



CHELAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
316 WASHINGTON ST, STE 301
WENATCHEE, WA 98801
509-667-6225

STAFF REPORT

TO: Andrew Kottkamp, Hearing Examiner
FROM: Chelan County Community Development 
REPORT DATE: December 30, 2024
FILE NUMBER: AA 24-408 (Chambers)
AA 24-409 (No. 1 Canyon Neighbors)
REQUEST: A request for an Administrative Appeal was submitted by both the property owner, Tyler Chambers, and the No. 1 Canyon neighbors, to appeal SEPA MDNS 24-167, issued on October 3, 2024

GENERAL INFORMATION

Violation Location:	Unassigned, No. 1 Canyon Road, Wenatchee, WA 98801
Parcel Numbers:	22-20-07-000-125, 22-20-07-120-050, 22-20-07-000-100
Owner:	Tyler W. Chambers 1214 Malaga Ave Wenatchee, WA 98801
Zoning District:	RR10 (Rural Residential/Resource 10) & RR20 (Rural Residential/Resource 20)
Appellant 1:	Tyler Chambers
Representation:	Brett Vinson Reynolds, Burton & Vinson 1219 Cole St Enumclaw, WA 98022
Appellant 2:	No. 1 Canyon Neighbors
Representation:	David Bricklin Bricklin & Newman LLP 123 NW 36 th St Ste 205 Seattle, WA 98107
Existing Land Use:	The site is currently vacant with recent excavation activity (since 2021)
Associated Files:	SEPA 24-167, HMMP 24-168, CE 21-056, CE 21-057

APPLICATION & PUBLIC HEARING NOTICE COMPLIANCE

Stop Work Order:	May 3, 2022
Appeals Submitted:	October 18, 2024
Notice of Public Hearing:	January 2, 2025
Public Hearing:	January 15, 2025

OVERVIEW / SITE HISTORY

Three (3) parcels purchased by Chambers:

22-20-07-120-050, 20.82A, July 15, 2021

22-20-07-000-100, 25.59A, July 15, 2021

22-20-07-000-125, 20.07A, January 5, 2022

Complaint received regarding grading and earth moving resulting in code violations CE 21-056 & CE 21-057.

Code Violation files closed in October 2021 pursuant to review by former Director, Jim Brown, upon determination that it was deemed "minor development", pursuant to CCC Section 14.98.

Chelan County does not have a grading ordinance.

Chambers purchased additional 20.07 acres in 2022 and continued the excavation, which now exceeded the 1000 cy SEPA exemption threshold, CCC 13.040.080.

Numerous complaints received in early 2022 regarding both earth moving activities/excavation and critical areas violations for both stream degradation and wildlife.

Stop Work order issued by Director Walter on May 3, 2022, citing violation 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.

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.

Chambers submitted a Technical Memorandum/Critical Areas Assessment on dated June 3, 2022

Chambers submitted a Geo-hazard Assessment initially in May 2022, and revised assessments with requested updates and clarifications in November 2023 and February 2024.

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.

Chambers submitted an updated HMMP on March 28, 2024

Chambers submitted a SEPA Checklist on April 5, 2024

Chambers submitted aa Stormwater Management Plan, V1, on April 30, 2024. It was routed to Public Works and not approved.

Director Walter issued a SEPA MDNS 24-167 on May 23, 2024.

Chambers submitted a Stormwater Management Plan, V2, on June 3, 2024. It was routed to Public Works for review and again, not approved.

Chambers submitted a Stormwater Management Plan, V3, on June 6, 2024. It was approved by Public Works.

Numerous complaints were received by neighboring properties regarding continued excavation activity on-site. Request received for additional review pursuant to additional material brought on site.

SEPA MDNS withdrawn on June 24, 2024 – Chambers 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.

Chambers was required to submit a Geotechnical Report and updated stormwater management plan to include the recent activity.

Geotechnical Report submitted by Chambers, dated August 15, 2024.

SEPA MDNS 24-167 issued October 3, 2024.

Appeal of MDNS received by Tyler Chambers – timely filed

Appeal of MDNS received by No. 1 Canyon Neighbors – timely filed

STAFF ANALYSIS

In determining the appropriate mitigating conditions for SEPA MDNS 24-167, specific code sections from the Chelan County Code were reviewed:

Chapter 13.04 State Environmental Policy Act

Section 13.04.080 Thresholds for Categorical Exemptions, which stipulates 1000 cy of landfill or excavation

Section 13.04.100 Environmental Checklist, required when not exempted

Section 13.04.110 Mitigated DNS, DNS based on conditions attached to the proposal

Chapter 11.77 Critical Areas Overlay District General Provisions and Administration

Section 11.77.030(2) Administration

Critical area review is required for all land uses, development activity, and alteration of any land, water, vegetation, structure or improvement in Chelan County that proposed land use action is within, likely to be within, or is adjacent to a critical area whose buffers may overlap the proposed action, regardless of whether or not a permit or authorization is required from the county.

Section 11.77.050 General Regulations

Section 11.77.060(1) General Critical Areas Report

If the administrator determines that the parcel(s) of a proposed land use action is within, likely to be within, or is adjacent to a critical area whose buffers may overlap the proposed action, a critical areas report prepared by a qualified professional specific to each critical area shall be required. The expense of preparing the critical area report shall be borne by the applicant.

Section 11.77.100 Noncompliance

1. When a critical area or its buffer has been altered in violation of this chapter, all ongoing activity shall stop and the critical area shall be restored. The administrator shall have the authority to issue a “stop-work” order pursuant to Title 16 to cease all ongoing activity and order restoration, rehabilitation, replacement, or other measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this chapter. Activity shall not resume until such time as the violation has been corrected and the county determines that the same or similar violation is not likely to reoccur.
2. If the county determines that a plan for restoration or other measures is required, all activity shall remain stopped until a plan is prepared and approved by the administrator. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in subsection (3) of this section. The

administrator may, at the applicant or other responsible party's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

Chapter 11.78 Fish and Wildlife Habitat Conservation Areas Overlay District (FWOD)

Section 11.78.010 Designation and Identification

- 1(B) Habitats and species of local importance, as determined locally. Currently, the county has determined that mule deer and elk winter range and migration corridors are habitats of local importance;
- 2(A) The Washington State Department of Fish and Wildlife Priority Habitats and Species (PHS) and Wildlife Heritage Maps and Database, as amended
- 2(E) DNR Stream Type Maps for Type S, F, Np, and Ns waters per criteria as set forth in WAC [222-16-031](#), Interim water typing system, as amended
3. Site Assessment. The administrator may require the applicant to conduct a site assessment to confirm the presence or absence of a fish and wildlife habitat conservation area. A site assessment must be performed by a qualified professional biologist. If the field investigation concludes that the site is not within and/or would not impact a fish and wildlife habitat conservation area or buffer, compliance with this chapter is not required.
4. Agency Referral. Referral may be necessary to determine if compliance with this chapter is required. The administrator may request assistance from pertinent agencies, including but not limited to Washington State Department of Fish and Wildlife, to review the results of a site assessment, designation, or other information as requested. If agency assistance is desired, the administrator will mail a specific notice to those agencies. Agencies must submit written comments to the administrator not later than thirty days from the date of the mailing of the notice in order to receive consideration.

Section 11.78.030 General Regulations

Proposed activities or development shall be prohibited from fish and wildlife habitat conservation areas and their buffers, except in accordance with this chapter.

Section 11.78.040(3)(B) Riparian Habitat Regulations, Required Riparian Buffer

Section 11.78.050(1) Upland Habitat Regulations

Upland habitat conservation areas include those area where federal or state endangered, threatened, and sensitive species have a primary association or are within one thousand feet of a mapped point location, state natural area preserves, natural resource conservation areas, state wildlife areas, and habitats and species of local importance. In Chelan County, mule deer and elk winter range and migration corridors are habitats of local importance.

Section 11.78.060(1) Habitat Management and Mitigation Plan

A habitat management and mitigation plan for fish and wildlife habitat conservation areas shall be prepared by a qualified professional biologist when a development activity is proposed in a fish and wildlife habitat conservation area or buffer. The expense of preparing the habitat management and mitigation plan shall be borne by the applicant. The county may retain independent qualified consultants, at the expense of the applicant, to assist in review of plans and reports.

Chapter 11.86 Geologically Hazardous Areas Overlay District (GHOD)

Section 11.86.010 Applicability

The provisions of this chapter shall apply to any land use or development under county jurisdiction that is proposed to be located within designated geologically hazardous areas

with the exception of residential footprint expansions less than fifty percent. Designated geologically hazardous areas include all areas classified as geologically hazardous areas under Section [11.86.020](#).

Section 11.86.020(1)

Known or Suspected Risk. Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area with a known or suspected risk and shall require a geologic site assessment as described in Section [11.86.070](#):

Section 11.86.050 Designation

Areas classified as geologically hazardous areas pursuant to Section [11.86.020](#) are designated as geologically hazardous areas.

Section 11.86.060 Performance Standards

Section 11.86.065 Report Preparer Qualifications and Criteria

Section 11.86.070 Geologic Site Assessment and Geotechnical Report Requirements

The Director reviewed all applicable code sections, in addition to assessments, reports and plans submitted by Mr. Chambers, along with numerous public comments, in determining the appropriate mitigation measures to be included within the SEPA MDNS 24-167.

The original MDNS was issued on May 23, 2024 and included conditions that were identified as mitigation measures within the Grette HMMP. This HMMP also incorporated numerous mitigation measures suggested in the Munson Engineers geologically hazardous site assessment.

Mr. Chambers enlisted Munson Engineers to prepare both the original geologically hazardous assessment (and subsequent revisions) along with the stormwater management plan (all three versions).

The HMMP prepared by Grette Associates dated March 2024, provided a description of the project, the existing site conditions, including soils, ecology, water resources, wildlife, plants and priority habitat and species, and an impact assessment. The HMMP went on to identify management and mitigation, to include compensatory mitigation.

A letter from the Department of Fish and Wildlife, Region Two, dated June 7, 2024, concurred with the compensatory mitigation requirement and requested that the County consider requiring identification of future building envelopes. This request was incorporated into the MDNS conditions/mitigation.

The MDNS mitigation conditions 1.1 through 1.10 were derived from the professional analysis and recommendations of the report preparer, Glenn Grette.

Upon reports of additional material being dumped on site and video evidence of such, Director Walter withdrew the MDNS on June 24, 2024, citing additional material being dumped on site that was neither accounted for, nor addressed, in the existing geologically hazardous site assessment. Director Walter also required a full geotechnical report be submitted prior to further review of SEPA MDNS mitigation.

Mr. Chambers contracted DE-Civil, PLLC (Glen Coad, PE) to perform a geotechnical investigation and report. The report dated August 15, 2024 also considered the HMMP prepared by Grette Associates, dated March 2024, the most recent geologically hazardous site assessment prepared by Munson Engineers, dated February 2024, the stormwater/erosion and sediment control plan prepared by Munson Engineers, dated May 2024, a soil stability report by Schettler Civil Engineering Services, and soil compaction test results prepared by CSI Construction Special Inspection, dated 2012-2022.

The geotechnical report addressed site conditions, slope stability, site stability, site preparation, structural fill, temporary excavations, foundation and structure support, slope setbacks, site drainage and seismic conditions. As a professional engineer with over 20 years of experience with geotechnical engineering, Mr. Coad outlined the site issues and provided mitigation recommendations.

The MDNS mitigation conditions 2.1 through 2.13 were derived from the professional analysis and recommendations of the report preparer, Glen Coad, PE.

The concerned residents near the project site have submitted numerous letters and emails regarding the development of this site and impacts to the surrounding properties. Although these concerns were considered during our analysis, Director Walter was comfortable issuing the MDNS with conditions based on the submitted reports produced by industry professionals/experts. The recommended mitigation was deemed appropriate for the scale of development, and proposed future residential use.

Some concerns brought up by the neighboring property owners we not issues the County could engage in. For example, private driveway damage and/or pushing dirt and material to the property edge so that storm events caused runoff onto adjacent properties, are both civil matters that the County cannot regulate. We are bound by the jurisdiction of the Chelan County Code.

We realize that this appeal is two-fold. One appellant feels that the MDNS conditions are onerous and beyond the scope of the planned development, while the other appellant feels that the County has not gone far enough to protect neighboring properties.

The County feels that the appropriate mitigation is contained in MDNS 24-167 based on analysis by the Community Development Department, comments from agencies with jurisdiction, comments from concerned citizens, and the extensive analysis provided by geology and biology experts engaged to prepare reports, and stands on the issued SEPA MDNS 24-167.

FINDING OF FACT

1. The Director of Community Development is the Administrator of the Chelan County Code and is the SEPA Administrator with the authority to issue SEPA Determinations.
2. Property being reviewed is located at unassigned, No. 1 Canyon, Wenatchee; Assessor Parcel Numbers 22-20-07-000-125, 22-20-07-120-050, 22-20-07-000-100.
3. Tyler Chambers purchased two parcels, 22-20-07-120-050, 22-20-07-000-100 on July 15, 2021.
4. On October 4, 2021, a complaint was received by Allan Galbraith on behalf of landowners at the top of No. 1 Canyon Road. The complaint claimed significant land disturbing activities and requested a critical areas and stormwater review. Mr. Chambers owned two (2) parcels at the time of the complaint.
5. CE 21-056 & CE 21-057 were logged as code compliance violations regarding excessive grading and earth moving.
6. Chelan County does not have a grading ordinance/resolution.
7. Former Director, Jim Brown, determined that the on-site excavation activity qualified as "minor development" as defined by CCC 14.98, and did not complete a full critical areas review, but did require Mr. Chambers to submit a Geotechnical Report to analyze the potential geological hazards of the project.
8. Tyler Chambers purchased parcel number 22-20-07-000-125 on January 5, 2022.
9. In April, 2022, numerous complaints were received regarding excavation and earth moving work on three properties lying south of No. 1 Canyon Road and accessed via a private residential access easement. The property owner, Tyler Chambers, had leveled building sites and was moving material that was creating steep, unstable slopes, and stormwater drainage issues for property owners downhill (north) of the subject site. The complaint also identified critical or protected wildlife habitat that had been disturbed or removed. Further, excavated material had rolled down the northern slope of the property and into a DNR identified stream.
10. Staff review of the DNR Stream typing map identified an untyped seasonal stream between No. 1 Canyon Road and Mr. Chambers property
11. The Washington Department of Fish and Wildlife Priority Habitats and Species maps identified the following habitat:
 - 11.1. Mule Deer
 - 11.2. Shrubsteppe

- 11.3. Biodiversity Areas and Corridor
- 11.4. Golden Eagle
- 12. The Chelan County Geologic Hazards map identified erodible soils, and although not identified on the map, does contain steep slopes, as stated in the submitted geotechnical report and geologically hazardous evaluation.
- 13. The Chambers properties are subject to compliance with the Chelan County Code, specifically, Section 13.04.080 (SEPA exemption thresholds) and 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).
- 14. A Stop Work Order was issued by Director Walter on May 3, 2022, with requirement for critical areas review.
- 15. Mr. Chambers submitted a Geo-hazard Assessment initially in May 2022. This assessment was revised in November 2023 and again in February, 2024.
- 16. Mr. Chambers submitted a Technical Memorandum/Critical Areas Assessment on dated June 3, 2022.
- 17. Director Walter met with Tyler Chambers, Deputy Prosecutor Marcus Foster and Prosecutor Robert Sealby on June 30, 2022. Numerous deficiencies were identified in the geologically hazardous assessment, including the need for a SEPA checklist to be submitted as a result of exceeding the 1000cy limit to SEPA exemptions for earth movement.
- 18. In July, 2023, a meeting was held with Director Walter, Tyler and Wendy Chambers, attorney Aaron Harris, and Deputy Prosecutor Marcus Foster. Director Walter reiterated the deficiencies noted in the geologically hazardous assessment, and potential mitigation identified in the HMMP.
- 19. On November 22, 2023, another meeting was held with Tyler and Wendy Chambers, Commissioner Smith, Prosecutor Robert Sealby and Director Walter to, again, discuss the required submittal documents and/or revisions in order to move forward with the project.
- 20. On February 21, 2024, Director Walter met with Commissioner Smith, Glenn Grette, and Tyler and Wendy Chambers to discuss the HMMP and how to incorporate mitigation into the geotechnical report mitigation.
- 21. On March 1st, 2024, Director Walter met with Glenn Grette regarding clarification of the HMMP.
- 22. Mr. Chambers submitted the required SEPA checklist on April 5, 2024.
- 23. The SEPA checklist was reviewed by Director Walter on April 18, 2024.
- 24. Director Walter issued the SEPA MDNS 24-167 on May 23, 2024 based on the submitted SEPA checklist, submitted HMMP, submitted geologically hazardous assessment, and numerous public comments received.
- 25. On June 7, 2024, Department of Fish and Wildlife, Region Two, responded to the SEPA MDNS 24-167 with recommendations for permanent preservation of the compensatory mitigation for the 17.3 acres, along with identification of building envelopes.
- 26. Director Walter was provided a copy of a stream typing conducted in 2012 for Parcel Number 22-19-01-000-050, which is upstream from the Chambers properties. The stream typing identified the presence of a Ns type stream adjacent to No. 1 Canyon Road. This is the same stream that runs seasonally below the Chambers property adjacent to No. 1 Canyon Road. The Ns stream type is a seasonal, non-fish bearing stream with a 50 foot riparian buffer.
- 27. In June, 2024, Numerous complaints were received regarding continued excavation on the Chambers property. Both written and video evidence were received regarding this activity. The stop work order had not been lifted.
- 28. On June 24, 2024, Director Walter withdrew the SEPA MDNS 24-167 and advised Mr. Chambers that a full geotechnical report would be required as the previous assessment and stormwater

management plan did not account for, nor address, the additional truck loads of material being dumped on site.

29. Mr. Chambers submitted a geotechnical investigation/report, prepared by DE-Civil, PLLC, dated August 15, 2024.
30. Upon review of the geotechnical investigation/report, and with consideration given to public comments and the existing HMMP, Director Walter issued SEPA MDNS 24-167 on October 3, 2024.
31. Both the property owner, Tyler Chambers, and the No. 1 Canyon Neighbors appealed the SEPA MDNS 24-167. Both appeals were timely filed.
32. Mr. Chambers is represented by Brett Vinson of Reynolds, Burton & Vinson
33. The No. 1 Canyon Neighbors are represented by David Bricklin of Bricklin & Newman LLP
34. The January 15, 2025 appeal hearing was duly advertised on January 2, 2025.

APPEAL PROCEDURE

Chelan County Code Section 14.12.010: Administrative appeals.

(1) An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.

(2) The notice of appeal shall contain a concise statement identifying:

(A) The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.

STAFF RECOMMENDATION

Staff requests the issued SEPA MDNS 24-167 be upheld.

EXHIBITS

- A. AA 24-408 Appeal Request Materials
- B. AA 24-409 Appeal Request Materials
- C. SEPA MDNS 24-167 issued October 3, 2024
- D. Geotechnical Investigation/Report dated August 15, 2024
- E. SEPA MDNS 24-167 Withdrawal dated June 24, 2024
- F. Department of Fish and Wildlife Region Two letter dated June 7, 2024
- G. SEPA MDNS 24-167 issued May 23, 2024
- H. SEPA Checklist dated April 5, 2024
- I. HMMP 24-168 dated March 28, 2024
- J. Geologically Hazardous Area Evaluation dated May 2022; Revised November 2023; Revised February 2024
- K. Stop Work Order dated May 3, 2022
- L. CE 21-056 & CE 21-057 case notes
- M. Complaint letters & correspondence