100 sqft permanent and 2,550 sqft of temporary impacts). Direct stream impact at the crossing, including a new 24 inch culvert installation extending 5 feet from both side of the 20 ft wide road crossing is estimated to be no more than 90 sqft. The rest of the impact is to stream and wetland buffer area.

Total proposed impacts from both crossings are estimated to be about 417 linear feet, with a 20 ft wide road impact area (measured to toe slope) – 8,340 sqft (0.19 acres) of permanent impact 4,170 sqft (0.1 acres) of temporary clearing and grading impacts to stream, wetlands and buffer. Direct impacts to wetlands and streams are estimated to be no more than 180 sqft (0.004 acres). The majority of impacts will be to buffers.

Proposed Mitigation (See Table 2)

All temporary impact areas at the edge of the two existing and improved road crossings will be revegetated with native plants.

Ns North:

- Erosion gullies will be repaired using rocks, logs and willow staking to diffuse and slow flows.
- The old logging road impacts (265 linear ft) in the buffer to the northeast will be ripped and replanted with native vegetation.

Ns West:

- The natural flow path of Ns West will be restored to its original channel by repairing logging road damage in the buffer.

- The old logging road (558 linear ft) in the buffer to the south of the natural channel will be ripped, regraded to restore natural flow to Ns West and replanted with native grasses to stabilize the surface and reduce erosion.



Figure 7. Old logging road diversion of stream Ns west near Wetland B/C.

Ns South/ Wetland A:

- The old logging road (802 linear ft) in the buffer to the west of the stream/ wetland system will be ripped and replanted with native vegetation.
- Disturbed areas west of the northern end of Wetland A will be restored, as described in more detail below.

Np Stream West:

- The natural flow path of the Np stream will be restored to its original channel by removing an existing crossing about 900 feet downstream from the Ns Streams' confluence. There is no culvert, so road fill and compacted soils at the crossing will be removed to allow for creation of a natural stream flow channel. This mitigation repair will require ripping and regrading about 0.2 acres of the existing road on either side of the crossing.
- The old logging road (1,700 linear ft) in the buffer to the south of the stream will be ripped and replanted with native vegetation.
- The old logging road (1,300 linear ft) in the buffer to the north of the natural channel will be ripped and replanted with native vegetation.
- The above logging road continues another 1,800 feet outside of the buffer up a side slope to meet with the main road at the eastern section boundary. That road section will also be ripped and replanted with native vegetation, to minimize future access to downslope mitigation areas.

"Mud-bog" Restoration Area:

- The severely disturbed wetland and buffer areas near Wetlands B and C (*Figure 8*) will be restored. The target area (about 2.2 acres) includes the old logging road running between

Wetlands B and C, and a broad area between Wetlands A and B near the confluence of the three Ns streams. It receives sediment-laden flow from the logging road diversion of Ns West flow (*Figure 7, described above*) and is impacted by years of past mud-bogging activities.

- Bare and compacted soil areas will be ripped, soil amended and revegetated. Adjacent wetland and buffer areas dominated by pasture grasses and other non-native vegetation will be interplanted with native wetland or buffer species, based on background hydrology conditions.



Figure 8. ATV mud-bogging area at convergence of Ns streams.

Table 2. Wetland and Riparian Areas: Proposed Impacts and Mitigation Areas			
Area of Interest	Approximate Sqft (acres)	Approximate Linear Feet	Comments
Wetland, Stream and Buffer Impacts			
Orchard Road Crossings	8,340 sqft permanent, 4,170 sqft temporary (0.29 total ac.) ~180 sqft of permanent wetland/stream impacts	417 ft	24-inch culvert extended 5 feet from either side of toe slope: stream impact is 3x30 ft (90 sqft) at each crossing. Toe slope road width assumed to be ~20 feet wide with ~10 ft of temporary construction impacts outside of road
Mitigation/Restoration Proposed			
Road outside of buffer restored	36,060 sqft (0.83 ac.)	1,803 ft	Existing road width assumed to be ~20 ft
Roads inside of buffer restored*	94,760 sqft (2.2 acres)	4,738 ft	Existing road width assumed to be ~20 ft
Wetland Restoration area	98,720 sqft (2.3 acres)	NA	Restoring wetland vegetation in area between WL B and A impacted by ATV traffic and logging roads
Total Acreage Restored	~5.3 acres	NA	18:1 replacement ratio based on 0.29 acres impacted
*Ns West: 558 ft (11,160 sqft or 0.26 acres); Ns North: 265 ft (5,300 sqft or 0.12 acres); Ns South: 803 ft (16,060 sqft or 0.37 acres) and Np Stream: 3,112 ft (62,240 sqft or 1.43 acres)			

Elk Habitat Management and Mitigation Plan

Colockum Elk Habitat: WDFW manages Rocky Mountain Elk as a game animal and considers it a species of recreational, commercial, and/or tribal importance (WAC 232-12-007). Elk were also identified as a Species of Management Interest by the Stemilt Partnership (TPL 2007). The Colockum elk herd range covers more than 1,600 square miles (*Figure 9*) with an estimated population of 6,500 (WDFW, 2018). According to the Washington Department of Fish and Wildlife (WDFW 2020 – letter to file), elk are not evenly distributed throughout this range and are heavily concentrated in GMUs 328 and 329 and to a lesser extent in GMUs 251 (where the project is located) and 335. Of the 105,662 acres of lands identified by WDFW as calving habitat, less than 0.4% is located within Section 17 (*Figure 11*). Most of the elk herd use summer range that is located in the Naneum, Swauk, and Teanaway drainages (WDFW, 2006), which are not near the Project Site. No winter range is located in the Project Area, so the Project would not affect elk or mule deer winter range (*Figure 10*). As such elk that use the Project Site may be considered a subpopulation of the larger Colockum Elk Herd (WDFW – pers comm).

Existing Elk Habitat Quality Assessment

In 2019, Washington Conservation Science Institute (WCSI 2019) modeled and assessed the quality of elk habitat in the Stemilt-Squilchuck Basins (Assessment Area). This was a landscape scale habitat model that included four interacting components that quantified nutrition, cover, habitat security and terrain. This model was founded on extensive research on elk in the western United States and has been identified by WDFW and Chelan County as the best available science on which to base mitigation actions. It is important to recognize that the individual covariates do not in and

Nutrition has been identified as a critical component of elk survival and productivity (Cook 2002). Levels of digestible energy in elk diets during the summer have been shown to strongly influence elk condition and reproduction (Rowland et al. 2018). The nutrition parameter was selected to identify the vegetation types that have the greatest potential to meet or exceed the minimum nutritional requirements for an elk cow/calf pair (Cook et al. 2018) and was estimated from data on forage productivity and elk use (Lehmkuhl et al. 2013). Nutrition was based on the potential vegetation group (PVG), vegetation structure and canopy cover. For instance, more mesic open sites have greater potential to contribute to forage species than dry, closed canopy forest, particularly in the spring when nutrition contributes to calving productivity.

Cover, more specifically distance to cover quantifies the role cover plays in providing security habitat and reflects research that suggests elk are more likely to forage near areas that provide sufficient forest cover to hide (Rowland et al. 2018).

Habitat security quantifies the amount of area that is outside of potential human disturbance as measured by distance from open roads. Extensive research into this topic has indicated that open roads provide access for humans, and although the level of impact can vary depending on road density, traffic volume and type of access, motorized vehicle use can disturb and displace elk from using habitats in the vicinity (Gaines et al. 2003, Gaines et al. 2020).

Terrain reflects elk tendency to use gentle terrain more often than steep terrain (Rowland et al. 2018). In this model, digital terrain data (30 meter pixel) was used to classify the assessment area

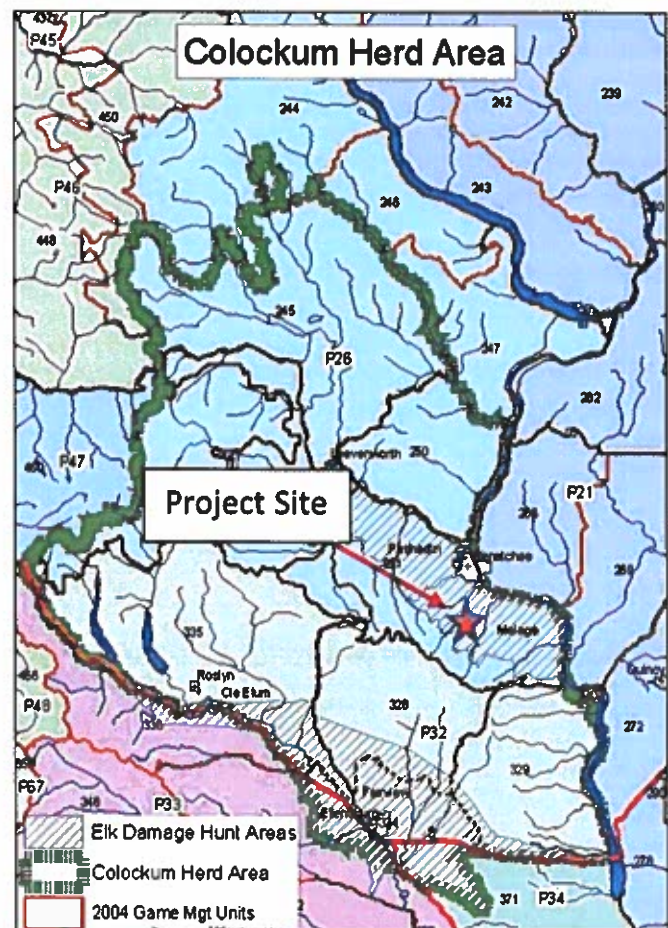


Figure 9. Colockum elk herd range relative to project site.

into gentle (<30 degrees), moderate (30-60 degrees), and steep (>60 degrees) slope steepness classes. Although slope may influence habitat selection and lead to increased energetic costs, a regional analysis of elk habitat use (Rowland et al. 2018) demonstrated the importance of managing for nutrition in combination with other covariates (i.e., roads, slope, cover-forage edges) that affect elk use of nutritional resources. Higher summer and fall nutrition has been linked to better elk productivity and calf survival (Cook 2002, Rowland et al. 2018).

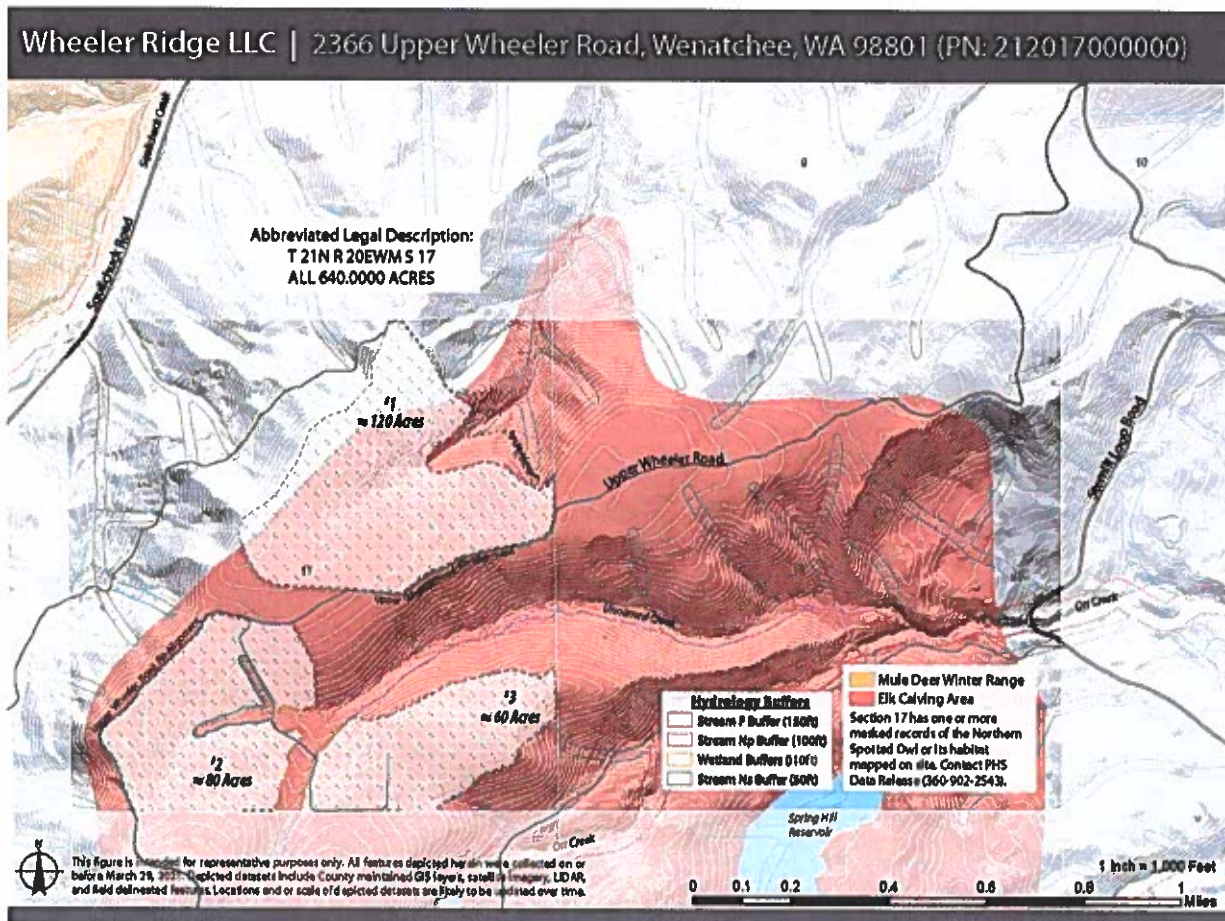


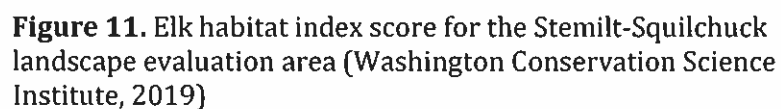
Figure 10. Mule deer winter range and elk calving areas within the Project Area as mapped by WDFW Priority Habitat and Species data.

Habitat Function and Quality

The resulting habitat index was categorized into low (scores 1-3), moderate (scores 4-6) and high (scores 7-10) habitat quality classes. Results indicated that ~19,370 acres (50%) of the Assessment Area is in a low habitat quality condition; ~17,000 acres (44%) in a moderate habitat quality condition, and ~2,600 acres (6%) in a high quality condition" (Figure 11). WCSI results indicate that elk habitat within the Project Site ranges from moderate to low. No high quality habitat is located in the Project Site. This is largely due to the site being relatively dry, heavily roaded and portions being quite steep.

Elk Habitat Impacts and Mitigation

The Project Site likely provides early season forage in vegetation types that typically dry out by mid-summer (Table 3). Anecdotal observations confirm that elk use this area but data is not available to quantify the level of use. The area is likely used by some elk as they leave the winter range. Forage and water availability would limit the duration of that use as this area dries out fairly quickly. In the southeast corner of Section 17 there is some higher quality habitat adjacent to the perennial stream and Section 16. This is also very close to a road that receives illegal motorized use and has been proposed for



restoration. Calving may occur here but has been undocumented. As described by the extensive research (see Gaines et al. 2003, Gaines et al. 2020, McCorquodale 2013 for reviews), the probability of elk use is substantially diminished by the high density of open roads.

Table 3. Distribution of overstory vegetation cover types within Section 17 and within the Orchard boundaries in Section 17

Overstory (dominant) cover type	% of Section 17	% of Section 17 within Orchard Boundaries
Non-forest	2.4	0
Douglas-fir	7.4	0.9
Ponderosa Pine/Douglas-fir	70.7	38.1
Douglas-fir/Grand fir	19.5	1.0

Habitat Impacts

A total of ~257 acres of elk habitat within Section 17 will be impacted by the installation of fenced orchards, relocation of part of Upper Wheeler Road and exclusion of some habitat adjacent to Orchard Unit No 2 (Table 4). The area adjacent to Orchard Unit No 2 could be used by elk but is effectively unavailable because it is configured in a way (ie. surrounded by the orchard polygon – Figure 12) that will limit the likelihood of elk entering it so is considered “removed” in this assessment. Within Section 17, 23.7% of available low quality habitat and 16.5% of moderate quality habitat would be removed. No high quality habitat is present due to the dry nature of the vegetative structure, high canopy cover and presence of open roads.

As described previously, the Colockum Elk Herd Range encompasses over 1,600 sq miles, with over 105,000 acres of calving habitat. This project would have an insignificant effect on elk habitat and the Colockum elk herd population. Project implementation will have an insignificant impact on habitat for the sub-population that uses this area.

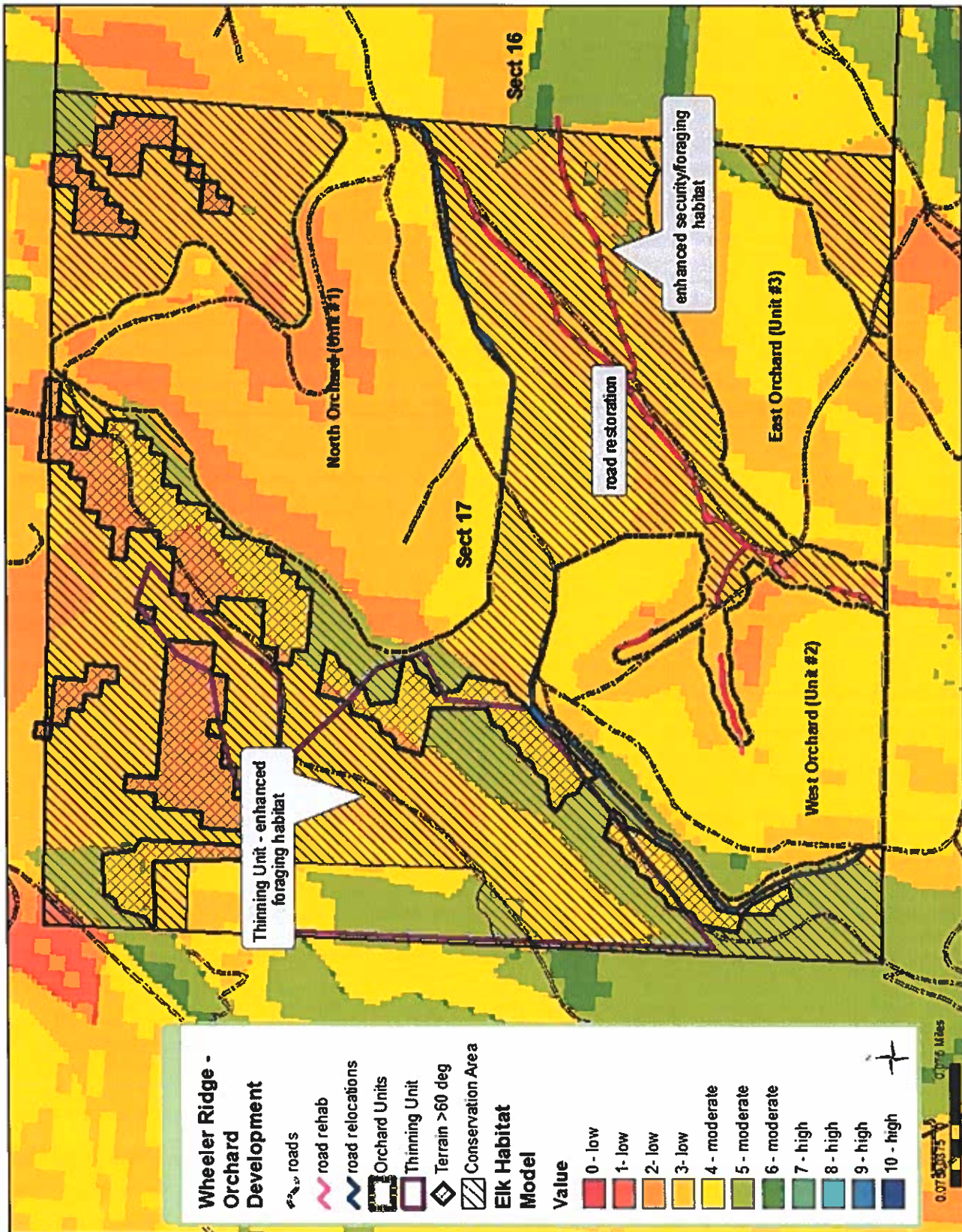
Table 4. Summary of impacts to elk habitat and mitigation within Section 17. The elk habitat quality map in the Project Site is classified into low, moderate and high categories, with index scores that range from 0-10. No high quality habitat is located in Section 17. Mitigation is described for the entire Conservation Area and the Conservation Area outside of slopes greater than 60 degrees. Additional mitigation in the form of habitat enhancement would occur through wetland restoration and road abandonment/restoration (~5.3 acres) as well as 80 acres of thinning in the NW corner of the Conservation Area. (Final MDNS 15.a.)

Habitat Quality Category	Habitat Quality Score	Impact to Elk Habitat (acres)				Mitigation (acres)			
		Orchard Polygons	Road Relocation	Excluded area adjacent to Orchard Unit No 2	Total Impacts	Conservation Area	Ratio (Mitigation: Impact)	Conservation Area (slope < 60 degrees)	Ratio (Mitigation: Impact)
Low	1	0	0	0	0.0	1.2	na	1	na
	2	29.8	0.02	0.06	29.9	41.6	1.4	9.8	0.3
	3	117.4	0.35	4.05	121.8	170.4	1.4	168.2	1.4
Low subtotal		147.2	0.37	4.11	151.7	213.2	1.4	179*	1.2
Moderate	4	94.7	1.57	0.17	96.4	89.5	0.9	64.1	0.7
	5	8	0.67	0	8.7	51.6	6.0	50.8	5.9
	6	0.5	0	0	0.5	0.2	0.4	0.2	0.4
Mod subtotal		103.2	2.24	0.17	105.6	141.3	1.3	115.1	1.1
High	7 – 10	0	0	0	0.0	0	na	0	na
Grand total		250.4	2.61	4.28	257.3	354.5	1.4	294.1	1.1
Habitat Enhancement									
	Thinning					80		64	
	Restoration					5.3		5.3	
Total Mitigation						439.8	1.7	363.4	1.4

*Slope adjusted mitigation will compensate for impacts to habitat in the low category with an additional 27 acres beyond the 1:1 requirement.

**Slope adjusted mitigation will compensate for impacts to habitat in the moderate category with an additional 9 acres beyond the 1:1 requirement.

Figure 12. Elk habitat quality mapped within the Wheeler Ridge Project Area relative to project actions and mitigation. The map displays the Conservation Area and those areas excluded on slopes greater than 60 degrees.



Impacts from rock crushing, irrigation facilities, orchard fencing and road maintenance -Habitat:

The irrigation pumping station and pipeline (facilities), and orchard fencing have been considered in the HMMP analysis as construction activities associated with orchard development and habitat removal. The impacts of the orchard fence on elk movement are further discussed on page 21 *Key Function: Movement*.

Additional information relative to the rock crushing facilities is provided below.

Habitat Impacts: The proposed rock crushing areas (rock pits) within Section 17 may impact up to 2 acres of land. The rock sources are located on steeper, rocky slopes with some grass cover, and are mapped as Habitat Class 3 (low quality, ~1.5 acres) and Habitat Class 4 (moderate quality, ~0.5 acres). The rock pits are located on terrain identified as > 60 degrees slope. Because Chelan County has indicated areas where terrain exceeds 60 degrees in slope cannot be used for mitigation, then it would follow that these same areas are not considered habitat and would not require mitigation. However, even if mitigation for the rock pit areas is required, then the Conservation Area still provides the required habitat mitigation (*Table 4*).

The rock pit in Section 9 is already in place within an existing operational orchard on private land. No habitat would be impacted by use of this pit.

Disturbance:

Most rock removal and crushing would occur on Section 17 within the estimated project / County road "Effect Radius". The activities associated with the rock pits would create movement and noise above ambient from June to November. This would be a short-term impact, similar to the other construction noise created by the large machinery on site during the period of orchard development. The effects are considered construction activities and are covered by the HMMP analysis of such impacts on page 28. The rock pits may be used over the long term to crush more rock to maintain roads. Rock crushing activity would occur intermittently in the May to November timeframe. Additional noise from rock crushing may cause disturbance to nearby wildlife but would be of short duration (*i.e.*, occurring for hours on limited occasions as opposed to ongoing for days or on frequent occasions).

One potential rock pit is located outside of the Effect Radius (in Section 9) within an existing operational orchard on private land. The rock in Section 9 is already crushed and would only be loaded, so the additional noise would not differ from the noise associated with use of this rock pit in conjunction with existing, ongoing orchard activities.

The irrigation facilities would be located within the orchard development and disturbance would be similar to those from the orchard operation activities.

Road maintenance is an ongoing activity (long-term) that would have effects similar to current human activity on the roads in the area. Road maintenance per ccc.11.78.020 (5) "Maintenance, reconstruction, repair, or operation of existing streets, highways, or roads" is exempt from the HMMP requirements. Although the road maintenance is exempt from the requirements of CCC 11.78.020 and are not included in the determination of required mitigation, they are included in the analysis of effects.

Summary of Effects:

Rock pit development would remove about 2 acres of low – moderate quality elk habitat. Disturbance effects to elk would be similar to those created by the orchard construction and logging activities. The additional impacts of rock crushing, irrigation facilities and road maintenance may create short term disturbance to elk. However, this would not be a significant impact to the Colockum Elk Herd, because:

- 1) There is a high level of existing human disturbance in the Project Area,
- 2) The additional impacts would not occur in high quality habitat,
- 3) The rock pit itself would only result in a short-term, small scale increase in impacts relative to existing conditions and the proposed orchard development.

Habitat Mitigation

Based on the impacts to Section 17 (Orchard Development and road realignment) approximately 257 acres would require mitigation in habitat types with similar functions and values. Impacts to Section 16 (road and utility work) would be exempt from the HMMP per Chelan County Code (11.78.020 (2), (5)). Per Chelan County MDNS (November 2020) “existing portions of Upper Wheeler Road (that lie outside of the existing easement) on Section 16, once constructed within the existing easement, shall be restored with native grasses, forbs, and trees”.

Chelan County FINAL MDNS (2020, Item Animals, 15.e.) required the following condition:

- e. Identification of habitat mitigation area with similar functions and values to orchard conversion areas to compensate for the unavoidable loss and conversion of 260 acres of priority habitat and species habitat. Habitat mitigation area shall be of equal or greater habitat value and have similar slope, distance to cover, escape cover, and vegetation types and may not include areas with slopes in excess of 60 degrees. The specific size of the habitat mitigation area shall be determined and set forth in the HMMP consistent with this section and with WDFW guidance on habitat mitigation replacement ratios. The presumptive habitat mitigation area replacement ratio shall be 2:1; provided, however, that the HMMP shall also consider and discuss the need for habitat mitigation replacement ratios higher than 2:1 and may also consider and discuss the rationale for habitat mitigation replacement ratios lower than 2:1; provided, further, that any ratio lower than 2:1, if determined appropriate for implementation consistent with this section, shall include a review and analysis of WDFW mitigation guidance and best available science supporting any such ratios. In no case shall habitat mitigation replacement ratios include out-of-kind mitigation, fail to provide no net loss of functions and values to orchard conversion areas, or be less than 1:1. Habitat mitigation areas will be located on an appropriate site in Water Resource Inventory Area 40A (Squilchuck/Stemilt) or other site in the Colockum watershed;

In the letter from WDFW, dated November 24, 2020, WDFW suggested this discussion of mitigation ratio application based on WDFW’s Wind Power Guidelines (WDFW 2009) (and reiterated by Chelan County in the Final MDNS). The mitigation descriptions in the Wind Power guidelines are primarily focused on high quality habitat and categorizes habitat based on the following (p.9):

- A) “Class I and Class II habitats are considered the highest priorities for current statewide conservation action in Washington. Class I habitats have a greater number of associated Species of Greatest Conservation Need (SGCN) than the Class II habitats and Class II habitats

have a greater number of associated SGCN than the Class III habitats. Class IV habitats are generally low value habitats." The guidelines indicate that "no mitigation will be required for impacts to lands that have low habitat value, which includes lands that are: currently being cultivated; developed; or disturbed by an active road or other corridor that eliminates natural habitat values."

Elk are not an SGCN species, although calving habitat is a Priority Habitat. All habitat impacts from the Wheeler Ridge Project would occur in low to moderate quality habitat that is within 250 meters of an open road, and would avoid high quality habitat (*Figure 12, Table 4*). In addition, the area in general is heavily roaded and disturbed, further contributing to the overall lower quality classification. In conclusion, most of (60%) the impacts would occur in low quality habitat based on the habitat assessment and presence of roads, which, according to the Wind Power Guidelines would not require mitigation. The remaining 40% would occur in moderate quality, where a 1:1 mitigation ratio would be appropriate.

Based on the review of these guidelines, WDFW Policy on mitigation (which requires a minimum of 1:1 but does not provide thresholds for alternative ratios) and the impacts to elk habitat in Section 17, a 1:1 ratio would be appropriate and 257 acres would require 1:1 mitigation in habitat types with *similar functions and values* (*Table 4*). These mitigation actions would:

- 1) Provide On-Site, In-kind mitigation (identified as highest priority)
- 2) Compensate for the impact by replacing or providing substitute resources or environments (Conservation Area),
- 3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment (Restoration Actions).

As described below, proposed mitigation actions would exceed the 1:1 ratio and result in important improvements to elk habitat in and adjacent to Section 17 through permanent habitat protection, restoration of higher quality habitats and seasonal road closures to decrease disturbance to elk during critical time periods.

Key Function: Early Season Forage

This assessment indicated that a total of 151.7 acres of mitigation would be required in the low habitat quality category and a total of 105.6 acres of mitigation would be required in the moderate habitat category (*Table 4*). To mitigate impacts, a Conservation Area, will be designated, in perpetuity, to provide long-term protection to elk habitat (early season forage) and serve to preserve habitat connectivity (movement) across the central ridge between orchard areas (FINAL MDNS 15.b.). This is a significant mitigation action that will protect habitat on private property that could otherwise be developed in the future. The Conservation Area covers a total of about 355 acres (*Figure 12*). Within the Conservation Area, 213 acres are classified as Low Quality habitat, while 141 acres are classified as Moderate Quality habitat. Combined, the habitat categories exceed the general mitigation requirements (1:1) by 97 acres, resulting in an initial mitigation ratio of 1.4 to 1.

In order to address the slope permitting condition (FINAL MDNS 15.e.), we excluded areas in the Conservation Area that were located in the "Steep" terrain category (>60 degrees) as determined by the Elk Habitat Quality Terrain parameter and reevaluated the habitat within the Conservation Area. This resulted in the exclusion of ~59 acres that could be considered for mitigation. The slope restricted results indicate the Conservation Area still provides sufficient acres to mitigate for impacts. In the Low Quality category 179 acres will be protected (27 acres more than the mitigation requirement) and in the Moderate Habitat Quality category 115 acres will be protected (9.5 acres

more than the mitigation requirement), for a total of 294 protected acres. Although 59 acres were excluded for the analysis, these acres are still available to elk within the Conservation Area.

In addition to providing long-term habitat protection, habitat quality scores indicate the habitat in the Conservation Area is comprised of higher quality habitat within both the Low and Moderate categories as compared to what will be removed (ie. the Conservation Area provides more habitat with a score of 5 than the orchards). As such the mitigation satisfies the requirement of similar or *better quality* habitat at a ratio of 1.1 to 1. The low quality habitat that is being removed within the orchards is on more moderate terrain than in the Conservation Area, but is often within dry vegetation groups with high canopy cover that does not provide quality foraging opportunities as compared to the somewhat steeper, more mesic sites in the northwest and southeast portions of the Conservation Area. Although not required, additional mitigation will be accomplished by habitat enhancement activities described in the Wetland and Riparian Areas mitigation and below in Additional Mitigation.

Key Function: Landscape Permeability and Movement

The Final MDNS required a discussion of landscape permeability and wildlife crossing corridors and WDFW requested discussion of the impacts on seasonal migration corridors. We have provided the following to examine the effect of the project on landscape permeability and the ability of elk to move across the landscape during seasonal migration and in general seasonal use of the area.

In the spring elk migrate from winter range to follow the growth of highly nutritious emergent vegetation up to higher elevation summer range (Sawyer and Kauffman 2011, Sawyer et al. 2012, Barker et al. 2019). Movement routes, also called “corridors”, and stopover sites, which provide quality forage and security, are two important elements of successful migration (Gaines et al. 2020). Human recreation and development can influence elk movements, potentially altering patterns, rates and routes (Sawyer et al. 2012). Increased movement rates and altered routes, as a result of human disturbance or development, can reduce the amount of time spent foraging and more time moving, resulting in energetic costs. Section 17 and the Project Area are not located within the mapped migration route for the Colockum Elk Herd (WDFW PHS data, *Figure 10*). Any elk in the vicinity of Section 17 most likely use this area to move through, but do not linger because Section 17 is at a lower elevation and does not provide high quality, secure habitat that would function as a stopover site. The high density of open roads and existing human activity further decrease the quality and function of this site.

Because an 8-foot tall standard wildlife fence shall be constructed around the Orchard Areas to limit human-wildlife contact (FINAL MDNS 22.), the Conservation Area was designed to provide movement corridors between the fenced orchard units that will allow elk to cross Section 17. The movement corridors range from ~220 to over 1,300 feet in width.

The corridor between Units 1 and 2 is over 400 feet wide at its narrowest point. The existing Upper Wheeler Rd crosses between the two units. In a letter to Chelan County, (WDFW response to Draft MDNS, Nov 24, 2020), WDFW stated that part of the Conservation Area acres:

“are identified as providing a migration corridor between orchard #1 and orchard #2 to lands adjacent to the east; however Upper Wheeler Road crosses this corridor and is in line-of-site of both orchard areas. This configuration is likely to reduce or eliminate the

effectiveness of the intended mitigation for elk movement, compounding the loss of potential movement routes through the proposed fenced lands.”

Upper Wheeler Road is an existing route that already negatively impacts elk use on Section 17. Additional disturbance from orchard operations may add to that impact, however, animal movements at night or at times of low human use will still occur when road traffic and activity is minimal (Dr. John Lehmkuhl – pers comm.). Additionally, movement from east to west across Section 17 would lead to Squilchuck State Park and the Forest Ridge Subdivision, so this would not be a high quality/priority route to maintain.

The corridor between Units 2 and 3 is about 220 feet wide at its narrowest point. An orchard access road (not open to the public) runs through this corridor. This will be a valuable corridor despite the relatively narrow width: there will be no public road in that area and it allows animals to move south to the summer range in relatively dense vegetation within the corridor.

The corridor between Units 1 and 3 is over 1,000 feet wide. The existing road within this corridor will be restored as part of mitigation (*See Additional Mitigation, page 26*). This will result in better conditions for elk than what currently exists in an area that is adjacent to higher quality habitat on Section 16.

Furthermore, orchard operations in spring, when elk are most likely onsite, will be intermittent across the three orchard units and will not be a source of constant disturbance. Additional disturbance from orchard operations may affect the utility of all three corridors to different degrees, however, as noted previously elk will still move through the area at night or at times of low human use. In addition, elk often become habituated to orchard activities (WDFW 2006, Walter et al. 2010). Installation of the wildlife fence will exclude them from the orchards, reducing the likelihood of conflict, but will not preclude movement between the orchard units.

Even if we assume elk do not use the corridors, they would be displaced at most, less than ½ mile (from the middle of Section 17) in order to go around the units. Elk are highly mobile and will easily be able to move around the orchard units in habitat that is of higher quality than the habitat in the orchard units (*Figure 12*). In particular, the habitat to the west of unit 2 and east of units 1 and 3 is higher quality than the habitat in the center of Section 17 (FINAL MDNS 15.c.).

In addition, mitigation measures proposed to address increased human activity resulting from orchard construction and operations will improve habitat conditions to the south of Section 17 (*see Disturbance Mitigation page 30*). This will offset the impact of loss to movement across Section 17. Furthermore, monitoring of elk use will provide site specific information regarding the effectiveness of mitigation and inform adaptive management (*See Disturbance Impacts and Mitigation page 30*).

In general, movement will be impeded by the fenced orchard units, but this will not be a significant negative impact. Based on the best available science, the loss of movement options across Section 17 will not adversely affect the Colockum Elk Herd or the elk subpopulation in this area.

Additional Mitigation (*See Figure 12 page 25*)

Key Functions: Early Season Forage and Calving

As described in the Wetland and Riparian Areas Plan, about a mile of illegal roads in the southeast corner of Section 17 created by off road enthusiasts will be ripped, to de-compact the soils, and replanted in native vegetation, designed to provide either elk forage or hiding habitat for calves (*Figure 11*). The habitat in this area is currently classified as moderate, primarily in scores of 4 and 5, and some 6, because of heavy canopy and proximity to roads. Closing the road may not change classification of the habitat (due to the continued disturbance buffer of open roads), but it will immediately decrease likelihood for disturbance (and thereby enhance security habitat) in an area that has greater probability of use due to existing vegetation and proximity to the stream. Mitigation for disturbance is discussed in the following section. This mitigation action is located in the best potential calving habitat on Section 17.

Foraging habitat will also be enhanced by planting native forbs in riparian restoration areas, seeding abandoned road beds with a native grass mixture and treating noxious weeds in an area adjacent to higher quality habitat and within the connectivity corridor that may serve as both elk spring range and calving grounds (per WDFW PHS data). This mitigation area is also directly adjacent to Section 16, which is managed by WDFW. Restoration of these roadbeds and riparian habitat will improve habitat conditions between Orchard units #1 and #3 (adjacent to Section 16) over the long term, through increased forage in riparian areas and road beds and removing roads that disconnect foraging vegetation and allow for disturbance on approximately 5.3 contiguous acres (FINAL MDNS 15.b.).

Approximately 80 acres have been identified in the northwest quarter of Section 17 for forest health management (ie. thinning). The resulting changes in forest structure will allow understory forage species to propagate and provide increased forage for elk. Foraging will be further improved by seeding the open areas with a native species grass mix. This mitigation activity will enhance about 64 acres of habitat on terrain that is <60 degrees slope; 30 acres in the low category and 34 acres in the moderate category.

These mitigation actions will provide a potential movement corridor for elk that will be assessed through monitoring and enhanced riparian and wetland habitat adjacent to higher quality habitat. There may be some calving use but there is likely to be better calving habitat elsewhere in the Stemilt sub basin where water, cover and high quality forage occur. Because the elk habitat model was created at a landscape level these site specific actions may not change model metrics. However, mitigation actions will certainly improve conditions for elk that use this area. This will be beneficial mitigation toward improving important nutritional resources. When considering the cumulative mitigation from the Conservation Area (355 acres) and Habitat Enhancement (~85 acres), the final mitigation ratio is 1.7 to 1. If we exclude areas with slope > 60 degrees, the final mitigation ratio is 1.4 to 1.

Elk Disturbance Impacts and Mitigation

Existing Condition

To examine the effect of orchard activities on the elk that use this area, we must consider existing activities on and adjacent to Section 17 (*Figure 13*). Section 17 is private land and the land to the north and northwest is entirely privately owned and subdivided into numerous smaller parcels with single family residences. To the west, Squilchuck State Park shares a boundary with Section 17. The Forest Ridge Subdivision, a community of 120 single family residences, is within 1,000

meters of Section 17. The parcel to the southwest (Section 19) is owned by Tamarack Saddle LLC. An expansion to the Mission Ridge Ski Area has been proposed on Section 19 and would be located over 0.6 miles from the SE corner of Section 17. The Washington Department of Fish and Wildlife owns and manages the land to the south (Section 20) and west (Section 16) of Section 17. The lands to the northeast and southeast are a mixture of private landholders with parcels of varying sizes and designations.

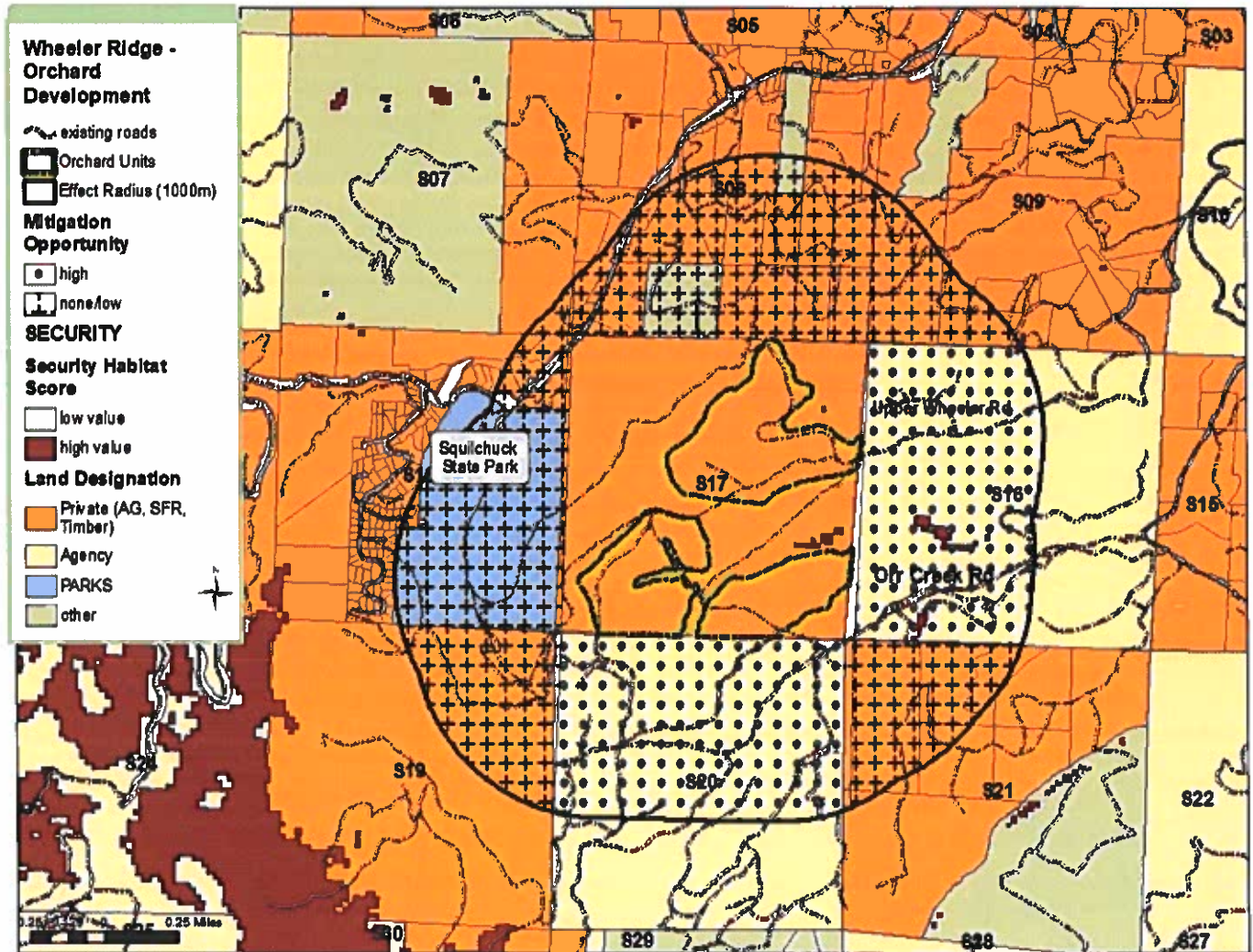


Figure 13. Land ownership/management and mitigation opportunity classification on lands adjacent to Section 17 within the Effect Radius determined for this project. This displays the existing condition of the area on and adjacent to Section 17. “Security habitat” (as mapped for the Elk Habitat Quality model (WCSI 2019)) displays how the extremely high road density and motorized use in this area limit availability of habitat that is free from disturbance. The mitigation opportunity under the none/low class reflects the high level of existing human use on private property.

Section 17 is bisected by the boundary between the Squilchuck Creek and Stemilt Creek Subwatersheds (HUC12). Road density is quite high in both subwatersheds: 5.2 miles per square

mile in Squilchuck Creek and 5.7 miles per square mile in Stemilt Creek. Both watersheds are heavily used by recreationists in summer, particularly in the upper half where private landholdings diminish and the land is managed by federal and state agencies. Trucks, cars, motorcycles, UTVs, and ATVs use the roads, as well as some trails. The landscape is used by hikers, bikers, and campers, as well as other recreationists. These uses can be found on designated trails and sites as well as dispersed use off trail. Target shooting is a common occurrence, and hunting seasons occur throughout the year (ie. spring - turkey, late summer - bear, fall - deer/elk, year-round - coyote). Hunting activity increases dramatically in the late summer and fall with deer and elk seasons. The adjacent private parcels also contribute to disturbance through the use of lawn mowers, leaf blowers, vehicles (motorcycles, cars, trucks), etc. Security habitat as measured in the Elk Habitat Quality model, indicates security habitat within the project site is very low (*Figure 13*). As such, increased use from orchard activities will have the potential to increase site-specific disturbance to elk, however, the effect would not be measurable relative to the model.

Impacts and Mitigation

To determine the impacts of additional disturbance due to orchard activities, the MDNS requested an examination of the impacts within the “effect radius” of the project and identification of additional habitat mitigation. We determined the effect radius in consultation with WDFW (January 28, 2020) based on elk research and data on sound levels.

Established and accepted metrics of disturbance based on best available science indicate that proximity to open roads is one of the most studied and influential elements of elk habitat selection and distribution (McCorquodale 2013). Motorized human activities can negatively influence elk habitat selection and elk tend to be disturbed by sudden, inconsistent noises, ie. gunshot, people getting out of vehicles, motorcycles, mountain bikes.

Priesler et al. (2006) found elk reacted negatively to OHVs up to 1,000meters, and habitat use was about 50% less within 500 meters of an open road. Buchanan et al. (2014) also suggested the relative probability of use decreased by about 50% within 500 meters of an open road and by about 80% within 1,000 meters.

The Project Site would see increased human activity during orchard development. Activity would be highest during construction activities that would occur during Phases 1 thru 3 (see Schedule of Mitigation Actions). The machinery that will be used for orchard construction (short-term) may include heavy machinery for logging, rock crushing and road construction, as well as agricultural machinery, such as tractors, mowers, and sprayers for operation and maintenance (long-term). This could cause short-term increases in disturbance to elk. However, this would be difficult to measure because the area is already heavily roaded and used by recreationists.

Use will increase as the growing season progresses but will not be constant. For instance, sprayers and mowers may be onsite up to 2-5 days per week, on different parts of the orchard units. The newly installed pumping station would be centrally located and additional noise from the station would be similar to the vehicles and tractors on site. The irrigation pump will be surrounded by sound blankets to reduce noise impacts if noise levels are determined to be too high outside of the elk fence. Increased use due to ongoing, long-term orchard harvest operations would occur over a 2-3 week period from late August to early September. Elk are unlikely to be using Section 16 or 17 during this time period as foraging has diminished substantially due to low elevation senescence

and elk will have moved higher up in the Stemilt Basin or elsewhere in the Colockum range (FINAL MDNS 15.b.).

Bird cannons and similar noise deterrents will only be used in August and September when non-noise techniques are proven to be ineffective. Falconers, reflective ribbons and inflatable dancers will be used the rest of the year. It should be noted that hunting seasons are open in this area (ie. spring - turkey, late summer - bear, fall - deer/elk, year-round - coyote) and target shooting occurs regularly in the Stemilt basin. The noise from gunshot is similar to bird cannons, therefore we would expect the cannons would have a short-term displacement effect on elk, similar to the effect of gunshots in the basin. Per the terms of the Conservation Area Agreement (Appendix II) hunting and discharge of firearms will be prohibited on Section 17, actually decreasing that type of disturbance within the Conservation Area.

Typical sound levels are described in *Table 5* and suggest that machinery and vehicle sound levels on the Project Site will range from 75 – 100 decibels (dB), while bird cannons will be similar to gunshots. Sound levels also diminish exponentially with distance and the rate of attenuation is influenced by terrain and objects that absorb sound such as the ground and trees. Sound levels decrease approximately 6 dB for each doubling of distance from a stationary source and 4.5 dB for each doubling of distance in a relatively flat environment with absorptive vegetation (FTA 2018).

Table 5. Typical sound levels (UMM 2019, FHWA 2017, FTA 2018)

Sound Levels in dB(A)	General	Agriculture
0	Threshold of hearing (Weakest sound)	
40	Quiet office, Library	
50-60	Normal Conversation	
55-70	Dishwasher	
75	Pickup truck	
74-112		Tractor
77-81		Pumps
77-120		Chainsaw
79-89	Riding mower	
80-105		Combine
81-102		Grain dryer
83-116		Crop dusting aircraft
85-106		Orchard sprayer
85-115		Pig squeals
88-94		Garden tractor
93-97		Grain grinding
96-100	ATV, motorcycle	
110	Leaf blower	
110-130	Rock concert	
140	Gun shot, siren @100 feet	
125	Jet plane at ramp	

Impacts within Effect Radius

Based on the information on sound levels and disturbance metrics from research, it was determined (in consultation with WDFW) that the Effect Radius for this project would be a 1,000 meter buffer around the orchard units (*Figure 13*). Elk are likely using the area within the Effect Radius in spring and early summer to move to higher summer range, and possibly for calving (although calving has not been documented on Section 17). However, elk use is diminished due to the high level of human activity that already exists in the area. Because we do not have data on elk use it is challenging to assess the cumulative impact of additional orchard activity and answer the question of how elk use will change in the Effect Radius. As such we provide a mixture of quantitative and qualitative assessment of impacts and mitigation.

The Effect Radius includes private property to the north and west of Section 17, as well as Squilchuck State Park. Current levels of human activity are much higher there than currently in Section 17. We classified lands to the north and west as no or low opportunity for mitigation because there is no opportunity for mitigation on adjacent private property and low opportunity for mitigation on state park lands. In contrast, lands to the south and west of Section 17 are managed for conservation by WDFW and present a high opportunity for mitigation.

When we overlay the Effect Radius onto modeled Security Habitat we find about 10 acres of modeled security habitat within the Effect Radius (and 9 acres if we exclude slopes >60 degrees) (*Figure 13*). Although this security habitat is fragmented and isolated, increased orchard activity could further decrease the value for elk in that area.

Mitigation

To mitigate for these impacts, Wheeler Ridge, LLC. will implement three strategies: 1) road restoration, 2) seasonal road closures, and 3) monitoring and adaptive management.

1) Road Restoration

As described previously, about a mile of illegal roads in the southeast corner of Section 17 will be restored (*Figure 14*). Restoring this road may not change classification of the habitat (due to the continued disturbance buffer of open roads), but it will immediately decrease likelihood for disturbance (and thereby enhance security habitat on ~40 acres) in an area that has greater probability of use due to existing vegetation, terrain (located in a draw) and proximity to the stream. This will occur in an area that has higher potential for elk use adjacent to Section 16.

2) Seasonal Road Closures

a) To further mitigate for potential decreased elk use due to orchard activity, Wheeler Ridge may coordinate with WDFW to install gates to seasonally close (from April 1st through June 30th) a road (road id S1840) in Section 20 that crosses an area used by elk in the early season (*Figure 14*). Although this area is within the existing disturbance buffer, it provides more gentle terrain, with documented early season elk use, up out of the Orr Creek Road drainage (which sees very high human traffic). Seasonally limiting motorized use in this area will enhance habitat security on about 108 acres. This is a conservative estimate as a 500 meter buffer to estimate road influence would cover far more than 108 acres, but would also be overlapping road influence buffers from other nearby roads. This will also improve habitat connectivity for elk across the northeast corner of section 20, just north of Orr Creek Road.

In addition, this road is steep and rutted at its junction with Orr Creek Road and it is contributing sediment into Orr Creek. Closing it in the spring time would help to decrease further road damage and sedimentation, benefiting species other than elk.

It's very challenging, based on available data and methodology, to quantify the question of how elk use will be impacted by this project, however, seasonal road closures will definitively decrease human activity during the time elk are most likely in the area and thereby improve conditions. The seasonal road closure in Section 20 will provide mitigation of *better* quality, because the habitat conditions in the mitigated area are of higher quality than the orchards, and it will improve connectivity to high quality habitat in Section 16. These improvements would not happen without this mitigation.

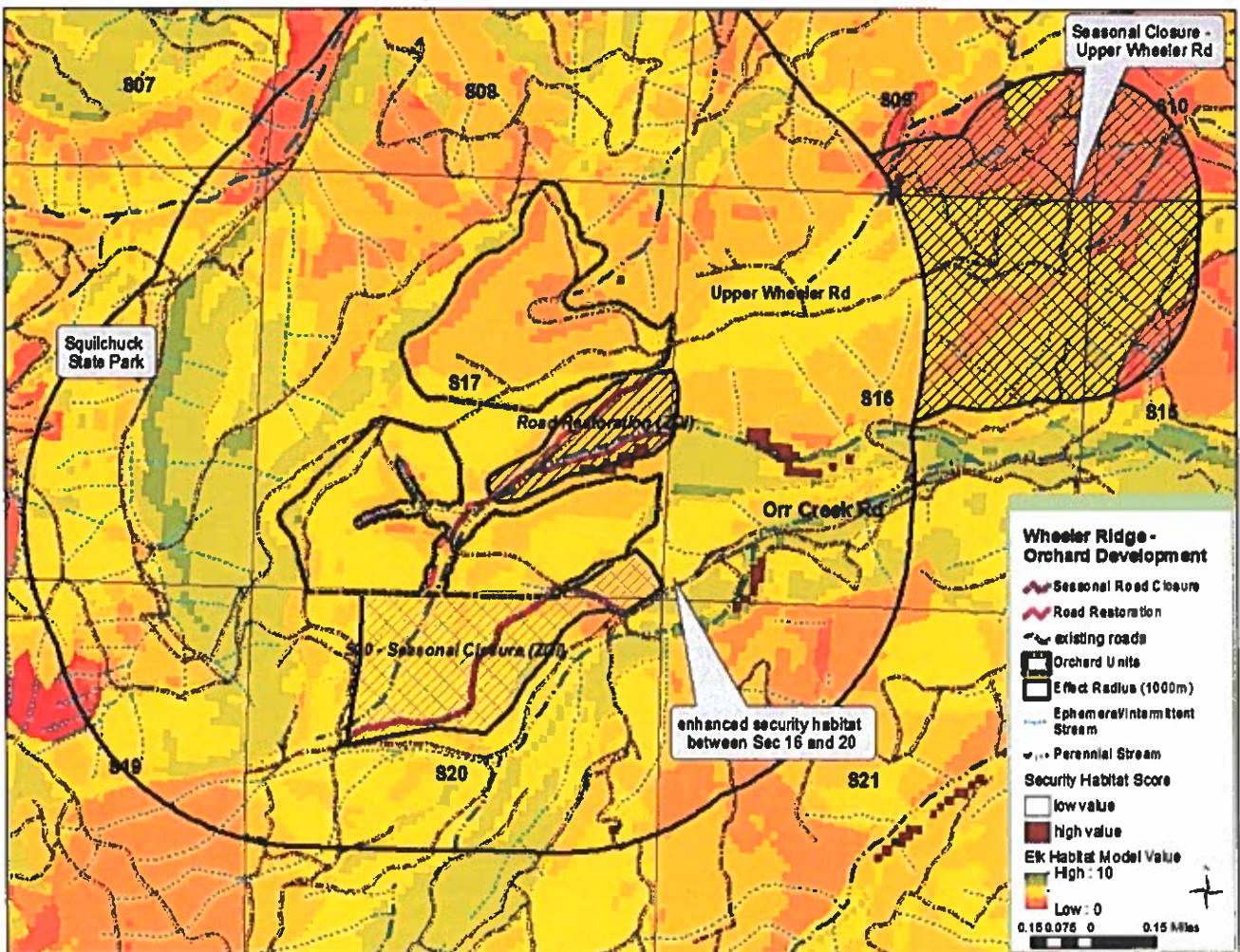


Figure 14. Seasonal road closures in Section 20 (road id S1840, WDNR FPAMT) to mitigate for increased human activity resulting from orchard operations and in Section 16 to mitigate for increased human activity due to improvements to Upper Wheeler Road.

b) Additionally, Chelan County described concern over “increased use of Upper Wheeler Road on Section 16 as a result of orchard operations” and requested a *discussion* of mitigation

(FINAL MDNS 15.i.). "Upper Wheeler Road is currently an unpaved county road that begins at Stemilt Loop Road near Kyle Mathison Amigos Road and ends approximately 3.5 miles southwest at a reservoir owned by the Wenatchee Heights Reclamation District. The first approximately half-mile of the road is 20-25 feet wide and well-maintained. The remainder of the road is primitive and less well maintained with width varying between 12 to 15 feet."(From SCJ Tech. Memo – 9/28/19). The road crosses through the northern third of Section 16 and bisects Section 17.

Increased public use of Upper Wheeler Road could be mitigated by seasonally closing the road to motorized use when elk are likely to be in the area (from April 1st through June 30th). Closing this section of road across Section 16 would improve habitat conditions on over a mile long stretch of land that WDFW has designated for conservation and would be a **highly** beneficial short and long-term mitigation measure for all wildlife in the area. A seasonal road closure will decrease the amount of motorized vehicle use on Upper Wheeler Road and if we conservatively assume a wash within the Effect Radius (ie. increased use due to orchard activity will be equivalent to increased use of an improved Upper Wheeler Road), and we calculate a 500 meter buffer around the road outside of the Effect Radius, that could enhance use/security on ~460 acres. Overall human use would decrease in the area, thereby decreasing disturbance to elk in the early season. Wheeler Ridge, LLC would implement this in collaboration with Chelan County and WDFW.

Additional mitigation actions have been identified and will be implemented to mitigate for impacts associated with disturbance (Final MDNS 22.). These include:

- All dumpsters/garbage cans within the orchard fence will be maintained. Appropriate permits shall be obtained prior to installation.
- Logging trucks, site clearing equipment, fruit hauling trucks, and other equipment shall be turned off when not in use to limit noise disturbance from these activities on wildlife.

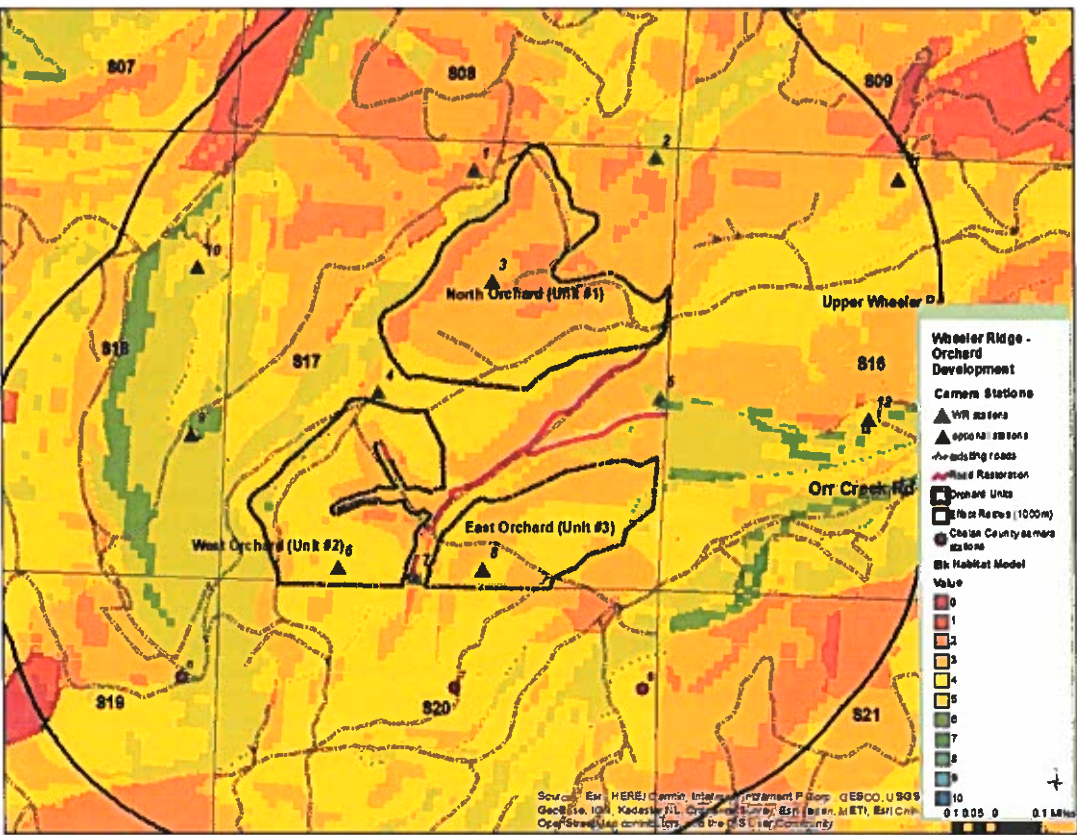
3) Monitoring and Adaptive Management

Because we cannot specifically measure the potential impacts within the Effect Radius for this project, Wheeler Ridge LLC will coordinate with WDFW to monitor and adaptively manage this situation (FINAL MDNS 15.h.). A direct measure of success of elk habitat conservation and enhancement is not possible without substantial data collection on elk use. However, the success of the Conservation Area and proposed plant community enhancement measures will be used as a proxy to indicate success, in concert with some direct elk use observation data.

Remote wildlife cameras will be deployed within the Conservation Area on Section 17 in strategic locations (in consultation with WDFW to determine number of cameras and locations,) to track elk use within mitigated habitat areas (*Figure 15*). This monitoring will assess the functionality and effectiveness of the corridor between orchard units and use around the orchard units. The number of elk using Section 17 during the spring/summer months, as well as the duration of habitat use will be documented on the wildlife cameras or with observations of elk, tracks or other sign, for at least 1 season (March to June) prior to construction activities on Section 17 and 5 years after mitigation installations have been completed to determine successful mitigation.

There is not existing data to *quantify* (number of elk in spring/summer) existing elk use on Section 17. Nor is there information to *qualify* that data (ie. is that number sufficient, good, etc.). As such, when elk are detected using the corridor and areas around the orchards, then mitigation would be considered successful. If elk are not detected in the 5 years following camera installations,

mitigation would be considered insufficient and the HMMP would be adapted and modified. Wheeler Ridge, LLC will coordinate with WDFW and Chelan County to identify further mitigation, possibly in the form of additional road closures in areas that would contribute much more than Section 17 to the Colockum elk herd by improving security in higher quality habitat, such as the upper Stemilt Basin.



-figure shows where cameras stations are located relative to the elk habitat model.

Although the impacts to disturbance and mitigation are difficult to quantify, because of the high number of open roads and existing human activity in this area, seasonally closing roads in spring habitat will benefit elk that use the area around Section 17 and offset additional disturbance that may result from orchard operations. Based on this analysis and consultation with WDFW, additional disturbance from orchard operations will not adversely affect the Colockum Elk Herd. The subpopulation of elk that use Section 17 may be displaced but the overall effect will not adversely affect the subpopulation. The Project Area will still provide habitat for early season foraging. Mitigation is located in areas with higher probability of use (ie. on/adjacent to WDFW lands) and will allow for movement across Section 17 and around the orchard units. Monitoring will inform the need for adaptive management.

Habitat Management Agreement

The Final Mitigated Determination of Non-Significance (December 30, 2020) sets forth the following two Mitigation Measures for implementation of a conservation easement or real property dedication to ensure the long-term preservation, monitoring and maintenance of the habitat mitigation area:

20. The site-specific HMMP shall establish, with terms acceptable to the County, a habitat management agreement and associated legal mechanism to permanently assure performance and stewardship for the habitat mitigation area, which will include preparation of a proposed conservation easement, deed restriction, donation, or other legally binding arrangement together with: 1) identification of an entity designated to hold and administer the same; 2) management plan for conservation and restoration actions, monitoring activities, adaptive management actions, and reporting requirements; 3) timeline for implementation; and 4) financial assurances. All costs associated with operation and maintenance of mitigation measures, including ownership and management of the habitat mitigation area, shall be borne by the applicant in perpetuity.

21. Any required monitoring shall be performed in accordance with requirements of the approved HMMP. A monitoring report shall be submitted by August 1st of each year, or as otherwise specified in the HMMP during the monitoring period, to the Chelan County Community Development Department and to WDFW. Reports shall update the County and WDFW on the status and progress of the mitigation, along with any corrective recommendations, and shall identify any adaptive management measures necessary in accordance with the HMMP.

(Underlining added.)

These two conditions are consistent with and implement the following two provisions of the Chelan County Code (CCC) Title 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District:

CCC 11.78.100 Habitat management and mitigation plan.

...

(2) The habitat management and mitigation plan shall be approved or denied in writing by the administrator and shall contain but not be limited to the following information: . . .

(B) A report which contains:

(iii) A plan which explains how the applicant will avoid, minimize or mitigate adverse impacts to fish and/or wildlife habitats created by the proposed use or activity.

Mitigation measures within the plan may include, but are not limited to:

(a) Establishment of buffer areas;

(b) Preservation of critically important plants and trees, preferably in consolidated areas;

(c) Limitation of access to habitat area;

(d) Seasonal restriction of construction activities;

(e) Clustering of development and preservation of open space, if permitted by the underlying zoning district;

(f) Signs marking habitats or habitat buffer areas;

(g) Title notice or plat dedication warning statements;

(h) Conservation easements;

(i) Preserve and introduce native plant species which serve as food and shelter from climatic extremes and predators and structure and cover for reproduction and rearing of young for critical wildlife;

(j) The use of native species or species recommended by the Washington State Department of Fish and Wildlife in the revegetation or landscaping of disturbed or developed areas and in any enhancement of habitat or buffers.

CCC 11.78.250 Incentives.

(1) The county encourages such mechanisms as the open space tax program, conservation easements and donations to land trusts, in order to provide taxation relief upon compliance with these regulations.

(Underlining added.)

Wheeler Ridge will implement Mitigation Measures 20 and 21 and the provisions of CCC 11.78.100(2)(B)(iii)(h) through the execution and recording of a conservation area agreement in substantially the form attached hereto as Appendix II.

Schedule of Mitigation Actions

As contemplated in CCC 11.78.100(C), the Project is comprised of multiple “development activities,” including timber harvest, completion of the orchard wildlife fencing, orchard planting, construction of the housing, storage and maintenance buildings (site development) and orchard operations (maintenance, harvest, etc.), each of which has associated impacts and mitigation measures. *Table 5* provides a schedule of mitigation actions (FINAL MDNS 15.j.) with specific details of Development Activities and associated Mitigation Measures. The Project’s Development Activities are broken down into four enumerated phases with corresponding Mitigation Measures. All Mitigation

Measures associated with a Phase must be completed or bonded for prior to commencing the Development Activities associated in the next Phase. Per CCC 11.78.100(C), bonding will be provided in conjunction with Phase 1 and updated as necessary throughout the Project to ensure that all Mitigation Measures will be completed in a timely efficient manner.

The proposed timing and implementation of substantive mitigation activities in *Table 5* will ensure that mitigation is integrated in a balanced, logical manner so as to avoid, minimize, and mitigate associated impacts as they arise and “prior to . . . the completion of final approval of any development activity for which mitigation measures have been required,” per CCC 11.78.100(C). For example, in Phase 2 the proposed mitigation planting and habitat restoration within Section 17 will be integrated and occur contemporaneously with orchard planting as materials, equipment, labor and seasonal considerations for both activities are highly similar. Conversely, it would not make sense to do mitigation planting or habitat restoration in areas that might be disturbed by Phase 1 Development Activities such as timber harvesting or installation of irrigation facilities and utilities. In turn, the associated Mitigation for Phase 2 will be completed or bonded for per CCC 11.78.100(C) prior to commencing the Phase 3 Development Activities, which are limited to areas within the Project’s fenced orchard polygons and thus will not disturb the restored habitat areas outside of the fenced orchard units.

Table 5. Wheeler Ridge Section 17 Orchard Project Habitat Management & Mitigation Plan: Schedule of Mitigation Actions - Timing & Sequence

Development Activities	Restoration Actions and Mitigation Measures
<p>Phase 1:</p> <ol style="list-style-type: none"> 1) Conduct maintenance / repair / operation of existing County roads in Section 16 and Section 17 to remove 1,460 mbf of timber on Section 17; remove 30 mbf of timber on Section 16 within recorded easements to install utilities, irrigation pipelines and make road improvements; 2) Install 12-inch buried irrigation pipeline and 8-inch buried irrigation pipeline from Section 9 within the Section 16 easement to Section 17; 3) Install three buried power distribution utility line and associated vaults within the Section 16 easement to connect to the shop / storage building / seasonal housing / fuel station on Section 17; 4) Install two 24- inch culverts in existing private roads on Section 17 per WDNR requirements; 5) Conduct rock extraction / crushing from private rock pit on Section 9 and / or Section 17 for maintenance of existing County roads. 	<ol style="list-style-type: none"> 1) Stake out habitat restoration areas identified on Section 17 in HMMP prior to commencing any site-disturbing activities <ol style="list-style-type: none"> a) 100-foot buffer on either side of Np stream b) 110-foot buffer around perimeter of Wetland A, (50-ft stream buffer will not control) c) 110 -foot buffer around perimeters of Wetlands B and C d) 50-foot buffer on either side of Ns West (natural flow pathway and current flow pathway) and Ns North if not within the Wetlands B and C buffers) 2) Lay out the realignment route of the old logging road that will provide future orchard access to County Road, utilizing existing stream crossings. <ol style="list-style-type: none"> a) Re-route will minimize crossing distance of Wetland A/Ns South and of Ns West/Ns North confluence. b) It will avoid Wetlands B and C and their buffers. c) It will follow WDFW standards for crossing design. Consider conducting site visit with hydrologic or wetland planner to design crossings. 3) Prior to engaging in site-disturbing activities or moving heavy equipment, plan which existing roads will be used for timber harvest access and how BMPs will be used. <ol style="list-style-type: none"> a) Ensure road use does not contribute to sediment delivery to streams or cause further harm to restoration areas. b) Ensure road use complies with County Code, WADNR and BMPs. As needed, install water bars, replace/install culverts include an additional temporary culvert at Ns West current flow / road location) and improve stream crossings before commencing timber harvest. 4) Use BMPs during all harvest operations to minimize sediment delivery to all streams and wetlands. 5) Install Habitat Management Areas Signs on Section 17 6) Close illegal 2-track road heading Southwest from the East Section 16 / Section 17 boundary line toward the perennial stream located between orchard polygon units #1 and #3.

	<ul style="list-style-type: none"> 7) Install no trespassing signs and a locked gate to prevent vehicular access to closed illegal road. 8) Post bonds for mitigation plantings to be installed in Phase 3 per CCC 11.78.100(C). 9) Install remote cameras.
Phase 2: <ul style="list-style-type: none"> 1) Prepare ground for orchard planting; 2) Construct 9.9 acre foot reservoir; 3) Construct road improvements in existing roads in Sections 16 and 17; 4) Re-route and construct portion of County road in Section 17; 5) Install irrigation pumping facilities and irrigation pipelines between orchard units; 6) Relocate 1,500 linear feet of existing nonmotorized trail within Section 17; 7) Complete construction of 8-foot tall wildlife fence around each orchard polygon per WDFW's design requirements. 	<ul style="list-style-type: none"> 1) De-compact illegal roads (described in <i>Table 2</i>) and prepare same for restoration and native plantings. 2) Complete 8-foot wildlife fence around the orchard development to avoid human-wildlife conflict and crop damage (WDFW requirement) 3) Preserve elk and other wildlife permeability via wildlife corridors that provide direct access to protected wildlife habitat on Section 16 and Section 20. 4) If necessary, update bonds for mitigation plantings to be installed in Phase 3 per CCC 11.78.100(C) to ensure two year requirement is met 5) Plan in detail, with a site visit by a wetland planner, the terrain restoration, erosion control measures, and vegetation planting needed to restore the "mud bog" area and to control erosion in Ns West and Ns North, in accordance with the following goals. Implement recommended measures in Phase 2 or 3, as appropriate. <ul style="list-style-type: none"> a) Restore Ns West to its original flow pathway, 50-75 feet north of its current flow path as shown in <i>Figure 6</i>. Because the natural channel is well-vegetated, no need for significant erosion control measures are anticipated once the natural flow pathway is restored. Remove the temporary culvert installed prior to the Ns West restoration. b) Once restored, Ns North will remain in its natural flow pathway, but may require erosion control measures in the future to reduce potential gully erosion in certain sections, as indicated in the adjacent logging road diversion. 6) Based on the plan developed in the previous step, re-grade (as needed), de-compact soil, and prepared soil for planting (disked and/or soil amendments as needed) in degraded "mud-bog" area and logging roads near the seasonal streams. <ul style="list-style-type: none"> a) Includes portions of old logging roads in buffers and wetlands around Wetlands A, B, and C. b) Includes "mud bog" area between Wetlands A and B.

	<p>c) Grade existing soil material to fill ruts and rip compacted soils with equipment that minimizes impact to wetland. Access via previously-impacted areas. Do not rip areas with standing water or that have groundwater near the surface. Construction activities may need to be carried out in mid to late summer to minimize erosion and damaging impacts to soils.</p> <p>7) De-compact old logging road crossing at Np stream and prepare for stream channel rehabilitation and native plantings.</p> <p>8) De-compact old logging road along the south side of Np stream that was closed in Phase 1 and prepare for native plantings.</p> <p>a) Rip soil with equipment and practices that minimize sediment delivery to stream and impacts to riparian habitat.</p> <p>9) For all re-graded or ripped areas, cover with straw or mulch blankets before the next rain event to avoid sediment movement before Phase 3 erosion control measures are installed. Install silt fences as needed in critical locations.</p>
<p>Phase 3:</p> <p>1) Plant three orchard polygons with internal orchard roads, irrigation infrastructure, and grass planted between each row;</p> <p>2) construct loading docks within Section 17;</p> <p>3) construct 24-person seasonal housing, 5,000 sf shop / storage building / fuel station in 2-acre area of orchard polygon # 1 per site plan.</p>	<p>1) Install stabilization and erosion control measures for wetland and Ns stream areas identified by site visit from wetland planner in Phase 2.</p> <p>2) Plant native vegetation in the restored road, wetland and habitat restoration / improvement areas (See Table 2);</p> <p>3) Install fencing with signage around the perimeter of the seasonal stream and wetland buffers to ensure there is no entry from adjacent orchard activities.</p> <p>4) Plant native grasses and plants along new road relocations and utility corridors</p> <p>5) Replant areas disturbed during site preparation with native species</p> <p>6) Record a conservation area agreement on 355-acre portion of Section 17 outside of orchard polygons upon completion of mitigation plantings thereby establishing Conservation Area</p>
<p>Phase 4: Orchard Operations & Maintenance (ongoing for life of project): harvesting fruit each summer; pruning; weed control; compost application and fertilizing; and maintaining existing roads.</p>	<p>1) Implement HMMP to adaptively manage Conservation Area to enhance elk habitat.</p> <p>2) In wetland and Ns stream areas where erosion control measures were installed in Phase 3, ensure that not more than 15% bare soil surface or gully erosion persists after year 5. During annual site visits, any evidence of continued erosion (channels; gullies;</p>

	<p>bare sediment deposits) will be noted and new erosion control measures will be applied.</p> <ol style="list-style-type: none">3) Thin forested areas to enhance elk forage opportunities and reduce fire risk by applying USFS/WDNR forest health recommendations.4) As directed by the Monitoring Plan monitor restoration plantings, re-plant, and control weeds in buffer areas for the lifetime of the orchards.5) HMMP performance standards will require any replanted areas to achieve 80% cover by native plant species (including volunteer canopy layers) by the end of the 5-year monitoring period.6) During calving season (May-June), orchard management activities are minimal. Orchard staff will be educated about the purpose and function of the Conservation Area to avoid / minimize inadvertent wildlife disturbances during calving season.7) Wildlife cameras will be deployed strategically throughout Section 17 to document spring / summer annual elk and other wildlife use for a 5-year period.
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Planting Plan

Guidance

The Planting Plan, see Appendix III, is provided as an initial guide on restoring vegetation to the wetlands and upland areas at the Wheeler Ridge site. Before planting, additional investigation of soils and nutrients in the target planting areas is recommended, as well as a thorough understanding of the hydrologic conditions in wetlands where soil has been moved and erosion control measures are in place.

Because restoration is occurring in an area with a mean annual precipitation of about 25 inches (SCJ 2019), the recommended seeding rate (of 7-10 PLS lbs per acre) has been doubled to 14-20 PLS lbs/acre. Because broadcast seeding will most likely be employed (not drilled) and depending on site conditions (ie. slope) a maximum application of 28 PLS pounds of seed per acre may be prudent (BFI Natives, Moses Lake, WA; Majerus et al. 2013). Depending on success, subsequent seedings may be necessary (see Performance Standards), at which point a seed mix with an easy to establish native legume (such as a native lupine) may be considered to provide natural fertility. Seeding will occur in the fall.

Grass seeding will predominantly occur on all restored roadbeds for a total of approximately 2.2 acres inside buffers and 0.83 acres outside of buffers. Initial seeding efforts will therefore require approximately 85 pounds of grass seed (at 28 PLS pounds of seed per acre).

For wetland and buffer sites, it is proposed to use native species already present in the nearby wetland and buffer (upland) areas, appropriate to the hydrological condition, and available either from local or regional nurseries. The goal should be to establish a vegetatively diverse ecosystem of native species on the site that is reflective of natural ecosystems in the region with the same hydrology and hydroperiod.

Species appropriate to the transition from wetland to upland soil and hydrologic conditions, reflecting nearby native vegetation will be planted. Seasonality of hydrologic conditions will be taken into account. The majority of wetland vegetation in all three wetlands (A, B and C) is Facultative, reflecting the seasonally wet conditions expected in this area. Obligate vegetation was documented only in Wetland C and near the mud-bog road crossing where water backed up and ponded for long periods. As such, Obligate vegetation, if used, should only be planted in the wettest areas that are expected to remain wet most of the year. Facultative vegetation should be planted in most other wetland areas. Buffer vegetation should mimic upland species growing naturally in surrounding areas.

Quaking aspen trees and saplings were sometimes documented near wetland areas, but almost never within the wetland areas. When they were in a wetland area, it was typically limited to one or two trees. Quaking aspen are classified as Facultative Upland vegetation in this region. Only plant quaking aspen in the upland portions of the wetland buffers.

Precise decisions on what to plant and where must be accomplished after stream and wetland hydrology has begun to be restored. Understanding where and when water stands or flows in the wetlands will be key to planting success. It is important to distinguish between delineated wetlands and their adjacent upland buffers. Species from the Wetland list below will be planted in the wetlands and from the Upland list in the buffers.

Wetland plant root systems are important means of stabilizing degraded sites. Herbaceous wetland plants provide aggressive, fibrous root systems over time that in combination with the larger woody plant roots do a better job of tying the soil together than woody plants alone. Sedges (*Carex* spp.), spikerushes (*Eleocharis* spp.), bulrushes (*Scirpus* spp.), and rushes (*Juncus* spp.) are used extensively in riparian and wetland revegetation because of their aggressive root systems. In addition to stabilizing soil, they provide wildlife habitat and slow surface water velocity. Wetlands A, B, and C are currently classified as Palustrine Scrub-Shrub, wherein shrubs and small trees will dominate overall but there may be some parts (likely the wettest) dominated by herbaceous plants.

Wetland species are typically very difficult to grow from seed in the field; planting seedlings or plugs will likely be necessary to achieve survivorship and cover targets. For herbaceous plants, use nursery stock or consider transplanting from Wetland A or B if there is a large intact area of rhizomatous species such as sedges, small-fruited bulrush, or spike rush. As a rule of thumb, dig no more than 1 square foot (0.09 m²) of plant material from a 4-square-foot (0.4 m²) area. This can then be divided into 4 or 5 smaller plugs. Plant herbaceous plugs no less than 18-24 inches apart on average, and clustered to mimic natural conditions. Plant in the spring or early summer when water is available. Soil amendments (mulch, compost or fertilizer) may be necessary in areas where topsoil is absent. For woody plants, planting bareroot seedlings or container stock from a nursery is recommended to reduce the time of establishment. Wetland bareroot seedlings must be planted so that roots reach the water table and the seedlings will not die from drought stress before they have a chance to establish a viable root system. These seedlings should be planted on centers ranging from 5 to 10 feet on average, and clustered to mimic natural conditions. Planting holes should be properly prepared in uncompacted fertile soil substrates.

The plan developed in Phase 2 will be used to further guide planting specifics. Detailed transplanting and planting guidance in technical resources listed on the NRCS Wetland Restoration, Enhancement, Creation, & Construction webpage will be employed, such as the 2003 handbook by NRCS, *Wetland Restoration, Enhancement, and Management* (Technical Note No-190-15). (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/water/wetlands/restore/?cid=nrcs143_010912).

The wetland restoration area will be planted with a mixture of herbaceous plants, shrubs and grass seed. Current topography indicates that about an acre of the restored mud bog area will contain (parts of Wetland B and C) or convert to wetland conditions, and the remaining 1.2 acres will be in upland buffer. Based on these estimates, and assuming that there will be some natural regeneration of existing native plants, the initial wetland and buffer restoration effort will consist of the following (Figure 16):

- 1) 7,500 herbaceous wetland plants
- 2) 800-1,500 shrubs, about half wetland species and half buffer species
- 3) 8 pounds of native grass seed to fill in between plants

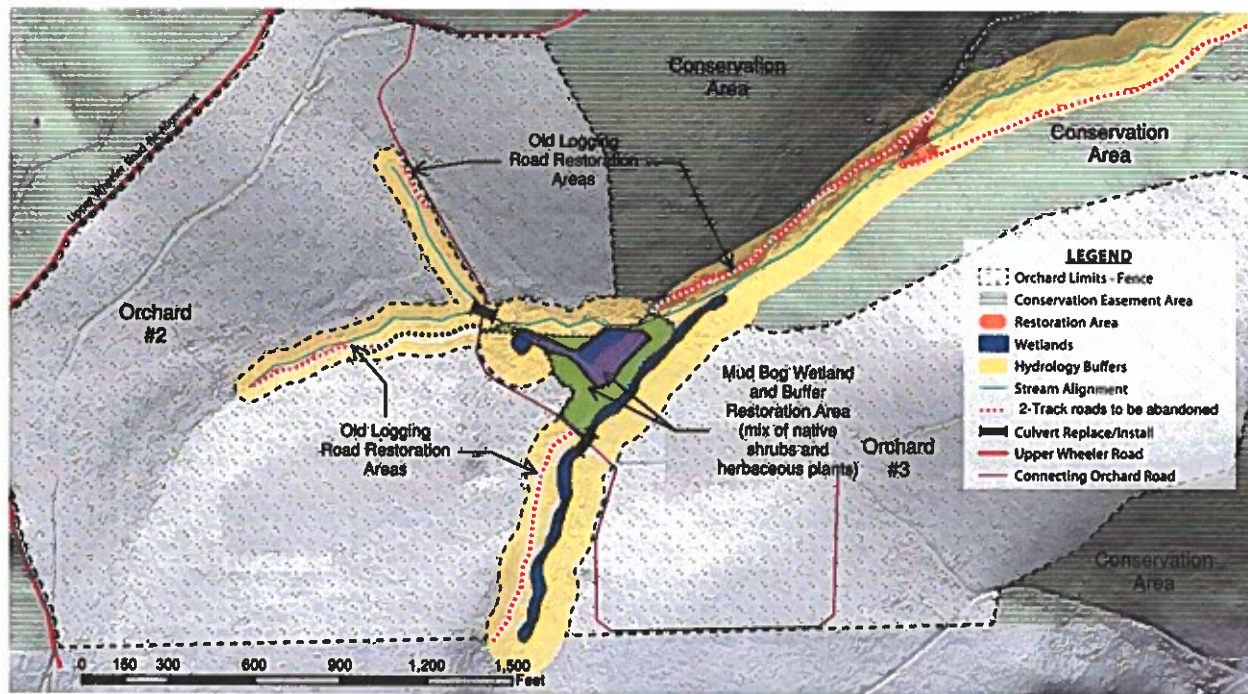


Figure 16. Wetland and road restoration planting locations.

Plant list

Wetland species

Trees

Red alder (*Alnus rubra* – not dominant, but present)

Shrubs

Serviceberry (*Amelanchier alnifolia*)

Twinberry (*Lonicera involucrata*)

Red osier dogwood (*Cornus sericea*)

Wild crabapple (*Malus fusca*)

Wild rose (*Rosa* spp.)

Herbs, Ferns and Vines

Water parsley (*Oenanthe sarmentosa*)

Wild columbine (*Aquilegia formosa*)

Yellow lily (*Iris pseudacorus*)

Wild iris (*Iris missouriensis*)

Sedge spp (*Carex* spp.)

Coltsfoot (*Tussilago farfara*)

Small-fruited bulrush (*Scirpus microcarpus*)

Horsetail (*Equisetum* spp.)

Spike rush (*Eleocharis palustris*)

Spreading buttercup (*Ranunculus repens*)

Dominant or common upland species*Trees*

Ponderosa pine (*Pinus ponderosa*)

Red alder (*Alnus rubra*)

Quaking aspen (*Populus tremuloides*)

Shrubs

Oregon grape (*Mahonia aquifolium*)

Bitterbrush (*Purshia tridentate*)

Oceanspray (*Holodiscus discolor*)

Snowberry (*Symphoricarpos albus*)

Wild rose (*Rosa* spp.)

Herbs, Ferns and Vines

Yarrow (*Achillea millefolium*)

Arrow leaf balsamroot (*Balsamorhiza sagittata*)

Violet (*Viola* spp.)

Lupine (*Lupinus* spp.)

Wild geranium (*Geranium maculatum*)

Bleeding heart (*Dicentra formosa*)

Trillium (*Trillium ovatum*)

Grasses and Sedges

Blue Wildrye (*Elymus glaucus*)

Bluebunch Wheatgrass (*Pseudoroegneria spicata*)

Idaho Fescue (*Festuca idahoensis*)

Mountain Brome (*Bromus marginatus*)

Prairie Junegrass (*Koeleria macrantha*)

Sandberg Bluegrass (*Poa secunda*)

Carex spp.

Monitoring Plan

Monitoring will determine if all mitigation measures required were properly enacted and completed; triggering corrective actions if all measures are not properly in place or if unplanned deficiencies are identified. This includes inspection of installed physical components (terrain modification and erosion control measures) and the biological components (vegetation and wildlife use). This Monitoring requirement will be in effect for 5 years following completion of the project and modified as appropriate once mitigation has been implemented and wetland restoration is fully planned and underway.

Mitigation Performance Standards

- 1) Conservation Area: This mitigation action will be considered complete once Conservation Area designation has been recorded with the appropriate entity. Refer to Appendix II.

Wildlife Use (FINAL MDNS 15.h.)- See page 37 item 3) Monitoring and Adaptive Management**2) Road/Riparian Restoration and Thinning (to provide additional mitigation):**

Performance standards will require that any replanted areas achieve 80% cover by native plant species (including all canopy layers) by the end of the 5-year monitoring period. Native plant volunteers will be acceptable in assessing this standard as long as the targeted habitat type and species diversity for that specific planting area is maintained – i.e., dense red alder volunteers will be thinned to ensure they account for less than 20% of the total canopy cover in shrub-dominated mitigation areas, but will be entirely removed from grassland areas.

Monitoring data should inform maintenance operations. Necessary erosion control measures should always be maintained or modified promptly. Plan and implement additional measures if more than 15% bare soil surface or gully erosion persists after year 5. Re-planting should occur if survivorship drops below 40% in the first 5 years, if foliar cover of invasives plants exceeds 25% of total foliar cover on the site, or if total foliar cover is less than 50% after 5 years. Invasive plant control should be ongoing and follow the Integrated Pest Management Plan.

Invasive plants (i.e., undesirable non-native species) should be paid special attention within the Wheeler Ridge site, where the combination of soil re-grading, a history of off-road vehicle activity, and ongoing orchard operations increase the likelihood of the spread and establishment of invasive propagules. Rapid colonization by these species can pose significant threats to project success, including outcompeting natives, lowering overall species diversity, consuming excess amounts of water, or not providing proper food or cover for wildlife.

A direct measure of success of elk habitat enhancement is not possible without substantial data collection on elk use. However, the success of the proposed plant community enhancement measures as described above will be used as a proxy to indicate success, in concert with elk use data collected with remote cameras over the 5-year monitoring period.

Monitoring Frequency

- Once a year for the first 5 years after initial planting or any re-planting or re-working of erosion control measures, whichever is later

Components to measure

Although many of the following elements are specific to wetlands, the approach can be applied and modified for upland restoration as well.

Hydrology and physical components

- Hydrology indicators in wetland areas (Use USACE Hydrology Indicators)
- Functional condition and necessity of erosion control measures
 - Necessity may change over time as sedimentation occurs

Vegetation

- Three parallel Line Intercept transects (using a 1 meter wide “line”) will be set up crossing the wetland and buffer restoration area after the plants are first installed, marking the beginning and end with stakes and flagging. Photo points will be established at each end of each transect, with the photo view line looking back at the opposite end of the subject transect.
- General vegetation data

- Document all plant species with more than 5% foliar cover, plus others recognized
 - Determine nativity of each species
 - Photograph plants that can't be clearly identified
 - Estimate and document percent foliar cover of each plant encountered
- Planting survivorship and growth (most important in Years 1-3)
 - Monitor at each planting site
 - Document areas with higher mortality or stressed plant rates, and try to determine problem
 - Document (count) dead, or stressed plants (from the installation) by species
 - Qualitatively describe annual growth and vitality of woody plants (e.g., changes in height and dbh) and horizontal spread (areal cover) of herbaceous species
 - Make recommendations for replanting as needed
- Noxious and invasive species
 - If not captured above, record observations about presence and vigor of invasive plants, and provide maintenance recommendations

Wildlife Use - See page 37 item 3) Monitoring and Adaptive Management

Reporting

A monitoring report shall be submitted by December 31st of each year, or as otherwise specified in the HMMP during the monitoring period, to the Chelan County Community Development Department and to WDFW (FINAL MDNS 21.). Although the Final MDNS requested report submission by August 1st, submitting the report at year end will allow for assessment of plant conditions at the end of the growing season and time to make adaptive management recommendations. Reports shall update Chelan County and the Washington State Department of Fish and Wildlife on the status and progress of the mitigation, along with any corrective recommendations, and shall identify any adaptive management measures necessary in accordance with the HMMP.

SUMMARY

This Habitat Management and Mitigation Plan is based on best available science and proposes reasonable measures to avoid or mitigate potential impacts to critical areas, including wildlife habitat, as well as compliance with applicable local, state, and federal regulations. The HMMP was developed in accordance with the mitigation sequencing requirements in CCC 11.78.015 and the WDWF replacement ratios for impacts on Section 17. Wheeler Ridge, LLC is proposing to convert approximately 260 acres of forest habitat within a 640-acre historical working forest to orchard development. For mitigation, 355 acres will be preserved in a permanent Conservation Area, and will be enhanced to improve elk habitat functions. In addition, degraded wetland and riparian buffer areas will be restored, erosion control measures in two severely degraded Ns streams will be implemented, two culverts at existing, eroding road crossings will be replaced/upgraded per WDNR requirements, and illegal roads will be abandoned and gated to prohibit future public access to protected Conservation Area habitats.

Wheeler Ridge, LLC will work directly with Chelan County, WDFW and other permitting agencies to ensure wildlife and wildlife habitat enhancements proposed are designed in such a way to maximize environmental benefits. Impacts to wildlife and their habitat cannot be entirely avoided

but will be minimized and mitigated to ensure retention of potentially important habitat – particularly for elk breeding and calving functions. Implementation of this project will not have a significant adverse impact on the Colockum Elk Herd.

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Appendix I. WDFW: POL-M5002 REQUIRING OR RECOMMENDING MITIGATION (1999)

Department of Fish and Wildlife

POL-M5002

POLICY TITLE: Requiring or Recommending Mitigation

Replaces: WDW POL 3000, 3001 and 3002,
all dated 10/1/92; WDW POL 3003,
dated 9/16/92; WDF Policy 410,
dated 9/10/90; and WDF Policy 404,
dated 5/1/87

Effective Date: Jan. 11, 1999Approved By: 
Director

See Also: Commission Policies

POL-M5002 REQUIRING OR RECOMMENDING MITIGATION

This policy applies to all habitat protection assignments where the Washington Department of Fish and Wildlife (WDFW) is issuing or commenting on environmental protection permits, documents, or violation settlements; or when seeking commensurate compensation for impacts to fish and wildlife resources resulting from oil or other toxic spills.

1. Goal is to achieve no loss of habitat functions and values.

The goal of WDFW is to maintain the functions and values of fish and wildlife habitat in the state. We strive to protect the productive capacity and opportunities reasonably expected of a site in the future. In the long-term, WDFW shall seek a net gain in productive capacity of habitat through restoration, creation, and enhancement.

Mitigation credits and debits shall be based on a scientifically valid measure of habitat function, value, and area. Ratios shall be greater than 1:1 to compensate for temporal losses, uncertainty of performance, and differences in functions and values.

2. WDFW uses the following definition of mitigation: avoiding impacts is the highest mitigation priority.

"Mitigation" means actions that shall be required or recommended to avoid or compensate for impacts to fish, wildlife, or habitat from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, in the following sequential order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action.
 - B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 - C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
 - D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - E. Compensating for the impact by replacing or providing substitute resources or environments.
 - F. Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.
- 3. WDFW requires mitigation when issuing environmental permits or documents.
 - 4. WDFW recommends mitigation on permits or documents issued by other agencies.

5. Complete mitigation ensures no loss of habitat functions or values, or populations.

Complete mitigation is achieved when mitigation elements in number 2 (A-F) ensures no loss of habitat functions or values, or fish and wildlife populations. Habitat loss and mitigation success shall be measured with the Habitat Evaluation Procedure (HEP) or other method acceptable to WDFW.

6. On-site in-kind mitigation is the highest priority.

WDFW priorities for mitigation location and type, in the following sequential order of preference, are:

- A. On-site, in-kind.
- B. Off-site, in-kind.
- C. On-site, out-of-kind.
- D. Off-site, out-of-kind.

For off-site mitigation to be accepted, the project proponent must demonstrate to WDFW's satisfaction that greater habitat function and value can be achieved off-site than on-site.

Combination of the four types may be accepted. "On-site" means on or adjacent to the project impact site. "In-kind" means the same species or habitat that was impacted.

Out-of-kind mitigation is not acceptable for impacts to priority habitats and species, with two exceptions: (1) priority habitats and species that are at greater risk can be substituted for impacted priority habitats and species; and (2) for hydraulic projects, WDFW shall consider off-site and/or out-of-kind mitigation where equal or better biological functions and values are provided (see number 8 below). Priority habitats, and habitats of priority species, may be replaced at a level greater than the impacts of the project on those habitats and species.

7. For off-site fish mitigation, mitigation must occur in the same Water Resource Inventory Area (WRIA) as the impacts.

Exceptions to the above must be approved by the director.

For federal endangered or threatened species, mitigation must occur within the habitat supporting the same Evolutionary Significant Unit (ESU).

8. WDFW may not limit mitigation to on-site, in-kind mitigation when making decisions on hydraulic project approvals for infrastructure development projects.

The State Legislature has declared that it is the policy of the state to authorize innovative mitigation measures by requiring state regulatory agencies to consider mitigation proposals for infrastructure projects that are timed, designed, and located in a manner to provide equal or better biological functions and values compared to traditional on-site, in-kind mitigation proposals. For these types of projects, WDFW may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on a project site. When making a permit decision, WDFW shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. The factors WDFW must consider in making this decision are identified in RCW 90.74.020 (3). Also see RCW 75.20.098 and Chapter 90.74 RCW.

9. When WDFW is issuing a Hydraulic Project Approval in relation to state or federal cleamp sites, and WDFW is the sole decision-maker, WDFW can only require mitigation if the

sediment dredging or capping actions do not result in a cleaner aquatic environment and equal or better habitat functions and values.

When other agencies are decision-makers, recommendations for mitigation may be made under other state or federal authority to protect habitat functions and values.

10. When WDFW is issuing a Hydraulic Project Approval and is the sole decision-maker, WDFW can request, but cannot require "habitat mitigation" for maintenance dredging of existing navigable channels and berthing areas.

The phrase, "habitat mitigation" is analogous to compensatory mitigation. See RCW 75.20.325. When other agencies are decision-makers, recommendations for mitigation may be made under other state or federal authority to protect habitat functions and values.

11. Preserving at-risk, high quality priority habitat may be considered as part of an acceptable mitigation plan.

When high quality areas of priority habitats or habitats of priority species are at risk, preservation of those habitats may be accepted as part of a mitigation plan, as long as there is no loss of habitat function.

12. Habitat replacement is preferred to hatcheries for fish mitigation.

Commission policy directs WDFW to give priority to natural production rather than hatchery production, within habitat capabilities.

13. Mitigation game fish may be purchased from aquatic farmers.

If WDFW requires, as part of a mitigation agreement, that resident hatchery game fish be stocked, RCW 77.18.020 requires that WDFW notify the project proponent that the fish may be purchased from a private aquatic farmer. WDFW shall specify fish health requirements, pounds or numbers, species, stock, and/or race of the fish to be provided.

14. Where authority exists, strive to maintain recreational and harvest opportunities.
15. Approved habitat mitigation measures shall be based on best available science.
16. Mitigation plans shall be required for a project with significant impacts.

Mitigation plans shall include the following:.

- Baseline data
 - Estimate of impacts
 - Mitigation measures
 - Goals and objectives
 - Detailed implementation plan
 - Adequate replacement ratio
 - Performance standards to measure whether goals are being reached
 - Maps and drawings of proposal
 - As-built drawings
 - Operation and maintenance plans (including who will perform)
 - Monitoring and evaluation plans (including schedules)
 - Contingency plans, including corrective actions that will be taken if mitigation developments do not meet goals and objectives
 - Any agreements on performance bonds or other guarantees that the proponent will fulfill mitigation, operation and maintenance, monitoring, and contingency plan.
17. Proven mitigation techniques must be used.

Experimental mitigation techniques are allowable only if advance mitigation is being performed and will be fully functional prior to the project impacts.

18. Mitigation shall proceed along with project construction.

Mitigation measures are an integral part of a construction project and shall be completed before or during project construction, except projects with impacts that have no proven mitigation techniques. Those projects require advance mitigation.

19. Delayed mitigation shall include replacement that is greater than losses.

Mitigation that is implemented after project construction, or that requires a long time to reach replacement value, shall include additional habitat value (over and above replacement value) equal to the loss through time.

20. WDFW shall determine impacts and mitigation.

WDFW shall determine the project impact, significance of impact, amount of mitigation required, and amount of mitigation achieved, based on the best available information, including the applicant's plans and specifications.

For large projects with potentially significant impacts, this will be based on review of studies approved by WDFW.

21. Cumulative impacts of projects shall be considered.

Cumulative impacts of projects shall be considered and appropriate measures taken to avoid or minimize those impacts.

22. Project proponent pays mitigation costs.

Mitigation costs may include but are not limited to:

- A. Studies to determine impacts and mitigation needs.
- B. Alteration of project design.
- C. Planning, design, and construction of mitigation features.
- D. Operation and maintenance of mitigation measures for duration of project (including personnel).
- E. Monitoring of mitigation measures and fish and wildlife response.
- F. All WDFW costs including engineering analysis and input.

23. Performance bond or other monetary assurance may be accepted.

A performance bond, letter of credit, escrow account, or other written financial guarantee may be accepted to ensure that the project proponent will fulfill mitigation requirements, operation and maintenance, monitoring, and contingency plans. The amount of the bond should cover the costs plus 10 percent.

24. Mitigation site shall be protected for the life of the project.

The mitigation site shall be protected permanently, or at a minimum, for the life of the project. This protection shall be through conservation easement, deed restriction, donation to WDFW, or other legally binding method.

25. WDFW shall seek mitigation for unmitigated projects.

WDFW shall seek mitigation for unmitigated or undermitigated existing projects. Criteria for prioritizing unmitigated projects are:

- A. Fish and wildlife losses from the project.
 - B. Potential gains of fish and wildlife.
 - C. Likelihood of achieving mitigation.
 - D. Time required to achieve mitigation.
 - E. Support from other agencies and tribes.
 - F. Presence of priority habitats and species.
 - G. Cost to WDFW.
26. Compliance monitoring shall be performed as funding allows.
27. Mitigation banking may be an acceptable form of mitigation.

The term "mitigation bank" as used here refers to a habitat creation, restoration, or enhancement project undertaken by a project proponent to act as a bank of credits to compensate for habitat impacts from future development projects. Credits and debits shall be based on area or a scientifically valid measure of habitat function and value acceptable to WDFW, such as the Habitat Evaluation Procedure (HEP). The use of credits from a mitigation bank as a form of compensation shall occur only after the standard sequencing of mitigation negotiations (avoid, minimize, rectify, reduce, and then compensate). Habitat units may be traded or sold.

28. Terms of mitigation must be documented.

A mitigation contract is necessary to document the terms of the mitigation. Mitigation contracts may take several forms:

- A. Mitigation agreement (must be approved by Office of Attorney General).
 - B. Federal Energy Regulatory Commission (FERC) order.
 - C. Conditions on an environmental permit.
 - D. Statements in a final environmental impact statement.
 - E. Conservation easement.
 - F. Energy Facility Site Evaluation Council (EFSEC) site certification.
 - G. Landowner Landscape Plan.
29. Habitat and Lands Services Program coordinates all mitigation projects except Columbia and Snake River mainstem fish mitigation projects that are coordinated by the Intergovernmental Fisheries Program.

The program that coordinates the mitigation projects is responsible for coordinating with all other programs and regions that have interest or involvement in the project.

30. Facilities shall be transferred to the appropriate program for management.

When mitigation planning is completed, responsibility for any facilities (land, fish cultural facility, etc.) shall be transferred to the appropriate program and region. During the latter stages of planning, the managing program shall be phased into the process.

31. Managing programs shall follow the mitigation contract.

The program and region managing a mitigation facility or project shall follow the terms of the mitigation contract at all times. No deviations shall be made from the mitigation contract unless approved by the program that negotiated the contract.

Appendix II. Conservation Area Agreement

(begins on following page)

After Recording Return To:

Chelan County Department of Community Development
Attn: Jim Brown, Director
316 Washington Street, Suite 301
Wenatchee WA 98801

DECLARATION OF CONSERVATION COVENANTS

Declarant: Wheeler Ridge, LLC, a Washington limited liability company
Legal: Portions of Section 17, Township 21 North, Range 20 East, Willamette Meridian, Chelan County, Washington.

This Declaration of Conservation Covenants ("Declaration") is made as of the [REDACTED] of May, 2021, (the "Effective Date") by Wheeler Ridge, LLC, a Washington limited liability company ("Declarant").

PROJECT & MITIGATION SUMMARY

Declarant is the owner of that certain real property located in Chelan County, Washington, which is legally described in **Exhibit A** (the "Property"). Declarant submitted applications to Chelan County to State to convert and develop approximately 260 acres of the Property from its forested condition into in three separate fenced areas – Orchard Area #1, #2, and #3—, to establish irrigated cherry orchards and support facilities for harvest in late summer (August/September) (the "Project"), as more particularly described in the Description of Proposal on page 1 of that certain December 30, 2020 Final Mitigated Determination of Non-Significance, Chelan County File No. SEPA 2018-326 (the "MDNS"), a true and correct copy of which is attached hereto as **Exhibit C**.

Per Chelan County Code (CCC) 11.78.060, the Project area has been classified as a Minor Development within Class II Wildlife Habitat Conservation Area. Chelan County Code 11.78.100(2)(B)(iii)(h) and CCC 11.78.250(1) encourage the use of conservation covenants as a means of protecting and preserving priority habitats and species. To this end, MDNS Mitigation Measures 20 and 21 require "a habitat management agreement and associated legal mechanism to permanently assure performance and stewardship for the habitat mitigation area, which will include preparation of a proposed conservation easement, deed restriction, donation, or other legally binding arrangement."

CONSERVATION COVENANTS

NOW, THEREFORE, pursuant to RCW 64.04.130 and in fulfillment of the terms, conditions and provisions of CCC Title 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District, and the MDNS, Declarant hereby dedicates, reserves, grants, conveys and warrants, subject to encumbrances, conditions, restrictions, and limitations of record as of the recordation date hereof, the following perpetual conservation covenants according to the terms and conditions set forth herein.

1. **Purpose & Scope.** This Declaration is intended to achieve the purposes and objectives of CCC Title 11.78 and the MDNS through the dedication and implementation of conservation covenants to ensure the long-term preservation, monitoring and maintenance of the habitat mitigation area as legally described and depicted in **Exhibit B** hereto ("Conservation Area"), subject to the terms, conditions and restrictions in that certain May 2021 Habitat Management & Mitigation Plan (the "HMMP") approved by Chelan County in coordination and consultation with the Washington State Department of Fish & Wildlife (the "Purpose of Covenants"). A true and correct copy of the HMMP shall be kept on file by Declarant and Chelan County and shall be made available to any local, state and federal agency and any member of the public upon request.

2. **Use and Management Plan.** In accordance with the Purpose of Covenants, Declarant shall not use the Conservation Area in any manner inconsistent with CCC Title 11.78, the MDNS and/or the HMMP, and in the event of any conflict between the requirements of CCC Title 11.78, the MDNS and/or the HMMP the most restrictive requirement shall apply.

Declarant reserves the right to use the Conservation Area for any uses or activities that are not inconsistent with the restrictions set forth herein, CCC Title 11.78, the MDNS and/or the HMMP.

a. **Permitted Uses and Activities.** The Parties agree that activities deemed consistent with the Purpose of Covenants, CCC Title 11.78, the MDNS and/or the HMMP shall include but not be limited to the following:

(1) Activities related to the conservation of habitat for priority, threatened, endangered and other listed species identified in the Chelan County Code, state statutes and federal law, including but not limited to: maintenance, repair, replacement, relocation and removal of existing roads, power lines, culverts, barriers to fish passage or other improvements; research; removal of non-native and/or invasive species; construction, maintenance and replacement of fences and gates to protect the natural features of the Property from damage; habitat restoration; and ecosystem health, such as risk reduction through under-burning, thinning, or harvest to stop the spread of disease or insect infestation.

(2) Interpretive trail construction, maintenance, replacement and removal consistent with and in furtherance of the Purpose of Covenants.

(3) Installation, maintenance, replacement and removal of signs on the Property to limit or direct use or access, for interpretive information, as an entrance sign, and/or to acknowledge the participation of the Declarant, Chelan County and/or any third-party or entity that participates in fulfilling the Purpose of Covenants per **Subsection 15** below.

(4) The undertaking of other activities that are required by and subject to compulsion of any governmental agency with authority to require such activity; PROVIDED, however, that any such activity shall be conducted so that interference with the Purpose of Covenants is avoided, or, if avoidance is not possible, minimized to the full extent possible.

(5) Cutting trees, construction and/or other disturbance of resources, including the removal of invasive species, to the extent reasonably prudent or necessary to remove, mitigate and/or warn against an unreasonable risk of harm to persons, property or health of native species on or about the Property per MDNS Mitigation Measures 12 and 14. Declarant shall undertake such steps as are reasonable under the circumstances to consult with Chelan County prior to taking actions that, but for this provision, would not be permitted or would be permitted only with approval from Chelan County.

(6) Non-commercial, low-impact public recreation, including, but not limited to bird watching, mountain biking, hiking and picnicking and those activities required per MDNS Mitigation Measures 30 and 31.

(7) Scientific research activities consistent with and in furtherance of the Purpose of Covenants. Declarant shall be permitted to conduct scientific research consistent with the Purpose of Covenants and, in particular, monitoring and maintenance required in the HMMP.

(8) Educational activities consistent with and in furtherance of the Purpose of Covenants. Declarant shall be permitted to engage in educational activities consistent with the Purpose of Covenants and HMMP, and Declarant may allow a third-party to conduct educational activities in the Conservation Area in accordance with **Subsection 15.b.** below.

(9) Harvest of any timber where special management objectives consistent with the with the Purpose of Covenants and HMMP make such harvest methods appropriate in order to develop and maintain a multi-aged, multi-storied stand or to create diversity.

(10) Ecosystem regeneration and/or regeneration after natural disturbances or selective timber harvest activities pursuant to **Subsection 2.a.(9)**, above.

(11) Vehicular use (both motorized and non-motorized) in connection with any permitted activity listed in this **Subsection 2.a.** or otherwise in the case of an emergency.

(12) Rock extraction, rock crushing and timber harvest performed in accordance with MDNS Mitigating Measures 1 through 8, 27 and 28 and any additional conditions of approval required for such activities by Chelan County.

(13) Installation, maintenance, replacement, repair and/or removal of fencing required by MDNS Mitigating Measure 22.

(14) Installation, maintenance, replacement, repair, relocation and/or removal of Upper Wheeler Road, as it now exists or as it is relocated, in accordance with MDNS Mitigating Measure 34.

(15) Installation, maintenance, replacement, repair and/or removal of utilities and/or irrigation facilities within Upper Wheeler Road, as it now exists or as it is relocated, in accordance with MDNS Mitigating Measures 37 and 38.

(16) Any other non-commercial activities allowed under CCC Title 11.78, the MDNS and/or the HMMP and consistent with the Purpose of Covenants.

b. Prohibited Uses and Activities. The Parties further agree that the following activities are deemed inconsistent with the Purpose of Covenants, unless such activities are implemented in conjunction with a condemnation action, and/or are done pursuant to the of rights of third-parties in existence prior to the recordation date hereof. Uses and/or activities prohibited in the Conservation Area include, but are not limited to, the following:

(1) **General Uses.** Industrial, residential and commercial uses and/or activities not expressly specified in the HMMP, MDNS and/or **Subsection 2.a.** above.

(2) **Roads & Utilities.** Road construction or granting of easements for rights-of-ways for roads, power lines, telecommunication facilities and/or above ground utilities not expressly specified in the HMMP, MDNS and/or **Subsection 2.a.** above, unless such activities are implemented in conjunction with a condemnation action. Notwithstanding the above, use of existing roads and/or easements that provide neighboring landowners temporary access to their properties for recreation, timber harvest and/or related purposes are permitted so long as such use is consistent with the Purpose of Covenants.

(3) **Removal of Trees & Vegetation.** There shall be no cutting, pruning, or removal of trees and other vegetation, including downed timber, except (i) as may be incidental to permissible uses and activities reserved under **Subsection 2.a.** or with the express advance written approval of Chelan County, (ii) as deemed necessary by Chelan County to preserve, protect or enhance the Conservation Area consistent with the Purpose

of Covenants, or (iii) as contemplated under and necessary for implementation of the HMMP.

(5) Livestock grazing. Livestock grazing is strictly prohibited.

(6) Storage & Waste Disposal. The storage and/or disposal of rubbish, garbage, waste, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material; PROVIDED, however, that rubbish, garbage, waste and debris can be stored in proper containers for subsequent disposal, and the temporary piling of brush and other vegetation may occur to the extent reasonably necessary to undertake a permitted activity specified in the HMMP, MDNS and/or **Subsection 2.a.** above.

(7) Herbicides, Pesticides or Insecticides. The use of any herbicides, pesticides or insecticides, except as contemplated or allowed in the HMMP to preserve, protect or, enhance and/or restore the Conservation Area or as may be permitted or mandated by a local, state or federal authority for management of invasive species.

(8) Introduced Vegetation. The planting or intentional introduction of non-native species or other species identified as prohibited in local, state or federal regulation and/or the HMMP.

(9) Alteration of Land. The alteration of the surface of the land, including without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat and/or sod or any changes in topography is prohibited, except as permitted by or as may be incidental to the permissible activities specified in the HMMP, MDNS and/or **Subsection 2.a.** above.

(10) Structures and Improvements. Except as expressly permitted in the HMMP, MDNS and/or **Subsection 2.a.** above, the construction of any building, structure, or other improvements of any kind, temporary or permanent, including but not limited to houses, windmills, wind turbines, sheds, storage tanks, mobile homes, wells, roads, parking areas, dams and impoundments.

(11) Mining. Except as expressly permitted in the HMMP, MDNS and/or **Subsection 2.a.** above, the exploration for, or development and extraction of, minerals, hydrocarbons, sand, gravel, and/or rock on or below the surface.

(12) Agriculture. Except as expressly permitted in the HMMP, MDNS and/or **Subsection 2.a.** above, the planting, propagation, and growing of any plants or trees for commercial or non-commercial agricultural, nursery, or gardening purposes.

(13) Motorized Vehicles & Conveyances. The operation of wheeled or motorized vehicles, including without limitation, automobiles, trucks, motorcycles, all-terrain vehicles, snowmobiles, and/or any other type of motorized vehicle or conveyance shall be

prohibited, except (i) as otherwise authorized in **Subsection 2.a.** above, (ii) as may be required by State and/or the County to protect the Conservation Area, or (iii) as may be contemplated or allowed under CCC Title 11.78, the MDNS and/or the HMMP and consistent with the Purpose of Covenants.

(14) Hunting & Discharge of Firearms. Hunting and the discharge of any firearm for any purpose except as is necessary for lawful self-defense to address an imminent threat of death of bodily harm to self or others.

3. Notice and Approval of Other Activities.

a. Notice. Except for those uses and activities identified as permitted in **Subsection 2.a.** above, prior to engaging in any other uses or activities not prohibited in **Subsection 2.b.** above, Declarant shall give Chelan County sixty (60) days prior written notice consistent with **Section 16** below ("Notice"). The Notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit Chelan County to make an informed judgment as to its consistency with the Purpose of Covenants. Chelan County shall not give its written consent and approval unless Declarant demonstrates that the proposed use or activity is consistent with the terms, conditions and Purpose of Covenants. Such activities or uses approved by Chelan County under this **Section 3** shall be deemed amendments to this Declaration and shall be memorialized in writing and recorded per **Section 7** below.

b. Approval. Where Chelan County's approval is required, Chelan County shall grant, grant with conditions, or deny approval in writing within sixty (60) days of receipt of Declarant's written request for such approval. Failure to approve Declarant's request within sixty (60) days shall be deemed a denial of such request. No proposed use or activity may proceed without Chelan County's written consent and approval as provided herein; PROVIDED, however, that if Declarant must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Declarant may proceed with such action without Chelan County' approval, but Declarant shall provide notice to Chelan County of such compulsory action as soon as practicable.

4. Entry and Inspection. Chelan County may enter upon the Conservation Area to inspect for compliance with and otherwise enforce the terms of this Declaration. Chelan County shall provide Declarant at least three (3) days' written notice prior to entering the Conservation Area; PROVIDED, however, that Chelan County is not required to have Declarant's permission or consent to enter the Conservation Area for such purposes. Chelan County shall not interfere with Declarant's use and enjoyment of the Property in conjunction with such entry and inspections.

5. HMMP Implementation Costs & Financial Assurances. Per MDNS Mitigation Measures 20 and 21, Declarant shall report to Chelan County, and Chelan County

shall monitor the restoration actions, monitoring activities, adaptive management actions and reporting requirements for implementation of the HMMP for a period of up to five (5) years from the Effective Date. Per MDNS Mitigation Measure 20, all costs associated with operation and maintenance of mitigation measures, including but not limited to any and all cost of ownership and management of the Conservation Area, shall be borne solely and exclusively by Declarant in perpetuity.

a. Performance Bond. Per CCC 11.78.100.C. and MDNS Mitigation Measure 15.j., as a financial assurance and security for the performance of its obligations under the HMMP, Declarant shall complete all mitigation in the HMMP prior to Chelan County granting final approval of any development activity for which mitigation measures have been required or post a performance bond at one hundred fifty percent (150%) of the cost of uncompleted mitigation measures. Bonding for completion of such mitigation measure shall be in effect for a maximum of two (2) years.

b. Maintenance Bond for Mitigation Measures. Upon completion of the installation of all mitigation measures required by the HMMP, Declarant shall provide Chelan County with a maintenance bond at one hundred fifty percent (150%) of the cost of maintaining such mitigation measures, which maintenance bond shall be updated and replaced every two (2) years for up to five (5) years for the ongoing management of the Conservation Areas in accordance with the HMMP. Beginning two (2) years from the Effective Date, Declarant shall prepare and deliver to Chelan County a cost estimate for each subsequent two (2) year mitigation maintenance period not less than sixty (60) days prior to each subsequent two-year anniversary of the Effective Date, which cost estimate shall be the basis of the updated, replacement maintenance bond for the subsequent two (2) year period. Within thirty (30) days of receipt of such cost estimate, Chelan County shall provide comments on the cost estimate and either approve or modify the same. If Chelan County fails to respond to such cost estimate within 30 (days) of receipt, then it shall be deemed accepted and shall be the basis of the maintenance bond for that subject period.

c. Maintenance Bond for Monitoring & Adaptive Management. Declarant shall prepare and deliver to Chelan County a cost estimate for the initial two (2) year monitoring and adaptive management period prior to the Effective Date, and thereafter Declarant shall prepare and deliver to Chelan County a cost estimate each subsequent two (2) year monitoring and adaptive management period not less than sixty (60) days prior to each subsequent two-year anniversary of the Effective Date. Within thirty (30) days of receipt of such cost estimate, Chelan County shall provide comments on the cost estimate and either approve or modify the same. If Chelan County fails to respond to such cost estimate within 30 (days) of receipt, then it shall be deemed accepted and shall be the basis of the monitoring and adaptive management bond for that subject period. Declarant shall then provide Chelan County with a separate maintenance bond at one hundred fifty percent (150%) of the cost of two (2) years of monitoring the mitigation measures and conducting adaptive habitat management per the HMMP for such two (2) year period, which bond shall be updated and replaced every two (2) years for up to five (5) years for the ongoing

monitoring and adaptive management of the Conservation Areas in accordance with the HMMP.

6. **Third-Party Monitoring.** Chelan County shall have the right to delegate monitoring and enforcement authority under this Declaration to any duly appointed manager, which may include a federal, state, or local government agency or non-profit entity; PROVIDED, however, that the delegation shall be subject to the terms and conditions of this Declaration in all respects. This appointment may be changed from time to time. Declarant shall be given sixty (60) days advance written notice of such appointment.

7. **Amendment.** If circumstances arise under which an amendment to or modification of this Declaration is warranted, and Chelan County, in its sole discretion, determines that the amendment is consistent with and in furtherance of the Purpose of Covenants, Declarant and Chelan County may jointly amend this Declaration. Any such amendment shall be in writing as mutually agreed to by both Chelan County and Declarant. Amendments shall become effective upon recording in the official records of Chelan County and any other jurisdiction in which such recording is required. Nothing in this Section shall require Declarant or Chelan County to agree to any amendment or to consult or negotiate regarding any amendment.

8. **Successors in Interest.** The rights, duties and obligations of Declarant and Chelan County under this Declaration shall be perpetual, shall run with the land and shall bind Declarant's and Chelan County's respective heirs, successors, agents, and assigns.

9. **Transfer of Ownership.** After sixty (60) days prior written notice to Chelan County, Declarant may convey its interest in the Conservation Area to a qualifying entity per RCW 64.04.130, subject to the provisions herein, and provided the Chelan County has approved the transfer, which approval shall not be unreasonably withheld. Approval shall be based, in part, on the financial resources, history, qualifications, organizational mission, and ability of the prospective transferee to manage the Conservation Area consistent with the terms of this Declaration. Such notice shall include the name, address, and telephone number of the prospective transferee or its representative. Any transfer of ownership that occurs without the express approval of Chelan County shall be null and void. The terms of this Declaration shall be included in any deed or other legal instrument by which Declarant divests itself of any interest in all or a portion of the Conservation Area, including, without limitation, a leasehold interest. The failure of Declarant to perform any act required by this **Section 9** shall not impair the validity of this Declaration or limit its enforceability in any way.

10. **Extinguishment.** This Declaration may be extinguished only by express release by the Chelan County, its successors or assigns or formal court order, and pursuant to condemnation; PROVIDED, however, in the event that development of the Project has not commenced within three (3) years of the Effective Date, then this Declaration shall be extinguished without further action and shall be null and void and of no force and effect, unless it is amended by to extend this deadline. This Declaration will not be extinguished by

abandonment for non-enforcement. Declarant waives any common law right to extinguish or modify this Declaration by adverse possession, prescriptive easement or other activity inconsistent with this Declaration.

11. Compliance with Laws. Declarant shall comply with all local, state and federal laws while performing any activity within the Conservation Area.

12. Dispute Resolution. As a condition precedent to any suit for breach, interpretation or enforcement of this Declaration, any person or entity seeking to bring such suit shall first notify Declarant and/or Chelan County in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the dispute cannot be resolved through negotiation within thirty (30) days of such written notice, then the parties to the dispute may, but are not obligated to, agree to a mutually acceptable method of non-binding alternative dispute resolution (*i.e.*, mediation) with a qualified third-party mediator acceptable to all parties. The parties to any such dispute shall share equally any costs of the services provided by such mediator as such costs are incurred. The existence of a dispute shall not excuse performance pursuant to this Declaration. Notwithstanding the above, Chelan County may seek appropriate remedies pursuant to **Subsection 13.d.** below without prior notice to Declarant and without complying with the dispute resolution procedures in this **Section 12.**

13. Chelan County's Remedies.

a. Notice of Violation, Corrective Action. If Chelan County reasonably believes that Declarant is in violation of the terms of this Declaration or that a violation is threatened, Chelan County shall give written notice to Declarant of such violation and demand corrective action sufficient to prevent or cure such violation. Where the violation involves injury to the Conservation Area resulting from any use or activity inconsistent with the Purpose of Covenants, Declarant shall promptly restore the portion of the Conservation Area so-injured to its condition existing immediately before such violation occurred at Declarant's sole cost and expense.

b. Declarant's Failure to Respond. If Declarant fails to cure the violation within sixty (60) days after receipt of notice thereof from Chelan County, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing such violation within the sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, then Chelan County may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Declaration. Such action may include be brought *ex parte* as necessary and as allowed under applicable civil rules, may include claims for temporary or permanent injunction, claims to enjoin trespasses by members of the public, and/or claims to enjoin any violation by Declarant and to require restoration of the Conservation Area to the condition that existed immediately before any such injury.

c. **Damages.** Chelan County shall recover damages to which it may be entitled for violation of the terms of this Declaration and/or injury to the Conservation Area, including damages for the losses caused by impairment of the Purpose of Covenants. Without limiting Declarant's liability in any way, Chelan County shall apply any damages recovered to the cost of undertaking any corrective action and/or restoration of the Conservation Area in accordance with any judgment entered by a court of competent jurisdiction.

d. **Emergency Enforcement.** If Chelan County reasonably believes that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Area or to prevent injury to person or loss of life, then Chelan County may pursue its remedies under this **Section 13.d.** without prior notice to Declarant and without waiting for the period provided for cure to expire or engaging in alternative dispute resolution per **Section 12** above.

e. **Scope of Relief.** Chelan County's rights under this **Section 13** shall apply equally in the event of either actual or threatened violations of the terms of this Declaration. Declarant agrees that Chelan County's remedies at law for any violation of the terms of this Declaration are inadequate and that Chelan County shall be entitled to the injunctive relief described in **Section 13**, both prohibitive and mandatory, in addition to such other relief to which Chelan County may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Chelan County's remedies described in this **Section 13** shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

f. **Costs of Enforcement.** Any actual costs incurred by Chelan County in enforcing the terms of this Declaration against the Declarant including, without limitation, costs of suit and reasonable attorney's and consultant's fees, and any costs of restoration necessitated by the violation of the terms of this Declaration by Declarant or Declarant's agents, employees, contractors, invitees or licensees, shall be borne by Declarant if Chelan County prevails in such enforcement. If Declarant prevails in any action by Chelan County to interpret or enforce the terms of this Declaration, then Chelan County shall bear its own costs and any costs incurred by Declarant in defending itself against Chelan County including, without limitation, reasonable attorney's and consultant's fees.

g. **Chelan County's Discretion.** Enforcement of the terms of this Declaration shall be at the discretion of Chelan County, and any forbearance by Chelan County to exercise its rights under this Declaration in the event of any breach of any term of this Declaration by Declarant shall not be deemed or construed to be a waiver by Chelan County of such term or of any subsequent breach of the same or any other term of this Declaration or of any of Chelan County's rights under this Declaration. No delay or omission by Chelan County in the exercise of any right or remedy upon any breach by Declarant shall impair

such right or remedy or be construed as a waiver. Notwithstanding the foregoing, nothing in this Declaration shall be interpreted to waive or toll any applicable statutes of limitations.

h. Acts Beyond Declarant's Control. Nothing contained in this Declaration shall be construed to entitle Chelan County to bring any action against Declarant to abate, correct, or restore any condition with the Conservation Area or to recover damages for any injury to or change in the Conservation Area resulting from conditions or matters that: (i) predate Declarant's acquisition of the Property; (ii) predate recording of this Declaration; and/or (iii) result from causes beyond Declarant's control, including, without limitation, fire, flood, storm, volcanic activity, avulsive events, climate change, pest infestation, and earth movement, or for acts or omissions of Chelan County, the public or trespassers, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate injury to persons or property (including without limitation to the Property) resulting from such causes.

14. Costs, Liabilities, Insurance, Taxes, Environmental Compliance and Indemnification.

a. Costs, Legal Requirements, Liabilities and Insurance. Declarant shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, maintenance and restoration of the Conservation Area, including but not limited to the maintenance of adequate comprehensive general liability insurance coverage. If Declarant is self-insured, evidence of its status as a self-insured entity shall be provided to Chelan County. If requested by Chelan County, Declarant shall describe its financial condition and the self-insured funding mechanism. Declarant shall prevent the perfection of any liens against the Conservation Area that are not subordinate to this Declaration arising out of any work performed for, materials furnished to, or obligations incurred by Declarant.

b. Taxes. Declarant shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Declaration, and shall furnish Chelan County with satisfactory evidence of payment upon request. If Declarant fails to pay any taxes when due, Chelan County is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Declarant, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Declarant at the maximum rate allowed by law.

c. Remediation. If, at any time, there occurs a release in, on, or about the Conservation Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health

or environment, Declarant shall take all legally required steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Chelan County, in which case Chelan County shall be responsible for such remediation.

d. Hold Harmless. Declarant hereby agrees to release and hold harmless, indemnify, and defend Chelan County and its employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with:

(1) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation Area that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Chelan County under this Declaration;

(2) Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. § 9601 et seq.) and MTCA (chapter 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Conservation Area, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Conservation Area;

(3) The presence or release in, on, from, or about the Conservation Area, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and,

(4) The obligations and covenants specified in this **Section 14**.

15. No Creation of Public Rights or Third-Party Beneficiary Rights. This Declaration does not create any rights in favor of the general public or any member thereof to undertake or enforce the terms of this Declaration.

16. Notices. Unless otherwise specified herein, any notices required or permitted under this Declaration may be delivered personally, sent by email, facsimile machine or U.S. Mail, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery, receipt of email, confirmation of facsimile, or three (3) days after being mailed, whichever is applicable.

To Chelan County:

Chelan County Department of Community Development
Attn: Jim Brown, Director
316 Washington Street, Suite 301
Wenatchee WA 98801
Phone: (509) 667-6225
Fax: (509)667-6475

To Declarant:

Wheeler Ridge, LLC
Attn: Ben Alworth
KMO - Director of Support Operations
4597 Stemilt Hill Road
Wenatchee, Washington 98801
Office 509-662-3613 x2704
Mobile 509-669-0729
Email Ben.Alworth@Stemilt.com

17. General Provisions.

a. Liberal Construction. This Declaration shall be liberally construed to carry out the Purpose of Covenants. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of Covenants that would render the provision valid shall be favored over any interpretation that would render it invalid.

b. Severability. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. Governing Law and Venue. This Declaration shall be construed and interpreted in accordance with the laws of the state of Washington. In the event of a lawsuit involving this Declaration, venue shall be proper only in Douglas County.

d. Entire Agreement. This instrument sets forth all rights, duties and obligations of Declarant and Chelan County with respect to the Declaration and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Declaration. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment as provided for in this Declaration.

e. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

f. **Exhibits & HMMP.** All exhibits referenced herein and the HMMP are hereby incorporated into this Declaration as part of and material terms to this Declaration.

g. **Counterparts.** This Declaration may be executed in counterparts with like effect as if all signatures appeared on a single copy.

18. **Certification of Authority.** The undersigned Declarant representative certifies that the Declarant is a legally incorporated Washington limited liability company with full authority and legal capability to perform the terms of this Declaration and that he is authorized to sign this Declaration on behalf of Declarant.

*[THE REMAINDER OF THIS PAGE IS LEFT BLANK. SIGNATURES,
ACKNOWLEDGEMENTS AND EXHIBITS APPEAR ON THE FOLLOWING PAGES.]*

DECLARANT:

Wheeler Ridge, LLC, a Washington limited liability company

Dated: _____

By: _____
Kyle Mathison, Manager

STATE OF WASHINGTON)
) ss
COUNTY OF CHELAN)

On this _____ day of _____, 2021, personally appeared before me Kyle Mathison, to me known to be the Manager who executed the within and foregoing instrument on behalf of Wheeler Ridge, LLC, a Washington limited liability company and acknowledged said instrument to be the free and voluntary act and deed of said nonprofit corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said nonprofit corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
Washington residing at _____

My appointment expires _____.

CHELAN COUNTY:

**DEPARTMENT OF COMMUNITY
DEVELOPMENT**

Dated: _____

By: _____
Jim Brown, Director

APPROVED AS TO FORM ONLY:

_____ day of _____ 2021

By: _____
Marcus Foster, Chelan County Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF CHELAN)

On this _____ day of _____, 2021, personally appeared before me Jim Brown, to me known to be the Director of the Chelan County Department of Community Development, who executed the within and foregoing instrument on behalf of Chelan County, and acknowledged said instrument to be the free and voluntary act and deed of Chelan County for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
Washington residing at _____

My appointment expires _____.

**EXHIBIT A
PROPERTY**

**Real property in the County of Chelan, State of Washington, described as follows:
SECTION 17, TOWNSHIP 21 NORTH, RANGE 20, E.W.M., CHELAN COUNTY,
WASHINGTON**

**EXCEPT THAT PORTION THEREOF CONVEYED TO CHELAN COUNTY FOR ROAD
PURPOSES BY DEED RECORDED DECEMBER 5, 1955, UNDER AUDITOR'S NO.
502399, IN VOLUME 544, PAGE 389.**

**AND EXCEPT THE 20 ACRES ON THE NORTHWESTERN PORTION NOTED AS
EXCLUDED IN THE EXHIBIT B EASEMENT MAP**

APN: 212017000000

EXHIBIT B EASEMENT AREA

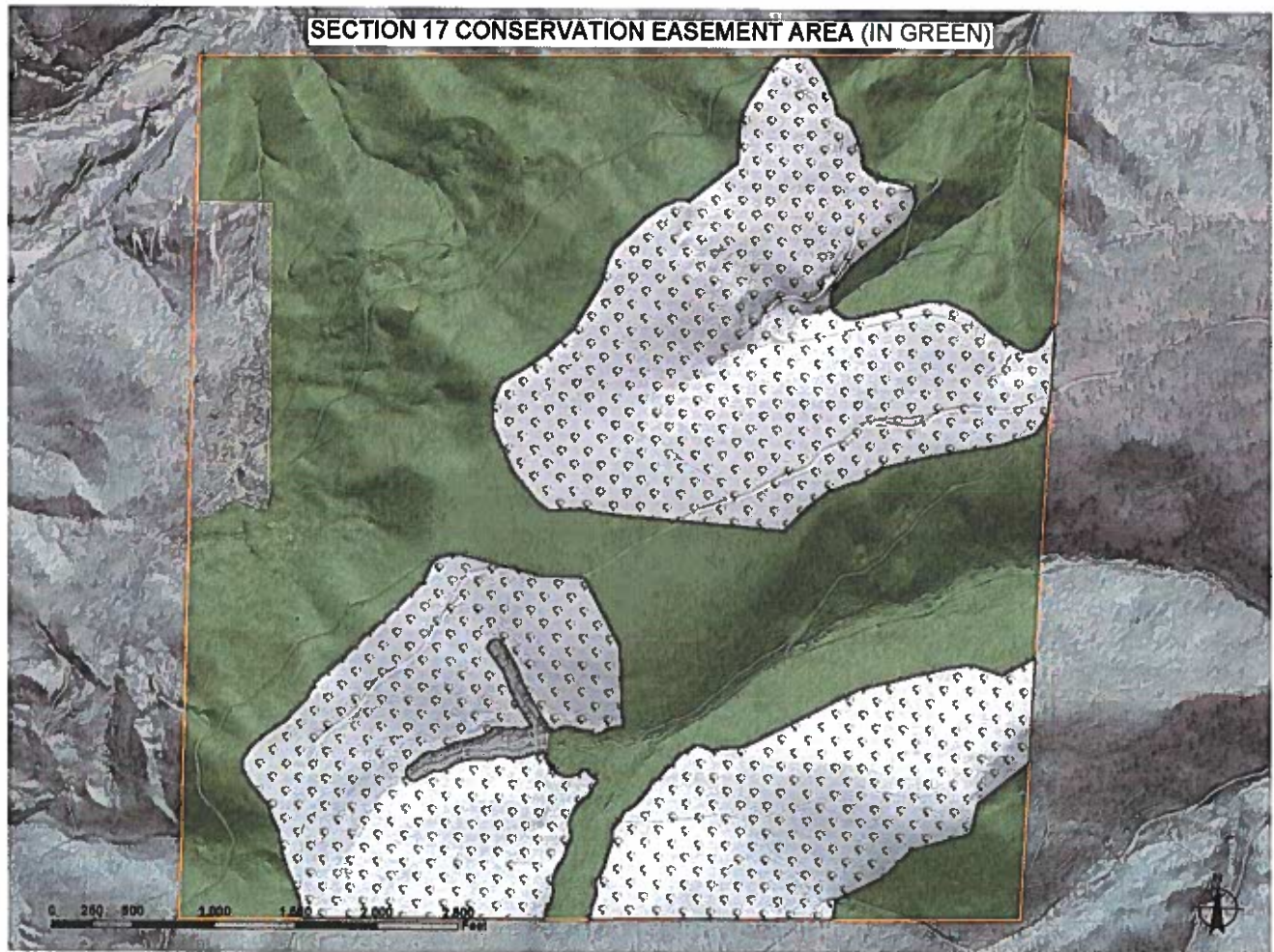


EXHIBIT C

MDNS

CHELAN COUNTY

FINAL MITIGATED DETERMINATION OF NON-SIGNIFICANCE Wheeler Ridge, LLC, Timber Harvest and Orchard Development

DATE OF ISSUANCE: December 30, 2020

APPLICANT: Wheeler Ridge, LLC, Ben Alworth

OWNERS OF THE PROPERTIES: Sections 9 and 17 – Wheeler Ridge, LLC; Section 16 – Washington State Department of Fish and Wildlife

APPLICATION: Chelan County File No. SEPA 2018-326

DESCRIPTION OF PROPOSAL: The applicant is proposing to develop approximately 260 acres in three separate fenced areas – Orchard Area #1, #2, and #3, see *Figure 1 - Proposed orchard development site plan, revised May 2020* – to establish irrigated cherry orchards and support facilities for harvest in late summer (August/September) on Section 17. The Orchard Areas are currently primarily forested. Improvements in Orchard Area #1 (120 acres) include orchard trees, irrigation infrastructure, a 9.9 acre-foot reservoir, ½-acre orchard loading dock, 8-foot tall perimeter standard wildlife fence, an estimated 2-acre area consisting of a 24-person seasonal housing structure of approximately 3,600 square feet, an approximately 2,500 square foot shop, an approximately 2,500 square foot spray storage shed, a pump station of approximately 1,000 covered square feet with 1,000 gallon gasoline and 2,500 gallon diesel storage capacities, irrigation pipelines and utilities, as well as internal orchard roads. Orchard Area #2 (80 acres) includes orchard trees, irrigation infrastructure, an approximately ½-acre orchard loading dock, an 8-foot tall perimeter standard wildlife fence, internal orchard roads, and new/replacement culvert across a stream within the existing road. Orchard Area #3 (60 acres) includes orchard trees, irrigation infrastructure, an approximately ½-acre orchard loading dock, 8-foot tall perimeter standard wildlife fence, and internal orchard roads. A portion of an existing recreational trail will be re-aligned to be outside of the Orchard Areas. A total of 1,420 mbf of timber would be removed from Section 17 within the Orchard Areas. The orchards will generally begin operations with spraying in April/May (or after the snow melts). In June, spraying would continue, trees would be tied, mowing would occur, and irrigation of the orchards would begin. In addition, pruning (along with previously mentioned operations) would begin in June and continue into July. Cherries are anticipated to be harvested in late August or early September.

Outside of the three Orchard Areas, project components include up to three rock crushing facilities north of Orchard Area #1 (Section 17). There is a fourth rock pit located on Section 9 that will be used for this project. The rock crushing facilities would be used initially for construction of the proposed roads and for ongoing maintenance. The total area dedicated to the four rock crushing facilities would be less than two acres. The initial rock crushing for the road construction is anticipated to take one to three months and would use an excavator and a mobile crusher; no blasting is proposed.

*Final Mitigated Determination of Non-Significance
Wheeler Ridge, LLC, Timber Harvest and Orchard Development
Chelan County*

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Access to the site is proposed to be along Upper Wheeler Road within existing easements on Section 16. This road would extend approximately 2.3 miles and include the removal of 30 mbf of timber. The newly aligned Upper Wheeler Road within Section 17 would be improved and realigned in areas. Approximately 45 mbf of timber would be removed for roads on Section 17.

The proposed action requires approval of Chelan County permits including, but not limited to, building permits, conditional use permits for the irrigation pipeline pumping stations (Utility, High Impact (CCC 11.04.020 and 14.98.1915)), and for the rock crushing activities (Rock Crushing Sorting, Batching of Concrete or Asphalt (CCC 11.04.020)), habitat management and mitigation plan approval, critical areas variance, and utility and road franchise permits/approvals and right-of-way permits from Chelan County.

The proposed action may require the following permits and approvals from other agencies:

- Section 404 permit – U.S. Army Corps of Engineers
- Construction stormwater general permit – Washington State Department of Ecology
- Exempt well approval – Washington State Department of Ecology
- Section 401 water quality permit – Washington State Department of Ecology
- Hydraulic project approval – Washington State Department of Fish and Wildlife
- Seasonal housing permit – Washington State Department of Health
- Water system plan approval – Washington State Department of Health, Office of Drinking Water
- Forest practices approval – Washington State Department of Natural Resources
- Road maintenance and abandonment plan – Washington State Department of Natural Resources
- Surface mine reclamation permit – Washington State Department of Natural Resources
- Septic tank permit – Chelan Douglas Health District

LOCATION OF PROPOSAL: Township 21N; Range 20E; Section 17, and portions of Section 9 and Section 16. Chelan County Assessor's Parcel Numbers: 212017000000, 212016000000, 212009430010, and 212009440050.

DOCUMENTS REVIEWED: The supporting documents listed below have been submitted for review. All documents are available to the public upon request and can be found on the County's web page at: <https://www.co.chelan.wa.us/community-development/pages/current-planning>.

1. *Wheeler Ridge, LLC Forest Stewardship Management Plan* dated October 16, 2015 prepared by Schellhass Forestry, LLC
2. *Cultural Resources Overview, Wheeler Ridge Project, Chelan County, Washington* dated June 29, 2018 prepared by Cultural Resource Consultants
3. *Wheeler Ridge Hydraulic and Field Water Quality Measurements* dated July 13, 2018 prepared by Four Peaks Environmental
4. *Wheeler Ridge: Northern Spotted Owl Surveys Final Report* dated August 10, 2018 prepared by Washington Conservation Science Institute

5. *Section 16 and 17 Upper Wheeler Road Reconnaissance and Planning-Level Geotechnical Considerations - Revised*, dated August 29, 2018 prepared by Aspect Consulting
6. *Predicting Summer Elk Habitat Potential in Section 17, Technical Memo Version 1*, dated September 3, 2018 prepared by SCJ Alliance
7. *Wheeler Ridge Orchard Expansion– Trip Generation Analysis and Traffic Impact Review Technical Memorandum*, dated September 28 2018, prepared by SCJ Alliance
8. *Critical Area Report, Wildlife Habitat Mapping & Management Plan* dated October 2018 prepared by SCJ Alliance
9. *SEPA Environmental Checklist for Wheeler Ridge, LLC Proposed orchard Development & Wildlife Habitat Enhancements* dated October 2018 prepared by Ben Alworth, Wheeler Ridge, LLC
10. *Stemilt-Squilchuck Landscape Evaluation Final Report*, dated June 2019 prepared by Washington Conservation Science Institute
11. *Survey for Spotted Owl Habitat on the Section 16 Pipeline Easement* dated September 5, 2019 prepared by Wildwoods Consulting
12. *Shiflett Elk Observations [no official title]*, dated September 14, 2019 prepared by Steve Shiflett
13. *Predicting Summer Elk Habitat Potential in Section 17, Technical Memo Version 2*, dated October 29, 2019 prepared by SCJ Alliance
14. *Critical Area Report, Wildlife Habitat Mapping & Management Plan* dated November 2019 prepared by SCJ Alliance
15. *Wetland Summary Report* dated November 2019 prepared by SCJ Alliance
16. *SEPA Environmental Checklist for Wheeler Ridge, LLC Timber Harvest, Orchard Development & Restoration* dated November 2019 prepared by Ben Alworth, Wheeler Ridge, LLC
17. *May 2020 Wetland Field Work Summary Technical Memorandum*, dated May 19, 2020 prepared by SCJ Alliance
18. *SEPA Checklist, Wheeler Ridge, LLC Orchard Development*, dated May 20, 2020 prepared by Ben Alworth, Wheeler Ridge LLC
19. *Section 17 Geological Hazard Assessment Memorandum*, dated May 20, 2020 prepared by Aspect Consulting
20. *Section 17 Follow-On Geotechnical Reconnaissance*, dated July 24, 2020 prepared by Aspect Consulting
21. *Wheeler Ridge Wetland Summary Report*, dated August 2020, prepared by SCJ Alliance
22. *Road Systems Mitigation Assessment and Description Technical Memorandum*, dated August 7, 2020 prepared by SCJ Alliance
23. *Letter Re: Chelan County, Shockey Planning Group June 19, 2020 Letter Additional information Request Response*, dated August 7, 2020 prepared by Ben Alworth, Wheeler Ridge, LLC
24. *Steffen's Meadow Restoration and Planting Plan*, {undated} prepared by Chelan County Natural Resources Department and Washington Department of Ecology
25. *Letter Re: CCC 11.78.110 Habitat Management & Mitigation Plan – Timing and Implementation of Mitigation for Wheeler Ridge, LLC Section 17 Proposed Orchard Development*, dated October 23, 2020 prepared by Ben Alworth, Wheeler Ridge, LLC

*Final Mitigated Determination of Non-Significance
Wheeler Ridge, LLC, Timber Harvest and Orchard Development
Chelan County*

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26. *Submitted comments of persons and agencies responding to preliminary mitigated determination of non-significance issued for this proposal on November 10, 2020.*
27. *Record of survey applicant Wheeler Ridge, LLC, recorded on November 2, 2016, with the Chelan County Auditor as AFN 2447133.*

NOTICE OF LEAD AGENCY: Chelan County has determined that it is the lead agency for this proposal.

NOTICE OF NON-SIGNIFICANCE: Chelan County has determined that this proposal conducted in conformance with applicable development regulations, including Chelan County codes and ordinances as well as state and federal regulations, and the mitigation measures listed below, will not have a probable significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). Pursuant to WAC 197-11-350(3), the original proposal has been clarified, changed, and conditioned to include necessary mitigation measures to avoid or minimize probable significant environmental impacts. This decision was made after review of a completed environmental checklist, public comments, and other supplemental and additional information on file with the Chelan County Community Development Department and an inspection of the site. This information is available to the public upon request and can be found on the County's web page at: <https://www.co.chelan.wa.us/community-development/pages/current-planning>.

Note: Issuance of this threshold determination does not constitute approval of any required permit. The proponent's application will be reviewed for compliance with all applicable Chelan County codes that regulate development activities.

MITIGATION MEASURES:

This final mitigated determination of non-significance is issued with the following conditions:

Earth

1. The proposed rock crushing areas may not exceed two acres over the lifetime of the project.
2. Rock crushing shall not exceed 17,000 cubic yards during initial project development, including public and private road building. Rock crushing shall not exceed 3,900 cubic yards in any two-year period thereafter.
3. A geotechnical engineer shall review the final reservoir location to confirm it is sited in an appropriate location to avoid identified geological hazards.
4. Clearing of native vegetation shall be minimized on slopes 35 percent or greater.
5. Outside of Orchard Areas, where timber is harvested to support project development, native grass, shrubs, and soil shall be maintained to minimize runoff, erosion, and subsurface infiltration. Cut slopes shall be less than 15 feet.
6. Applicant must fulfill all applicable Washington State Department of Natural Resource reclamation requirements for rock excavation, processing, and related activities.

Air

*Final Mitigated Determination of Non-Significance
Wheeler Ridge, LLC, Timber Harvest and Orchard Development
Chelan County*

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7. Air quality impacts associated with emissions from on-site equipment shall be minimized by keeping vehicles, engines, and rock excavation and processing equipment in good repair. All vehicles and machinery shall be turned off when not in use.
8. All required spray applications must comply with Chelan County and Washington State regulations.

Water

9. To minimize the amount of water infiltrating below the root zone, conserve water, and limit impacts of irrigation water on slope stability, the applicant shall utilize drip irrigation systems or other water conservation measures and develop a water conservation plan in consultation with the U.S. Department of Agriculture Natural Resources Conservation Service.
10. Remote sensors shall be installed along the proposed irrigation pipelines to allow automatic shut-off should a leak be detected.
11. Roadside drainage shall be designed in consultation with and approved by the Chelan County Public Works department.

Plants

12. Prior to or in conjunction with orchard conversion, the project applicant shall develop and implement a noxious weed control plan with the Chelan County Noxious Weed Control Board for the project site.
13. If the orchard development is abandoned, the applicant shall develop and implement a re-planting and monitoring plan subject to approval by Washington Department of Fish and Wildlife (WDFW) for all disturbed areas within two years of abandonment.
14. All forested areas outside of the Orchard Areas shall be managed to reduce fire risk and prevent tree disease. The applicant shall develop and implement a forest health management plan in consultation with the Chelan County Natural Resource Department.

Animals

15. The applicant shall develop and implement a detailed, site-specific (i.e., not conceptual) habitat management and mitigation plan (HMMP) consistent with CCC 11.78.100(2) and in consultation with WDFW in order to achieve no net loss of habitat functions and values. This HMMP shall mitigate for the permanent loss of 260 acres of upland forest elk habitat, nearby impacts to elk habitat from the development proposal, and other impacts to local and regional wildlife habitats. The HMMP shall address the requirements of CCC 11.78.100(2) and shall include the following additional required content:
 - a. Assessment of the functions and values of the habitat being lost compared to the habitat being proposed for mitigation;
 - b. Discussion of short and long term impacts of the loss of habitat;

- c. Discussion of landscape permeability, including in relation to wildlife crossing corridors between the Orchard Areas and related road activity within those corridors;
- d. Discussion of proximity and timing of orchard operations and implications for wildlife, including seasonal orchard restrictions to benefit wildlife, and analysis and development of an integrated bird deterrent program, including the use of noise and non-noise deterrents, impacts to wildlife, and adaptive management techniques. Bird cannons and similar noise deterrents may only be used between early August and early September when non-noise techniques are proven to be ineffective;
- e. Identification of habitat mitigation area with similar functions and values to orchard conversion areas to compensate for the unavoidable loss and conversion of 260 acres of priority habitat and species habitat. Habitat mitigation area shall be of equal or greater habitat value and have similar slope, distance to cover, escape cover, and vegetation types and may not include areas with slopes in excess of 60 degrees. The specific size of the habitat mitigation area shall be determined and set forth in the HMMP consistent with this section and with WDFW guidance on habitat mitigation replacement ratios. The presumptive habitat mitigation area replacement ratio shall be 2:1; provided, however, that the HMMP shall also consider and discuss the need for habitat mitigation replacement ratios higher than 2:1 and may also consider and discuss the rationale for habitat mitigation replacement ratios lower than 2:1; provided, further, that any ratio lower than 2:1, if determined appropriate for implementation consistent with this section, shall include a review and analysis of WDFW mitigation guidance and best available science supporting any such ratios. In no case shall habitat mitigation replacement ratios include out-of-kind mitigation, fail to provide no net loss of functions and values to orchard conversion areas, or be less than 1:1. Habitat mitigation areas will be located on an appropriate site in Water Resource Inventory Area 40A (Squilchuck/Stemilt) or other site in the Colockum watershed;
- f. Identification of additional habitat mitigation area with similar functions and values to orchard conversion areas to compensate for habitat impacts from effect radius extending beyond orchard polygons and related facilities, with consideration given to all aspects of orchard operations including human activity, operation of vehicles, implementation of the bird deterrent program, pruning and harvest work, rock crushing, pump stations, sprayers, wind machines, noise, light, and glare, following the same habitat mitigation area replacement standards and analysis in section (e) above;
- g. Assessment of wetland buffers and determination of appropriate buffer widths. Wetland buffers shall be a minimum of 110 feet provided that the HMMP shall consider and discuss the need for more protective buffer widths;
- h. Preparation of a monitoring and evaluation plan containing benchmarks for monitoring effectiveness of mitigation, including criteria to determine nature and extent of expected success for mitigation and triggers and strategy for improving habitat functions and values of mitigation area;

- i. Discussion of mitigation for the increased use of an improved Upper Wheeler Road on Section 16 as a result of orchard operations;
 - j. Prior to undertaking any action that may result in impacts to existing habitat, a schedule of mitigation actions shall be provided to guarantee that all approved mitigation can be fully implemented; provided, that habitat mitigation area shall be acquired and permanently protected prior to commencement of timber harvest and/or orchard development activities. All other mitigation measures shall be implemented before or during project construction according to the schedule.
16. The site-specific HMMP, once submitted to the Chelan County Community Development Department, shall be processed in accordance with CCC 11.78.100(2). The administrator's written decision shall be forwarded to WDFW, other agencies or tribal entities which provided comments to the department and to any other agency/individual(s) who request a copy of the written decision (CCC 11.78.100(2)(B)(iv)). Any person aggrieved by the administrator's decision can file an appeal of the decision in conformance with CCC 11.78.100(3) and Ch. 11.95 CCC.
17. The site-specific HMMP shall be approved by Chelan County Community Development Department prior to commencement of timber harvest and/or orchard development activities.
18. Any required local, state, or federal permitting for mitigation identified in the approved site-specific HMMP shall be obtained prior to implementing mitigation.
19. Mitigation identified in the approved site specific HMMP shall be implemented consistent with the approved schedule provided in the HMMP.
20. The site-specific HMMP shall establish, with terms acceptable to the County, a habitat management agreement and associated legal mechanism to permanently assure performance and stewardship for the habitat mitigation area, which will include preparation of a proposed conservation easement, deed restriction, donation, or other legally binding arrangement together with: 1) identification of an entity designated to hold and administer the same; 2) management plan for conservation and restoration actions, monitoring activities, adaptive management actions, and reporting requirements; 3) timeline for implementation; and 4) financial assurances. All costs associated with operation and maintenance of mitigation measures, including ownership and management of the habitat mitigation area, shall be borne by the applicant in perpetuity.
21. Any required monitoring shall be performed in accordance with requirements of the approved HMMP. A monitoring report shall be submitted by August 1st of each year, or as otherwise specified in the HMMP during the monitoring period, to the Chelan County Community Development Department and to WDFW. Reports shall update the County and WDFW on the status and progress of the mitigation, along with any corrective recommendations, and shall identify any adaptive management measures necessary in accordance with the HMMP.
22. An 8-foot tall standard wildlife fence shall be constructed around the Orchard Areas to limit human-wildlife contact. All dumpsters/garbage cans shall be located within the fence. Appropriate permits shall be obtained prior to installation. Fencing materials shall be consistent with CCC 11.78.190(2) and addressed in the HMMP.

23. Logging trucks, site clearing equipment, fruit hauling trucks, and other equipment shall be turned off when not in use to limit noise disturbance from these activities on wildlife.

Environmental Health

24. A spill kit approved by the Washington State Department of Ecology shall be stored in each Orchard Area.
25. Spill collection facilities shall be used at spray fill stations and the fuel station.
26. All chemical inventories shall be listed and stored in accordance with the Washington State Department of Ecology and Washington State Department of Labor and Industries.
27. Rock crushing can only occur during 7:00 a.m. to 5:30 p.m. Monday – Saturday and shall be in accordance with all state and federal regulations.
28. No blasting for rock excavation is permitted.

Light and Glare

29. All lighting shall be directed away from areas outside of the Orchard Areas.

Recreation

30. The portion of the existing single-double trail that would be within Orchard Area #1 shall be relocated as shown on see *Figure 1 - Proposed orchard development site plan, revised May 2020*.
31. Signage along the trail shall be provided to alert trail users during periods of rock crushing.

Historic and Cultural Preservation

32. An inadvertent discovery plan shall be established. In the event that any ground disturbing activities result in the discovery of archaeological resources, work shall be halted in the immediate area and contact shall be made with County officials, the Washington State Department of Archaeology and Historic Preservation, and appropriate tribal representatives. Work shall remain halted until further investigation and appropriate consultations have concluded.
33. If human remains are discovered, work shall be immediately halted in the area, the discovery covered and secured against further disturbance, and contact shall be made with law enforcement personnel.

Transportation

34. Access to the proposed orchard is via a public road (Upper Wheeler Road), which is an unmaintained public road. The applicant's proposed realignment and use of the road shall be reviewed, approved, and permitted by the Chelan County Department of Public Works and a franchise obtained from the Chelan County Board of County Commissioners prior to any work being conducted in the existing or realigned road right-of-way.

35. The applicant shall provide carpool van(s) as necessary for employees to reduce the number of trips to the proposed orchard daily.

Public Services

36. Access control and a gate, as acceptable to the Chelan County Fire Department, will be provided to the Orchard Area #1 reservoir so emergency service providers have access to the reservoir in the event of a fire.

Utilities

37. All utilities, including but not limited to irrigation pipeline and electrical lines, shall be located within Chelan County right-of-way; provided, however, utilities may also be located in the segment between depicted Point A and Point B and the segment between depicted Point D and Point F of that certain 20' utility and irrigation easement identified on record of survey recorded on November 2, 2016, with the Chelan County Auditor as AFN 2447133, so long as any disturbance due to the placement of utilities is fully restored consistent with surrounding natural conditions. Existing portions of Upper Wheeler Road (that lie outside of the existing easement) on Section 16, once constructed within the existing easement, shall be restored with native grasses, forbs, and trees.
38. Use of Upper Wheeler Road for utilities shall be reviewed, approved, and permitted by the Chelan County Department of Public Works and a franchise obtained from the Chelan County Board of County Commissioners prior to any work being conducted in the existing road right-of-way.

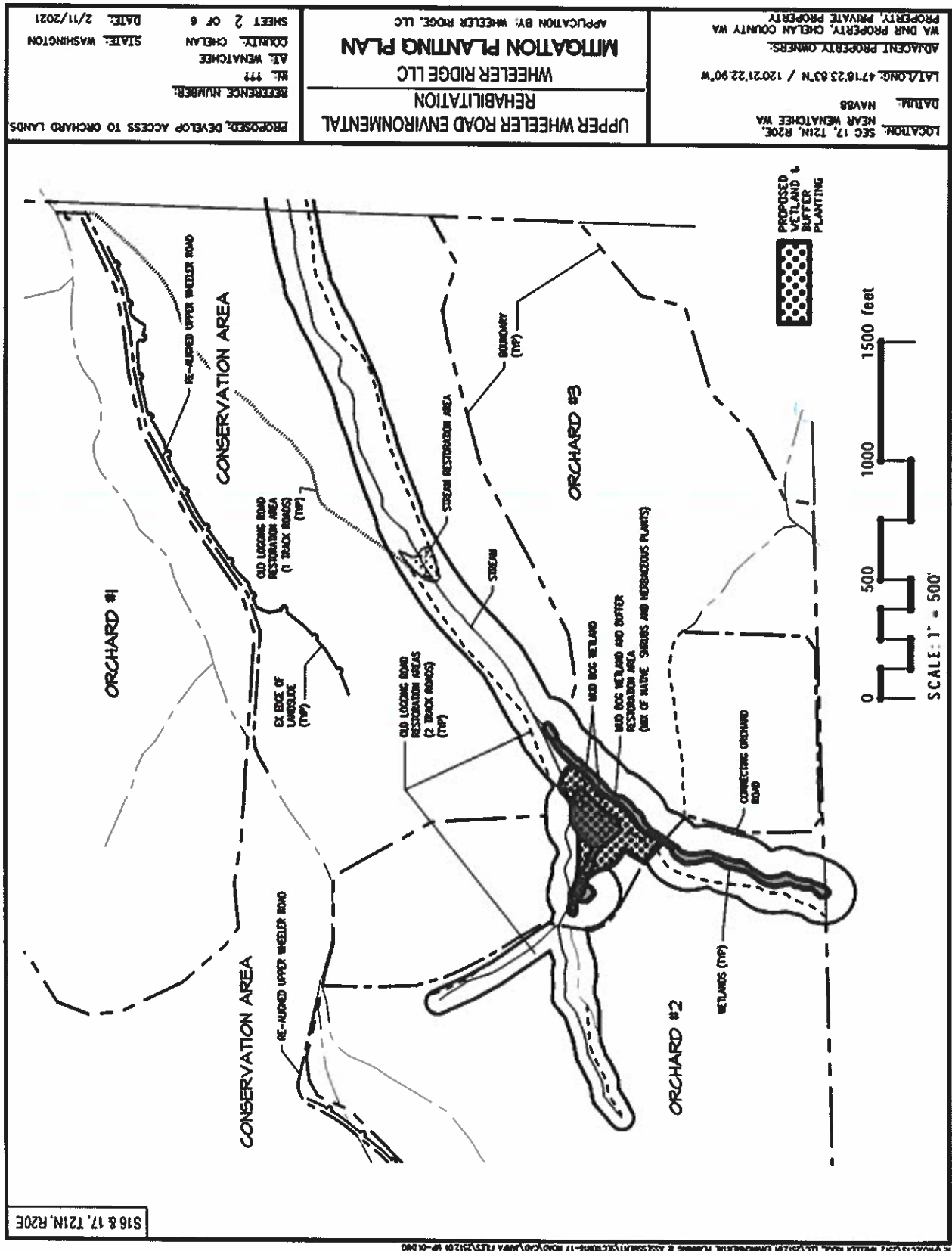
COMMENT PERIOD: This final mitigated determination of non-significance is issued under WAC 197-11-350. A previous 14-day public comment period has been completed. There is no comment period on this final mitigated determination of non-significance.

APPEALS: You may appeal this determination in accordance with CCC 13.04.180, CCC 13.04.200, CCC 14.12.030, WAC 197-11-680, and other applicable SEPA statutes and regulations by submitting an appeal with the required fee to Chelan County Natural Resources Department, 411 Washington Street, Suite 201, Wenatchee, WA 98801, by no later than 5:00 p.m., January 13, 2021.

Responsible Official: Mike Kaputa
Position/Title: Director, Chelan County Natural Resources Department
Phone: (509) 670-6935
Address: 411 Washington Street, Suite 201, Wenatchee, WA 98801
Signature: Michael Kaputa (on file) **Date:** December 30, 2020

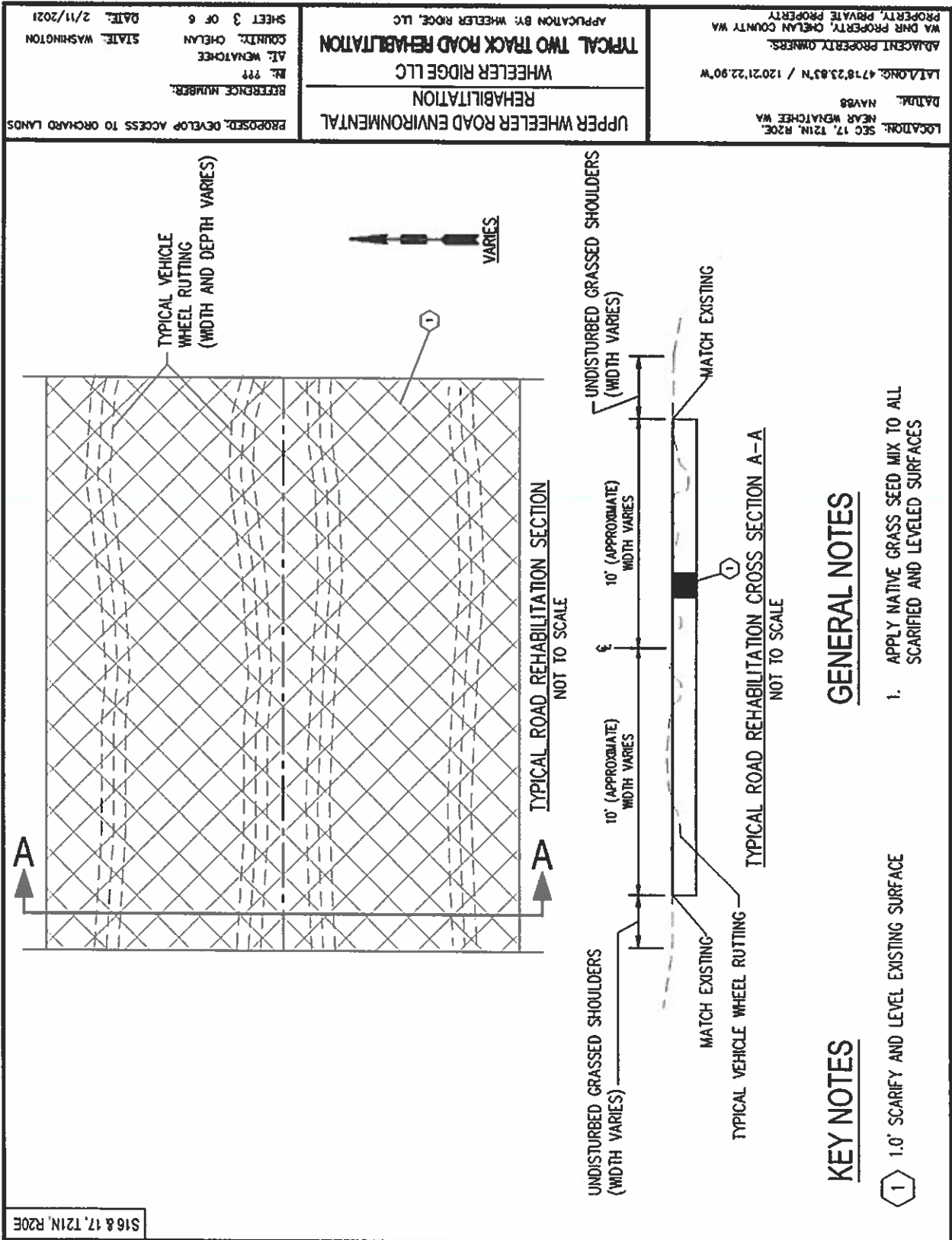
Appendix III. Planting Plan

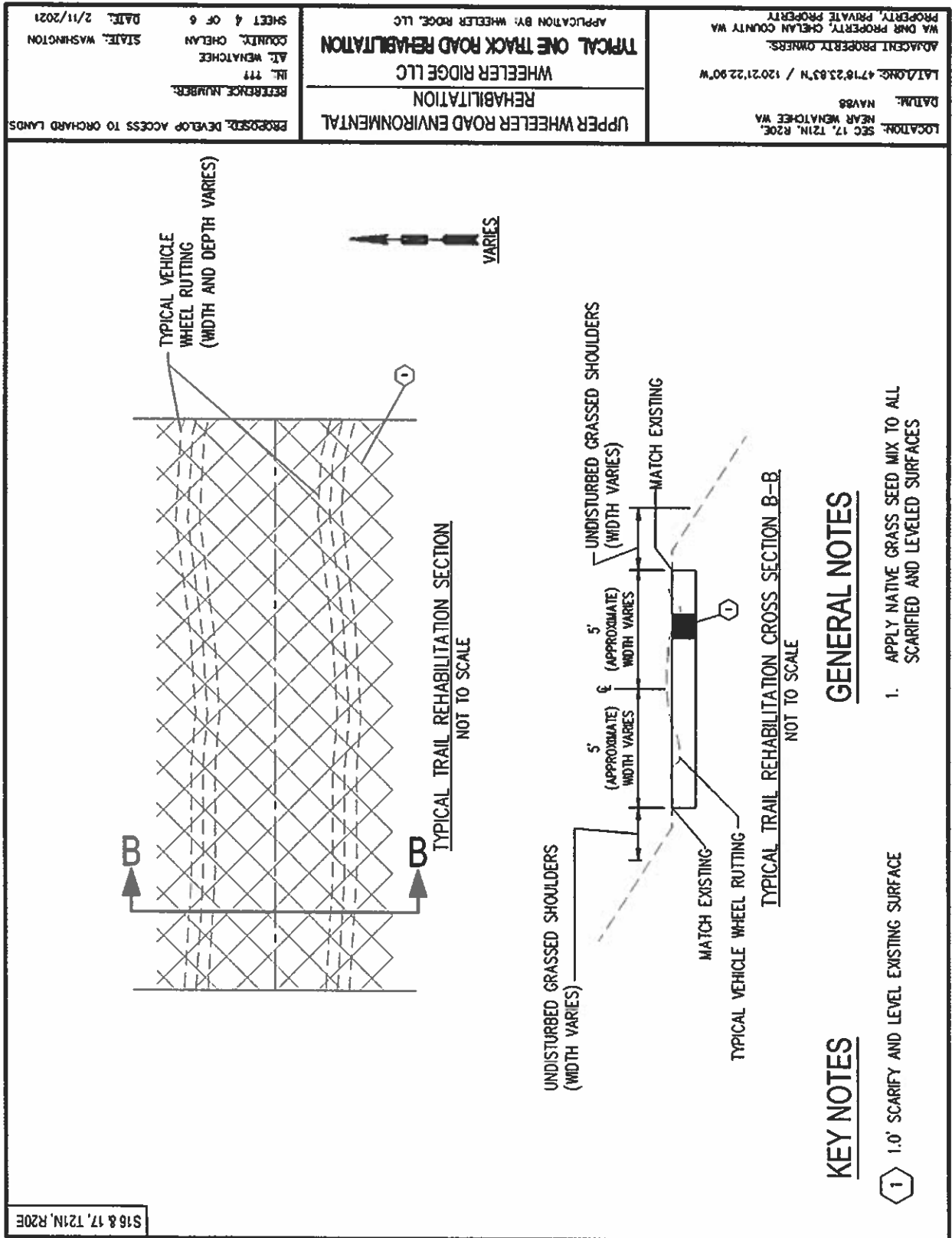
FILED 10, 2021 9:32 AM - LAW OFFICES
IN PROJECTS, 2512 WHEELER ROAD, WILMINGTON, DE 19806
10 PROJECTS, 2512 WHEELER ROAD, WILMINGTON, DE 19806



<p>PROPOSED DEVELOP ACCESS TO ORCHARD LANDS</p> <p>REFERENCE NUMBER: 177</p> <p>AL: WENATCHEE</p> <p>COUNTY: CHELAN</p> <p>SHEET 2 OF 6</p> <p>DATE: 2/11/2021</p> <p>STATE: WASHINGTON</p>	<p>UPPER WHEELER ROAD ENVIRONMENTAL REHABILITATION</p> <p>WHEELER RIDGE LLC</p> <p>MITIGATION PLANTING PLAN</p> <p>APPLICATION BY: WHEELER RIDGE, LLC</p>	<p>LOCATION: SEC 17, T21N, R20E, NEAR WENATCHEE WA</p> <p>DATUM: NAVD83</p> <p>ADJACENT PROPERTY OWNERS: WA DNR PROPERTY, CHELAN COUNTY WA</p> <p>PROPERTY, PRIVATE PROPERTY</p> <p>LAT/LONG: 47°18'23.83"N / 120°21'22.90"W</p>
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FILE NO. 2021-02-21-0000 - Final Program
PROJECT/2021 WHEELER RIDGE, LLC/2021 ENVIRONMENTAL PLANNING & ASSESSMENT/SECTION-17 ROAD/CHELAN AREA/2021/2021 UP-01-DWG





17010105751212 WHEELER RIDGE, LLC/2512101 ENVIRONMENTAL PLANNING & ASSOCIATES/SECTION 17 ROAD/CAD/101 WENATCHEE RILEY/2512101 XS-01200

S16 & 17, T21N, R20E

14th May 2021 9:30:27am - User: jayaraman
H:\PROJECTS\2512 WESTERN BRIDGE, LLC\2512101 ENVIRONMENTAL PLUMBING & ASSESSMENT\SECTION-17 ROAD\CAD\BMAP R375\2512101 WP-010.DWG

[illegible]

Appendix IV. Orchard Fence Details



UNOFFICIAL COPY

Permit No:

19 0169

CHELAN COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT
 316 WASHINGTON STREET, SUITE 301, WENATCHEE, WA 98801
 TELEPHONE: (509) 667-6225 FAX: (509) 667-6475

COMMERCIAL BUILDING PERMIT APPLICATION
 COMMERCIAL BUILDINGS/STRUCTURES

Parcel Number (APN): 21-20-17-000-000 Lot Size: 640.00 (Acres)
 Parcel Address: 2386 Upper Wheeler Road City/Zip: Wenatchee, WA
 Abbreviated Legal Description: T21N R 20 EWM S17
 Property Owner(s): Wheeler Ridge, LLC
 Mailing Address: 4597 Stemilt Hill Road
 City/State/Zip: Wenatchee, WA 98801 Phone: (509) 862-3613
 E-mail: ben.alworth@stemilt.com ☒ Copy of Recorded Deed is required as an attachment.

Applicant: Ben Alworth Company Name: Kyle Mathison Orchards
 Mailing Address: 4597 Stemilt Hill Road
 City/State/Zip: Wenatchee, WA 98801 Phone: (509) 862-3613
 E-mail: ben.alworth@stemilt.com

Contractor's Name: Property Owner
 Contractor's License Number: _____
 Mailing Address: _____
 City/State/Zip: _____ Phone: _____
 E-mail: _____

Application For: ☒ New ☐ Remodel ☐ Addition ☐ Commercial Building ☐ Multi-Family Building (3 Units or More)
☐ Fire Repair/Replacement of: _____ Destruction Date: _____
☐ Tenant Improvement / Interior Remodel: _____
☐ Change of use/Proposed Occupancy: _____
 If addition to building is proposed, please identify existing footprint and square footage of structure(s):

☒ Other: Fence
 Detailed Description of Proposed Use for the Structure:
 8' Deer Fence with 4-5" treated wood posts spaced 20' on center around the orchard area as noted on the attached map.

U FOR OFFICIAL USE ONLY U

Received By & Date: BH 3/26/19	Zoning Approval & Date: BH 4/8/19	Building/Fire Approval & Date: BP 4/5/19	Intake Fees Paid: \$1,774.11 Final Fees Paid:
UGA: N/A	Zoning: RR20	Snow Load: 90 lb	FP / FW:

Revised 20MAR15

Complete applications will be accepted Monday-Thursday 8am to 4pm & Friday 8am to 11am

Page 1 of 7

IBC Building Construction Type:

☐ Type IA ☐ Type IIA ☐ Type IIIA ☐ Type IV ☐ Type VA
☐ Type IB ☐ Type IIB ☐ Type IIIB ☐ Type VB

IBC Sprinkler Substitutions (If applicable, please specify all that apply):

☐ Area Increase ☐ Story Increase ☐ One-Hour Construction
☐ Unlimited Areas ☐ Height Increase ☐ Other: _____

Structure / Development Details: Dimensions of Building Footprint: _____ (ft.)

Building Height: _____ (ft.) Number of Stories: _____

☐ Label Existing/Finished Grade on all 4 elevation views of Building Plans.

Floor Area(s)—check all that apply and indicate the area in Square Feet:

☐ Basement: _____ ☐ Main/1st Floor: _____ ☐ 2nd Floor: _____ ☐ 3rd Floor: _____ ☐ 4th Floor: _____
☐ Deck: _____ ☐ Covered Porches/Patios: _____ ☐ Mezzanine: _____ ☐ Storage: _____
☒ Other: 25,000 Lineal Feet of 8' High Deer Fence Area: _____ (sq. ft.)
☐ Retaining Wall(s): Length: _____ (ft.) Height: _____ (ft.)

For existing structure(s), describe existing use and occupancy:

Please provide the following details (indicate retail/office areas in square feet):

Existing Bathrooms: _____ New Proposed Bathrooms: _____
 Existing Retail Space: _____ New Proposed Retail Space: _____
 Existing Office Space: _____ New Proposed Office Space: _____
 No. of Existing Employees: _____ No. of Proposed Employees: _____

Will New Proposal Affect Existing Parking or Access? ☐ Yes ☐ No

No. of Existing Off-Street Parking Spaces: _____ No. of Proposed Off-Street Parking Spaces: _____

New/Change Mechanical? ☐ Yes ☐ No

New Landscaping Proposed? ☐ Yes ☐ No ☐ Landscaping Plan attached, if applicable.

Is this building for Restaurant Use: ☐ No ☐ Yes, please indicate the number of seats in the establishment.

Existing Number of Seating: _____ Proposed Number of Seating: _____

Impervious Surface (IS) Information in Square Feet:

Refer to Chelan County Code Section 13.16.020 (16) for the definition of "Impervious Surface."

Existing IS (Include existing roof, driveway, etc.): 0 New IS (Include new roof, driveway, etc.): 0

Total Impervious Surface (Existing Impervious Surface plus New Impervious Surface): 0 (sq. ft.)

Total Square Footage of All Commercial Buildings (structures only) on Property: 0 (sq. ft.)

Sanitation Disposal:

☒ N/A ☐ Septic Permit #: _____ ☐ Sewer District: _____

Water Source:

☒ N/A ☐ Single Private Well ☐ Shared Private Well ☐ Public Water Supplier: _____

NOTE: Prior to permit issuance a Letter of Availability is required from the Sewer District or Public Water Supplier. Prior to Certificate of Occupancy a letter verifying Sewer/Water connection is required and a final Septic as-built/inspection must be approved by the Chelan-Douglas Health District.

Please Complete the Following:

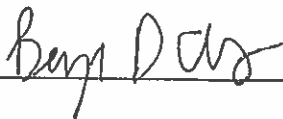
1.	What is the current use of the property? <u>Forested Area</u>
2.	List all existing structures on the property, the year constructed, and the Building Permit Number (if applicable): <u>N/A</u> <input type="checkbox"/> <i>Label and Identify on site plan.</i>
3.	Please identify legal access to the subject property and list Auditor's File # (AFN) if applicable: <u>AFN: 682477 and Chelan County Road</u>
4.	List and attach all Easements, Deed Restrictions, or other Encumbrances restricting the use of the property. (Refer to your subdivision, deed and/or Title Report) List by auditor's file number (AFN) and identify easement type: <u>Quitclaim deed: 164435</u> <input type="checkbox"/> <i>Label and Identify on site plan.</i>
5.	*Is the property within 200 feet of a river, stream, wetland, drainage way, other water body? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, If yes please identify: <u>One perennial stream on the property, all fencing will be placed outside of the buffer.</u>
6.	*Are there any geologically hazardous areas on property or within 250 feet? For example: avalanche areas, landslide areas, areas of soil erosion, or areas of historic slope failure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, (Circle applicable)
7.	Please list any other applicable applications or approvals (file numbers) from Federal, State or Local Agencies for any structures, construction, or other activities necessary for approval of this building permit application: <u>SEPA 2018-0326</u>
*May involve height restrictions, a wetland delineation, a geologic site assessment, and additional setback requirements. Inquire with Chelan County Department of Community Development.	

If applicable ~~Required~~ by RCW 19.27.095

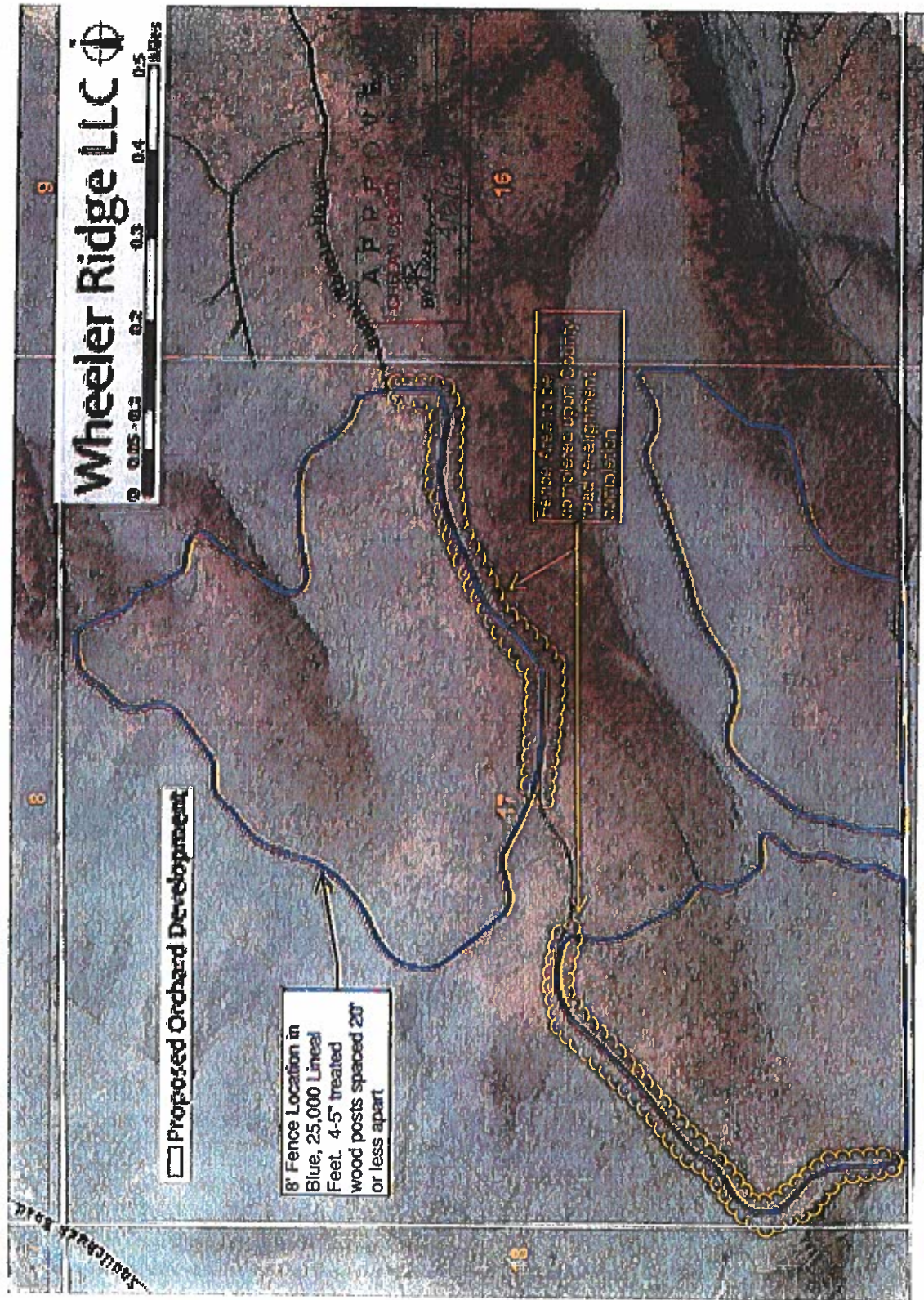
Lending Agency Name: _____ Phone: _____
 Address: _____
 Contractor's Bonding Firm: _____ Phone: _____
 Address: _____

I (We) certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true, correct and complete to the best of my (our) knowledge. I (We) further certify (or declare) that all Easements, Deed Restrictions, other encumbrances, and/or issues restricting or affecting the use or condition of the property have been accurately disclosed to the best of my (our) knowledge and are shown on the site plan submitted with this application. I (We) understand that encroachment and/or building into easements, deed restrictions or other encumbrances are my (our) responsibility and not Chelan County's. I (We) further affirm that by my (our) signature below that I (we) have obtained legal permission to build within or encumber all easements on this property. Owner hereby releases, discharges, indemnifies and holds harmless the County from and against any and all claims, demands, causes of action, suits or judgments (including costs and expenses incurred in connection therewith) by both the easement holder or encumbered person(s) arising out of or in connection with the County's issuance of a building permit. I (We) certify (or declare) that I (We) am the owner of the property or have been given authorization from the property owner to obtain this permit. I (We) further agree to comply with the International Building, Residential, Fire, Mechanical, Plumbing, and all applicable Chelan County/City Codes. Applicant/Owner(s) assumes all risk and liability for any claims and liabilities.

Owner/Applicant Signature: _____

Date: 3/25/2019

OVERLAP COPY



190169

Effective Date: November 21, 2014

PROJECT REVIEW SHEET (FULL)

PROPERTY OWNER:	WHEELER RIDGE, LLC		BP FILE#:	190169
SITE ADDRESS:	NNA SQUILCHUCK ROAD		CITY/ZIP:	WENATCHEE / 98801
PARCEL #:	21-20-17-000-000	ZONING	RR20	PROJECT:
LEGAL DESC.:	METES & BOUNDS		LEGAL LOT VIA:	Greater than 20 acres

UGA Name:	N	Aquifer Recharge Req'd:	N	SEPA Req'd:	N	CV#:	
Habitat: Elk	Y	Traffic Impact Study:	N	Property Violation:	N	AFN:	
Within AOD:	N	Enhanced Septic:	N	Legal Access:	N	#:	9461
Within Floodplain:	N	Parking Req'd:	N	Driveway Permit:	Y		
Within Floodway:	N	Commercial Project:	N	Land Use Permit:	N		
Wetland Delineation:	N	Storm Water Drainage:	N	Easements:	Y		
Geo Assess. Req'd:	Y	Landscaping Req'd:	N	Within 200' of shoreline of the state or assoc. floodplain:	Y/N		

WATERBODIES / STREAMS

Shoreline Body:	N/A	Designation:	N/A	OHWM Setback:	N/A	Ft.	Height:	N/A	Ft.
Stream Name:	N/A	Stream Type:	N/A	Setback:	N/A	Ft.			
Stream Name:	N/A	Stream Type:	N/A	Setback:	N/A	Ft.			
Wetland Category:	N/A	Setback:	N/A	Ft.					

RIPARIAN / COMMONLINE / SHORELINE

Riparian Buffer Reduction Calcs (applicable to shorelines and all water bodies): Only applies to lots created before June 1999!

(a) Max Lot Depth	N/A	(c) Lot Depth Total ÷ 2 = (d)	N/A	
+(b) Min Lot Depth	N/A	(d) Lot Depth Avg. x 25% =	N/A	Ft. Setback from OHWM*
=(c) Lot Depth Total	N/A	*not to be less than 25' or less than the Common Line per 11.78.140(1)		
Vegetation Plan or Mitigation Req'd:	Y/N			

Common Line Calcs (applicable to shorelines only)

Adjacent SFR Setbacks:	Lot 1 (a)	N/A	Total (c) + 2 =	N/A	ft. setback from OHWM (not to be less than 25')
	Lot 2 (b) +	N/A			
	Total (c) =	N/A			
SMP Section 16 Compliance Memo created:	Y/N				

Shoreline Riparian/Common Line Setback shall be no less than:	N/A	Ft. from OHWM
Stream(s) Riparian Setback shall be no less than:	N/A	Ft. from OHWM
Wetland Buffer shall be no less than:	N/A	Ft. from OHWM
G Line/K Line verification	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A (Applies only to shoreline of Columbia River)	

SETBACK REQUIREMENTS

PRIMITIVE: UPPER WHEELER ROAD WIDTH (ft) ROW: ?

YARD	ROAD NAME/EASEMENT/OTHER	REQUIRED	PROPOSED
*FRONT:	UPPER WHEELER ROAD (NORTH)	0' setback for fence	0' PL
*SIDE:	(EAST)	0' setback for fence	5'+ PL
*SIDE:	(WEST)	0' setback for fence	5'+ PL
*REAR:	(SOUTH)	0' setback for fence	0' PL
*Indicate N,S,E,W	ZONING HEIGHT:	35'	8'
	SHORELINE HEIGHT:	N/A	N/A

PARCEL SIZE:	640 acres X 43,560 =	27,878,400 sq.ft.	Existing Lot Coverage:	0 sq ft
LEGAL COVERAGE ALLOWED:	35% =	9,757,440 sq.ft.	Proposed Lot Coverage:	N/A
			Total Lot Coverage:	0 sq ft

Effective Date: November 21, 2014

PROJECT REVIEW SHEET (FULL)

- *Project Description: New 8' tall deer fence.
- Use permitted pursuant to Chelan County Code, Section 11.04.020.
- Zoning Height Cales: 8' tall fence
- Deed AFN: 2411047
- Easement AFN & description: Ingress, Egress, & Utilities Easement, AFN: 2121406.
- Previous Building Permits & Status:
- Applicant indicates 0 sq ft of new impervious surface. Pursuant to CCC, Chapter 13.16 a stormwater drainage plan is not required.
 - o Documentation provided in owner packet: ☐ Yes ☒ N/A

Approved by: Breanne Hensley

Date: 4/3/2019



Chelan County
Department of Community Development
 316 WASHINGTON ST. SUITE 301
 Wenatchee, WA 98801
 (509) 667-6225

PERMIT

BP 190169
New Commercial Structure
ISSUED: 4/8/2019
SITE ADDRESS: 2386 UPPER WHEELER ROAD, WENATCHEE
EXPIRES: 10/8/2020
PROJECT DESCRIPTION: NEW 8' TALL DEER FENCE
PARCEL NUMBER: 212017000000
LEGAL DESCRIPTION: T 21N R 20EWM S 17 ALL 640.0000 ACRES
APPLICANT: WHEELER RIDGE LLC
 4597 STEMILT HILL RD
 WENATCHEE, WA 98801

OWNER: WHEELER RIDGE LLC
 4597 STEMILT HILL RD
 WENATCHEE, WA 98801

FEES:	Paid	Due	DETAILS:	
State Building Code Surcharge - Commercial	\$25.00	\$0.00	Domestic Water Supplier:	N/A
GIS Permit Tracking/Archiving/Digitizing Plan Surcharge	\$28.00	\$0.00	Sewer/Septic Permit Number:	N/A
Building Plan Review	\$567.71	\$0.00	Water Source:	N/A
Building Permit	\$873.40	\$0.00		
Zoning Review - Commercial Industrial	\$280.00	\$0.00		
Totals :	\$1,774.11	\$0.00		

VALUATIONS:

Commercial Construction Value	50000.00	\$50,000.00
Total:		\$50,000.00

REQUIRED INSPECTIONS

Setbacks	Other
Footings	Compliance with Conditions of Approval
Rough Framing	Final

PERMIT CONDITIONS OF APPROVAL

1. Must conform to adopted city and county codes. The site plan for this building permit is approved as submitted. Any variations subsequently changed by the applicant/agent/contractor are not authorized until approval has been granted by the Chelan County Department of Community Development.



Chelan County
Department of Community Development
 316 WASHINGTON ST. SUITE 301
 Wenatchee, WA 98801
 (509) 667-6225

Permit BP 190169
New Commercial Structure

2. Pursuant to the International Residential Code, Section 109.3 or the International Building Code, Section 110.5: it shall be the duty of the permit holder or their agent to notify the building official that such work is ready for inspection. It shall be the duty of the person requesting any inspection required by this code to provide access to and means for inspection of such work. The building official upon notification shall make the requested inspections. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official. Notice: Lending institutions may require a certificate of occupancy and/or a final inspection.
3. Responsible for obtaining all applicable permits from local, state, and federal agencies.
4. At footing and setback inspection, all property corners and easements shall be clearly marked.
5. Per 11.88.170(11)(B) Accessory structures shall not be used as a dwelling unit, defined by the IRC, unless allowed under this title.
6. Driveway must comply with all Public Works requirements as cited on permit # '9461'. Must contact Public Works for final driveway approval.
7. Prior to final inspection, a permit is required for the annual fire and life safety occupancy permit and annually thereafter per Title 3 of the Chelan County Code.
8. Any building or structure, or any gas, mechanical or plumbing system authorized by this permit shall not be used to support, directly or indirectly, cannabis activities regulated or prohibited by Chelan County Code Chapter 11.100.
9. This permit is subject to all easements both public and private and it is the applicant/owner's responsibility to not encroach and/or violate. Applicant/owner assumes all risk/liability for all incomplete and/or incorrect information including, but not limited to encroachments, encumbrances, easements, etc.; and, any claims and liabilities that result there from in any manner as a result of this permit. Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of any easements. This permit condition shall run with the land and shall be binding upon all heirs, assigns, and successors in interest.
10. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions or reservations affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant/owner assumes all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations.
11. All building permits shall comply with Sections 105.4 Validity of permit, and 105.5 Expiration, of the 2015 International Building Code (IBC) and 2015 International Residential Code (IRC). Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated. The fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work. The permit holder or his agent shall make or cause to be made any necessary inspections as listed in IRC Sections R109.1 through R109.1.6.1 and IBC Sections [A]110.3.1 through [A]110.3.10.1. It shall be the duty of the permit holder or their agent to notify the building official that such work is ready for inspection. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy except for permits listed in Section R105.2.
12. The Administrator may suspend/revoke or deny any permit issued by the department per Chapter 16.14, Title 16, Enforcements and Violations, Chelan County Code.

I hereby certify that the above information is correct and that the construction on, and the occupancy and use of, the above described property will be in accordance with the laws, rules and regulations of the State of Washington and of Chelan County.

Owner/Applicant:

Bern Darg

Date: *4/8/19*

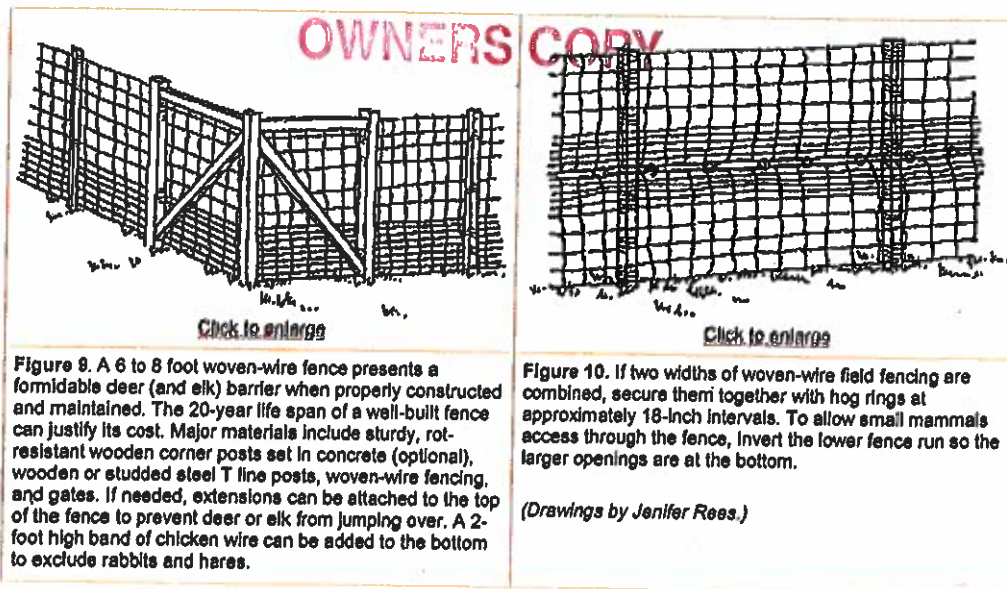
Permit Issued By:

Lisa Ogle

Date: *4-8-19*

Authorized by Community Development

Information from WDFW Webpage, <https://wdfw.wa.gov/living/deer.html>



Fencing facts:

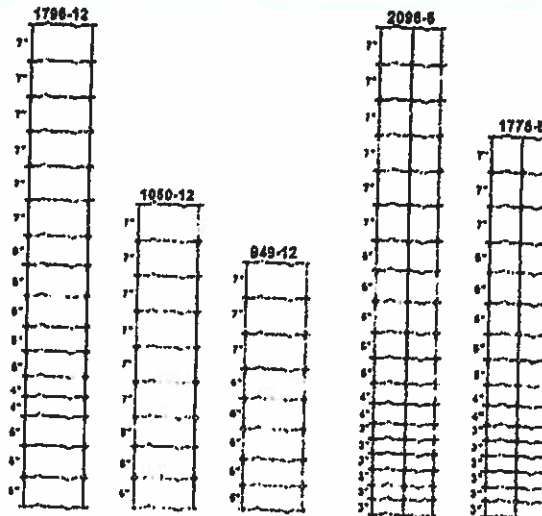
- It is easier to build a fence while the land is vacant; when possible, fence an area before you plant an orchard or a garden.
- Enclose the entire area needing protection (including driveways). Deer will wander the perimeter of the fenced area until they find an opening.
- Keep fencing material flush to the ground (including under gates). Fill dips with gravel, rocks, logs, or other suitable material. Incredibly, deer will try to either crawl under or squeeze through a fence before jumping over it.
- Deer can be excluded from areas with a properly constructed and maintained 6 to 8-foot high fence (Figs. 9 and 10). The higher fence will be needed in an area with many deer and a low supply of wild food.
- A board fence or hedge that prevents deer from seeing a safe landing zone on the other side need be only 5 1/2 feet high.
- The larger the area being enclosed, the more travel patterns will be disrupted, and the more pressure the fence will receive.
- Large areas with high deer pressure should be fenced with woven-wire deer fencing or a high-tensile electric wire. Heavy-duty black polypropylene deer fencing is commercially available and useful where other fencing is visually obtrusive.
- Information on corner bracing, stretching wire, and other fence-building details can be obtained from fencing material suppliers.

Fixed-Knot Game Fence Product List

Fence Specifications

→ 33116	20	96"	6"	330'	2096-6-330	409 lbs.
33115	17	96"	6"	330'	1796-6-330	367 lbs.
33113	17	75"	6"	330'	1775-6-330	337 lbs.
33117	13	48"	6"	330'	1348-6-330	243 lbs.
33111	10	60"	6"	330'	1060-6-330	217 lbs.
33110	9	49"	6"	330'	949-6-330	188 lbs.
33216	20	96"	12"	330'	2096-12-330	292 lbs.
33215	17	96"	12"	330'	1796-12-330	258 lbs.
33213	17	75"	12"	330'	1775-12-330	243 lbs.
33312	12	48"	12"	660'	1248-12-660	333 lbs.
33311	10	60"	12"	660'	1060-12-660	305 lbs.
33310	9	49"	12"	660'	949-12-660	266 lbs.

The spacing of the Line Wires will vary according to the end use. Generally (but not always) the spacing is narrower at the bottom, and increases in size towards the top of the fence. This is designed to keep smaller animals in or out of the fenced area. The Stay Wires (vertical wires) are most commonly spaced 6" or 12". Here are some common examples of the spacing →



Wire Specifications

Line Wire	12 1/2 GA	175K	1360 lbs.	.85 OZ Zinc/sqft
Stay Wire	12 1/2 GA	125K	960 lbs.	.85 OZ Zinc/sqft
Knot Wire	13 GA	60K	350 lbs.	.85 OZ Zinc/sqft

190709

4-5" 12' posts spaced 20' less

TIMBER SPECIALTIES MATERIAL SAFETY DATA SHEET

K-33® CCA Treated Wood

SECTION I

MSDS NUMBER:	244-Tim
MSDS CODE:	Tim
SYNONYMS:	N/A
MANUFACTURED BY:	Licenses/Customers of Timber Specialties Co.
DIVISION:	Wood Preserving Division
REGISTRATION NUMBER:	N/A
EMERGENCY PHONE:	(805) 854-2244
OTHER CALLS:	(805) 854-2244
ADDRESS:	35 Crawford Crescent, PO Box 820, Campbellville, Ontario L0P 1B0
MSDS PREPARED BY:	Teri Muchow
DATE PREPARED:	June 18, 1990
DATE LAST REVISED:	August 19, 2014 (replaces April 11, 2013)

SECTION II - HAZARDOUS INGREDIENTS/IDENTITY INFORMATION

TRADE NAME: K-33® CCA - Treated Wood INGREDIENT NAME	CAS	OSHA PEL	ACGIH TLV	OTHER	Percent by Weight
Arsenic Pentoxide	1303-28-2	0.01 mg/M ³ as As	0.01 mg/M ³ as As	N/A	See chart below.
Copper Oxide	1317-39-1	1.0 mg/M ³ as Cu	1.0 mg/M ³ as Cu	N/A	See chart below.
Trivalent Chromium	1308-38-9	1.0 mg/M ³ as Cr	0.5 mg/M ³ as Cr	N/A	See chart below.
Wood Dust (if machined)	N/A	5 mg/M ³	5 mg/M ³	N/A	See chart below.

PERCENTAGE OF HAZARDOUS INGREDIENTS
COMPONENT %

	.25 pcf	.4 pcf	.6 pcf	1.0 pcf	2.6 pcf
Arsenic Pentoxide	.3 %	.4 %	.6 %	1 %	2.6 %
Copper Oxide	.15 %	.2 %	.3 %	.6 %	1.3 %
Chromium Trioxide	.4 %	.6 %	.9 %	1.4 %	3.3 %
Wood Dust*	84.28%	83.98%	83.47%	82.45%	78.88%

*This represents the maximum amount of wood dust that could be generated if the wood was completely machined.

• ADDITIONAL INFORMATION •

States and territories operating their own OSHA programs may have more protective PEL levels. Contact your state agency to determine the status of the PELs in your state.

Based on the applicable retention and a wood density of 32 pcf, the above values may vary due to the variability of treatment and the natural variability of wood.



CHELAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
316 WASHINGTON STREET, SUITE 301, WENATCHEE, WA 98801
TELEPHONE: (509) 667-6225 FAX: (509) 667-6475

April 14, 2020

Mr. Ben Alworth
Wheeler Ridge, LLC
Ben.Alworth@Stemilt.com
(sent via email)

RE: Wheeler Ridge, LLC Fence Permit BP 190169

Dear Mr. Alworth,

I am in receipt of your request dated April 10, 2020 to lift the Stop Work Order issued on February 18, 2020 to allow limited fence construction to continue in accordance with modified conditions.

Pursuant to Attachment 2 included with your request, you have identified 2 sections of fence that are proposed to be allowed to be constructed prior to the completion of the SEPA review for the Wheeler Ridge Project:

Area 1. Northern Orchard, NW Ridgeline – The portion of the fence to be constructed extends from the existing trail at the North, runs South along the ridgeline and terminates as the fence angles East for a distance of ~2,750 LF.

Area 2. SE Orchard, SE Corner – The portion of the fence to be constructed extends from the existing private road at the South and follows NE to the Eastern property line for a distance of ~1,600 LF.

The portion of the Stop Work Order pertaining specifically to Area 1 and Area 2, identified above, and depicted in green on Attachment 2 is hereby lifted. Please note that this does not preclude the owner/applicant from being required to apply for, and comply with, other permitting requirements of local, state and federal agencies with jurisdiction.

Thank you,

A handwritten signature in black ink that reads "Deanna Walter".

Deanna Walter
Interim Director

Att: Attachment 2

ATTACHMENT 2 – Revised Fence Map

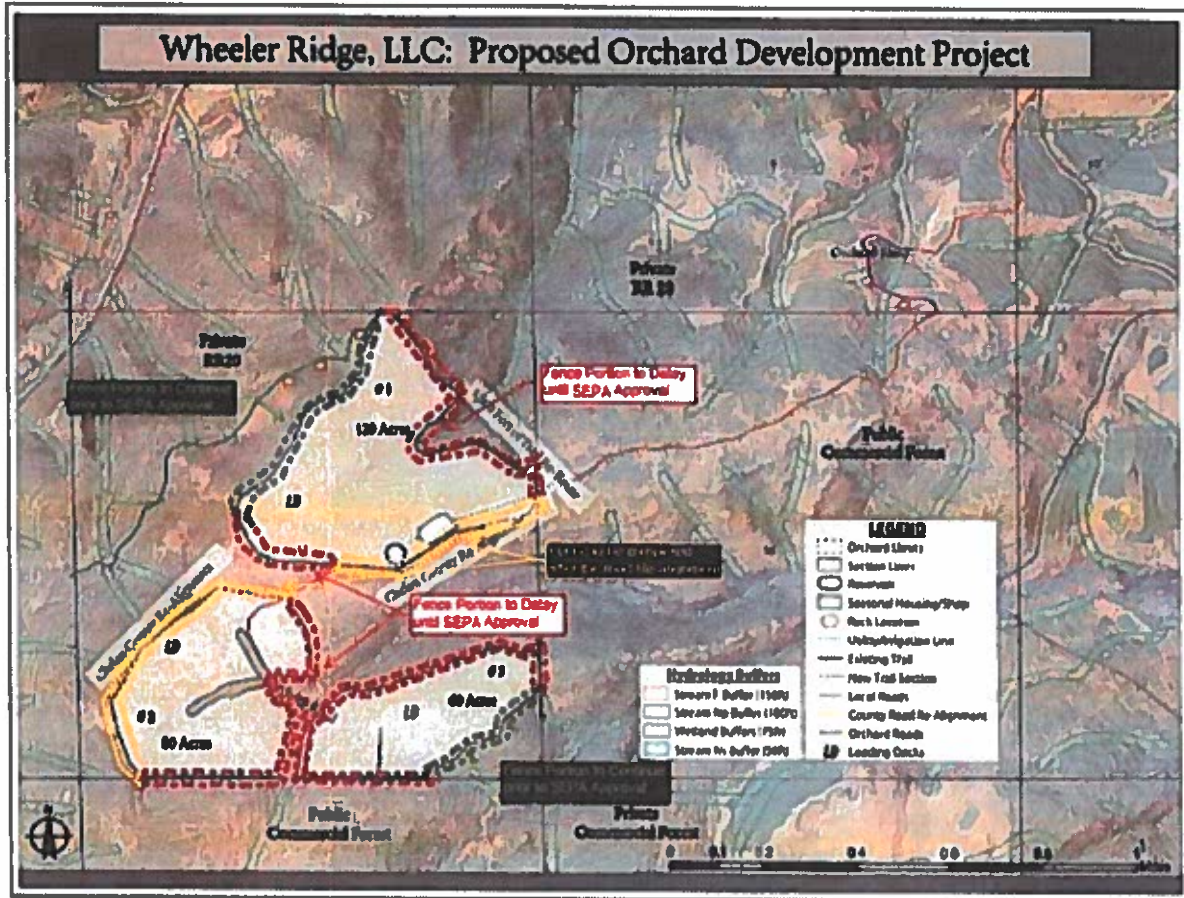


Figure 2 Proposed orchard development on Section 17, 16, & 9 Chelan County Washington

Wheeler Ridge, LLC letter to Chelan County Department of Community Development – Fence Permit BP 190169