

**CHELAN COUNTY  
LAND USE HEARING EXAMINER**

**IN THE MATTER OF**

**AA 24-408 (Tyler Chambers)**

**Chambers Appeal of MDNS**

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**DECISION ON SEPA APPEAL**

THIS MATTER is an appeal of a Mitigated Determination of Nonsignificance dated October 3, 2024 (SEPA MDNS 24-167). The Hearing Examiner, having held a hearing and admitted evidence into the record, hereby makes the following Findings of Fact, Conclusions of Law, and Decision as Follows:

**I. FINDINGS OF FACT**

1. A complaint was received regarding property owned by Tyler Chambers (Chambers Property) regarding grading and earth moving resulting in code violations (CE21-056 and CE21-057).
2. These code violation files were closed in October, 2021 pursuant to review by the former Director of Community Development who determined that the work on the Chambers Property was deemed "minor development" per CCC section 14.98.
3. Chelan County does not have a grading ordinance.
4. Tyler Chambers (Chambers) purchased an additional 20.07 acres in 2022 and continued with the excavation on the subject property, which excavation now exceeded 1,000 cubic yards which is the SEPA Exemption threshold. CCC 13.040.080.
5. Numerous complaints were received in early 2022 regarding both earth moving activities/excavation and critical areas violations for both stream degradation and wildlife.
6. A Stop Work Order was issued by Director Walter on May 3, 2022, citing violations of CCC Sections 11.77.030, 11.77.050, 11.77.100, 11.78 and 11.86 (Critical Areas Overlay District General Provisions and Administration, Fish and Wildlife Habitat Conservation Areas Overlay District & Geologically Hazardous Areas Overlay District), and excavation that exceeded the SEPA exemption threshold of 1000cy.
7. Chambers was required to submit a Habitat Management and Mitigation Plan (HMMP) and Geologically Hazardous Assessment for review and approval, along with submittal of a SEPA checklist.
8. Chambers submitted a Technical Memorandum/Critical Areas Assessment on dated June 3, 2022
9. Chambers submitted a Geo-hazard Assessment initially in May 2022, and revised assessments with requested updates and clarifications in November 2023 and February 2024.
10. Several meetings between Director Walter and Chambers occurred where Chambers was specifically told what reports, assessments and documents would need to be submitted for proper review and approval. These meetings were also attended by Chambers' attorney, Aaron Harris, Deputy Prosecutor Marcus Foster and Glenn Grette.
11. Chambers submitted an updated HMMP on March 28, 2024
12. Chambers submitted a SEPA Checklist on April 5, 2024

13. Chambers submitted a Stormwater Management Plan, V1, on April 30, 2024. It was routed to Public Works and not approved.
14. Director Walter issued a SEPA MDNS 24-167 on May 23, 2024.
15. Chambers submitted a Stormwater Management Plan, V2, on June 3, 2024. It was routed to Public Works for review and again, not approved.
16. Chambers submitted a Stormwater Management Plan, V3, on June 6, 2024. It was approved by Public Works.
17. Numerous complaints were received by neighboring properties regarding continued excavation activity on-site. A request was received for additional review pursuant to additional material brought on site.
18. The SEPA MDNS was withdrawn on June 24, 2024. Chambers had brought numerous truckloads of off-site material and dumped on-site in violation of the Stop Work Order, and neither the Geo-hazard assessment nor the stormwater management plan accounted for or addressed the additional material.
19. Chambers was required to submit a Geotechnical Report and updated stormwater management plan to include the recent activity.
20. A Geotechnical Report was submitted by Chambers, dated August 15, 2024.
21. The County issued a SEPA MDNS 24-167 on October 3, 2024.
22. Tyler Chambers timely filed an appeal to this new MDNS.
23. An additional appeal of the MDNS was filed by the No. 1 Canyon Community (hereinafter "Community"). This appeal is being decided separately under AA 24-409.
24. In the appeal filed by Chambers, received October 18, 2024, Section F, Chambers bases his appeal raising the following issues with the October 3, 2024 MDNS:
  - 24.1. Nexus and proportionality;
  - 24.2. Inconsistency with Chelan County Code Chapter 11.86;
  - 24.3. Lack of supporting findings and conclusions.
25. An open record public hearing was called to order on January 15, 2025.
26. Providing argument for Appellant Chambers was Brett Vinson, attorney for Mr. Chambers.
27. Appellant Chambers called the following witnesses:
  - 27.1. Jeff Hallman (Testifying as a lay witness): Mr. Hallman testified that he represented the prior owners in selling the property to Mr. chambers. He stated that there had been grading on the property before Mr. Chambers purchased the property. He stated that some utilities had been installed. He stated that he believed Mr. Chambers had provided all required reports.
  - 27.2. Tyler Chambers (testifying as a lay witness): Tyler Chambers: Mr. Chambers testified that he is the owner of the subject property. He indicated that he had bought the property in the spring of 2021. He stated that he had a conversation with the County at that time asking what he needed to do in order to build his home on the property. He stated that in the fall of 2021 his neighbors hired an attorney to try to get his work stopped. No stop work order was issued at that time. He stated he owns about 67 acres on three separate parcels. He stated that if the conservation easement required by the MDNS put into place, he could only build one house.
  - 27.3. Glenn Grette (testifying as an expert): Glenn Grette: Mr. Grette is a Principal at Grette and Associates. He is a fishery and general biologist. He was the author of the Habitat Management and Mitigation Plan (HMMP). He later stated that the report was actually written by an



employee of his, Jessica Pavelka. He acknowledged that this report originally stated that there were to be no development impacts on the 44 acres set aside for the conservation easement. He testified at the hearing that this 44-acre conservation easement was not necessary and that it was not the intent of the HMMP to be read to require a permanent conservation easement.

27.3.1. On cross-examination, the County pointed out that the HMMP stated that the conservation easement was to be "in perpetuity." On cross-examination Mr. Grette acknowledged that Fish and Wildlife recommended a permanent conservation easement to be set aside.

27.3.2. Also on cross-examination, this time by Mr. Bricklin, Mr. Grette acknowledged that his area of expertise was as a fisheries biologist and was not a civil engineer, not a soil scientist, and not a geotechnical engineer. Mr. Grette confirmed that the HMMP did not analyze erosion but stated they did consider the geotechnical engineer's opinions. Mr. Grette testified about a report issued by his office in December, 2024 and acknowledged that this report was issued after the October MDNS had been issued. He agreed that Mr. Chambers or his agents had asked Mr. Grette to amend the report to take out "in perpetuity".

28. Appearing on behalf of appellant Community was attorney Dave Bricklin. Mr. Bricklin provided argument consistent with his written materials.
29. Mr. Bricklin called John Torrence as an expert witness. Appellant Chambers objected to this testimony and requested a continuance of the hearing.
30. The Hearing Examiner granted that request for a continuance, continuing the hearing until February 19, 2025.
31. The February 19, 2025 hearing was subsequently continued and was eventually reconvened on June 4, 2025.
32. At this June 4, 2025 hearing, the Hearing Examiner admitted the exhibits referenced below.
33. An open record public hearing was held, after due legal notice, on June 4, 2025.
34. Appearing and testifying on behalf of the Community were the following individuals:

34.1. John Torrence (testifying as an expert witness): Mr. Torrence is a civil engineer in the State of Washington with 40 years' experience in private land development. He has worked in the Wenatchee area for the past 22 years. Mr. Torrence was of the opinion that the grading and filling activity of Mr. Chambers was a direct cause in accelerating and redirecting storm water runoff from the site in a pattern different from the pre-grading and fill activity performed by Mr. Chambers. He testified about a natural drainage ravine that had been blocked and forcing a portion of the runoff to now be directed towards private property on the west side of the access road. There was also testimony as to the storm water system put in by Chelan County on the No. 1 Canyon Road as being blocked by sediment from the runoff from Mr. Chambers' property. Mr. Torrence's testimony was consistent with his June 11, 2025 declaration. Mr. Torrence testified that the SEPA Checklist submitted by Mr. Chambers regarding erosion and drainage impacts being "not applicable" was not sufficient for a SEPA decision to be made. His general testimony was that based upon his review of what had occurred on the property, including the prior grading and fill by Mr. Chambers and the stormwater runoff from the property was that this was evidence that the MDNS was not adequate. He believed that additional MDNS conditions would be appropriate to control erosion. He stated that erosion control is an evolving process and therefore some sort of monitoring plan should be required. He was of the opinion that defined storm water retention areas needed to be identified. His primary concern was that the site needed to have immediate site stabilization and an immediate



storm water plan implemented. He further recommended that a bond be in place to ensure compliance. It was Mr. Torrence's opinion that the blocked ravine that had previously allowed natural storm water drainage from the property and above the property, that is now blocked, greatly increases erosion and sediment being deposited on neighboring properties.

34.2. On cross-examination Mr. Torrence agreed that he did not know the exact amount of yards of earth that had been moved but could visually see that it had been a substantial amount of work and a substantial amount of grading. He said that the grading activity blocked the ravine that had provided the natural storm water runoff from the site and property above the site.

34.3. The Hearing Examiner can summarize Mr. Torrence's testimony in that it was Mr. Torrence's opinion that the county did not have adequate information to issue the October 3, 2024 MDNS.

34.4. Katie Fitch: Ms. Fitch is a restoration ecologist. Part of her job is the reestablishment of native vegetation, including revegetation of shrub steppe habitat. She stated that revegetation of shrub steppe habitat is very difficult and that it will fail without a proper plan being in place. She stated that the shrub steppe had been completely removed from the areas that have been graded. She again reiterated that reseeding and site restoration will fail unless properly monitored. She believed that the MDNS needed more detail as to what type of monitoring would be required.

34.5. Matt Canlis (testifying as a lay witness): Mr. Canlis testified referring to exhibits N29, N8.1, N10, N18, NOC11, N15, N16, and N17. All of this testimony generally related to the pre-grading drainage from the site now owned by Mr. Chambers and post grading drainage from the site that has flooded his property.

34.6. Julie Canlis (testifying as a lay witness): Julie Canlis: Ms. Canlis testified utilizing exhibits N72 and N75 indicated that even small rainfall events will cause water to run on to their property and that this was not the situation before Mr. Chambers began his grading and filling activities.

35. Testifying on behalf of Appellant Chambers were the following witnesses:

35.1. Dave Schettler (testifying as an expert witness): Mr. Schettler testified as an expert witness. He testified consistent with his June 11, 2025 declaration, and Chambers exhibit A-2 and A-4. In general, he testified that the erosion and runoff issues identified by Mr. Torrence and Mr. and Mrs. Canlis were not due to any work performed by Mr. Chambers. He testified that while Mr. Chambers work on his property impacted the natural flow of the ravine, he indicated that water had always flowed down the road on to the county road.

35.1.1. It should be noted that Mr. Chambers attempted to submit into the record exhibit 4b, a May 6, 2025 document. This exhibit was excluded from the record as being untimely disclosed and served.

35.1.2. On cross-examination, Mr. Schettler admitted that he had never observed the site before Mr. Chambers did work and did not have any personal observations of stormwater runoff before Mr. Chambers performed his work.

36. Appearing on behalf of Chelan County was Marcus Foster, Deputy Prosecuting Attorney. Mr. Foster provided argument consistent with their written materials.

37. Testifying for Chelan County was Deanna Walter: Ms. Walter testified on behalf of the county as an expert witness. She indicated that the County Engineer had been consulted two times before the issuance of the MDNS. The County Engineer was consulted prior to the issuance of the first MDNS and the second time prior to the issuance of the second MDNS. Both the first MDNS and the second



MDNS were distributed to all agencies with jurisdiction. She testified that based upon the number of truck loads and the capacity of each truck that were removing soil from the Chambers Property that far more than 1,000 cubic yards had been removed and therefore exceeded the threshold that required SEPA review. Regarding replanting vegetation monitoring, she indicated that this would be performed as it is done on shoreline and riparian areas with reviews on the second and fifth year to look at survival rates and, if appropriate, to require additional actions by the applicant.

38. The following exhibits were admitted into the record:

- 38.1. All exhibits identified in Exhibit A to Chambers April 25, 2025 Disclosure. Those exhibits are identified as exhibits A-1 through A-4;
  - 38.2. All exhibits identified by Community in Section 3 of their January 22, 2025 Exhibit Disclosure, and Rebuttal Exhibit list dated February 14, 2025. Those exhibits are identified as Exhibits NOC 1-NOC 74;
  - 38.3. All exhibits identified by Chelan County in their Exhibit List dated April 25, 2025. Those exhibits are identified as Exhibits C-1 through C-14;
  - 38.4. Chambers Post Hearing Brief, dated July 11, 2025;
  - 38.5. No. 1 Canyon Community Closing Brief, dated July 11, 2025;
  - 38.6. Chelan County Post Hearing Brief dated July 11, 2025;
  - 38.7. June 3, 2025 Declaration of Marc Norsen;
  - 38.8. June 3, 2025 Declaration of Peter Smytheman;
  - 38.9. June 4, 2025 Declaration of Paul Groenewold;
  - 38.10. June 4, 2025 Declaration of Kristi Rich;
  - 38.11. June 8, 2025 letter from Chelan-Douglas Land Trust to the Hearing Examiner;
  - 38.12. June 11, 2025 Declaration of John Torrence;
  - 38.13. June 11, 2025 Declaration of Dave Schettler.
39. Chambers made a motion in their final summation to strike post hearing declarations. The Community provided a response. The Hearing Examiner denies Chambers' motion.
40. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
41. The opinions of Mr. Torrence were generally contradictory to those opinions of Mr. Schettler. The Hearing Examiner finds that Mr. Torrence's opinions on issues that were in conflict with Mr. Schettler were far more convincing than the opinions of Mr. Schettler. The Hearing Examiner gave Mr. Torrence's testimony greater weight than that of Mr. Schettler. Mr. Torrence's investigation and observations of this site were consistent with those observations of lay witnesses as to the storm water runoff from the property both before and after Mr. Chambers work on his property. Mr. Schettler's opinions regarding storm water runoff prior to Mr. Chambers work on his property simply was not credible based upon the Hearing Examiners review of the testimony and the investigation performed by Mr. Schettler.
42. Even though the Hearing Examiner gave Mr. Torrence's testimony more credibility, the Hearing Examiner has still found, in this decision, that the responsible official's SEPA determination was not clearly erroneous.
43. Discussion on the specific appeal issues:
- 43.1. Nexus and proportionality:

- 43.1.1. The SEPA responsible official had sufficient facts and information regarding the environmental impacts related to nexus and proportionality as those terms are referenced in this appeal.
- 43.1.2. This argument in Chambers' appeal fails for lack of specificity as to facts as to what part of the MDNS fails to satisfy the NOLLAN/DOLAN test. At most, from the evidence provided, it could be the fact that the MDNS, in following the recommendations of the HMMP, established a permanent conservation easement on the property. Although there was testimony at the hearing by Mr. Grette that it was not intended that the conservation easement be permanent, it is clear that the initial report stated that the conservation easement to be permanent and that it was only changed after discussions between Mr. Grette and Mr. Chambers.
- 43.1.3. Furthermore, the Hearing Examiner finds that the permanent conservation easement is proportional and directly related to the proposed development occurring on Mr. Chambers' property. Mr. Chambers development will obliterate vast areas of shrub steppe habitat, permanently, and this permanent conservation easement is a rational mitigation measure.
- 43.1.4. The Hearing Examiner finds that there are no environmental impacts related to appellant's arguments of nexus and proportionality. The Hearing Examiner further finds that the SEPA responsible official adequately considered nexus and proportionality when issuing the MDNS.
- 43.1.5. No probable significant environmental impacts exist related to appellants claims of nexus and proportionality.
- 43.2. Inconsistency with Chelan County Code Chapter 11.86:
  - 43.2.1. The SEPA responsible official had sufficient facts and information regarding the environmental impacts and the MDNS is consistent with the Chelan County Code as those terms are referenced in this appeal.
  - 43.2.2. Again, this appeal issue relates to the conservation easement. It is the argument of Mr. Chambers that conservation easements cannot be imposed as a mitigation measure in a Mitigated Determination of Nonsignificance for a project such as Mr. Chambers. Again, the permanent conservation easement is certainly justified under the facts of this particular proposed development by Mr. Chambers, evidenced not only by what Mr. Chambers proposes, but also by the work that he has already done on his property. The conservation easement set forth in the Mitigated Determination of Nonsignificance is an appropriate mitigation measure to protect the environment that is being degraded as a result of Mr. Chambers development.
  - 43.2.3. The Hearing Examiner finds that there are no environmental impacts related to appellants' arguments of inconsistency with the Chelan County Code. The Hearing Examiner further finds that the SEPA responsible official adequately addressed the Chelan County Code when issuing the MDNS.
  - 43.2.4. No probable significant environmental impacts related to appellants claims of inconsistency with the Chelan County Code.
- 43.3. Lack of supporting findings and conclusions:
  - 43.3.1. The SEPA responsible official had sufficient facts in rendering the MDNS.
  - 43.3.2. Once again, this issue relates to the conservation easement. The claim is that the MDNS did not explain the basis for the permanent conservation easement. However,



it should be noted that Mr. Chambers' own expert, Mr. Grette, in the initial HMMP clearly called for a permanent conservation easement in order to mitigate the adverse environmental consequences created by Mr. Chambers past actions and his proposed future actions. However, it should be noted that this SEPA determination only relates to the grading, fill, and removal of soil from Mr. Chambers property that triggered the environmental review due to the 1,000 cubic yard threshold being met. The Hearing Examiner finds that this 1,000 cubic yard threshold has been proven by the evidence submitted in this case. That evidence most primarily being the size of the trucks removing the soil from the property and the capacity of the trucks, and that the trucks were filled with soil as they left with property. The Hearing Examiner finds that it was clearly demonstrated that this 1,000 cubic yard threshold had been met, that the SEPA process was triggered, and that the MDNS issued by the County on October 3, 2024 adequately addressed all of the environmental impacts of this past work and set forth reasonable mitigation measures.

43.3.3. The Hearing Examiner finds that there are no environmental impacts related to appellants' arguments of lack of supporting findings and conclusions. The Hearing Examiner further finds that the SEPA responsible official adequately addressed the findings and conclusions in the MDNS.

43.3.4. No probable significant environmental impacts related to appellants claims of lack of supporting findings and conclusions.

44. 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 been granted the authority to render this decision.
2. The issues on appeal are strictly limited to those raised by appellant in their appeal documents.
3. A mitigated determination of non-significance (MDNS) involves changing or conditioning a project to eliminate its significant adverse environmental impacts.
4. To overturn a MDNS, an Appellant must demonstrate that the decision was clearly erroneous.
5. A finding is clearly erroneous when, although there is evidence supported, the reviewing authority of on the record is left with the definite and firm conviction that a mistake has been committed.
6. For a MDNS to survive judicial scrutiny, the record must demonstrate that environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with the State Environmental Protection Act (SEPA).
7. The decision to issue an MDNS must be based on information sufficient to evaluate the proposal's environmental impacts.
8. An agency's decision to issue a MDNS and not to require an Environmental Impact Statement must be accorded substantial weight.
9. 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.
10. If a 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.

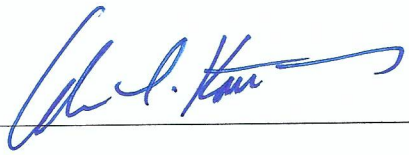
11. A MDNS does not require that all environmental impacts be totally eliminated.
12. "Probable" means likely or reasonable likely to occur, as in "[A] reasonable probability of more than a moderate effect on the quality of the environment."
13. The term "probable" is used to distinguish likely impacts from those that merely have a possibility of occurring but are remote or speculative.
14. The Responsible Official's SEPA decision is reviewed under the clearly erroneous standard.
15. A threshold determination that an Environmental Impact Statement is not required is subject to review under the "clearly erroneous" standard, which means that the threshold determination should only be overturned where, in light of the entire record, the Hearing Examiner is left with a definite and firm conviction that a mistake has been committed.
16. The responsible official did not make a mistake in making the SEPA Determination of a Mitigated Determination of Non-Significance.
17. A cumulative impact analysis is only required where there is evidence that the project under review is dependent upon a subsequent proposed development that will result in additional impacts.
18. There is no evidence that this project is dependent upon any subsequent proposed development that would result in additional impacts.
19. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the MDNS dated October 3, 2024 is hereby affirmed in all respects and SEPA appeal AA24-408 is hereby dismissed.

Dated this 8 day of August, 2025

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.