

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUPA 2019-001

VAR 2019-004

Yakama Land Enterprise

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**RECEIVED**

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**JUN 10 2019**

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**CHELAN COUNTY  
COMMUNITY DEVELOPMENT**

FINDINGS OF FACT,

CONCLUSIONS OF LAW,

DECISION AND CONDITIONS

OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on June 5, 2018, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**FINDINGS OF FACT**

1. An application for a Conditional Use Permit Amendment and a variance has been requested to vary the required 200 ft. setback from the adjacent property per CCC Section 11.93.290(1) and to amend Condition of Approval #10 of CUP 2004-015 for the placement of a storage building. The amendment to CUP 2004-015 is for the construction of a 35 ft. x 120 ft. (4,200 sq. ft.) pole building for storage of vehicles and equipment used by the Yakama Nation Fisheries program. A variance is also proposed to reduce the required setback of 200 ft. from adjoining properties to 125 ft. to allow for the construction of the pole building.
2. The owner/applicant is Yakama Land Enterprise, PO Box 1158, Toppenish, WA 98948.
3. The agent is Grette Associates, LLC, Attn: Anne Hessburg, 15 S. Worthen St., Suite 101, Wenatchee, WA 98801
4. The subject site address is 7051 US 97, Peshastin, WA 98847.
5. The parcel number for the subject property is 24-18-29-420-100.
6. The subject site is outside of an Urban Growth Area.
7. The Comprehensive Plan designation and zoning designation for the subject site is Rural Residential/Resource 5 (RR5).
8. The property is currently used as an isolated small scale business for an aquaculture research facility by the Yakama Nation Fisheries Resource Management via approved CUP 2004-015 (Exhibit A).
9. The following are known permits on record with Chelan County Community Development:
  - 9.1 BP 000643—installation of a wood stove (issued August 28, 2000)
  - 9.2 AI 2004-002—Administrative Interpretation for Yakama Research Facility (denied August 3, 2004)

- 9.3 BP 040843—large fire place inserts (issued December 27, 2004)
- 9.4 BP 090444—commercial interior remodel (finaled November 23, 2010)
- 10. The property is generally flat with native vegetation. Existing structures on site include an office, garage, employee housing, and multiple outbuildings.
- 11. The property to the north of the subject property is zoned Rural Residential/Resource 5 (RR5).
- 12. The property to the south of the subject property is in residential use and is zoned Rural Residential/Resource 5 (RR5).
- 13. The property to the east of the subject property is Peshastin Creek and is zoned Rural Residential/Resource 5 (RR5).
- 14. The property to the west of the subject property is US Highway 97.
- 15. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped March 4, 2019. The proposed development does not require a vulnerability report, pursuant to Chelan County Code (CCC) Chapter 11.82.
- 16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property contains class II priority habitat for riparian zones.
- 17. According to the Natural Resources Stream Typing Maps, the Peshastin Creek riparian areas and buffers are identified within the subject property; therefore, provisions of CCC 11.78 Fish and Wildlife Priority Habitats apply.
- 18. The subject property is located adjacent to the Peshastin Creek, a Shoreline of Statewide Significance, with a rural shoreline designation.
- 19. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150800A of the FIRM maps, there is 100 and 500 year flood plain associated with Peshastin Creek east of and adjacent to the subject property. Therefore, the provisions of CCC, Chapter 11.84, Frequently Flooded Areas Overlay District and CCC, Chapter 3.20, Flood Hazard Development, do apply.
- 20. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area for a known earthquake fault line. Therefore, the provisions of CCC, Chapter 11.86 do apply to the project. A geological site assessment would be required with building permit submittal.
- 21. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
- 22. There are no known cultural resource sites on the subject property. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
- 23. The Applicant plans to begin construction after receiving approval of land use permit and building permit, approximately Spring/Summer 2019.
- 24. According to the site plan of record, dated March 4, 2019, the property is accessed from US Highway 97, a state right-of-way. DOT commercial access connection permit No. 43833 was issued for the property in September of 2004.

25. Domestic water is currently available through an on-site private well.
26. Chelan County PUD provides electrical services to the subject property.
27. Domestic wastewater is currently disposed of through an existing septic system and drainfield, permit No. 03-1AT4B-0187.
28. The applicant must comply with CCC, Chapter 7.35 Noise.
29. The maximum building height within the RR5 zone is 35 ft. The use of the property is not changing from the fisheries program. The surrounding properties are not being subjected to unknown impacts.
30. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on April 5, 2019 with comments due April 19, 2019. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:
  - 30.1 Chelan County Fire Marshal responded on April 24, 2019.
  - 30.2 Chelan County PUD responded on April 16, 2019.
  - 30.3 WA State Dept. of Transportation responded on April 5, 2019.
  - 30.4 Confederated Tribes of Colville responded on April 8, 2019.
31. The following agencies were notified but did not respond:
  - 31.1 Chelan County Building;
  - 31.2 Fire District No. 6
  - 31.3 WA Dept. of Archaeology and Historic Preservation
  - 31.4 Yakama Nation
  - 31.5 Chelan County Natural Resources
32. No public comments were received.
33. Pursuant to WAC 197-11-800(6)(a) of the State Environmental Policy Act (SEPA), the proposed action is categorically exempt from environmental review and a threshold determination.
34. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
35. The application materials were submitted on March 4, 2019.
36. A Determination of Completeness was issued on April 1, 2019.
37. The Notice of Application was provided on April 5, 2019.
38. The Notice of Public Hearing was provided on May 24, 2019.
39. The project is consistent with Chelan County Code (CCC) Section 11.93.040(1) in the following respects:
  - 39.1 The criteria for an isolated small scale business are addressed below.
  - 39.2 Based on review of the application materials submitted, the criteria for an isolated small scale business can be satisfied.

40. The project is consistent with Chelan County Code (CCC) Section 11.93.040(2) in the following respects:
- 40.1 The proposed development is located in the Rural Residential/Resource 5 (RR5) zoning district. The RR5 zoning district allows for isolated small scale businesses as a Conditional Use. Additionally, the proposed addition of the pole building accessory structure is a permitted use in said zoning district.
  - 40.2 Per the site plan of record, date stamped March 4, 2019, the proposed pole building would meet applicable zoning setbacks identified in CCC, Section 11.12.020. However, pursuant to CCC, Section 11.93.290(1), a 200 ft. setback is required to be maintained from all adjoining properties for new construction. A variance application was submitted with application to modify this requirement.
  - 40.3 The proposed structure would be located outside of the shoreline jurisdiction for Peshastin Creek.
  - 40.4 Based on the site plan of record, the proposal meets applicable RR5 zoning and critical areas regulations. The setback requirements for a Conditional Use Permit for an isolated small scale business have not been met. Therefore, a variance application was submitted to request a reduction in the required 200 ft. setback from adjoining properties.
41. The project is consistent with Chelan County Code (CCC) Section 11.93.040(3) in the following respects:
- 41.1 Pole buildings as an accessory use are a permitted use within the RR5 zoning district. The pole building would be compatible with the surrounding residential properties and the area.
  - 41.2 The structure would allow for equipment storage of vehicles and fish traps that are currently stored on the property; this would provide organization to the property as well as provide protection from the elements.
  - 41.3 The proposed pole building is a permitted use and would not change the use of the property. The property is and was used as an isolated small scale business for the Yakama Fisheries Program. The pole building would provide a covered storage space for the existing equipment currently stored on the property.
42. The project is consistent with Chelan County Code (CCC) Section 11.93.040(4) in the following respects:
- 42.1 The proposed pole building would be constructed in an area that is currently used to park vehicles and store fish traps. This area is devoid of vegetation and a minimal amount of excavation (14 cu. yds.) would be necessary.
  - 42.2 Although the property is within the shoreline jurisdiction of Peshastin Creek, the work would take place outside of the 200 ft. buffer.
  - 42.3 The property is not identified as a classified resource land per the Chelan County Comprehensive Plan.
  - 42.4 Locating the proposed pole building outside of required buffers would limit impacts to the shoreline and riparian areas.
43. The project is consistent with Chelan County Code (CCC) Section 11.93.040(5)(a) in the following respects:

- 43.1 Chelan County provided a Notice of Application to all providers. Comments are included in the file of record.
- 43.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
- 44. The project is consistent with Chelan County Code (CCC) Section 11.93.040(5)(b) in the following respects:
  - 44.1 The proposed development, as conditioned, would not result in county facilities reduced below adopted levels of service.
- 45. The project is consistent with Chelan County Code (CCC) Section 11.93.040(6) in the following respects:
  - 45.1 The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare.
- 46. The project is consistent with Chelan County Code (CCC) Section 11.93.040(7) in the following respects:
  - 46.1 Roads, ingress and egress: The subject property fronts and accesses off of US Hwy 97, a state right-of-way.
  - 46.2 Stormwater: Stormwater requirements, if applicable, would be addressed with commercial building permit review.
  - 46.3 Parking and Loading: The proposed development will result in the addition of on-site parking.
  - 46.4 Domestic and Irrigation Water: The proposal does not require domestic or irrigation water services.
  - 46.5 Sanitary Facilities: The proposal does not require sanitary systems.
  - 46.6 Power: Power is provided by Chelan County PUD.
  - 46.7 Fire Protection: Fire protection is provided by Chelan County Fire District No. 6.
  - 46.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 47. The project is consistent with Chelan County Code (CCC) Section 11.93.040(8) in the following respects:
  - 47.1 Noise and Vibration: Noise and vibration would be temporary during construction of the improvements. Construction noise is regulated by CCC, Section 11.88.190 and CCC, Chapter 7.35.
  - 47.2 Light and Glare: Lights appurtenant to the proposed development are regulated by CCC, Section 11.88.080.
  - 47.3 Heat, Steam, Odors, Smoke and Dust: The current and proposed development would not generate heat, steam or odors.
  - 47.4 Erosion: The subject property is located within a geologically hazardous area. Staff recommended as a condition of approval that a geological site assessment be submitted with commercial building permit application.

- 47.5 Water Quality: The proposed development, as conditioned, would not impact water quality.
- 47.6 Wastes and Physical Hazards: The proposal would not result in wastes or physical hazards.
- 47.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
- 47.8 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties could be avoided or mitigated as conditioned.
- 48. The project is consistent with Chelan County Code (CCC) Section 11.93.040(9) in the following respects:
  - 48.1 The proposed storage building as an accessory to the primary use of the subject property is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.
  - 48.2 The project is consistent with the Chelan County Comprehensive Plan.
- 49. The project is consistent with Chelan County Code (CCC) Section 11.93.290(1) in the following respects:
  - 49.1 As submitted, the proposed location of the pole building would not meet this requirement; a variance application was submitted to modify this setback requirement.
  - 49.2 Only with the granting of the proposed variance would this criterion be satisfied.
- 50. The project is consistent with Chelan County Code (CCC) Section 11.93.290(2) in the following respects:
  - 50.1 Per the application materials, the proposed pole building would be 4,200 sq. ft.
  - 50.2 As proposed, the pole building would not exceed 5,000 sq. ft.
- 51. The project is consistent with Chelan County Code (CCC) Section 11.93.290(3) in the following respects:
  - 51.1 As proposed, there would not be a retail component associated with the pole building.
  - 51.2 This provision would not apply.
- 52. The project is consistent with Chelan County Code (CCC) Section 11.93.290(4) in the following respects:
  - 52.1 The Hearing Examiner has the discretion and authority to require additional conditions, as necessary.
- 53. The project is consistent with Chelan County Code (CCC) Section 11.95.030(1)(a) in the following respects:
  - 53.1 The applicant is requesting to reduce the required 200 ft. setback from all adjoining properties as required per CCC Section 11.93.290(1).
  - 53.2 Accessory structures are a permitted use in the RR5 zoning district and are not uncommon in the surrounding area.

- 53.3 This variance would not constitute a special privilege as the surrounding properties have constructed accessory structures and is a permitted use within the RR5 zoning district.
- 54. The project is consistent with Chelan County Code (CCC) Section 11.95.030(1)(b) in the following respects:
  - 54.1 The subject property has an irregular, shallow shape and multiple restrictive setbacks. Majority of the property lies within the required 200 ft. setback per CCC Section 11.93.290(1). Additionally, there is the required 25 ft. front yard setback and the steep drop as the property slopes down from the highway. With these constraints, the buildable area would be a 345 sq. ft. irregularly shaped area with a maximum width of 10 ft.
  - 54.2 The plight of the applicant is in part due to the topography of the subject property together with the restrictive setback regulations.
- 55. The project is consistent with Chelan County Code (CCC) Section 11.95.030(1)(c) in the following respects:
  - 55.1 With the approval of CUP 2004-015, no new construction was proposed. Therefore the 200 ft. setback from adjoining properties did not apply to the existing structures. As such, Condition of Approval #10 was implemented that would require an amendment to the CUP if any new structures were proposed.
  - 55.2 Additionally, the current lot configuration was established by BLA 2003-072 which was recorded prior to the purchase of the subject property by the applicant.
  - 55.3 The hardship does not appear to be the result of the owner's actions.
- 56. The project is consistent with Chelan County Code (CCC) Section 11.95.030(1)(d) in the following respects:
  - 56.1 The authorization of this variance would not be materially detrimental to the purposes of Title 11. This variance would promote the goals and objectives of Title 11 and the Comprehensive Plan. The proposed development for a storage pole building is similar to other uses and structures within the same zoning district. Chelan County Code Chapter 11.04 District Use Chart, permits accessory structures within the RR5 zoning district. Pursuant to CCC Section 11.88.170(10)(C) for commercial/industrial accessory uses and structures, every reasonable effort shall be made by persons operating a business to store all such materials within an enclosed building.
  - 56.2 The proposed location for the storage building would be in the same area that the outside storage of equipment is currently placed.
  - 56.3 The authorization of this variance would promote the development of the property for a storage pole building. Additionally, the location of the pole building would eliminate the need for clearing of additional vegetation and would be compliant with the goals and objectives of CCC Title 11 as well as the Comprehensive Plan.
  - 56.4 The authorization of this variance would not be injurious to property in the same district or neighborhood in which the property is located. The authorization of this variance would avoid injury to the applicant's property rather than cause injury to other property in the neighborhood. The authorization of this variance would not be detrimental to the objectives of the comprehensive plan.

57. The project is consistent with Chelan County Code (CCC) Section 11.95.030(1)(e) in the following respects:
- 57.1 Majority of the subject property lies within the required 200 ft. setback per CCC Section 11.93.290(1). With the irregular shaped lot along with the restrictive setback constraints, the buildable area would be a 345 sq. ft. irregularly shaped area with a maximum width of 10 ft.
  - 57.2 The hardship is a result of the application of the Chelan County Code to the subject property based on site specific conditions, which does not factor in lot configurations.
58. The project is consistent with Chelan County Code (CCC) Section 11.95.030(3)(a) in the following respects:
- 58.1 The variance request is based on the requirements of CCC Section 11.93.290(1) along with the topographical restraints of the property.
  - 58.2 The variance request would not be based on illegal or nonconforming circumstances created by the applicant.
59. The project is consistent with Chelan County Code (CCC) Section 11.95.030(3)(b) in the following respects:
- 59.1 The proposed development would have no economic return and is not associated with an existing structure.
  - 59.2 The variance request would not be based upon lack of reasonable economic return or a claim that the structure is too small.
60. The project is consistent with Chelan County Code (CCC) Section 11.95.030(3)(c) in the following respects:
- 60.1 The proposal is not based on the fact that the condition for which the variance is requested existed at the time the applicant acquired the property, it generated from the approval of the 2004 CUP.
  - 60.2 The proposed variance would not be based on the fact that the condition existed at the time the applicant acquired the property.
61. The project is consistent with Chelan County Code (CCC) Section 11.95.030(3)(d) in the following respects:
- 61.1 The proposed variance would not change the permitted land uses.
  - 61.2 This does not apply.
62. The project is consistent with Chelan County Code (CCC) Section 11.95.030(3)(e) in the following respects:
- 62.1 The proposed variance would not affect density.
  - 62.2 This does not apply.
63. The overall use of the property would not be changing from the research facility for the fisheries program. Therefore the surrounding properties would not be subjected to unknown impacts. The proposed storage building would be an accessory to the existing use of the subject property. Although the proposed structure would not meet the required 200 ft. setback from the adjoining



- property, it would remove the potential visual impacts of the outside storage of equipment that the properties may be currently subjected to.
64. Pursuant to Chelan County Code Section 11.88.170, storage associated with commercial purposes is encouraged to make every reasonable effort to store all such materials or equipment within an enclosed building. The location proposed with the storage building would be in roughly the same area that the on-site equipment and vehicles are currently located. Therefore, minimal clearing of native vegetation would be proposed with construction. The storage building would allow for organization of the subject property as well as potentially alleviate visual impacts of on-site equipment storage.
  65. Staff has reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended **APPROVAL** subject to recommended conditions of approval.
  66. An open record public hearing after due legal notice was held on June 5, 2019.
  67. The entire planning staff file of record was admitted into the record at this open record public hearing.
  68. Appearing on behalf of the applicant was Anne Hessburg. Ms. Hessburg testified that she was the agent authorized to appear and speak on behalf of the Applicant. Ms. Hessburg testified that the applicant concurred with the all of the representations set forth in the staff report and had no objections to any of the proposed conditions of approval.
  69. No member of the public testified at this hearing.
  70. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
  71. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## **CONCLUSIONS**

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the Rural Residential/Resource 5 (RR5) land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## **DECISION**

Based upon the above noted Findings and Fact and Conclusions of Law, Conditional Use CUPA 2019-001 and VAR 2019-004 are hereby **APPROVED**.

## **CONDITIONS OF APPROVAL**

1. All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.
2. Pursuant to Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
- 2.1. All Conditions of Approval from the approved CUP 2004-015 decision approved October 12, 2004 shall be in full force and effect unless modified by this decision.
3. Pursuant to Chelan County Code Section 11.95.050, in any case where a variance is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of this code. An appeal of the decision shall automatically stay the issuance of building or other permits until such appeal has been completed.
4. Pursuant to Chelan County Code Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
5. Pursuant to Chelan County Code Section 11.95.080, a variance shall become void three years after approval if no substantial construction has taken place or such other time period as established by the Hearing Examiner.
6. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
7. Pursuant to Chelan County Code Chapter 11.78, development shall be subject to the provisions of said chapter, as amended.
8. Pursuant to Chelan County Code Chapter 11.84, all or part of this area may be located within the 100 or 500 year floodplain and shall be subject to the provisions of said chapter as well as Chelan County Code Chapter 3.20 Flood Hazard Development, as amended.
9. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
10. Pursuant to Chelan County Code Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
11. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.

12. Pursuant to Chelan County Code Section 11.93.090, upon final action of the hearing examiner to deny an application for a conditional use permit, the department shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
13. Pursuant to Chelan County Code Section 11.93.110, a conditional use permit shall become void if not acted upon, including but not limited to submitting a building permit or the placement of all infrastructure, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
14. Pursuant to Chelan County Code Section 11.93.120, action of the Hearing Examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Approved this 7<sup>th</sup> day of June, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4) (a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.**

**Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.**

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.