

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, DECISION AND CONDITIONS
PA 21-382	)	OF APPROVAL
Henderson	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on March 16, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. FINDINGS OF FACT**

1. This is an application for a Plat Alteration to reconfigure the roadway and lots of approved preliminary plat #P 2018-112 (Enchantment Lane) to adapt to proposed Chelan County paving and drainage improvements to Knowles Road that requires acquisition of a portion of the land encapsulated by the preliminary plat. The plat boundary will be modified to create a Tract for this acquisition purpose as well as modifying the eighteen lots to fit within the remaining boundary. The subject properties zoned Residential High (RH) and are within the Wenatchee Urban Growth Area.
2. The subject properties are located at 3424 and NNA Knowles Road, Wenatchee, WA 98801.
3. The applicant is Harry Henderson, 3624 School St., Wenatchee, WA 98801. The agent is Robert Culp, Munson Engineers, 610 N. Chelan Ave., Wenatchee, WA 98801.
4. The subject properties are located within the Wenatchee Urban Growth Area.
5. The Comprehensive Plan designation and zoning district is Residential High (RH) District.
7. The existing land use is residential and vacant land.
8. The application was submitted on August 20, 2021.
9. The Determination of Completeness was issued on September 24, 2021.
10. The Notice of Hearing was issued on March 5, 2021.
11. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. of right of way) of the project boundary, jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on September 29, 2021 with comments due October 13, 2021. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. No public comments were received. The following is a list of Agencies who received notice and the date comments were received:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	No comments received	
Chelan County Building Official	June 25, 2021	No Comment
Chelan Douglas Health District	October 14, 2021	Recommend approval of the plat based on all lots exceed 12,500 sq.ft. per the approved Method II study.
Chelan County Public Works	October 13, 2021	Recommended conditions of approval were provided for the proposed development regarding the internal access road and stormwater/drainage requirements.
Chelan County PUD	July 2, 2021	If the extinguished easement is noted as #7 on the Plat, the District does not have utilities in the location and would have no comment. If this is not the correct location, please indicate where it is, the District has several utilities on these properties and would need to verify location.
Chelan County Assessor	No comments received	
Chelan County Fire District No. 7	No comments received	
WA Dept. of Archaeology & Historic Preservation	No comments received	
WA Dept. of Ecology	October 11, 2021	The Washington State Department of Ecology (Ecology) comment letter, states "Based upon the historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the Model Toxics Control Act cleanup levels,

		Ecology recommends that potential buyers be notified of their occurrence.”
WA Dept. of Fish & Wildlife	No comments received	
Confederated Tribes of Colville	No comments received	

12. The applicant submitted an environmental checklist on August 20, 2021. Pursuant to WAC 197-11 and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed by Chelan County. A Mitigated Determination of Non-Significance (DNS) was issued on March 4, 2022. The SEPA Checklist and MDNS are included within the file of record and adopted by reference.
13. Chelan County Code Section 12.22.020: Plat Alteration provides:
  - 13.1 Except as provided herein for boundary line adjustments, the alteration of any subdivision, or portion thereof, shall proceed according to the provisions of this title for plat alterations.
    - 13.1.1 The submitted application, including a site plan date stamped August 20, 2021, was reviewed for completeness and was deemed complete on September 24, 2021.
    - 13.1.2 The proposed alteration was submitted in accordance with this title.
  - 13.2 The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered.
    - 13.2.1 The Enchantment Lane Plat (P 2018-112) was approved by the Hearing Examiner on October 10, 2018, but the plat had not gone through final blueline review yet, so there are only the two parent properties affected by the proposed plat amendment. One component of the proposed plat amendment is creating a stormwater tract that will be purchased by Chelan County as part of the Knowles Road improvements and the other component of the plat amendment to modify the boundaries of the eighteen lots to fit within the new project boundary as documented in the site plan of record, date stamped August 20, 2021. Therefore, only the applicant’s signature is needed to achieve a majority. With the submitted application, a signature from the applicant was provided for the proposed amendment.
    - 13.2.2 The affected owner has signed the application. Therefore, this provision is satisfied.
  - 13.3 If the subdivision is subject to restrictive covenants, which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation

of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

13.3.1 No covenants have been recorded for the approved Enchantment Lane Plat (P 2018-11), therefore the proposed plat alteration would not result in the violation of any covenants.

13.3.2 Being as there are no applicable covenants, this provision would not apply.

13.4 The alteration of a subdivision is subject to RCW 64.04.175.

13.4.1 The purpose of the proposed plat alteration is not to remove an easement.

13.4.2 This provision would not apply.

13.5 If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

13.5.1 The proposed alteration is to reconfigure the roadway and lots of the approved Enchantment Lane Plat (P 2018-112) to adapt to proposed Chelan County paving and drainage improvements to Knowles Road that requires acquisition of a portion of the land encapsulated by the preliminary plat. The plat boundary will be modified to create a Tract for this acquisition purpose as well as modifying the eighteen lots to fit within the remaining boundary.

13.5.2 Any assessments would need to be satisfied prior to the Chelan County Treasurer signing the plat alteration.

13.6 After approval of the alteration, the applicant shall submit to the county a revised drawing of the approved alteration of the subdivision, which after signature of the approving authority shall be filed with the county auditor to become a lawful plat of the property.

13.6.1 The applicant would be required to submit blueline drawings and final plat to the Chelan County Department of Community Development for review and approval prior to being filed with the Chelan County Auditor's Office.

13.6.2 The Hearing Examiner sets as a Condition of Approval that the applicant must meet the final platting standards outlined in Chelan County Code Chapter 12.24.

13.7 The revised plat shall be surveyed and prepared by a Washington State licensed land surveyor.

13.7.1 As submitted with the application materials, the site plan was prepared by a licensed surveyor.

13.7.2 The Hearing Examiner sets as a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.

14. The applicants are seeking to modify the previously approved plat boundary in order to create a stormwater tract for County acquisition as well as reconfiguring the eighteen lots and internal roadway to fit within the modified plat boundary. The plat alteration enables the applicant to adjust the previously approved Enchantment Lane plat (P 2018-112) to meet stormwater requirements for the proposed Chelan County paving and drainage improvements to Knowles Road.
15. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
16. An open record public hearing after legal notice was provided was held on March 16, 2022 via Zoom videoconference.
17. Appearing and testifying for the Applicant was David Visser. Mr. Visser testified that he was the agent authorized to appear and speak on behalf of the Applicant and property owner. Mr. Visser stated the Applicant and property owners were in agreement with the proposed Conditions of Approval, however, he did have a question about proposed Condition No. 3.1.6. That question was answered to Mr. Visser's approval by Andrew Brunner of Chelan County.
18. No member of the public testified at this hearing.
19. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
20. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has authority to render this Decision.
2. The proposed land division was processed consistent with Chelan County Code Section 12, Plat Alteration.
3. All requirements of Chelan County Code Section 12.22.020 have been met.
4. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## **III. DECISION**

Based upon the above noted Findings and Fact and Conclusions of Law, PA 21-282 hereby **APPROVED**, subject to the conditions of approval.

## **IV. 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 Chelan County Code Chapter 12.24 as amended, the applicant shall complete a final Plat Alteration using the procedures of Chelan County Chapter 12.24: Final Process.

2. Pursuant to Chelan County Code Section 12.24.040 as amended, the final Plat Alteration shall be designed in substantial conformance with the Preliminary Plat Alteration of record, date stamped August 20, 2021, on file with the Chelan County Department of Community Development, except as modified herein.
3. Pursuant to the approved Enchantment Lane plat (P 2018-112), this Plat Alteration is subject to all Conditions of Approval set forth in P 2018-112, except as changed below by this decision and the original short plat decision.
  - 3.1. Conditions required by the comment letter from Chelan County Public Works dated October 13, 2021
    - 3.1.1. Pursuant to Chelan County Resolution 2014-135, frontage improvements will be required on Knowles Road per City of Wenatchee Development Standards. Chelan County Public Works has a future road improvement project for Knowles Road with a design of improving the road to a construction standard of 32' of pavement (curb to curb) with sidewalk on the west side of the roadway. The applicant shall enter into a Development Agreement with the County. The applicant shall pay their proportionate share of construction costs for the frontage improvements to Knowles Road. Note: the County has purchased additional right-of-way from the applicant. The site plan submitted with the PA shows this as "Tact A". This is County right-of-way not a Tract. Exhibit C is attached for reference
    - 3.1.2. Pursuant to Chelan County Code Title 15.30.920, this proposed project will have a direct impact to intersections on School Street. The applicant shall mitigate improvements to county intersections or traveled way by participating in paying their proportional share of mitigation for county road improvements. The County Engineer may require a Traffic Impact Study to determine impacts of this proposed project.
    - 3.1.3. If the applicant agrees, the Traffic Impact Study can be waived and an assessment of 18 PM (1 Lot = 1 PM) peak hour trips will be used as the marker for mitigation fees. Mitigation fees will be assessed based on impacts to the Easy Street/School Street Intersection. The estimate for improvements to the intersection is \$1,506,000 and the projected entering PM Peak volume for 2030 (Wenatchee Valley Transportation Comp. Plan) is 1158. Therefore, the Mitigation Fee shall be \$23,343.00 ( $18/1158 = 0.0155 \times 1,506,000 = \$23,343.00$ ). A Voluntary Mitigation Agreement will be entered into between Chelan County Public Works and the applicant for \$23,343.00 for the required improvements to this intersection.
    - 3.1.4. Pursuant to Chelan County Code Title 12.08.020(2), the applicant must demonstrate a Legal and Perpetual Access for the proposed lots on the plat.
    - 3.1.5. The design and construction of the new internal road may be constructed to meet a "Private Urban Local Access Class 2" Road Standard per Chelan County Code Standard Plan PW-17 (upon County approval of a Design Deviation). Per the City of Wenatchee requirements in their letter dated June 4, 2018, the road and subdivision design shall provide for future connectivity to the parcel to the north of this development (Parcel #232017440300). An Emergency Vehicle Turnaround will be required and shall be designed in a way to accommodate for future connectivity.
    - 3.1.6. Pursuant to City of Wenatchee Development Standards and Chelan County Code Title 15.60.070, road design specifications and features will be required to meet WSDOT, AASHTO, MUTCD, and all other referenced design guidelines and

- publications in this section which may include but limited to ADA ramps, curb, gutter and sidewalks only on one side of the street.
- 3.1.7. Pursuant to City of Wenatchee Development Standards, the applicant will be required to install Illumination at the intersection of Knowles Road and the new proposed internal public road. Illumination intensity and uniformity shall conform to the City of Wenatchee Development Standards.
  - 3.1.8. Pursuant to Chelan County Code Title 15.30.240, the applicant will be required to provide snow storage areas to place snow accumulated from the new proposed road.
  - 3.1.9. Pursuant to Chelan County Code Title 15.30.360, all lots within this subdivision will be required to access off the new internal roadway system.
  - 3.1.10. Pursuant Chelan County Code Title 15.30.310, the applicant is required to submit a sight distance analysis per Title 15 for all existing access and proposed access points. This includes all driveways and road intersections.
  - 3.1.11. Pursuant to Chelan County Code Title 15.30.310, submit with the Preliminary Mylar (blue-lines), a Lot Access/Addressing Plan. The Lot Access/Addressing Plan shall demonstrate how all lots and any existing driveway easements will be constructed and how they meet City of Wenatchee road approach standards.  
**Submit three (3) proposed road names to be approved by the Public Works Department and by Rivercom for the proposed new road in accordance with Title 10.20.**
  - 3.1.12. Pursuant to Chelan County Code Title 10.20, the applicant shall add the following note for addressing: **“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)”.**
  - 3.1.13. Pursuant to Chelan County Code, Title 15.30.310, the applicant shall cause a note to be placed on the face of the plat stating **“All new driveways accessing County Roads shall require an access permit from Chelan County Public Works, prior to the issuance of a building permit.”**
  - 3.1.14. Pursuant to Chelan County Code Title 15.30.610, Construction Plans: The applicant shall submit construction plans and reports for all required improvements on Knowles Road and the internal roads in accordance with Title 15.30: The Construction Plans shall include, but are not limited to:
    - A. Drainage Report and Plan.
    - B. Roadway Improvement Plan (showing location of utilities and roadway curve data).
    - C. Lot Access Plan (Profiles, Topography).
    - D. Erosion and Sedimentation Control Plan.
    - E. Signage Plan.
    - F. Illumination Detail.
    - G. ADA Ramp Detail.
    - H. Curb, Gutter and Sidewalk Details.
    - I. Topography Lines.
    - J. All Easements



- 3.1.15. Pursuant to Chelan County Code Title 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.
- 3.1.16. Pursuant to Chelan County Code Title 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 County Engineers signature on the Final Mylar.
- 3.1.17. Pursuant to Chelan County Code Title 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 will 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.
- 3.1.18. Pursuant to Chelan County Code Title 13.18.030(9) On the Final Plat, show the necessary easements and tracts in accordance with the approved drainage plan;
- 3.1.19. Preliminary Plat must comply with stormwater standards, Chapter 13.12; 13.14; 13.16 and 13.18 of Chelan County Code.
- 3.1.20. The Chelan County Engineer is currently investigating whether this proposed development is located in a drainage problem area, whereby the design storm of this development may be raised accordingly per Chelan County Code Title 13.18.040(6)(D)(v).
- 3.1.21. A private stormwater drainage system will be required for, and within, the proposed Subdivision. The private Subdivision facility shall use the Stormwater detention pond that will be constructed as part of the County road improvements to Knowles Road. The County shall maintain the Detention Pond (on County land). The HOA for the Subdivision shall maintain the private storm drainage facilities within the Plat. Operation and maintenance of the private drainage system will 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 Plat Mylar (bluelines) and shall be recorded with the final Plat.
- 3.1.22. The following note shall be placed on the final plat mylar:

**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.**

- 3.1.23. Applicant shall submit Lot Closure calculations with the Preliminary Mylar (blue) submission.
  - 3.1.24. On the final plat, the applicant must identify all roads as public or private
  - 3.1.25. On the final plat, the applicant shall show all easements that benefit or burden the project site
  - 3.1.26. Pursuant to Chelan County Code Title 15.30.825, Monumentation will be required on Knowles Road if not already monumented.
  - 3.1.27. On the final plat, the applicant must identify centerlines and right-of-way dimensions on Knowles Road and on any new proposed road.
- 3.2. Conditions required by the comment letter from the Washington State Department of Ecology dated October 11, 2021
- 3.2.1. Historical aerial photos indicate the project is located on property that was occupied by orchard during the time period when lead arsenate was applied as a pesticide, often resulting in soil contamination from lead and/or arsenic. Before proceeding, the project is required to conduct soil sampling under the Model Toxics Control Act (Chapter 173-340 WAC).
  - 3.2.2. If sampling indicated elevated levels of lead and arsenic, cleanup will be required prior to occupancy. The Department of Ecology plans to use Model Remedies for lead and arsenic pesticide contamination in historical orchards of Central Washington. Compliance with a Model Remedy ensures the project meets the minimum standards of the Model Toxics Control Act, and if implemented as described, your property will be successfully cleaned up to Washington State standards.
4. Pursuant to Chelan County Code Chapter 12.24 and RCW 58.17.215 as amended, the applicant shall provide a signature block for the majority of the affected property owners, referencing their lot number and parcel number, on the final plat alteration and secure all affected property owner's signatures prior to final Plat Alteration approval.

Dated this 18<sup>th</sup> day of March, 2022.

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.