

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	DECISION ON APPEAL
	)	OF SEPA DETERMINATION
AA 22-074	)	FOR PINE RIDGE PLANNED
SEPA APPEAL	)	DEVELOPMENT PROJECT
	)	NO. PD 20-001; PLAT 20-004

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on July 8 and 11, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision as follows:

**I. FINDINGS OF FACT**

1. On December 22, 2020, the property owner, Bergren Tree Fruits, LLC, through its agent, Dan Beardslee, submitted an application for a Planned Development and Major Subdivision.
2. The application was determined to be complete on January 21, 2021.
3. The Notice of Application was submitted March 6, 2021.
4. On February 3, 2022, Chelan County SEPA responsible official issued a Mitigated Determination of Non-Significance.
5. On February 5, 2022, this matter was properly noticed for the open record public hearing on the Planned Development and Major Subdivision, for hearing to be held on February 16, 2022.
6. On February 15, 2022, the Appellant, Melissa and Nick Rossi, timely submitted an appeal of the SEPA determination.
7. The Hearing Examiner struck the public hearing scheduled for February 16, 2022.
8. On March 8, 2022, the Hearing Examiner held a pre-hearing conference for this SEPA appeal.
9. On March 14, 2022, the Hearing Examiner issued an Amended Order on Pre-Hearing Conference setting dates for the filing of motions, for the disclosure of witness and exhibit lists, for the disclosure for lay witnesses, expert witnesses and exhibits, pre-hearing briefing, the procedure for the hearing on the SEPA appeal and underlying permits, and post-hearing briefing.
10. No pre-hearing motions were filed.
11. On April 19, 2022, the Appellants submitted their disclosure of witnesses, experts and exhibit list.
12. On April 26, 2022, Chelan County submitted its disclosure of witnesses and exhibits.
13. On May 3, 2022, Appellants submitted their rebuttal to initial disclosure of witnesses, experts, and exhibit lists.
14. On July 26, 2022, Appellants submitted their initial post-hearing briefing on the underlying permits and the SEPA appeal.
15. On August 2, 2022, Chelan County submitted its post-hearing brief.
16. On August 9, 2022, Appellant submitted their post-hearing reply brief on application and SEPA determination.

17. The open record public hearing on the SEPA appeal was held on July 8, 2022. The hearing resumed on July 11, 2022 for the portion of the hearing related to the Planned Development and Major Subdivision applications.
18. The Appellant's submitted the following exhibits that were admitted into the record:
  - 18.1 Ex. A-1 Chelan County file for Pine Ridge Planned Development Project No PD 20-001 and Plat 20-004
  - 18.2 Ex. A-2 Steve Keene email dated January 26, 2022
  - 18.3 Ex. A-3 Applicant's preliminary stormwater drainage overview by Torrence Engineering dated December 8, 2020
  - 18.4 Ex. A-4 Letter dated February 10, 2022 from Icicle Irrigation District
  - 18.5 Ex. A-5 Letter from Department of Ecology regarding contaminate concentrations on Applicant's site
  - 18.6 Ex. A-6 Applicant's Geological Hazard Assessment dated August 9, 2020
  - 18.7 Ex. A-7 Applicant's Landscape Plan
  - 18.8 Ex. A-8 RH2 Certificate of Water availability
  - 18.9 Ex. A-9 Applicant's wastewater availability letter
  - 18.10 Ex. A-10 Applicant's lead and arsenic test results
  - 18.11 Ex. A-11 Email from Department of Ecology to Maygan Hurst dated February 10, 2022
  - 18.12 Ex. A-12 Letter from Washington State Department of Health dated February 14, 2022
  - 18.13 Ex. A-13 Applicant's SEPA checklist
  - 18.14 Ex. A-14 Transpo Traffic Review Memorandum by Kassi Leingang ated February 16, 2022
  - 18.15 Ex. A-15 Public Works comments on the recommendation to install an all way stop dated October 15, 2022
  - 18.16 Ex. A-16 Applicant's project narrative
  - 18.17 Ex. A-17 Pine Ridge preliminary plat map with dimensions
  - 18.18 Ex. A-18 Pictures of fruit trucks
  - 18.19 Ex. A-19 Community of Peshastin zoning map
  - 18.20 Ex. A-20 Chelan County parcel map
  - 18.21 Ex. A-21 Applicant's updated site plan dated December 1, 2021
  - 18.22 Ex. A-22 Video of farmer using bees to pollinate
  - 18.23 Ex. A-23 Comment letter from the Department of Archeology and Historic Preservation dated March 17, 2021
  - 18.24 Ex. A-24 Applicant's typical site plan
  - 18.25 Ex. A-25 Applicant's traffic impact analysis and updates
  - 18.26 Ex. A-26 Model remedies for cleanup of former orchard properties in Central and Eastern Washington
  - 18.27 Ex. A-27 Orchard lands model development agreement
  - 18.28 Ex. A-28 Letter from Cougar Hills Development Co. to Ken Hemberry dated April 1, 2022
  - 18.29 Ex. A-29 Exhibit prepared by Katie Saltanovitz P.E. illustrating feasibility of flows to be dispersed on individual residential lots in accordance with stormwater manual requirements
  - 18.30 Ex. A-30 Email from Rossi's farmer with historic dates of harvest of pears on the Rossi's orchard
  - 18.31 Ex. 31 A-31 Department of Ecology Stormwater management manual for Eastern Washington (2019)



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| 18.32 | Ex. A-32 | All Department of Ecology comment letters  |
| 18.33 | Ex. A-33 | Chelan county Comprehensive Plan transportation element  |
| 18.34 | Ex. A-34 | WSDOT Synchro and SimTraffic Protocol  |
| 18.35 | Ex. A-35 | Chelan County Code for sight distance and roadway standards  |
| 18.36 | Ex. A-36 | Maps and Data available on the WSDOT website including PTR volumes, LOS standards and volume maps. |
| 18.37 | Ex. A-37 | Declaration of Steve Keene   |
| 18.38 | Ex. A-38 | Declaration of Ken Hemberry  |
| 18.39 | Ex. A-39 | April Clayton CV   |
| 18.40 | Ex. A-40 | Kassi Leingang CV  |
| 18.41 | Ex. A-41 | Katie Saltanovitz CV   |
| 18.42 | Ex. A-42 | Arsenic compounds article  |
19. The Respondent/County submitted the following exhibits that were admitted into the record:
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| 19.1  | Ex. C-1  | Entire Chelan County file of record for Pine Ridge, Project NO. PD 20-001; Plat 20-004 (identical to Appellant's Exhibit A-1). |
| 19.2  | Ex. C-2  | Preliminary engineering maps for Pine Ridge Development  |
| 19.3  | Ex. C-3  | Letter from John Torrence requesting deviation from Public Works road standards  |
| 19.4  | Ex. C-4  | Deviation approval letter from County Engineer Eric Pierson  |
| 19.5  | Ex. C-5  | Model remedies for cleanup of former orchard properties in Central and Easter Washington document                              |
| 19.6  | Ex. C-6  | Bergren General Land Use Application Form  |
| 19.7  | Ex. C-7  | Pine Ridge MDNS  |
| 19.8  | Ex. C-8  | Pine Ridge Staff Report  |
| 19.9  | Ex. C-9  | Pine Ridge traffic impact study by transportation engineering northwest  |
| 19.10 | Ex. C-10 | Determination of Non-Significance.   |
| 19.11 | Ex. C-11 | SEPA Environmental Checklist.  |
| 19.12 | Ex. C-12 | Declaration of Jeff Newschwander   |
| 19.13 | Ex. C-13 | County Response Brief  |
20. The following witnesses were called by Appellant at the July 8, 2022 open record hearing on the SEPA appeal:
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| 20.1 | <u>Nick Rossi</u> . Mr. Rossi testified as a lay witness.  |
| 20.2 | <u>Pam Jenkins</u> . Ms. Jenkins testified as an expert witness.   |
| 20.3 | <u>Katie Saltanovitz</u> . Ms. Saltanovitz testified as an expert witness.   |
| 20.4 | <u>Kassi Leingang</u> . Ms. Leingang testified as an expert witness.   |
| 20.5 | <u>April Clayton</u> . Ms. Clayton testified as an expert witness.   |
| 20.6 | <u>Melissa Rossi</u> . Ms. Rossi testified as a lay witness.   |
| 20.7 | The Appellants' called Alex White as a witness. Chelan County objected because Mr. White was not listed or disclosed on the Appellants' witness list. The Appellants' witness list did not reserve the right to call any witness of any party. The Hearing Examiner sustained the County's objection and did not allow the Appellant to call Mr. White as a witness. |
21. The following witnesses were called by the County at the July 8, 2022 open record hearing on the SEPA appeal:
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| 21.1 | <u>Michael Reed</u> . Mr. Reed testified as an expert witness.   |
| 21.2 | <u>Andrew Brunner</u> . Mr. Brunner testified as a lay witness.  |
| 21.3 | <u>Jason Detamore</u> . Mr. Detamore testified as a lay witness. |

- 21.4 Alex White. Mr. White testified as a lay witness.
22. Although the Applicants' full participation in the SEPA hearing process was permitted by the Hearing Examiner, the Applicant did not meaningfully participate in the SEPA appeal hearing. The Applicant did not submit any pre-hearing briefing. The Applicant did not submit any witness or exhibit lists, and did not call any witnesses at the open record public hearing on the SEPA appeal. The Applicant did not submit any post-hearing briefing.
23. The Hearing Examiner considered all testimony and exhibits submitted by the Appellant and all testimony and exhibits submitted by the County in rendering this decision.
24. In their Notice of Appeal, the Appellant set forth eight issues that can be summarized as follows:
- 24.1 The County lacked adequate information to assess the project's impacts on cultural resources and that Condition No. 1 was not adequate to mitigate impacts on cultural resources.
- 24.2 That Condition Nos. 2 and 3 are not adequate to mitigate the environmental impacts from highly contaminated on-site soils.
- 24.3 That Condition Nos. 10, 11, and 12 are not adequate to mitigate traffic impacts.
- 24.4 The cumulative effect of the conditions is not sufficient to eliminate the project's adverse impacts on land use compatibility.
- 24.5 That Condition No. 7 does not eliminate the significant adverse impacts to the current waterlines that cross the property.
- 24.6 The Chelan County SEPA responsible official did not have sufficient information to make the SEPA determination related to cultural resources, traffic, land use conflicts between agricultural and residential uses, esthetics due to light pollution, stormwater and water quality and health and safety from contaminated on-site soils.
- 24.7 The proposed Planned Development will have significant environmental impacts in specific areas set out in the appeal.
- 24.8 The proposed Planned Development's adverse environmental impacts have not been mitigated to reduce the impacts to a level of non-significance.
25. The SEPA appeal requested the Hearing Examiner to require the issuance of an Environmental Impact Statement or, in the alternative, to make a determination that the responsible official lacked sufficient information on which to base a threshold determination, and to remand to the responsible official to reconsider the threshold determination after obtaining necessary information.
26. The Hearing Examiner will address each of the specific issues raised in the Appellant's SEPA appeal:
- 26.1 The County lacked adequate information to assess the project's impacts on cultural resources and that Condition No. 1 was not adequate to mitigate impacts on cultural resources.
- 26.1.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding environmental impacts related to archeological impacts. The SEPA responsible official had adequate information provided by agencies with expertise in this area.



- 26.1.2 The Hearing Examiner finds that all environmental impacts relating to cultural resources are adequately mitigated through the conditions set forth in the MDNS. The SEPA responsible official's decision regarding environmental impacts and mitigation measures relating to cultural resources was not clearly erroneous and was based upon a review of the record presented to the responsible official.
- 26.2 That Condition Nos. 2 and 3 are not adequate to mitigate the environmental impacts from highly contaminated on-site soils.
  - 26.2.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding environmental impacts related to soil contamination. The SEPA responsible official had adequate information provided by agencies with expertise in this area.
  - 26.2.2 The Hearing Examiner finds that all environmental impacts relating to soil contamination are adequately mitigated through the conditions set forth in the MDNS. The SEPA responsible official's decision regarding environmental impacts and mitigation measures relating to soil contamination was not clearly erroneous and was based upon a review of the record presented to the responsible official.
- 26.3 That Condition Nos. 10, 11, and 12 are not adequate to mitigate traffic impacts.
  - 26.3.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding environmental impacts related to traffic impacts. The SEPA responsible official had adequate information provided by agencies and experts with expertise in this area.
  - 26.3.2 The Hearing Examiner finds that all environmental impacts relating to traffic are adequately mitigated through the conditions set forth in the MDNS. The SEPA responsible official's decision regarding environmental impacts and mitigation measures relating to traffic was not clearly erroneous and was based upon a review of the record presented to the responsible official.
- 26.4 The cumulative effect of the conditions is not sufficient to eliminate the project's adverse impacts on land use compatibility.
  - 26.4.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding environmental impacts related to land use compatibility. The SEPA responsible official had adequate information provided by agencies with expertise in this area.
  - 26.4.2 The zoning for this area, set by Chelan County Board of Commissioners, is Low-Density Residential in the Peshastin Urban Growth Area. At the time the County set this zone, the area of the new zone was adjacent to active orchard uses. Therefore, the Chelan County Board of Commissioners has already determined that the current zoning for the subject property is compatible with adjacent and neighboring agricultural uses.
  - 26.4.3 The Hearing Examiner finds that all environmental impacts relating to land use compatibility are adequately mitigated through the conditions set forth in the MDNS. The SEPA responsible official's decision regarding environmental impacts and mitigation measures relating land use compatibility was not clearly erroneous and was based upon a review of the record presented to the responsible official.

- 26.5 That Condition No. 7 does not eliminate the significant adverse impacts to the current waterlines that cross the property.
- 26.5.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding environmental impacts related to on-site water impacts. The SEPA responsible official had adequate information provided by agencies with expertise in this area.
- 26.5.2 The Hearing Examiner finds that all environmental impacts relating to on-site probable water impacts are adequately mitigated through the conditions set forth in the MDNS. The SEPA responsible official's decision regarding environmental impacts and mitigation measures relating to on-site waterlines was not clearly erroneous and was based upon a review of the record presented to the responsible official.
- 26.6 The Chelan County SEPA responsible official did not have sufficient information to make the SEPA determination related to cultural resources, traffic, land use conflicts between agricultural and residential uses, esthetics due to light pollution, stormwater and water quality and health and safety from contaminated on-site soils.
- 26.6.1 Hearing Examiner Response: See previous findings. The Hearing Examiner finds that the SEPA responsible official had sufficient facts and information regarding environmental impacts relating to cultural resources, traffic, land use conflicts, esthetics due to light pollutions, stormwater, water quality and on-site soil contamination at the time the MDNS was issued in this matter. Furthermore, mitigation measures related to these issues are sufficient and the SEPA responsible official's decision regarding these issues was not clearly erroneous and was based upon a review of the record presented to the responsible official.
- 26.7 The proposed Planned Development will have significant environmental impacts in specific areas set out in the appeal.
- 26.7.1 Hearing Examiner Response: See previous findings.
- 26.8 The proposed Planned Development's adverse environmental impacts have not been mitigated to reduce the impacts to a level of non-significance.
- 26.8.1 Hearing Examiner Response: The SEPA responsible official had sufficient facts and information regarding all environmental impacts at the time the MDNS was issued in the matter. The conditions set forth within the MDNS adequately mitigate the probable significant impacts related to this project. It's noted that the Appellant's presentation primarily relates to this issue, that being the inadequacy of the conditions set forth within the MDNS. However, as stated herein, the Hearing Examiner finds that the SEPA responsible official had sufficient facts and information regarding probable environmental impacts at the time the MDNS was issued. These probable environmental impacts are adequately mitigated through the conditions set forth within the MDNS.
- 26.9 The SEPA appeal requested the Hearing Examiner to require the issuance of an Environmental Impact Statement or, in the alternative, to make a determination that the responsible official lacks sufficient information on which to base a threshold determination, and to remand to the responsible official to reconsider the threshold determination after obtaining necessary information.



26.9.1 Hearing Examiner Response: Because the Hearing Examiner affirms the MDNS issued by the responsible official, the Hearing Examiner respectfully declines the invitation of the Appellants to order the issuance of an Environmental Impact Statement or to remand this matter back to the County for additional study and issuance of a new SEPA determination.

27. The Appellant's submitted evidence and expert testimony they claim relate to the basis of their SEPA appeal. The Appellant's expert and lay testimony, to be succinct, simply disagreed with the expert and lay opinions that were provided to the County upon which the SEPA responsible official based the issuance of the MDNS.
28. Regarding the specific issue regarding contaminated on-site soils, this environmental impact was thoroughly considered by the Chelan County responsible official. The responsible official considered expert and lay opinions, as well as factual analysis of the soil conditions, prior to issuing the MDNS.
29. There is substantial evidence in the record that was considered by the SEPA responsible official regarding traffic impacts. The Appellant introduced evidence and opinions regarding perceived traffic impacts. However, this does not negate the fact that traffic impacts were thoroughly considered by the SEPA responsible official prior to issuance of the MDNS.
30. Regarding the claimed environmental impacts regarding waterlines passing through the property, the Hearing Examiner specifically finds that there is no factual or opinion evidence proving, by a preponderance of the evidence, that the irrigation lines through the subject property will be eliminated or otherwise disrupt the flow of water to adjacent properties. The Hearing Examiner finds that these claimed impacts are clearly speculative. Irrigation water rights will not be impacted by the project. It's important to note that the Icicle Irrigation District was informed of the application and chose not to comment.
31. The Hearing Examiner finds, based upon the evidence submitted at the hearing that there was a factual basis for the SEPA responsible official to issue the MDNS. All probable environmental impacts were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA.
32. The Hearing Examiner specifically finds that the factual study and opinions by traffic expert, Michael Reed were more convincing than those opinions issued by Appellant's expert, Kassi Leingang. The Hearing Examiner finds it significant that Ms. Leingang did not do any data collection regarding traffic counts on any roads, but instead based her understanding of traffic volumes on discussions with area residents and employees. These facts are not more convincing to the Hearing Examiner than those facts accumulated by Mr. Reed as part of his traffic impact study.
33. Regarding the testimony submitted by Appellant's expert, Pam Jenkins, the Hearing Examiner finds that her testimony and opinions were not convincing and that her purported opinions regarding health risks were not convincing to the Hearing Examiner. She simply disagreed with the Department of Ecology's proposal to mitigate soil contamination on the site. However, the soil contamination on the site and the mitigation was fully considered by the SEPA responsible official.
34. The Hearing Examiner finds that the expert testimony of Katie Saltanovitz, that the Applicant's stormwater plan was not adequate, is not more convincing than the report submitted by John Torrence. Additionally, any erosion or sediment control plan will need to be approved by the Washington State Department of Ecology and meet statewide standards.

35. Regarding Appellant's expert April Clayton, the Hearing Examiner would state that the Hearing Examiner pointed out during Ms. Clayton's testimony that someone who was also in her room where she was testifying, (presumably her husband) was suggesting answers. Additionally, Ms. Clayton's testimony related to conflicts between agricultural and residential use. The Hearing Examiner would again point out that the Chelan County Board of Commissioners took the legislative action to zone this property, and neighboring properties, R-1, which is low-density residential.
36. Chelan County has not fully implemented the Agricultural Review Committee.
37. 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. The Appellants have standing to bring this appeal.
3. SEPA was enacted to promote the policy of fully informed decision making by government bodies when undertaking major actions significantly affecting the quality of the environment.
4. SEPA requires that the presently unquantified environmental amenities and values will be given appropriate consideration in decision making, along with economic and technical considerations.
5. Under SEPA, the "responsible official" of the "lead agency" has the duty to assemble and review full environmental information before rendering a decision.
6. Before reaching the determination of significance or non-significance, the government agency reviews an environmental checklist.
7. The purpose of the checklist is to ensure an applicant, at the earliest possible stage, fully discloses and that the agency carefully considers a proposal's environmental impacts before adopting the proposal.
8. The responsible agency must show that it considered the relevant environmental factors and that its decision to issue a determination of non-significance was based on information reasonably sufficient to evaluate the proposal's environmental impact.
9. To issue a determination of non-significance or mitigated determination of non-significance, the responsible agency must determine, based upon a full factual evaluation of the project, that there will be no probable significant adverse environmental impacts from a proposal.
10. The threshold determination must be based on information reasonably sufficient to evaluate the environmental impacts of a proposal.
11. The threshold determination must indicate that the agency has taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns.
12. To overturn an MDNS, the Appellant must demonstrate that the decision was clearly erroneous.
13. A finding is clearly erroneous when, although there is evidence supporting the decision, the Hearing Examiner reviewing the record is left with the definite and firm conviction that a mistake has been committed.



14. For an MDNS to survive to survive judicial scrutiny, the record must demonstrate that the environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with the State Environmental Protection Act. The decision to issue an MDNS must be based on information sufficient to evaluate the proposal's environmental impacts.
15. An agency's decision to issue an MDNS and not to require an Environmental Impact Statement must be accorded substantial weight.
16. If, in the course of formulating an MDNS, the lead agency determines that a proposal continues to have probable significant adverse environmental impacts, even with mitigation measures, an Environmental Impact Statement must be prepared.
17. If an MDNS is issued and an appealing party proves that the project will still produce significant adverse environmental impacts, then the MDNS decision must be held to be clearly erroneous and an Environmental Impact Statement must be prepared.
18. An MDNS does not require that all environmental impacts be totally eliminated.
19. "Probable" means likely or reasonably likely to occur as in "[A] reasonable probability of more than a moderate effect on the quality of the environment."
20. The term "probable" is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. The responsible official SEPA decision is reviewed under the clearly erroneous standard.
21. The Hearing Examiner concludes that the threshold determination in this matter is based upon sufficient information contained within the SEPA checklist, or later developed by the responsible agency, and it fully and fairly evaluates all known or probable environmental impacts.
22. 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, the SEPA determination for Pine Ridge Planned Development Project No. PD 20-001; PLAT 20-004 is hereby **AFFIRMED**.

Dated this 30 day of August, 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.