

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	
	)	
WV 2021-337, SV 2021-338, HMMP 2021-339	)	FINDINGS OF FACT,
BAKKEN	)	CONCLUSIONS OF LAW,
	)	CONDITIONS OF APPROVAL,
	)	AND DECISION

THIS MATTER, having come on before 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 wetland variance, shoreline variance, and habitat management and mitigation plan was submitted to vary two (2) Category II wetland buffers (A and B) located outside shoreline jurisdiction and vary one (one) Category II wetland buffer (C) and one (1) Type F/Ns riparian stream buffer location within shoreline jurisdiction to construct a 1,347 sq. ft. single-family residence, 355 sq. ft. detached garage, and install utilities on the subject property. Wetland buffer A would be reduced from 150 ft. to 70 ft. and wetland buffer B would be reduced from 150 ft. to 118 ft., pursuant to Chelan County Code (CCC) Chapter 11.80 and 11.95. Wetland buffer C would be reduced from 150 ft. to 46 ft. pursuant to Chelan County Shoreline Master Program (CCSMP) Appendix B Section 6.1.3.8. The Type F/Ns riparian stream buffer would be reduced from 100 ft. to 66 ft. pursuant to CCSMP Section 7.8.2. The project would result in approximately 1,277 sq. ft. of vegetation removal. Based on the Habitat Management and Mitigation Plan (HMMP) the applicant proposes to replace the removed vegetation at a 1:1 ratio with native woody vegetation plantings..
2. The applicants and owners are Shelley Cline and Joel Bakken, 6052 33<sup>rd</sup> Ave NE, Seattle, WA 98115.
3. The agent is Grette Associates, LLC, Attn: Ryan Walker, 151 South Worthen Street, Suite 101, Wenatchee, WA 98801.
4. The project location is NNA River Road, Plain, WA 98826.
5. The parcel number of the subject property is 26-17-12-725-026.
6. The legal description of the subject property is No. 3 Wenatchee Park Lot 13 recorded on February 4, 1913 under AFN: 48010. The subject property is 2.38 acres.
7. The project location is outside of an Urban Growth Area.
8. The Comprehensive Plan designation and zoning designation is Rural Residential/Resource 2.5 (RR2.5).

9. The subject property has an existing gravel driveway and domestic well. The proposed building location for the new single-family residence would be located in the area of the property that was previously used as Bridge Street, which is now vacated.
10. The proposed building location is flat and sparsely vegetated where Bridge Street was previously located. The remainder of the property is vegetated with mature trees and native shrubs. The property slopes downward toward the Wenatchee River, and on the opposite side toward a depressional wetland.
11. The property to the north is River Road and Chapel Drive and is zoned Rural Residential/Resource 2.5 (RR2.5).
12. The property to the south is Undeveloped Residential and is zoned Rural Residential/Resource 2.5 (RR2.5)
13. The property to the east is the Wenatchee River.
14. The property to the west is River Road and is zoned Rural Residential/Resource 2.5 (RR2.5).
15. The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 11.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
16. The subject property contains three (3) Category II wetlands. Therefore, the provisions of CCC Chapter 11.80 would apply.
17. The subject property is located within 200 ft. of the Wenatchee River, a shoreline of statewide significance; therefore, the provisions of the Chelan County Shoreline Master Program (CCSMP) would apply. Additionally, one of the Category II wetlands and a Type F/Ns stream are located within shoreline jurisdiction on the subject property.
18. According to the Federal Emergency Management Agency, FIRM Panel No. 5300150775B, flooding is indicated on the subject property. Therefore, the provisions of CCC 11.84 and 3.20 would apply.
19. The County GIS data map indicates known geologically hazardous conditions on the subject property. Therefore, the provisions of CCC 11.86 would apply. The applicant has submitted a Geologic Site Assessment prepared by David L. Nelson of Nelson Geotechnical Associates, dated August 20, 2021.
20. Pursuant to comments received from the Department of Archaeology and Historic Preservation (DAHP) and the Yakama Nation Cultural Resources Program, the subject property is located in an area with high probability of containing cultural resources and a cultural resources survey will be required. In addition to a cultural survey, the applicants will be required to prepare an Inadvertent Discovery Plan (IDP) for the proposed project and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately stop work and notify the appropriate tribal and state

representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.

21. Pursuant to comment received from the Confederate Tribes of the Colville Reservation, the subject property is located in an area with high probability of archaeological resources and medicinal plants. A cultural resource survey is required. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
22. Pursuant to WAC 197-11-800(6)(e), variance applications that are based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surrounding and do not result in a change of land use or density are categorically exempt from the environmental review process.
23. Construction will begin upon issuance of all necessary permits and within the appropriate work window.
24. The subject property has frontage on River Road and Chapel Drive. The proposed single-family residence and appurtenant structures would be accessed from the intersection of River Road and Chapel Drive.
25. Domestic water would be provided by an existing private well.
26. Power is provided by Chelan County PUD.
27. Sanitation would be provided by an on-site septic system. The proposed septic system shall be located outside of the wetlands and modified buffers.
28. The subject property is located within the boundaries of Fire District #9.
29. Noise from construction, typically associated with a residential construction. Construction noise is regulated by CCC, Section 11.88.190, which states no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of ten pm to seven am.
30. Being as the proposed development is to be residential, the visual impact is anticipated to be minimal as the surrounding properties are developed residentially.
31. The application was submitted on July 28, 2021.
32. The Determination of Completeness was issued on August 24, 2021.
33. 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 September 4, 2021 with comments due September 18, 2021. The application was re-noticed to correct the noticing period on September 21, 2021 with comments due October 21, 2021. Agency comments are considered in the decision and,

when appropriate, associated Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received.

Agencies Notified	Response Date & Nature of Comment
WA Department of Ecology	September 16, 2021 – Total Maximum Daily Load listings for the Wenatchee Watershed and construction information in the riparian buffer. October 19, 2021 – Ecology's Shorelands/Environmental Assistance program recommends that the County request a revised HMMP plan to property offset impacts to the adjacent Category II wetland buffers as well as clearly defining the amount of buffer impacts and mitigation proposed.
Chelan County Building Official	September 14, 2021 – No comments or concerns. September 27, 2021 – No comments or concerns.
Department of Archaeology & Historic Preservation	September 17, 2021 – The agency's statewide predictive model indicates that there is a high probability of encountering cultural resources within the proposed project area. DAHP recommends a professional archaeological survey of the project area be conducted and a report be produced prior to ground disturbing activities. October 7, 2021 – DAHP recommends that the applicant prepare an Inadvertent Discovery Plan (IDP) for the proposed project and preparation of construction crews for the possibility of encountering archaeological material during ground disturbing activities.
WA Dept. of Natural Resources	September 13, 2021 – The construction of a home would require an approved Class 4-General Forest Practices Application (FPA) from the WA DNR prior to timber harvest and clearing of stumps in order to convert a portion of the property to non-forestry. SEPA environmental review would be required for the FPA.
WA State Dept. of Fish & Wildlife	October 1, 2021 – No comments at this time.
Yakama Nation	September 8, 2021 – Requesting a cultural resource survey.
US Army Corps of Engineers	<b>No Comments Received</b>
Chelan County Fire Marshal	
Chelan County PUD	
Cascade School District	
Fire District No. 9	
Chelan-Douglas Health District	



Agencies Notified	Response Date & Nature of Comment
Confederated Tribes of the Colville Reservation	

34. The following public comments were received:

Public Comments	Date Received	Nature of Comment
Alexander Allen	September 14, 2021	Voicing opposition to the proposed development, concern regarding access to "The Rock", concerns for environmental protections for the river and wetlands.
Peter T. Brown	September 14, 2021	Voicing opposition to the proposed development, concern regarding access to "The Rock", concerns for environmental protections for the river and wetlands.
Clarice Christofferson	September 14, 2021	Requesting that the property owners make adjustments to application in order to allow access by the public to the rock.
Kathleen Gibbs	September 14, 2021	Protection of the wetlands, concern for access to the Big Rock and requesting that access remain for the benefit of the community.
Jessica Karraker	September 14, 2021	Fully support the approval of the project. The applicant appears to be working within the codes and application processes to construct a single-family residence.
Jeff Layton	September 14, 2021 & September 17, 2021	Voicing opposition to the proposed development, concern regarding access to "The Rock", concerns for environmental protections for the river and wetlands.
Lauren and Ross Peterson	September 14, 2021	Voicing opposition to the proposed development, concern regarding access to "The Rock", concerns for environmental protections for the river and wetlands.
Jason Roberts	September 14, 2021	Voicing opposition to the proposed development, concerns for environmental protections.
Adam Rubin	September 14, 2021	Believe that the property owners should have to follow the same rules as everyone else, concern for pollutants in the river, concern for the swimming hole.
Haakon Sorenson	September 14, 2021	Concern for access to "The Rock".
Anna Thompson	September 14, 2021	Voicing opposition to the proposed development, concern for intrusion on wetlands, drainage, and wildlife corridor. County should purchase the property and turn it into a low impact park.

Public Comments	Date Received	Nature of Comment
Chris and Cody Bench	September 15, 2021	Support of the proposal and the right of the owners to develop as needed. The property owners are making the best effort to mitigate habitat loss, and the parcel does not have a public access trail and beach.
Ian	September 17, 2021	7 years old, concerns for access to the rock.
Stacy Hurd	September 17, 2021	Expressing concern about reducing the wetland and riparian buffer for the property. Property owner should comply with known zoning constraints. Concern for the preservation of a long-time community gathering place.
Amanda Gatlin	September 18, 2021	Urging the County to adhere to the existing wetland and stream buffers and to make no exception for the proposed project, concerns for the stream and shoreline of the Wenatchee River, concern for septic system contamination.
Tom and Bev Layton	September 18, 2021	"The Rock" is a valuable resource for the Plain area, voicing opposition to the proposed project.
Jennifer Saugen	September 18, 2021	Concern for the creation of the subject property through a Boundary Line Adjustment in 2011 that creates a lot with no buildable areas, expressing concern for the septic field within wetland and shoreline setbacks, lawn fertilizers and other ecological impacts, mitigation, and public enjoyment of "The Rock".
Teresa Boushay	September 20, 2021	Concern for public access to the Wenatchee River, the septic drainfield and environmental impacts, and the time period of the Geologic Site Assessment done in the summer.

35. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 2.5 (RR2.5) Comprehensive Plan designation and Critical Areas were reviewed for consistency with the proposed residential development.
36. The project is consistent with the Rural Residential/Resource 2.5 (RR2.5) purpose statement: To maintain the range of rural development opportunities consistent with the rural character and rural development provisions outlines in the goals and policies of this comprehensive plan. These areas can provide buffering or transitions between existing rural developments and areas of higher or lower densities. This designation should not function as an urban reserve area, although these areas may someday be incorporated into an urban growth area. Uses appropriate for these areas include: residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. Additionally, the project is consistent with Goal CL 1 of the Resource

Element: Identify and protect critical areas from adverse environmental impacts while providing for reasonable use of the property.

- 36.1 The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
- 37. Chelan County Code 11.12.020: Standards for the Rural Residential/Resource 5 (RR5) Zoning District.
  - 37.1 Minimum Lot Size: 2.5 acres
    - 37.1.2 The applicant is not requesting to modify the lot size.
    - 37.1.3 This requirement does not apply.
  - 37.2 Minimum Lot Width: 100 ft. at the front building line
    - 37.2.1 The lot exceeds 100 ft. at the front building line.
    - 37.2.2 The lot complies with the required building width.
  - 37.3 Maximum Building Height: 35 ft.
    - 37.3.1 Building height would be calculated during building permit review.
    - 37.3.2 Building height would be determined during review of the building permit application
  - 37.4 Maximum Lot Coverage: Buildings and structures shall not occupy more than 35% of the lot area.
    - 37.4.1 According to Chelan County Assessor's records, the property is 2.38 acres, which would allow for 36,285.48 sq. ft. of lot coverage. Based on the application materials dated July 28, 2021, and the Assessor's records, the total lot coverage upon completion of the project would be approximately 1,682 sq. ft.
    - 37.4.2 The project meets the requirement for maximum lot coverage.
  - 37.5 Minimum Setback Distances: Front yard 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater; side yard 5 ft. from side property line; rear yard 20 ft. from rear property line.
    - 37.5.1 As indicated on the site plan of record, dated July 28, 2021, the proposed residential structure would meet the applicable zoning setbacks.
  - 37.6 Off-street parking requirements in this district shall be as follows: (A) Two spaces per single-family dwelling.
    - 37.6.1 Based on the revised site plan of record, a detached two car garage is proposed for the single-family residence.
    - 37.6.2 The proposed two car garage would satisfy the off-street parking requirement.
- 38. Chelan County Code 11.95.030: Variance Evaluation Criteria. No variance shall be granted unless it can be shown that all of the following conditions exist:
  - 38.1 The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege.
    - 38.1.1 The wetland buffers on the subject property, when combined, encompass the entire property. The variance would allow for the development of a modestly sized single-family residence and accessory structures on a legally established residential lot. The proposed residential development would be similar to the existing residences on the surrounding properties.
    - 38.1.2 The proposed project is similar to the residential development on the surrounding properties. The variance is necessary to preserve a right substantially the same as possessed by owners within the same area and would not grant special privilege.

- 38.2 The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control.
- 38.2.1 The plight of the applicant is due to the topography (wetlands), geographic location of the irrigation easement and historic land use planning decisions. Due to the smaller lot size and close proximity of critical areas, there is no buildable area on the property that is located outside of the overlapping wetland and stream buffers. The property is further impeded by the presence of an existing irrigation pipeline which has a recorded 30 ft. easement. The location of these critical areas and the irrigation pipeline are not within the applicant's control. The applicant has identified a potential building site on the subject property that would result in the least impact on the critical areas due to the site being previously used as Bridge Street. This area is mostly unvegetated and relatively flat compared to the rest of the property.
- 38.2.2 The applicant has identified a building site that would have the least impact on critical areas due to existing site conditions. The variance request appears to be based on the presence of critical areas that are located on the subject property, which the applicant has no control over.
- 38.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
- 38.3.1 The hardship asserted by the owners is not of their own actions. The hardship stems from the application of the critical areas as outlined in Chelan County Title 11. This includes the location of the Category II wetlands and their associated 150 ft. buffers and the location of the Type F/Ns stream and its associated 100 ft. buffer. The applicant also had no control over the location of the existing historic irrigation pipeline and its 30 ft. wide easement, or over the location of historic culverts under River Road which influenced the topography and hydrology and caused wetlands A and B and the Type F/Ns stream to be located on the property.
- 38.3.2 The hardship is not of the owners' actions.
- 38.4 The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan.
- 38.4.1 The proposed project would not create any additional public welfare or safety issues. The residential development would meet all building code requirements and would conform to other required sections of code to the greatest extent possible. The location of the proposed project would minimize impacts to the critical areas and their associated buffers. The project has been responsibly designed and provides important attributes which promote public welfare and safety.
- 38.4.2 The proposal satisfies the objectives of the comprehensive plan for the Rural Residential/Resource 2.5 (RR2.5) zone and critical areas. As conditioned, the proposal would not be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 38.5 The hardship asserted by the application results from the application of this title to the property.
- 38.5.1 Based on Boundary Line Adjustment 2011-169, recorded September 14, 2011 under AFN: 2348854, the current critical areas regulations were established prior to the creation of the current lot configuration. However, the boundary line adjustment increased the lot size of the subject property and appears to have

- resulted in a more buildable lot. The three Category II wetlands, the Type F/Ns stream, and their associated buffers encompass the entirety of the subject property.
- 38.5.2 The hardship is a result of the application of CCC Title 11 to the subject property.
- 38.6 The granting of a variance should not:
- 38.6.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.
- 38.6.1.1 The variance request is based on the property's encumbrances due to the application of the Title 11 critical areas for wetland and the CCSMP. The parcel was legally established pursuant to CCC Section 14.98.1090 definition of legal lot of record being as it was created prior to October 17, 2000. The project, as proposed, would conform to Chelan County building codes and setback requirements associated with the Rural Residential/Resource 2.5 (RR2.5) zoning designation. The hardship stems from the required critical areas for wetlands and the associated buffers.
- 38.6.1.2 The proposed variance is based on the application of the Chelan County critical areas ordinance of Title 11 as it relates to the associated wetland buffers.
- 38.6.2 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.
- 38.6.2.1 The applicant indicates that the request is not based on economic return, but rather the application of Title 11 and the undue hardship posed on the applicant by the implementation of the required wetland buffers. The buffers preclude the development of the property utilizing the guidelines for rural development as allowed within the Chelan County Code for parcels zoned Rural Residential/Resource 2.5 (RR2.5).
- 38.6.2.2 There is no claim of economic return. The reduced buffer would provide a building area for a residential structure and accessory developments.
- 38.6.3 Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.
- 38.6.3.1 The owners acquired the property on April 12, 2021. The lot was legally created in 1913, prior to the establishment of critical areas regulations. The lot shape was reconfigured through a Boundary Line Adjustment in 2011. However, this did not alleviate the hardship of the wetland buffer.
- 38.6.3.2 The lot was legally created as a residential lot prior to the County's adoption of zoning codes and critical areas regulations. However, these codes and regulations did exist at the time the applicant acquired the property.
- 38.6.4 Result in a de facto zone reclassification.
- 37.6.4.1 The proposed variance does not change the permitted land uses.
- 37.6.4.2 This does not apply.
- 38.6.5 Be substantially for the purpose of circumventing density regulations.
- 38.6.5.1 The proposed variance does not affect density.
- 38.6.5.2 This does not apply.

39. Chelan County Code 11.80.120: Wetland Variance Provisions. In addition to the requirements of Chapter 11.95 of this title as amended, a variance shall not be granted unless it can be shown that all of the following conditions exist:
- 39.1 The analysis of the proposal's impact on wetland and wetland buffer areas determines that there would not be a significant impact to the wetland and wetland buffer functions as stated in CCC Section 11.06.020 or that significant impacts would be mitigated by the application.
- 39.1.1 There would be no significant impact on the three Category II wetlands as a result of the proposed residential development. The construction of the single-family residence, detached garage, and utilities would be located outside of the wetlands, and only within their associated buffers. The location of the proposed development is already modified by the vacated Bridge Street. No wetland vegetation would be removed as a result of the project. Minimal buffer impacts would occur as a result of the proposed development, including the removal of approximately 1,277 sq. ft. of mixed vegetation. The vegetation removed would be replaced at a 1:1 ratio as part of the mitigation planting and would be located on a portion of the vacated Bridge Street which currently lacks native woody vegetation. The mitigation plantings would improve the buffer function over existing conditions through re-vegetation of a previously disturbed and modified area.
- 39.1.2 The potential impact to the wetland and wetland buffer was assessed via the application materials, wetland delineation, Habitat Management and Mitigation Plan. The Hearing Examiner finds that the potential impacts to the wetland and associated wetland buffer would be properly mitigated as conditioned.
- 39.2 No other reasonable use with less impact is possible:
- 39.2.1 Based on the application materials and site plan of record, date stamped July 28, 2021, the proposed development is of a modest size and consistent with other residential development in the area. The applicant has situated the proposed development so that it occurs as far as possible from all critical areas located on the subject property. The combined wetland buffers encompass the entire buildable area of the property outside of the required 100 ft. rural shoreline buffer of the Wenatchee River. The 1,277 sq. ft. of vegetation that would be removed as a result of the proposed development would be replaced at a 1:1 ratio.
- 39.2.2 The Hearing Examiner finds, as conditioned, that the proposed development would result in a minimal impact to the wetland and associated buffer while allowing reasonable use of the subject property.
- 39.3 Impacts to critical lands cannot be lessened through locational or design changes to the proposed use.
- 39.3.1 The proposed project has been designed to avoid the wetlands and their associated buffers to the greatest extent possible. The project would be located as far from the wetlands as is reasonable. The project would be located within an area of the property which is already modified by the presence of the vacated Bridge Street, thereby minimizing further impacts to existing mature woody wetland and buffer vegetation. Any removed vegetation within the combined buffers would be replaced at a 1:1 ratio. The applicant proposes to install 1,277 sq. ft. of woody vegetation as mitigation..



39.3.2 The Hearing Examiner finds, as conditioned, that the proposed development would be located and designed in a manner to avoid significant impacts to the wetlands and associated buffers.

40. This site is located along the Wenatchee River within the 'rural' shoreline designation. The proposed residential use/structure is permitted in this designation and would be located outside the required 100 ft. setback from the Wenatchee River. The shoreline variance request is for the Type F/Ns stream and Category II wetland buffers that are located within the 200 ft. shoreline jurisdiction.
42. The provisions of the Shoreline Master Program and Appendix B, Critical Areas Regulations, shall apply to any use, alteration or development within shoreline jurisdiction to document a finding of no-net-loss. Additional mitigation requirements may be included within this SMP based on the proposed development or use to document a finding of no-net-loss.
  - 42.1 Mitigation sequencing. Applicants shall demonstrate all reasonable efforts have been taken to avoid, minimize and then mitigate potential adverse impacts to ecological function resulting from new development and redevelopment in shorelines in the following sequence of steps listed in prioritized order:
    - 42.1.1 Avoiding the impact altogether by not taking a certain action or parts of an action.
    - 42.1.2 The applicant would avoid direct impact to critical areas by locating the proposed single-family residence, detached garage, and utilities outside of the mapped wetlands and streams. The developments would be located within the associated buffers instead. The applicant would also locate the development outside of the 100 ft. rural shoreline buffer for the Wenatchee River.
    - 42.1.3 Based on the application materials, the proposed development would avoid direct impact on the wetlands and streams on the subject property, but impacts would be located within the associated buffers.
  - 42.2 Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts.
    - 42.2.1 The applicant would minimize impacts to the critical areas on the subject property by locating the proposed development in a previously developed area of the property. The single-family residence and detached garage would be located in the footprint of the vacated Bridge Street and as far from critical areas as possible. The applicant is also requesting only the minimum amount of variance necessary to construct the single-family residence, detached garage, and utilities. Following installation of utilities, the soil would be top-seeded with a native grass blend. Best Management Practices would be utilized during all phases of the project in order to minimize the potential for erosion on the site.
    - 42.2.2 Based on the application materials, the proposed development would be located in an appropriate area on the subject property and affirmative steps would be taken that would minimize impacts to the critical areas.
  - 42.3 Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project.
    - 42.3.1 Based on the submitted Habitat Management and Mitigation Plan, native vegetation would be installed at a 1:1 mitigation ratio as replacement for any removed trees, shrubs, and weedy herbaceous species and grasses resulting from the construction of the proposed single-family residence, detached garage, and

installation of utilities. Vegetation removal would be limited to 1,277 sq. ft. and replacement vegetation would be located in a portion of the combined buffers that is downslope of the proposed development and in an area that is currently lacking in native woody trees and shrubs.

- 42.3.2 As conditioned, the applicant would rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project.
- 42.4 Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - 42.4.1 The short-term impacts to the combined buffers resulting from the removal of 1,277 sq. ft. of native vegetation would be eliminated over time through the installation of replacement vegetation at a 1:1 ratio per CCC 11.80.070(8). Maintenance of the planting area would include the replacement of any dead plants with like and in-kind species to ensure that benchmarks, as conditioned, would be achieved. The planting area would be monitored for noxious or invasive species which would not exceed 20 percent of the total planting area. If required, maintenance activities would be performed with guidance from the Chelan County Noxious Weed Control Board. The planting area would be recorded with the Chelan County Auditor to ensure that the plantings are preserved and proper legal protections are provided. The plants would remain at the site during the length of the proposed use.
  - 42.4.2 As conditioned, the applicant would reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
- 42.5 Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
  - 42.5.1 Short-term impacts to the critical areas on the subject property resulting from the removal of native vegetation within the buffers would be compensated for by installing replacement vegetation at a 1:1 ratio.
  - 42.5.2 As conditioned, vegetation removal resulting from the proposed development would be compensated for by replacement.
- 42.6 Monitoring the impact and the compensation projects and taking appropriate corrective measures.
  - 42.6.1 Vegetation plantings would be monitored for five years, as required by the CCSMP. Monitoring reports would be submitted to Chelan County Community Development as required, with an expected performance benchmarks of 90 percent survivorship in years one (1) and two (2), and 80 percent survivorship in years three (3) through five (5). Any dead plants would be replaced with like and in-kind species to ensure the benchmarks for success are achieved.
  - 42.6.2 As conditioned, the proposed compensation plantings would be monitored and the appropriate corrective measures would be taken.

- 43. CCSMP Section 7.8 Shoreline Variance Permits. CCSMP Section 7.9.1 Purpose and Review Process. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Shoreline Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.

44. After a Shoreline Variance application has been approved by the County, the County shall submit the permit to Ecology for Ecology's approval, approval with conditions, or denial. Ecology shall review the file in accordance with WAC 173-27-200.
45. CCSMP Section 7.8.2 Review Criteria. Shoreline variances may be authorized, provided the applicant can demonstrate compliance with the following criteria or as thereafter amended in WAC 173-27-170. Applicants are encouraged to consider the options, such as buffer averaging or buffer reduction and optimally implement mitigation sequencing prior to applying for a Shoreline Variance.
  - 45.1 General provisions. Shoreline Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
    - 45.1.1 RCW 90.50.020 prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences. The strict implementation of the CCSMP affects the ability of the applicant to develop a legal lot of record with a single-family residence as allowed within the zoning designation and consistent with Chelan County Code, the Chelan County Comprehensive Plan and RCW 90.50.020. The property cannot be legally developed without the granting of a variance due to the Type F/Ns stream, a Category II wetland, and their associated buffers.
    - 45.1.2 The Hearing Examiner finds that the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
  - 45.2 Shoreline variances landward of the OHWM. Shoreline Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant demonstrates affirmatively all of the following:
    - 45.2.1 How would the strict application of the bulk, dimensional or performance standards set forth in this SMP preclude or significantly interfere with reasonable use of the property?
      - 45.2.1.1 The upland of the subject property would not be able to be developed with a single-family residence without the granting of a shoreline variance. A Type Ns stream outside of shoreline jurisdiction holds a 50 ft. buffer for low and high impact land uses. The Type F/Ns stream located on the subject property is a tributary to the Wenatchee River and therefore, holds a 'rural' shoreline environment designation and associated 100 ft. setback, which extends over 100 ft. landward of the OHWM of the Wenatchee River and impedes development. The 150 ft. wetland buffer associated with Wetland C in shoreline jurisdiction also extends outside of the 100 ft. rural shoreline buffer of the Wenatchee River. Due to the presence of the wetlands, irrigation easement, front and side yard setbacks, and riparian buffers, there is no buildable area that is located outside of the combined critical area buffers.
      - 45.2.1.2 The combination of the combined critical area buffers as set forth by the SMP preclude with reasonable use of the property.
    - 45.2.2 How is the hardship described in Section 7.8.2.B.1 above specifically related to the property, and is the hardship the result of unique conditions such as irregular lot shape, size, or natural features and the application of this SMP, and not, for example, from deed restrictions or the applicant's own actions?

- 45.2.2.1 The hardship is a result of the topography of the parcel, its geographic location, and previous land use planning decisions. These combined elements have resulted in the formation of three wetlands and a Type F/Ns stream on the subject property. Because of the small lot size, and the close proximity of critical areas, there is no buildable area on the property that is located outside the overlapping buffers of the wetlands and Type F/Ns stream. The property development is further impeded by a 30 ft. irrigation pipeline and easement. The location of the critical areas, their associated buffers, and the irrigation pipeline and easement are not the result of the owner's own actions.
- 45.2.2.2 The hardship appears to be specifically related to the property and is the result of unique conditions like irregular lot shape and natural features. A portion of the property is impeded by a 30 ft. irrigation pipeline and easement that has been in place since the early 1900s. The location of the critical areas, their associated buffers, and the irrigation pipeline and easement do not appear to be the result of the owner's own actions.
- 45.2.3 How is the design of the project compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP, and will the project design not cause adverse impacts to the shoreline environment?
  - 45.2.3.1 The construction of a single-family residence, detached garage and utilities is compatible with the Rural Residential/Resource 2.5 (RR2.5) zoning district and the Chelan County Comprehensive Plan. Single-family residences, accessory structures, and utilities are also permitted in the 'rural' shoreline environment designation for the Wenatchee River. The proposed development would be located outside the 100 ft. rural shoreline buffer on the footprint of the vacated Bridge Street to minimize vegetation removal and impacts to critical areas.
  - 45.2.3.2 As conditioned, the project would not cause adverse impacts to the shoreline environment. The project would be compatible with the authorized uses in the zoning designation, comprehensive plan, and SMP.
- 45.2.4 How will the variance not constitute a grant of special privilege not enjoyed by other properties in the area?
  - 45.2.4.1 The requested wetland and Type F/Ns stream buffer variances would not constitute a grant of special privilege. The variances would afford the property owner's the minimum area necessary to construct a single-family residence, detached garage, and utilities on the subject property. The other properties in the area are developed with single-family residences and accessory structures of similar nature and size as the proposed development.
  - 45.2.4.2 The requested variance would not constitute a grant of special privilege not enjoyed by other properties in the area.
- 45.2.5 How is the variance requested the minimum necessary to afford relief?
  - 45.2.5.1 The entire property is encumbered by wetland buffers and an irrigation easement, rendering the entire site unbuildable without a variance. The modest home built outside the wetland areas, but with minimal relief from the wetland buffers, satisfies the requirement that the requested

- relief is the minimum necessary in order for the Applicant to construct a residential structure and accessory structures, of a modest size.
- 45.2.6 How will the public interest suffer no substantial detrimental effect?
    - 45.2.6.1 The proposed project is for the construction of a single-family residence, detached garage, and utilities on a privately-owned parcel. The public interest would not suffer substantial detrimental effect through the granting of the variance. All buildings and utilities would be constructed to meet all applicable building, fire, and health district standards and mitigation would be provided to compensate for potential loss of ecological function. The project would not impact the public's ability to utilize the Wenatchee River and would cause no long-term impacts to critical areas on the subject property.
    - 45.2.6.2 As conditioned, the proposed project would meet all applicable building, fire, and health district standards. The public interest would not suffer substantial detrimental effect as a result of the proposed project.
  - 45.3 Cumulative impacts. In the granting of all Shoreline Variance Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. The County may require that the applicant submit a cumulative impact analysis prepared by a qualified professional for the subject of the variance:
    - 45.3.1 Documenting other properties or uses on the same waterbody that are similarly situated and could request a similar variance.
      - 45.3.1.1 Based on the application materials and impact analysis, there are few properties located on the Wenatchee river that are similarly situated and could request a similar variance. The subject property is located within the pathway of a historic irrigation pipeline that existed before the regulations in the Chelan County Shoreline Master Program was adopted. The conditions that resulted in the creation of wetlands A and B and the Type F/Ns stream to be located on the property are also the result of previous land use planning decisions that predate the SMP and Chelan County Critical Areas Ordinance. The three wetlands and Type F/Ns stream and their associated buffers limit the buildable area on the subject property. There are very few properties on the same waterbody and within Chelan County that have as many encumbrances as the subject property; therefore, the cumulative impacts of granting similar variances would be minimal.
      - 45.3.1.2 There are very few properties on the same waterbody that are similarly encumbered by as many critical areas and could request a similar variance as the subject property; therefore, this standard would be met.
    - 45.3.2 Demonstrating consistency with the policies of RCW 90.58.020.
      - 45.3.2.1 The requested variances would comply with the CCSMP and, therefore, the policies in RCW 90.58.020 which prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences.
      - 45.3.2.2 The proposed variances demonstrate compliance with the policies of RCW 90.58.020; therefore, this standard would be met.
    - 45.3.3 Demonstrating no substantial adverse effects to the shoreline environment and achievement of no-net-loss of shoreline ecological function. For example, if variances were granted to other developments in the area where similar circumstances exist, the



total of the variances shall also remain consistent with the policies of the Act and shall not cause substantial adverse effects to the shoreline environment.

45.3.3.1 The applicant has submitted a Habitat Management and Mitigation Plan demonstrating that the proposed development would result in a no-net-loss of ecological function. The applicant proposes to install mitigation at a 1:1 ratio for any buffer vegetation removed during the construction of the single-family residence and utilities. Similar variances would also be required to minimize impacts to critical areas and provide mitigation for any unavoidable impacts.

45.3.3.2 A Habitat Management and Mitigation Plan was submitted along with the application and through its implementation, along with the other conditions of approval, would result in no-net loss of ecological function in the shoreline environment.

46. The proposed variance to reduce wetland buffers and shoreline buffer on the subject property would not be anticipated to constitute the granting of a special privilege as other properties in close proximity are developed residentially. Due to the application of the critical areas ordinance of Title 11 and the Shoreline Master Program, the subject property is almost entirely encumbered by protective buffers. The proposed mitigation plantings are anticipated to alleviate potential impacts that could be associated with the proposed residential development and would result in a no-net loss of ecological function on the subject property.
47. This application authorizes the applicant, in substantial conformance with all conditions of approval, to reduce the buffer of Wetland A from 150 ft. to 70 ft., reduce the buffer of Wetland B from 150 ft. to 118 ft., reduce the buffer of Wetland C from 150 ft. to 46 ft., and reduce the buffer of the Type F/Ns riparian stream buffer associated with the shoreline of the Wenatchee River from 100 ft. to 66 ft. in order to construct a 1,347 sq. ft. single-family residence, 355 sq. ft. detached garage, and install utilities on the subject property. The project would result in approximately 1,277 sq. ft. of vegetation removal, of which the applicant proposes to replace at a 1:1 ratio with native woody vegetation plantings as outlined in the Habitat Management and Mitigation Plan.
48. An open record public hearing was held on March 16, 2022.
49. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
50. Appearing and testifying on behalf of the applicant was Ryan Walker. Mr. Walker stated he was the agent for the property owners/applicants and were authorized to testify on their behalf. Mr. Walker testified that the property owners/applicants were in agreement with the proposed Conditions of Approval. Mr. Walker indicated that he agreed with all of the representations set forth within the staff report. Mr. Walker testified that there would still be public access available to the "rock" as identified by several public comments. This access would occur from Chapel Avenue as it intersects with the Wenatchee River. Because the water levels of the Wenatchee River, during the summer time, generally do not reach the ordinary high water mark. Therefore, there is public access along the shoreline, below the ordinary high water mark, to the "rock" for public recreation. Mr. Walker also testified that the on-site septic system and drain field location are to be located within the parameters set by the Chelan-Douglas Health District and that no waiver will be required.
51. Appearing and testifying from the public were the following:



- 51.1 Teresa Boushay. Ms. Boushay testified consistent with her written comment on file. She stated that she had no objection to the home which is to be of modest size. While she prefers the existing access to the “rock” area, she agreed that there is reasonable access to the “rock” from Chapel bridge to the shoreline.
52. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has been granted authority to render this Decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Chelan County Code and Comprehensive Plan.
3. As conditioned, the proposal will conform to the standards specified in the Chelan County Code.
4. As conditioned, the use will comply with all required performance standards as specified in the Chelan County Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either the Chelan County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.
7. 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, request for variance, WV 21-338 is hereby **APPROVED**.

## **IV. CONDITIONS OF APPROVAL**

1. Pursuant to CCC Section 11.95.040, the construction shall be in substantial conformance with the revised site plan of record, dated July 28, 2021.
2. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit for the construction of the single-family residence.
3. Pursuant to CCC Section 11.80.110 and the Habitat Mitigation and Management Plan (Exhibit B), date stamped July 28, 2021, the proposed plantings shall be completed prior to the final inspection of the building permit; if at such time the plantings cannot be completed prior to final inspection, bonding as outlined in CCC Chapter 14.16 shall be required.
  - 3.1 Upon installation of the approved plantings, monitoring reports shall be submitted to Chelan County Community Development at years one (1), three (3), and five (5) to ensure survival rates.

4. Pursuant to CCC Section 11.84 and 3.20 a Floodplain Development Permit may be required.
5. Pursuant to CCC Section 11.80.050(3), the location of the outer extent of the wetland buffer and riparian buffer, the wetland boundary and the areas to be disturbed shall be marked in the field, and such field markings shall be approved by the administrator prior to the commencement of permitted activities. The location of these areas shall be clearly identified on the site plan. Such field markings shall be maintained throughout the duration of the permit.
6. Pursuant to CCC Section 11.80.060(4), all wetland and riparian buffer areas shall be temporarily fenced between the construction activity and the buffer area with a highly visible and durable protective barrier(s) during construction to prevent access and sedimentation from disturbed areas from entering the wetland or its buffer. This requirement may be waived by the administrator if an alternative to fencing which achieves the same objective is proposed and approved.
  - 6.1 Prior to final inspection for the residential development, a wildlife passable fence shall be permanently installed at the edge of the wetland and mitigation plantings to demark areas to be retained in natural conditions.
7. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within 1,000 ft. of an occupied residence between the hours of 10 p.m. to 7 a.m.
8. Pursuant to comments received from DAHP and the Yakima Nation, the subject property is located within an area of high probability of archaeological resources and possible medicinal plants; therefore, a cultural resource survey is required unless waived by the requesting agency.
9. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological 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.
  - 9.1 An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
10. Pursuant to CCC 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.
11. Pursuant to CCC Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with the conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
12. Pursuant to CCC Section 11.95.070, upon final action of the hearing examiner as set forth in the provisions of this chapter, the department of building/fire safety and planning 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 CCC 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.
14. For all easements, Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of said easements.

15. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

Dated this 18th day of March, 2022.

CHELAN COUNTY HEARING EXAMINER



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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.