

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

RECEIVED

IN THE MATTER OF
P 2020-001
Kinzer

)
AUG 26 2020
)
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 August 19, 2020, 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. This is an application for a cluster subdivision to subdivide approximately 21 acres into 5 lots with an open space tract. The smallest lots size is approximately 0.71 acres and the largest lot is proposed at approximately 0.75 acres. The dedicated open space tract is approximately 17.18 acres in size and is proposed for a common use open space owned by the Home Owners Association with an easement for the Class B water tank.
- 2. The applicants/owners are Craig and Danna Kinzer, 801 Blanchard St. Ste. 200, Seattle, WA 98121. The engineer/surveyor is Brian W Hinthorne, Eagle Creek Consulting LLC, PO Box 503, Leavenworth, WA 98826.
- 3. The subject property is located at NNA Fox Road, Leavenworth, WA.
- 4. The parcel number for the subject property is 25-18-31-440-060.
- 5. The subject property is located outside of the Urban Growth Area.
- 6. The Comprehensive Plan designation and zoning designation for the subject site is Rural Residential/Resource 10 (RR10).
- 7. The subject property is currently residential vacant land. The property is situated on partial valley that steeply slopes towards the northwest, per the submitted application and geological assessment.
- 8. The subject property is 21 acres.
- 9. The property to the north is zoned Rural Residential/Resource 10 (RR10).
- 10. The property to the south is zoned Rural Residential/Resource 10 (RR10) & Rural Residential/Resource 2.5 (RR2.5).
- 11. The property to the east is zoned Forest Commercial.
- 12. The property to the west is zoned Rural Residential/Resource 10 (RR10).
- 13. The applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped March 5, 2020. Pursuant to Chapter 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply.
- 14. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150800A, the property does not contain identified 100 or 500-year flood plain or associated floodway.

Therefore, Chelan County Code Chapter 11.84, Frequently Flooded Areas Overlay District does not apply.

15. Pursuant to the Chelan County Geographical Information system, the property contains potential geologic hazardous areas. The applicant submitted a Geological Site Assessment, dated May 30, 2019. The report includes several recommendations for construction which should be adhered to for the design and construction of the proposed subdivision. Pursuant to Chelan County Code Chapter 11.86, a note on the final plat mylar should be required, identifying this subdivision as being located in a potential geologically hazardous area.
16. Pursuant to the National Wetlands Inventory Map, the subject property is located adjacent to known wetlands as well has a man-made lake with an associated wetland. The applicant submitted a Wetland Determination, dated June 6, 2019. There are two wetlands that rate as a Category III. The associated wetland buffer for those wetlands is 75 feet. One wetland on an adjacent property rates as a Category I. The associated wetland buffer is 200 feet. Pursuant to Chelan County Code Chapter 11.80, a note on the final plat mylar should be required to list the classification of the wetland.
17. Based on the Washington State Department of Natural Resources FPARS steam typing map, a stream was identified running south through the subject property. A stream typing was conducted during the above mentioned Wetland Determination. The report concluded that there was not a stream on site.
18. Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resources is maintained. Staff recommends notification if any artifacts are uncovered or discovered during the development of the proposed subdivision.
19. On February 14, 2019, a pre-application meeting was held to discuss the feasibility of the proposed development.
20. The property accessed from Fox Road that has a 60' right-of-way and is classified as a Rural Local Access Road in the county road system. Fox Road provides single lanes for traffic in both directions with no curb, gutter or sidewalk. Pursuant to the Chelan County Code 15.30, the design and construction of the new proposed internal private road would be required to be constructed to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) with Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) for this subdivision. However, as discussed below, this new road transects the Type I wetland buffer and no wetland buffer exemptions have been proven.
21. The comment letter from Chelan County Public Works, dated May 8, 2020, states a private stormwater drainage system is required with an Operation and Maintenance Agreement of the drainage system and recorded with the final plat.
22. Sanitation availability letters from Chelan-Douglas Health District, dated May 7, 2020, states: "Domestic water service would be by a new public water supply, individual service would be available to each lot. The new public water supply shall be reviewed and approved by the Chelan-Douglas Health District/State Department of Health". All lots meet state minimum lot size based upon soil type.
23. Line extensions would be necessary for the development and additional easements would be needed for the PUD primary lines if not dedicated on the face of the Plat.

24. The comment letter from the Chelan County Fire Marshal, date stamped April 7, 2020, states the subject property is not located within an established fire district. Alternate fire flow provisions would be necessary.
25. The comment letter from Chelan County Assessor, dated stamped April 23, 2020, states the legal description appears to be correct and there are no delinquent taxes.
26. Noise impacts are addressed in Chelan County Code Chapter 7.35.
27. The applicant submitted an environmental checklist on March 4, 2019. Pursuant to WAC 197-11 process and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed. Mitigated Determination of Non-significance (MDNS) was issued on June 12, 2020. The SEPA Checklist and MDNS are included within the file of record and adopted by reference.
28. The Notice of Application was referred to agencies and departments on April 23, 2020 and surrounding property owners within 300 feet, excluding 60 feet of right-of-way with comments due May 7, 2020. Agency comments are included, as appropriate, within this report and in the Conditions of Approval. The following agencies and County departments were sent referral packets

Agencies Notified	Response Date	Agencies Notified	Response Date
Chelan County Public Works	May 8, 2020	WA Department of Ecology	May 4, 2020
Chelan County Fire Marshal	May 7, 2020	Chelan County PUD #1	April 28, 2020
Chelan County Assessor	April 23, 2020	WA State Archaeology	April 27, 2020
Chelan-Douglas Health District	May 7, 2020	Cascade School District	None
Department of Ecology: Water Resources Program	May 20, 2020	Confederated Tribes of the Colville Nation	April 23, 2020
Fire District #3	May 7, 2020	Yakama Nation	None

29. The following public comments were received:

Public Comments	Date Received	Nature of Comment
Cathy Lamm	June 2, 2020	Concerned with the proposed use of ground water and access to the development.
Deer Meadows Water Association	May 11, 2020	Concerned about the proposed Group B water system.
Sheila Harris, Alan Chilcoat, Charlie Kuyk, Kyle & Angela Kelly, Kathleen & Michael	May 7, 2020	Concerned about the water supply, increase of traffic on Fox Road, nightly rentals, stormwater and poor

Public Comments	Date Received	Nature of Comment
Patton, Steve Stroud, James Grandin, Nancy & Brett Johnson, Suzanne & Robert Cowan, Marge & Ted Butler, Suzanne Benson and Gordy Welsh		stewardship of the wetlands and the wildlife corridor.
Mahala Murphy-Martin	May 7, 2020	Concerned about the proposed development invading the natural habitat in the area, location of the proposed road, the proposed water system, septic system, short term rentals and traffic on Fox Road.
Steven Martin	May 7, 2020	Concerned about the wildlife, disruption of the neighborhood peace, short term rentals, water supply and wetlands.
Matt & Amy Snyder	May 7, 2020	Concerned about the use of a Class B water system for the development.
Steve Stroud	May 3, 2020	Concerned about the water table, stormwater, wetlands, septic systems, short term rentals and would like an update to the building codes.
Brian & Lisa Koblenz	May 7, 2020	Concerned about the stormwater, the proposed Class B water system and the wildlife in the area.
Sheila Harris and Alan Chilcoat	May 7, 2020	Concerned about possible short term rentals, the possible wells, stormwater runoff, wetland on the property, wildlife on the property, access to the proposed development and light pollution.
Gordon Welsh and Suzanne Benson	May 7, 2020	Concerned about water availability, increased fire risk, increased traffic, increased noise and glare, negative impact on aesthetics in the canyon and stormwater runoff.
Nancy Bywater-Johnson	May 6, 2020	Concerned about the new development drawing off of the aquifer in the canyon, construction in the wildlife corridor, high-risk fire region and the stream was not noted in the Geo Assessment, width of access easement and the development is potentially hazardous to the area.
Tim Sale	May 5, 2020	Concerned about the wetlands being bi-

Public Comments	Date Received	Nature of Comment
		sected by the proposed private road.
John Fishburne	May 2, 2020	Concerned about the domestic water for the development.
Ted and Marge Butler	May 4, 2020	Concerns about water and the number of septic systems in the development.
Alec Gibbons & Angela Russell	May 13, 2020	Concerned about the over development and higher housing density would put more people in the outlying areas that are prone to fire that have limited access and resources. Having a Group B well would draw down the aquifer further that could be catastrophic to those lower in the canyon. The quality of life in Leavenworth has changed dramatically in the last 20 years.

30. Planning Department staff analysis:

- 30.1 Group B Well: The Chelan-Douglas Health District reviews and approves the domestic water source.
- 30.2 Wildfire Danger: Although the property is not within Chelan County Fire District #3, the location of the development is within a Wildland Urban Interface area with a Fire Hazard Severity rating of Extreme as defined by the International Wildland Urban Interface Code Table 502.1. A fire protection plan shall be developed.
- 30.3 Vacation/Nightly Rental: The County cannot speculate what a future property owners intentions are.
- 30.4 Increased traffic on Fox Road and Road Access: Chelan County Public Works would be required to sign off on access, internal road for the development and the Emergency Vehicle Access Road.
- 30.5 Poor stewardship of the wetland and the wildlife corridor: The application was submitted with a wetland delineation report prepared by a qualified professional and would need to meet the recommendations made in that report. The development would need to meet Chelan County Title 11.78, Fish and Wildlife Habitat Conservation Areas regarding any existing wildlife on the property.
- 30.6 Runoff from snow melt: The development would need to meet the comments from Chelan County Public Works dated May 8, 2020, regarding the stormwater comments.
- 30.7 Building Code Revamp: Chelan County Building follows the International Building, Residential, Mechanical, Fire and the Uniform Plumbing Codes, the county cannot 'revamp' the building code.
- 30.8 Neighbors were not properly notified: Pursuant to Chelan County Code Section 14.08.050(2)(C), the county is only required to send notices to surrounding properties within 300'.

- 30.9 Light pollution: Chelan County does not have any code regarding light pollution in county jurisdiction.
- 30.10 Noise: Property owners shall meet Chelan County Code Chapter 7.35, Notice Control.
- 30.11 Negative impact on aesthetic: The county has no responsibility to enforce the aesthetic as it is relative and the county code has no design criteria.
- 31. The application materials were submitted on March 5, 2020.
- 32. A Determination of Completeness was issued on April 13, 2020.
- 33. The Notice of Application was provided on April 23, 2020.
- 34. The SEPA Notice was issued on June 12, 2020.
- 35. The Notice of Public Hearing was provided on August 7, 2020.
- 36. Comprehensive Plan Review:
 - 36.1 Chapter 2, Land Use Element notes that growth patterns for the RR10 zoning district may include greater density, stating:
 - 36.2 “Goal LU 1: Residential designations shall provide for an adequate supply of land to accommodate the housing needs and strategies outlined by the comprehensive plan. Implementation regulations shall provide for a variety of residential opportunities to serve a full range of income levels.”
 - 36.3 “Rationale: An adequate supply of housing available to all income levels is necessary to meet the housing needs of the County.”
 - 36.4 “Policy LU 1.1: Promote improved neighborhood character and compatibility through unified design and site requirements for both site-built homes and manufactured and modular housing.”
 - 36.5 “Rationale: The placement of housing should take into consideration compatibility with the character of existing and future residential areas.”
 - 36.6 “Policy LU 1.2: Protect residential neighborhoods from impacts associated with incompatible land uses through application of development standards and permit conditioning.”
 - 36.7 “Rationale: Incompatible land uses located in close proximity to residential neighborhoods may create adverse impacts which could lead to a reduction of the high quality of life for the County residents.”
 - 36.8 “Policy LU 1.6: Consider environmental limitation, availability of infrastructure and consistency with the Comprehensive Plan the Growth Management Act when establishing residential density standards.”
 - 36.9 “Rationale: Physical characteristic and the availability of utilities are important factors in determining residential development patterns and densities. In addition, residential densities must be consistent with the guidance of the comprehensive plan and the requirements of the act.”
- 37. Rural Residential/Resource 10 (RR 10) Zoning Code 11.10.020(1)(A) Development Standards: Development in this district shall meet all applicable provisions of this title and all other rules, regulations and provisions of the Chelan County Code (CCC), including the following:
 - 37.1 Minimum lot dimensions shall be 10 acres.

- 37.2 Minimum lot width is 150 feet at the front lot line.
- 37.3 Maximum lot coverage is 35%.
- 37.4 The site plan of record, date stamped April 21, 2020, indicates that, other than lot sizes, all minimum dimensional standards have been met.
- 38. Chelan County Code 14.08.010 Pre-application meetings:
 - 38.1 Prior to the filing of a preliminary plat, the sub-divider shall submit to the administrator plans and other information sufficient to describe essential features of the property and the proposed or contemplated uses and development for the purposes of scheduling a formal pre-application meeting in accordance with CCC 14.08.010.
 - 38.2 The applicant participated in a pre-application meeting with Chelan County Community Development on February 14, 2019.
- 39. Chelan County Code 12.02.060 Concurrency of public infrastructure:
 - 39.1 After the opportunity for review and comment, all providers of water, sewage disposal, schools, and fire/police protection serving the proposed land division have been given adequate notice to provide comment regarding adequate capacity or arrangements for adequate services for the development, concurrently with the demand for such services and facilities.
 - 39.2 No county facilities will be reduced below adopted levels of service as a result of the proposed land division.
 - 39.3 The subject property would be served by a Group B well and would utilize on-site septic systems. Extensions of the existing lines would be required for power.
- 40. Chelan County Code 12.08 defines the standards for all subdivisions:
 - 40.1 No land division shall be approved which bears a name using a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in the county, except for the words which contain the following "town," "county," "place," "court," "addition," "acres," "heights," "villa," or similar words, unless the land so divided is contiguous to the land division bearing the same name.
 - 40.2 Review of the name would be required prior to final plat approval to determine that it does not match or is not similar to an existing plat name.
- 41. Chelan County Code 12.08.030 Easement:
 - 41.1 Utilities, whenever feasible, shall be located outside the established road prism, as defined in Title 15, but within the right-of-way. When location within the public right-of-way is not feasible or practical, as determined by the county or local utility purveyor, the following provisions shall be adhered to:
 - 41.1.1 Easements for the construction and maintenance of utilities and public facilities shall be granted, as determined by the county or local utility purveyor, to provide and maintain adequate utility service to each lot and adjacent lands.
 - 41.1.2 The widths of the easements shall be the minimum necessary as determined by the utility purveyor, unless the administrator determines a small or larger width is appropriate based on-site conditions. Whenever possible, public utilities shall be combined with driveways, pedestrian access ways and other utility easements.

- 41.1.3 Electrical service is available from the Chelan County PUD No. 1. However, line extension would be required.
- 41.2 Private road easements shall be shown.
 - 41.2.1 The applicant is proposing access by a private road and private driveways. Private road standards, as detailed in Title 15, would apply to this development and require an approved maintenance agreement. However, because this road is to transect a Category I wetland buffer, and because no exemptions have been proven, this road is not approved.
- 41.3 Easements required by this section shall be granted by the terms and conditions of such easements being shown on the final land division or separate instrument.
 - 41.3.1 All easement locations are required to be shown on the final plats, pursuant to CCC 12.08.030. Separate instruments recorded with the Chelan County Auditor should be referenced on the face of the final plat. Required easements, shall be reviewed with the blue line submittal.
- 41.4 Easement provisions shall be in conformance with the standards contained in Title 15, Development Standards.
 - 41.4.1 Easement locations and purpose(s) should be indicated on the final plat. Easements shall be reviewed with blue line submittal.
- 42. Chelan County Code 12.08.040 Fire protection standards.
 - 42.1 The fire protection standards contained in Title 15 and adopted International Fire Code are required in all divisions of land. Modifications are allowed though the adopted fire credit options when approved by the Chelan County fire marshal.
 - 42.2 The Chelan County Fire Marshal requires conformance with the International Fire Code. The nearest fire station is within 5 miles of the subject property. Pursuant to Chelan County Code 3.04.010, State Building Code, all building permits require compliance with the International Fire Code(s), as adopted or amended by Chelan County.
- 43. Chelan County Code 12.08.050.
 - 43.1 All land division creating new impervious surfaces shall meet the following requirements: (1) Storm drainage shall be provided in accordance with the adopted standards. (2) All infrastructure within the right-of-way shall become the property of, maintained and operated by, Chelan County.
 - 43.2 Chelan County Public Works comments state that the stormwater review is required prior to blue line review. Pursuant to Chelan County Code 13.16, a stormwater plan be prepared and implemented based on comments from Chelan County Public Works.
- 44. Chelan County Code 12.08.060.
 - 44.1 Where a division of land is traversed by a watercourse, a drainage easement adequate for the purpose and conforming to the line of such watercourse, drainage way, waste-way, channel or stream and of such width for construction, maintenance and protection as determined by the decision body shall be provided.
 - 44.2 The property is not impacted by a watercourse.
- 45. Chelan County Code 12.08.080.
 - 45.1 Road Standards: All land divisions shall comply with Title 15.

46. Chelan County Code 12.08.090.
 - 46.1 Permanent survey monuments shall be provided for all final land divisions as required in Section 15.30.825.
 - 46.2 Per Title 15 of the Chelan County Code, monuments should be required prior to submittal of the final plat or as approved by Chelan County Public Works Department. Compliance with CCC 15.30.825 shall be a condition of approval.
47. Chelan County Code 12.08.100
 - 47.1 No land division shall be approved if related improvements such as levees, fills, roads, or other features will individually or collectively significantly increase flood flows, heights, or velocities.
 - 47.2 If a determination is made that part of a proposed land division lies within the one-hundred-year flood plain or the floodway, the requirements of the Chelan County flood hazard development resolution shall apply.
 - 47.3 The subject property is not impacted with flood plain or flood way.
48. Chelan County Code 11.10.020.
 - 48.1 All subdivisions shall conform to the design standards of this title, in addition to the comprehensive plan, and all zoning regulations in effect at the time any preliminary subdivision of a subdivision is submitted for approval. Lots shall be of sufficient area and width to satisfy zoning requirements.
 - 48.2 Pursuant to the review within this staff report, the proposed development is consistent with the applicable chapters of the zoning code for the Rural Residential/Resource 10 (RR10) zoning districts, together with Chelan County Comprehensive Plan.
49. Chelan County Code 11.86 Geologically Hazardous Areas.
 - 49.1 Pursuant to the Chelan County Geologically Hazardous Areas map data, the subject property does contain potential geologically hazardous areas. Therefore, the provisions of Chelan County Code Chapter 11.86, Geologically Hazardous Areas Overlay District do apply.
50. Chelan County Code Stormwater.
 - 50.1 Stormwater would be required to meet the standards of Chelan County Code Title 13. Stormwater would be required for the entire subdivision and all required infrastructure improvements placed prior to final plat approval
51. Chelan County Code 12.24.015. All final land division review and approval requirements:
 - 51.1 The approval given to a preliminary plat shall expire pursuant to Revised Code of Washington (RCW) 58.17.140 unless, within the allowed timeframe, a proposed final plat in proper form is filed with the administrator.
 - 51.2 The applicant shall have five (5) years to final the plat from the date of preliminary approval.
52. This proposal is to develop a five (5) lot cluster subdivision with two (2) open space tracts on a 21 acre parcel. The property is situated on a partial valley that steeply slopes to the northwest. Critical areas identified on the property are potential geological hazard areas and a Category I and Category III wetlands.

53. Access to the lots is proposed to be provided by a 30 foot access easement. As discussed herein, this private road is not approved by this decision. Potable water would be provided by a Group B well and all lots would utilize on-site septic systems.
54. The proposed open space tracts would be approximately 17.29 acres, which exceeds the requirement of 70% of the subject property.
55. The Applicant proposes calculating lot numbers as follows:
 21 AC/10 AC minimum = 2.1 base density
 150% bonus + 40% open space bonus + 5% road interconnectivity bonus = 195%
 2.1 zoning base density x 1.95% = 4.095
 Round 4.095 up to 5 lots
 The Hearing Examiner's calculation is set forth below.
56. An open record public hearing after due legal notice was held using Zoom video conferencing on August 19, 2020.
57. Appearing and testifying on behalf of the applicant/owner was John Perez. Mr. Perez is the attorney and agent for the applicant and property owner. He indicated that there would be no residential use within the open space, that he agreed with all the representations within the staff report, and that he had no objection to any of the proposed conditions of approval.
58. Mr. Perez further testified a water quality study was performed indicating that there was adequate water available. Additionally, he stated they had no control over future property owner's use of the property.
59. Brian Hinthorne, on behalf of the applicant/owner, indicated that the new road would go through the wetland buffer. However, there would be mitigation measures. A specific wetland buffer exemption was not referenced.
60. On questioning of the staff by the Hearing Examiner, the staff indicated that the new road would go through the wetlands, but it was staff's opinion that this was permissible because of available exemptions. A specific wetland exemption was not referenced.
61. Testifying from the public were the following individuals:
- 61.1 Gordon Welsh. Mr. Welsh had primary concerns regarding water (wells running dry, impact of the Class B water system on existing homes), wildlife impacts and overnight rentals. He had concerns regarding traffic and indicated that there should only be two lots allowed.
- 61.2 Lisa Koblenz. Ms. Koblenz indicated that she agreed with the testimony of Mr. Welsh.
- 61.3 Sheila Harris. Ms. Harris' primary concern related to the aquifer recharge area and who had the senior water rights. She testified her concern regarding the new easement and the maintenance agreement, if any. She indicated that she disagreed with the Fire Marshall's comments stating that she believed the project was within Fire District No. 3.
- 61.4 Brett Johnson. Mr. Johnson had concerns with the new access road because he did not have all the details. He had concerns regarding the water system and the impacts on local wells, especially if there are pools and hot tubs in the new property.
- 61.5 Tim Sale. Mr. Sale testified consistent with his written comments.

62. The Chelan County Hearing Examiner has reviewed the application materials, as well as the staff report. There is no indication that the applicant has applied for any wetland buffer exemptions for the roadway through the 200 ft. buffer for the Category I wetland. While it is correct that exemptions are allowed pursuant to CCC 11.80.020, the applicant did not prove the applicability of any of the exemptions. The applicant did not request a continuance in order to provide evidence justifying the application of any exemptions.
63. On review of the wetland exemptions, the Hearing Examiner cannot find that facts exist justifying the application of any of the exemptions to this project.
64. Accordingly, any development within the 200 ft. wetland buffer is prohibited. This would include the new access road.
65. The applicant had applied for a 5% bonus for road interconnectivity. Because the new private road is not approved, there is no road interconnectivity to support this bonus.
66. Therefore, the density bonus calculation is a 2.1 base density multiplied by 1.90% resulting in a density calculation of .0399, which rounded up would allow 4 lots.
67. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Chelan County Hearing Examiner has been granted the authority to render this decision pursuant to Chelan County Code Section 1.61.080 Duties and Powers.
2. The subject application demonstrates consistency with the development standards and procedural requirements of Chelan County Code Title 11 Zoning, Title 12 Land Divisions, Title 14 Development Permit Procedures and Administration, and Title 15 Development Standards.
3. The application, as conditioned, demonstrates consistency with the goals and policies as set forth in the Chelan County Comprehensive Plan.
4. The application, as conditioned, demonstrates consistency with adopted levels of service for roads, utilities, fire protection facilities, schools and other public and private facilities needed to serve the development, with assurance of concurrency.
5. The public interest will be served by the subdivision.
6. The application, as conditioned, is compatible with adjacent uses and will not harm or change the character of the surrounding area.
7. A development within a wetland buffer area, such as development of a road, is not allowed without facts supporting the finding of an exemption.
8. 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, Conditional Use P 2020-001 is hereby **APPROVED**, subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL

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.

1. Pursuant to RCW 58.17, the development shall conform to all applicable local, state, and federal regulations, statutes, rulings, and requirements. The proposal shall be subject to approval that may be required under permits licenses or approvals by any other local, state, or federal jurisdictional agency.
2. All conditions imposed herein shall be binding on the Applicant. "Applicant" shall mean terms, which include the owner or owners of the property, heirs, assigns and successors.
3. Pursuant to Chelan County Code Section 11.20.020, the proposal shall comply with the Rural Village (RV) Zoning District's dimension and/or development standards.
4. Pursuant to Chelan County Code Section 12.08.030 and 12.24.020(3) and Chapter 15.30, all easement locations are required to be shown on final plats.
5. Pursuant to RCW 84.56.345, all taxes, delinquent taxes, and assessments that are required by the Chelan County Treasurer are to be paid prior to final Plat recording.
6. Pursuant to Chelan County Code Section 11.80.130, the following not shall be placed on the final plat:
 - 6.1. **"The subject property is located within or near a categorized wetland buffer. Subsequent development shall be consistent with Chelan County Code Chapter 11.80 Wetland Areas Overlay District, as amended."**
7. Pursuant to Chelan County Code Section 11.10.020(1), the minimum lot size may be modified one time for a cluster subdivision. The following note shall be placed on the final plat:
 - 7.1. **"The lots associated with this plat shall not be further subdivided utilizing the provisions of Chelan County Code Section 11.10.020(1)(A-D), as amended."**
8. Pursuant the Chelan County Code Section 12.02.010(1), the following note shall be placed on the final plat mylar:
 - 8.1. **"Chelan County is not responsible for notification or enforcement of covenants or deed restriction 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 assume all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations."**
9. Pursuant to RCW 27.53.020, the applicant shall stop work and contact Community Development and the Department of Archaeology and Historic Preservation and other agencies as required, regarding the possible impact of construction activities on the state's archaeological resources.
10. Pursuant to Chelan County Code Section 12.24.015, the following note shall be placed on the final plat mylar:
 - 10.1. **"Agricultural activities occur throughout Chelan County and may or may not be compatible with residential development."**

11. Pursuant to the Revised Code of Washington, the following notes shall be placed on the final plat:
 - 11.1. **“Noxious weed control is the responsibility of the individual lot owners, per RCW 17.10.140, as amended.”**
 - 11.2. **“If any Native American grave sites or archaeological resources are discovered or excavated, the owner/developer/contractor shall stop work immediately and notify Chelan County Department of Community Development and the Washington State Department of Archaeology and Historic Preservation in conformance with RCW 27.53.020. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample of this plan may be obtained from Chelan County Community Development.”**

12. Pursuant to Chelan County Code Section 11.86.080, the following note shall be placed on the final Plat:
 - 12.1. **“All development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended; and the Geotechnical Engineering Evaluation and Geologic Hazard Assessment prepared by Nelson Geotechnical Associates, Inc. dated May 30, 2019 or with a site-specific geological site assessment.”**

13. Chelan County Fire Marshal. The subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Agency Comments dated April 23, 2020.
 - 13.1. The Fire Marshal may modify Fire-flow requirements downward by applying fire protection credits for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical. Applicant is encouraged to contact this office to ascertain how the attached fire protection credits options apply to their development. A note on the face of the final short plat shall state:
 - 13.1.1. ***“Without the installation of a fire hydrant that has the capabilities of delivering the required fire flow and within the required distance to the lots in question, the applicant may choose one or any combination of the fire protection credits to satisfy 100% Fire Protection Credits needed.”***
 - 13.2. Class A roofing/noncombustible roof covering, as defined in the International Building Code, shall be used in all of Chelan County. A note on the face of the final mylar shall state that:
 - 13.2.1. ***“All buildings that require a building permit within this short plat shall have Class A roofing materials.”***

14. Chelan County Fire District #3. The location of the development is in a Wildland Urban Interface area with a Fire Hazard Severity rating of Extreme as defined by the International Wildland Urban Interface Code Table 502.1.
 - 14.1. A fire protection plan should be developed including a vegetation management plan utilizing fire resistant plants to prevent fire from being carried toward or away from buildings and defensible space maintenance of non-fire resistive grass, brush and trees around buildings.

15. Chelan-Douglas Health District. The subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan-Douglas Health District memorandum dated May 21, 2019.

- 15.1. Domestic water service shall be by a new public supply that has yet to be developed. Individual service shall be available to each lot. This system must be reviewed and approved by the Health District/State Department of Health, and construction of the system certified as per State Board of Health Regulations prior to final plat approval.
 - 15.2. A Restrictive Covenant is necessary for that part of the 100' sanitary control radius that falls outside the well owner's property and is recorded to the neighboring property owner's parcel(s). A Declaration of Covenant is necessary for that part of the 100' sanitary control radius that falls completely within the well owner's property and is owned in fee simple by the well owner. Protective covenants for each public well point must be declared in the dedicatory language on the plat as follows:
 - 15.2.1. ***"A Declaration of Covenant recorded as a notice to title with Chelan County as AFN: _____ establishes a sanitary control area with a 100' radius around the public well shown (as well tag # _____). No source of contamination may be constructed, stored, disposed of, or applied within the sanitary control area without the specific recorded permission of the well owner(s) and the Washington State Dept. of Health."***
 - 15.2.2. ***"The Declaration of Covenant and Restrictive Covenant(s) recorded as a notice to title with Chelan County as AFN: _____ establishes a sanitary control area with a 100' radius around the public well shown (as well tag # _____). No source of contamination may be constructed, stored, disposed of, or applied within the sanitary control area without the specific recorded permission of the well owner(s) and the Washington State Dept. of Health."***
 - 15.3. The dedicatory language on the final plat shall carry these notes:
 - 15.3.1. ***"The Health District has not reviewed the legal availability of water to this development."***
 - 15.3.2. ***"The combined water use by all the wells in this development may not exceed 5,000 gallons per day or be used to irrigate more than ½ acre unless ground water withdrawal permit is obtained from the Department of Ecology (RCW 90.44.050)."***
 - 15.4. The dedicatory language on the final plat shall contain this statement:
 - 15.4.1. ***"Site evaluations may be required at the time of application for individual septic system construction permits."***
 - 15.5. Lot 6H was not reviewed for domestic water and sewer as this lot (open space tracts, agricultural tracts, conservation easements, etc.) can be exempt under Chelan County Code Section 12.04.020(1)(E). As such, the following dedicatory language must be on the Mylar:
 - 15.5.1. ***"Lot 6H was not evaluated for the feasibility of sewage disposal and/or for an adequate source of domestic water. As such, this lot may not be suitable for development."***
16. Chelan County Public Works Department. The subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan County Public Works memorandum dated June 18, 2019.
- 16.1. Pursuant to Chelan County Code Section 12.02.020, the applicant would be required to demonstrate legal and perpetual access for the proposed lots on the subdivision.
 - 16.2. If this decision is reversed, and the road through the wetland buffer is approved, then pursuant to Chelan County Code Title 15.30, the design and construction of the new proposed internal private road would be required to be constructed to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) with Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) for this subdivision.

- 16.3. If this decision is reversed, and the road through the wetland buffer is approved, then pursuant to Chelan County Code Section 15.30.340, the applicant shall file a Private Road Maintenance and Upgrading Agreement appurtenant to all the property owners having a vested interest in the private shared/common access road and must contain wording of maintenance of the road sign within the development. Said agreement must be provided simultaneously with the preliminary Mylar (blue line) submission. Said agreement shall be recorded with the final plat.
- 16.4. If this decision is reversed, and the road through the wetland buffer is approved, then pursuant to Chelan County Code Title 15.30, the applicant would be required to provide new storage areas to place snow accumulated from the new internal private road.
- 16.5. If this decision is reversed, and the road through the wetland buffer is approved, then pursuant to Chelan County Code Section 15.30.650, required the following language on the face of the plat:
16.5.1. "Chelan County has no responsibility to build, improve, maintain, or otherwise service any private road for this plat."
- 16.6. Pursuant to Chelan County Code Section 15.30.310, the applicant is required to submit a lot access/addressing plan. The lot access/addressing plan shall demonstrate how all lots and any existing driveway easement would constructed and how they meet county road approach standards.
- 16.7. Pursuant to Chelan County Code Title 10.20, submit with the Preliminary Mylar (blue-line), a lot access/addressing plan. The lot access/addressing plan shall demonstrate how all lot and any existing driveway easement s would be constructed and how they meet Chelan County road approach standards. **Submit three (3) proposed private road names to the approved by the Public Works Department and by Rivercom for the proposed new roads and the joint access easement in accordance with Title 10.20.**
- 16.8. Pursuant to Chelan County Code Title 10.20, the applicant shall add the following note to the Final Mylar for addressing:
16.8.1. "Addresses are assigned to each lot based on given driveway locations. Any and all modifications to the location of the driveway(s) shall result in a change to the address previously assigned to said lot(s)."
- 16.9. If this decision is reversed, and the road through the wetland buffer is approved, then pursuant to Chelan County Code Section 15.30.610, Construction Plans: The applicant shall submit construction plans and reports for all required improvements on the internal private road improvements. The applicant would be required to have the Construction Plans shall include, but are not limited to:
 16.9.1. Drainage Report and Plan
 16.9.2. Roadway Improvement Plan (showing location of utilities and roadway curve data)
 16.9.3. Lot Access Plan (Profiles, Topography)
 16.9.4. Erosion and Sedimentation Control Plan
 16.9.5. Signage Plan
- 16.10. Pursuant to Chelan County Code Section 15.30.650, a Pre-Construction Meeting is required with the owner, contractor, and the Chelan County Public Works Department prior to commencing any construction.
- 16.11. Pursuant to Chelan County Code Section 15.30.660, As-Built Plans shall be submitted, reviewed and approved by the Public Works Department upon completion of all required improvements and prior to the County Engineers signature on the Final Mylar.
- 16.12. Pursuant to Chelan County Code Section 15.30.820, the applicant shall not obstruct sight distance with a centralized mailbox or locate a centralized mailbox on a County road right-of-way that would hinder County Road Maintenance. Should a centralized mailbox

- be required, provide details on construction plans. Minimum information shall include location, installation details, and pull-out detail.
- 16.13. The final plat shall include any easements necessary to provide and maintain all utilities to and within the proposed preliminary plat.
 - 16.14. Preliminary Plat must comply with stormwater standards, Chapter 13.12; 13.14; 13.16 and 13.18 of Chelan County Code.
 - 16.15. A private stormwater drainage system would be required for the proposed preliminary plat. Operation and maintenance of the private drainage system would require a Maintenance Agreement. The Maintenance Agreement must include an operational and annual maintenance criteria. Said Maintenance Agreement shall be submitted to the Public Works Department with the Preliminary Mylar (blue lines) and shall be recorded with the final plat.
 - 16.16. The following note shall be placed on the final plat Mylar:
 - 16.16.1. ***“The area within this plat contains a private storm drainage system designed to control runoff originating from this site. This site shall burden and benefit the parties’ successors and assigns; that its contents are binding upon the parties’ successors in interest and runs with the land. The Drainage Plan for this development was prepared by the engineering firm of _____, dated _____, a copy of which is on file with the Chelan County Public Works Department. It shall be the responsibility of the property owner(s) and/or their successors to thereafter maintain the storm drainage system to the originally designed condition. Chelan County personnel shall have the right of access to the property for purpose of inspection of the storm drainage system. If Chelan County personnel determine that the storm system maintenance is unsatisfactory, and the property owner has had due notice and opportunity to satisfactorily maintain the system, Chelan County personnel and equipment may enter the property to perform the necessary maintenance. Such maintenance shall be at the property owner’s expense. This private storm water drainage system was installed for the owner(s), who hereby agree to waive on behalf of itself and its successors in interest, any and all claims for damages against any governmental authority arising from the inspection, approval of, design of, and construction and/or maintenance of the drainage system. Stormwater Maintenance & Operation Agreement AFN: _____.”***
 - 16.17. The applicant shall submit Lot Closure calculations with the Preliminary Mylar (blue line) submission.
 - 16.18. The plat must identify all roads as public or private.
 - 16.19. The plat must identify centerlines and easement dimensions on any new proposed roads.
 - 16.20. The plat shall show all easements that benefit or burden the development site.
 - 16.21. Pursuant to Chelan County Code Section 15.30.825, Monumentation would be required to be placed on Fox Road if not already monumented.
 - 16.22. Lot closure calculations must be submitted with Pre-Final (blue lines).
17. Chelan County Public Utility District: Pursuant to Chelan County Code Section 12.08.030, the applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1. All easements shall be denoted on the Final Plat.
 18. Department Of Archaeology & Historic Preservation. A professional archaeological survey of the development area shall be conducted prior to ground disturbing activities. DAHP also

recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.

19. Pursuant to CCC 12.12.050 the maximum number of lots shall be four (4).
20. Pursuant to CCC 12.12(1)(C), the Fire Marshall shall be notified that the new road through the wetland buffer has not been approved, so that the Fire Marshall can evaluate whether the 4 lot cluster subdivision has adequate fire vehicle access.

Dated this 25th day of August, 2020.

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.