CHELAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
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ADMINISTRATIVE INTERPRETATION NO. 21-002

1. SUBJECT:

On October 25, 2021 Chelan County Community Development Department (Department) received a complete application from the attorney for the Yodelin Property Owner's Association for an *Administrative Interpretation* from the Director of Chelan County Community Development Department as provided in CCC 11.02.060.

That request was:

> *"Regarding the applicability of the Geologically Hazardous Areas Overlay District (under Chelan County Code 11.86) to certain lots within the Yodelin Development (the "Unbuildable Lots"), which Unbuildable Lots are highlighted in the enclosed map."*

A. BACKGROUND:

In January 1971, a series of avalanches occurred within portions of the Yodelin Development. One particularly large avalanche resulted in several structures destroyed, and four human lives lost. Further details of that incident are available through other sources, are not disputed to have occurred, and are not the subject of the interpretation. Chelan County was subsequently involved in the commissioning of an authoritative analysis of the site, what occurred during the avalanche, and the future avalanche risk to certain designated lots as noted in the final analysis' report. The details of who actually commissioned the study are not available, other than the cover page which states the report was, "*Prepared for Mel Borgersen and Associates*." The department does not have in the record who that person or organization was, their relationship to the development or Chelan County, what the actual scope of work for the study was, nor who funded this study and subsequent report. (There is an obituary in the *Seattle Times* for Melvin Borgersen (1911-2003) who resided in western Washington, who was apparently a renowned snow skiing sport enthusiast who was heavily involved in skiing competitions, training, safety, and ski area operation in the Northwest. He was in the leadership of several national skiing related organizations.) The only official record of the avalanche post-incident review is the report and associated documents, themselves.

The study commissioned was undertaken in mid-July 1971, less than a year after the avalanche took four lives. *Edward R. LaChapelle*, the principal investigator and author of the study report was a world renowned expert in snow avalanches who has

since passed away. The analysis and associated report are not in dispute and the report content is stipulated to by the department and is referred to on a regular and ongoing basis. No other site analysis is in the record that refutes nor supersedes the findings. The report is believed to have likely formed the foundation for the current geological hazard GIS overlay map and "parcel tags" (against permitted development activities) for that portion of Yodelin development covered under the study's recommendations against building, but only on select portions of the development footprint. Only photocopies of the final report and map attachments are in department records, and this report has formed the basis for many inquiries and permitting decisions in the past. It is unknown if an original uncopied report exists in some other location. It is also unknown if there may be other attachments, or supplemental documents that at one time existed.

The "tagged" parcels on the map and in the SmartGov permitting platform all have reduced relative property taxation value due to their longstanding treatment as, effectively, "unbuildable" (for habitable structures). This is because of the existence of the *LaChapelle* report and the lots' designations, which make these lots of little real property value for purposes of construction and human occupation of a structure. Other minor development work may possibly occur under CCC 11.86 if proper analysis occurred and was approved by the county, and in consideration of what level of site alteration is proposed, and for what time of year a limited property use would be intended to occur.

Of particular historical note, many land-use regulations and building regulations have come into existence and/or have changed since 1971. Those include national building codes and standards, state laws, and county codes which, in some cases, are simply codified state or national codes for county application. Many if not most land use and zoning regulations in effect today did not exist in any form in Chelan County in 1971. Certainly, there were no "*Critical Areas Ordinances*" which are a supplementary County Comprehensive Planning requirement created in compliance with the *Growth Management Act* not enacted until the 1990's.

Additionally, like many jurisdictions in Washington at that time, it appears that the *"Building Department"* for Chelan County in 1971 was headed by the director of county Public Works. Presumably that department, like today's Public Works had engineers on that staff that likely had engagement in the actual review of the avalanche study and report. Subsequently, the building department was branched off into its own separate department. Later it was merged with a Planning Department that had been created at some point *after* the avalanche occurred. The planning department was largely created in response to state requirements for zoning codes and the later codification of the *Growth Management Act* and was needed for implementation of those state requirements. The current Director of Community Development oversees all building and planning review and permitting in one department, and works directly with Public Works on issues that involve both departments such as street addressing, right of way protection, and managing storm water run-off related to development. The Director of Community Development is appointed by the Board of County Commissioners.

These details are important to the final interpretation because of any possible concerns that could arise about (in)consistency in how Yodelin development has been handled with regard to past development restrictions on development and building activities. It provides context about process and legal changes through time. At different times the project review and any restrictions and codes relevant to those times were likely different. So too were the persons and their titles, and which department they reported to, different over the several ensuing decades.

Additionally, on February 20, 1979, over seven years after the avalanche study report, the Chelan County Board of Commissioners (Board) passed Resolution *79-22*, which amended prior Resolution *77-109*, to amend the previously adopted *Uniform Building Code,* to grant clear authority to:

> ”SECTION 3. *The Building Director may deny a building permit for a structure which is proposed for a location which will be exposed to danger of serious damage from external causes such as floods, mudslides, and* ***avalanches****, provided, that this Resolution shall not obligate the Building Official to make inspection or inquiry to the exposure of any proposed building site to such dangers nor does the issuance of permit express or imply any assurance that the building site is safe from such dangers.” (*bold emphasis added*)*

There is no clear and explicit written tie within the resolution between the Yodelin avalanche incident and this resolution passed more than seven years later, though it can be assumed there was at least some consideration when it was passed. Through time, this resolution has *effectively* been tied directly to the Yodelin incident but nothing in the record, other than the word, “*Yodelin*” handwritten at the top of the resolution photocopy establishes some tie in application. Because of this, department staff have often thought of and referred to the resolution as *directly* tied. But nothing in the record establishes that connection as a fact. Certainly, the Board had plenty of time in the prior seven years in order to pass such a resolution, but did not. Records from that time are sparse.

Historically, Community Development staff has, in practice, not allowed the permitting of *any* structure (other than allowing those exempted in CCC 3.04.100) without requiring reanalysis and reassessment of the overall site for avalanche risk before issuing any permits. Presumably due to the high costs of doing so, and the lack of a local contemporary expert of the caliber of Mr. LaChapelle, coupled with the concern that such a study may not lead to an outcome recommending further development, no one has been willing, or able to commission such a study. Over time some permit applications have been reportedly denied. And building permit-exempt structures have been reportedly established on some lots. No record of an appeal of a structural permit denial has ever been located in the Department’s numerous Yodelin record searches.

B. AUTHORITY:

Relevant codes contemporary to this *Administrative Interpretation* are incorporated within the document for ease of reference and to clearly establish what code sections were used for informing the interpretation.

Chelan County Code 14.04.020 Director.

(The Chelan County *Building Official* is a "designee" of the Director/Administrator for administration and enforcement of Chelan County Code, Title 3.)

The director or his/her designee shall review and act on the following:

(**NOTE**: *The Chelan County Building Official is a "designee" of the Director/Administrator for the administration and enforcement of Chelan County Code, Title 3.*)

(1) **Authority.** The director is responsible for the administration of county code Titles 3, 11, 12, 13, 14 and 15 and associated RCWs and WACs.

(2) **Administrative Interpretation.** Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within thirty calendar days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

Chelan County Code 11.02.060 Interpretations.

(1) The administrator shall review and resolve any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, government officer, department or other person affected. The administrator's decision shall be in keeping with the spirit and intent of this title.

(2) Upon application, the administrator may determine that a use not specifically named in the allowed uses of a district shall be included among the allowed uses if the use is the same general type, and is similar in nature, to the allowed uses. Said use shall be consistent with the intent, goals and policies contained within the comprehensive plan.

(3) A record shall be kept of all interpretations and rulings made by the administrator and on appeals to the hearing examiner. Such decisions shall be used for future administration and code amendments.

WA State Residential Code R104.1 General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and

purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

WA STATE BUILDING CODE IBC 104.1General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

C. APPLICABLE BUILDING and LAND USE/ZONING CODE SECTIONS:

a. UNDERLYING BUILDING CODE AUTHORITY

WAC 51-51-003 International Residential Code.

The 2018 edition of the *International Residential Code* as published by the International Code Council is hereby adopted by reference with the following additions, deletions, and exceptions: Provided that Chapters 11 and 25 through 43 of this code are not adopted. Energy Code is regulated by Chapter 51-11R WAC; Plumbing Code is regulated by Chapter 51-56 WAC; Electrical Code is regulated by Chapter 296-46B WAC or Electrical Code as adopted by the local jurisdiction. Appendix F, Radon Control Methods, Appendix Q, Tiny Homes, and Appendix U, Dwelling Unit Fire Sprinkler Systems, are included in adoption of the *International Residential Code.*

CCC 3.04.010 Codes adopted.

There is adopted by the board of county commissioners the State Building Code consisting of those codes as delineated by RCW 19.27.031 including those amendments to those codes as set out in this chapter.

WA STATE IRC R101.2 Scope.

The provisions of this code shall apply to the construction, *alteration,* movement, enlargement, replacement, repair, *equipment,* use and occupancy, location, removal and demolition of detached one- and two-family dwellings and *townhouses* not more than three stories above *grade plane* in height with a separate means of egress and their *accessory structures* not more than three stories above *grade plane* in height.

WA STATE IRC R101.3 Intent.

The purpose of this code is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built

environment, and to provide safety to fire fighters and emergency responders during emergency operations.

WA STATE IRC R103.1 Creation of enforcement agency.

The department of building safety is hereby created and the official in charge thereof shall be known as the *building official*.

WA STATE IRC R104.1 General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

WA STATE IRC R104.2 Applications and permits.

The *building official* shall receive applications, review *construction documents* and issue *permits* for the erection and *alteration* of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

WA STATE IRC R104.4 Inspections*.*

The *building official* shall make the required inspections, or the *building official* shall have the authority to accept reports of inspection by *approved agencies* or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such *approved agency* or by the responsible individual. The *building official* is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

WA STATE IRC R105.1 Required.

Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and obtain the required *permit*.

WA STATE IRC R109.4 Approval required.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the *building official*. The *building official*, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the *permit* holder or

an agent of the *permit* holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the *building official*.

b. UNDERLYING CURRENT ZONING CODE AUTHORITY

Chapter 11.02

GENERAL PROVISIONS (for zoning)

CCC 11.02.040 Compliance.

(1) Hereafter, no building or structure shall be erected, demolished, remodeled, reconstructed, altered, enlarged, or relocated, and no building, structure or premises shall be used except in compliance with the provisions of this title and then only after securing all required permits. Any building, structure or use lawfully existing at the time of passage of the resolution codified in this title, although not in compliance therewith, may be maintained as provided for in Chapter 11.97.

(2) No county official or employee shall issue a permit for a conditional use or variance, or give other authorization for any use that would not be in full compliance with this title. Any permit or other authorization in violation of this title shall be void without the necessity of any proceedings for revocation or nullification, and any work undertaken pursuant to such permit or other authorization shall be unlawful, and no action taken by any elected or appointed official of the county shall validate any such work, permit, or other authorization.

Chapter 11.77

CRITICAL AREAS OVERLAY DISTRICT GENERAL PROVISIONS AND ADMINISTRATION

CCC 11.77.010 Purpose (note: only the relevant subsections provided here)**.**

It is the purpose of this chapter to protect critical areas as required by the Growth Management Act. This chapter adopts regulations and establishes review procedures to assure the protection of critical areas and reduce the threat posed to the public health, safety, environment, and welfare of Chelan County residents when development occurs in and near critical areas.

The purposes of this chapter with regards to each critical area are to:

(1) Wetland Areas. …*(left blank intentionally, for space)*

(2) Frequently Flooded Areas. …*(left blank intentionally, for space)*

(3) Geologic Hazard Areas. Certain portions of the county are characterized by geologic hazards that may pose a risk to public and private property, human life and safety and the natural systems that make up the environment of the county. These lands are affected by natural processes that make them susceptible to landslides, erosion, earthquake, **or snow avalanche.** Some geological hazards can be reduced or mitigated by engineering, design, or modified construction so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided. *(bold emphasis added)*

(4) Fish and Wildlife Habitat Conservation Areas. …*(left blank intentionally, for space)*

(5) Critical Aquifer Recharge Areas. …*(left blank intentionally, for space)* (Res. 2021-54 (Att. A), 5/4/21).

CCC 11.77.030 Administration.

(1) The director of Chelan County community development department or designee shall serve as the administrator to this chapter.

(2) 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.

(3) Pursuant to Section 14.08.010, applicants may request a preapplication meeting with the community development department and applicable state agencies to discuss proposed development proposals.

(4) Critical areas review shall be classified and processed in the manner delineated in Chapter 14.08 for the underlying development permit or approval being sought. When an applicant submits an application for any development proposal, the application shall indicate whether any critical areas or buffers are located on or within two hundred fifty feet of the development. If the applicant states there are no known critical areas, the county should review and confirm whether critical areas exist through office and/or site visit. If critical areas or buffers are present that may be impacted, the applicant shall be required to complete a critical areas report.

(5) All projects without an underlying development permit that are within, likely to be within, or are adjacent to a critical area whose buffers may overlap the proposed project shall submit a critical area determination application to the county to determine the necessary level of critical area review. The application shall indicate which critical areas or buffers are within two hundred fifty feet of the project. The county will decide if the project is likely to alter one or more critical areas. If alteration is likely to occur, the review for actions not subject to an underlying permit or approval shall be classified and processed as either a limited administrative review or full administrative review as defined in Section 14.10.020 or 14.10.030, at the discretion of the administrator.

Projects requiring full administrative review with public notice generally include those projects that are not exempt from SEPA review.

(6) When sufficient information is not available to determine whether a critical area exists on a site based on critical area maps, development project files, or publicly available data (e.g., the WDFW PHS data, the National Wetland Inventory (NWI), etc.), or the applicant challenges the decision of the administrator that a critical area exists on the site, a field investigation or site assessment by a qualified professional may be necessary to confirm the existence, location, and classification of a critical area. The cost of a field investigation or site assessment is the responsibility of the applicant.

(7) Any change or alteration to a development action approved by the county under this title shall be processed as a new action; provided, that the administrator may approve minor changes or alterations deemed consistent with the provisions of this title and the findings and conclusions on the original application. (Res. 2021-54 (Att. A), 5/4/21).

CCC 11.77.060 General critical areas report.

(1) 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.

(2) The county may retain independent qualified consultants, at the expense of the applicant, to assist in review of critical area reports.

(3) In addition to the requirements specified under each critical area, the written report and the accompanying figures, maps, and plan sheets shall contain the following information, at a minimum:

(A) A site map or set of maps of the project area, including:

(i) Reference streets and tax parcel property lines (noting the source of the geographic data such as land survey, county GIS data, etc.);

(ii) Existing and proposed project-related tracts, easements, rights-of-way, utility corridors, internal property/lot lines, and trail corridors;

(iii) Existing and proposed final contour lines (at the smallest readily available intervals, preferably two-foot or better) if proposing land contour alterations;

(iv) Existing and proposed built features of the project including structures, fences, roads, impervious surfaces, utilities, mechanical facilities, landscaping, and other built modifications to the existing land conditions;

(v) Existing and proposed locations of stormwater management and discharge features;

(vi) Project construction, land disturbance, and clearing limits;

(vii) Temporary erosion and sediment control best management practices for all vegetation and soil disturbance areas, including utility corridors, stormwater discharge points, and critical areas mitigation sites;

(viii) All delineated and surveyed critical areas, and their classification, occurring within or adjacent to the proposed project area or tax parcel(s);

(ix) Standard buffers, proposed buffer modifications with area measurements, and building setback limits for critical areas illustrated in subsection (3)(A)(viii) of this section;

(x) All existing and/or proposed critical areas mitigation sites; and

(xi) Location of existing and/or proposed critical area tracts and/or easements.

(B) A written report, including:

(i) The name and contact information of the landowner and applicant/agent (if different than the landowner);

(ii) The name, qualifications, and contact information for the primary author(s) of the critical area report;

(iii) Location information (parcel number(s), address(es), parcel acreages)

(iv) Narrative of the proposed action and all project-related elements including, but not limited to, utility corridor improvements, stormwater discharge points, grazing and habitat changes, proposed mitigation, and/or other physical activities that will alter the critical areas existing habitat and functions.

(v) Identification of all local, state, and/or federal permit(s) or regulatory review(s) required for the project;

(vi) Vicinity map for the project;

(vii) Description of the project area and surrounding landscape existing conditions;

(viii) Description of the methodologies and techniques used to identify, delineate, and characterize critical areas, special status species, and the impacts analysis, and the dates of and who conducted the field studies;

(ix) A statement specifying the accuracy of the report and all assumptions made and relied upon;

(x) Identification and characterization of all critical areas and buffers existing conditions, functions and values, including any functionally isolated conditions on or adjacent to the proposed project area;

(xi) Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc; and

(xii) Tabulated area quantities of each critical area(s) and associated buffers present in or adjacent to the proposed project area(s), and if proposed, the area quantities of proposed impacts and proposed mitigation for each critical area impacted.

(C) The administrator may waive selected components of the report or accept an alternative form of the required information if the administrator determines that sufficient detail will be provided to determine whether all applicable criteria and standards have been met. The administrator may consult with resource agencies prior to making a decision. (Res. 2021-54 (Att. A), 5/4/21).

Chapter 11.86

GEOLOGICALLY HAZARDOUS AREAS OVERLAY DISTRICT (GHOD)

CCC 11.86.005 Purpose.

The purpose of the geologically hazardous overlay district is to reduce the risk to the health and safety of citizens by designating and regulating geologically hazardous critical areas consistent with the Growth Management Act and Chapter 365-190 WAC, Minimum Guidelines to Classify Agricultural, Forest, Mineral Lands and Critical Areas. (Res. 2021-96 (Exh. A), 7/27/21; Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07).

CCC 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. (Res. 2021-54 (Att. A), 5/4/21; Res. 2011-86 (Att. A) (part), 10/4/11: Res. 2007-97 (part), 7/2/07: Res. 2000-129 (part), 10/17/00).

CCC 11.86.020 Classification.

Classification of each geologically hazardous area will be based upon the risk to development. The following categories shall be used:

(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:

(A) Erosion hazard areas identified by the U.S. Department of Agriculture Natural Resources Conservation Service Chelan County Soil Survey as either:

(i) Areas with a “very severe” erosion hazard; or

(ii) Areas with a “severe” erosion hazard where slopes are fifteen percent or steeper.

(B) Landslide hazard areas shall include areas potentially subject to mass wasting based on a combination of geologic, topographic and hydrologic factors. They include any areas susceptible to mass movement because of any combination of bedrock or soil characteristics, slope (gradient), slope aspect, rock or soil bedding and inclination or fractures or other geologic structure, hydrology, damage or removal of vegetative cover, or other factors. Examples of these may include, but are not limited to, the following:

(i) Sites that are located on or within two hundred fifty feet of areas of documented or historic landslides, including areas identified in geotechnical/geological reports, such as:

(a) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a “severe” limitation for building site development.

(b) Areas designated as landslides or mass wasting deposits on maps published by the United States Geological Survey or the Washington Department of Natural Resources Division of Geology and Earth Resources.

(c) Areas located on a landslide feature which has shown movement during the past ten thousand years or which is underlain or covered by mass wastage debris of that period.

(ii) Sites that are located on or within two hundred fifty feet from areas with all three of the following characteristics:

(a) Slopes steeper than fifteen percent; and

(b) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(c) Springs or groundwater seepage.

(iii) Areas potentially unstable as a result of rapid stream incision, stream or channel migration, stream bank erosion, or undercutting by wave action.

(iv) Areas located in bottoms of narrow drainages and other confined channels including canyons, ravines, and gullies, and areas located on an alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding.

(v) Steep Slopes. Areas located within two hundred fifty feet from the base of any slope of forty percent or steeper with ten feet of relief or a talus slope or a a distance equal to the vertical height of the slope, whichever is greater.

Figure 1. Steep slope classification. *(figure omitted)*

(vi) Areas that have slopes of fifteen percent or steeper and are located within two hundred fifty feet from areas affected by wildfire within the past ten years, or areas within confined drainage channels downstream of recent wildfire areas.

(vii) Areas that show evidence of, or are at risk from, sliding that may pose a threat to the public health and safety.

(C) Seismic hazards. Sites that are located within areas mapped by Washington Department of Natural Resources as having liquefaction susceptibility of “moderate” or higher, and sites located within two hundred fifty feet from a mapped or inferred fault.

(D) **Sites that are located on or within five hundred feet from snow avalanche areas. Snow avalanche areas include areas that show evidence of, or are at risk from, snow avalanches.** *(bold emphasis added)*

(E) Upon examination of the subject property by a qualified professional pursuant to Section 11.86.065, if a determination is made that none of the foregoing conditions are present on or adjacent to the property, the qualified professional may state in letter form the circumstances under which the site assessment or report may be waived.

(2) No Risk. Areas classified initially as geologically hazardous areas with a known or suspected risk or unknown risk may, upon further study, actually pose no risk to development or to the public health and safety. Where the administrator can determine that no risk from the geologically hazardous area is present, based upon geotechnical reports or best available science, these areas shall be classified as geologically hazardous areas determined to be of no risk.

(3) Unknown Risk. Geologically hazardous areas may be present in the county that cannot readily be identified based upon the criteria of subsection (1) of this section. Geologically hazardous areas of unknown risk include areas where data are not available to determine the presence or absence of a geological hazard. The administrator may require a geologic site assessment and/or geotechnical report to determine the actual presence or absence of a geologically hazardous area. (Res.

2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07: Res. 2002-8 (part), 1/15/02: Res. 2000-129 (part), 10/17/00)

CCC 11.86.030 Classification challenge.

An applicant may challenge the geologically hazardous area classification determination made by the administrator. Said challenge shall be in the form of a geologic site assessment or a geotechnical report under the provisions of Section 11.86.070. If the geologic site assessment or a geotechnical report indicates that the geologically hazardous area does not exist or should be classified as no risk or low risk, the administrator may find that the performance standards outlined in this chapter do not apply to the site or project. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07: Res. 2000-129 (part), 10/17/00).

CCC 11.86.040 Administrative review.

The administrator may modify the requirements of this chapter when existing or intervening natural or manmade features would preclude the development proposal from geologic risk. An applicant may request such review from the department of community development as part of the permit application process. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07. Formerly 11.86.035).

CCC 11.86.050 Designation.

Areas classified as geologically hazardous areas pursuant to Section 11.86.020 are designated as geologically hazardous areas. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07: Res. 2000-129 (part), 10/17/00. Formerly 11.86.040).

CCC 11.86.060 Performance standards.

(1) Upon completion of a geotechnical report, the following performance standards shall be applied during county review of proposed development projects that are the subject of the geotechnical report. Additional mitigation measures may be required pursuant to the findings of a geotechnical report. The administrator may agree to alternative mitigation measures set forth by the geotechnical report, if such alternative measures provide greater or equal protection than the application of the performance standards below. Development proposals may be approved pursuant to the performance standards of this section and/or mitigation measures of a geotechnical report, if they are determined to satisfy the purposes of this chapter. **A development permit may be denied based upon the administrator's evaluation of the inability of said measures to reduce risks associated with the geologically hazardous area.** Performance standards to be utilized include: *(bold emphasis added)*

(A) Construction methods should be used which minimize risks to structures and do not increase the risk to the site, or to adjacent properties and their structures, from the geologic hazard. Development shall not increase instability or create a hazard to the

site or adjacent properties, or result in a significant increase in sedimentation or erosion.

(B) Site planning should minimize disruption of existing topography and vegetation, and should incorporate opportunities for phased clearing.

(C) Disturbed areas shall be replanted within one year of project completion, in accordance with an approved revegetation plan, and be appropriately bonded for.

(D) Impervious surface coverage shall be minimized.

(E) Excavation and grading shall be minimized. A clearing and grading schedule shall consider limitations based upon seasonal weather conditions.

(F) Detailed drainage plans may be required for projects affecting areas of geologic hazard. These plans shall indicate the effect the project may have on the hazard areas and adjacent properties and mitigating measures, with stormwater detention standards based upon the technical studies required under this document.

(G) Any limitations to site disturbance, such as clearing restrictions, imposed as a condition of development approval should be marked in the field and approved by the county prior to undertaking the project.

(H) A monitoring program should be prepared for construction activities occurring in geologic hazard areas and be marked on the face of the building permit.

(I) All authorized clearing for roads, utilities, etc., should be limited to the minimum necessary to accomplish engineering design. Alternatives should meet the following requirements:

(i) Clearing, grading, or filling of sloped sites containing erosion hazard areas shall be limited by weather conditions and an approved erosion control plan.

(ii) The face of cut and fill on slopes shall be prepared and maintained to control against erosion.

(J) Unless otherwise directed by the administrator or recommended in the site assessment or geotechnical report pursuant to Section 11.86.070, temporary erosion and sedimentation control shall be consistent with best management practices (BMPs) in the Stormwater Management Manual for Eastern Washington, as revised, pursuant to Chapter 13.16.

(K) To maintain the natural integrity of landslide hazard areas and to protect the environment, and the public health and safety, adequate vegetation shall be maintained around all sides of the landslide hazard area.

(L) **Development proposals that involve altering land upon areas identified as landslide or avalanche hazard areas must demonstrate the following for approval:**

(i) There is no evidence of recent landslides or avalanches in the vicinity of the proposed development and quantitative analysis of slope stability and/or other pertinent factors indicate no significant risk to the proposed development or nearby areas.

(ii) The landslide or avalanche hazard areas can be modified or the project can be designed so that the landslide or avalanche hazard to the project is eliminated. *(bold emphasis added)*

(iii) Unless otherwise directed by the administrator or recommended in the geotechnical report pursuant to Section 11.86.070, surface water discharge from the site shall comply with requirements in the Stormwater Management Manual for Eastern Washington, as revised, pursuant to Chapter 13.16, and natural surface water drainages including water discharging from springs or seeps and shall be maintained.

(iv) **Disturbance of trees and vegetation shall be the minimum necessary in order to prevent erosion and/or an increase in avalanche hazard, to stabilize slopes, and preserve the natural character of the area.** *(bold emphasis added)*

(v) Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural landforms and vegetation.

(M) **Projects in snow avalanche hazard areas shall provide technical studies, which identify the location and extent of the potential avalanche area and include mitigation measures, which ensure that the proposed activity will not increase the potential for an avalanche on the subject property and adjacent properties.** *(bold emphasis added)*

(2) Performance standards or mitigation measures outlined in a geologic site assessment or geotechnical report shall be implemented and incorporated into conditions of approval, if applicable.

(3) If performance standards or mitigation measures are outlined in a geologic site assessment or geotechnical report, an engineer or geologist shall verify that said measures/standards have been adequately completed and provide written notification of completion to the department. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07: Res. 2002-8 (part), 1/15/02: Res. 2000-129 (part), 10/17/00).

CCC 11.86.065 Report preparer qualifications and criteria.

(1) A geologic site assessment, when required, shall be prepared by either a geologist licensed by the state of Washington; an engineering geologist licensed by the state of

Washington; or a professional civil engineer with geologic expertise licensed by the state of Washington.

(2) A geotechnical report, when required, shall be prepared by either an engineering geologist licensed by the state of Washington or a professional civil engineer with geologic expertise licensed by the state of Washington. A civil engineer must also have the following experience and background.

(A) Five years of geotechnical experience evaluating geologically hazardous conditions and site development activities, such as landform recognition; unstable geologic units; roads; structural footings, foundations and retaining walls; swimming pools and sport courts; and other activities such as timber removal, site disturbance and mining. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07).

CCC 11.86.070 Geologic site assessment and geotechnical report requirements.

Geologic site assessments and geotechnical reports shall be prepared in compliance with the following provisions. A geotechnical report contains all of the provisions of a geologic site assessment and shall be considered to meet the requirements of a geologic site assessment.

(1) The geologic site assessment shall include the following:

(A) Evaluate the actual presence of geologically hazardous areas within or in the vicinity of the site and the need for a geotechnical report. Specifically mention the circumstances or conditions which require the report to be prepared (steep slopes, erodible soils, suspected landslide or **avalanche hazard,** adverse hydrologic or flood risk, etc.). *(bold emphasis added)*

(B) Evaluate safety issues related to proposed activities. Address issues that could involve personal injury, worksite safety, or property damage.

(C) Address existing geologic, topographic, and hydrologic conditions on the site, including an evaluation of the ability of the site to accommodate the proposed activity. Describe the proposed development, including property size and location, nature and extent of the planned development (i.e., house, garage, shop, swimming pool, etc.), and its specific location on the property. Include evidence of prior grading, excavation, cut banks, fill areas, or mining activity, and their potential impact on the project. Note and evaluate any features that could adversely affect development such as drainage gullies, erosion channeling, alluvial fans, **evidence for debris flow or avalanche,** surface creep and landslides observed or suspected spring activity and flood risk potential. *(bold emphasis added)*

(D) A discussion of the surface and subsurface geological and engineering properties of the soils, sediments, and/or rocks on the subject property and adjacent properties and their effect on the stability of the slope. Note any areas of modified ground or fill. Where known from field inspection or reference maps and literature, include bedrock

identification and age, bedding and joint attitude with respect to slope inclination, fracturing, faults and shear zones, hydrothermal alteration, weathering characteristics, presence of landslide deposits and its age and consolidation, etc. Use cross-sections if necessary for better representation of subsurface character.

(E) A description of the soils in accordance with the Unified Soil Classification System. Give general soil characteristics that could affect site development (i.e., frost action and shrink/swell potential, permeability, compressibility, density or consistency, plasticity and wet/dry behavior, erodibility, etc.). Especially note the presence or suspected presence of clay-rich horizons and their position/location in the soil profile, and any indication that a building site could be subjected to soil compression or differential setting.

(F) **Evidence and history of avalanches,** faults, significant geologic contacts, springs or seeps, landslides or other downslope soil movement, or sedimentation and alluviation, stream or channel or shoreline incision, migration, or erosion, on the subject property and adjacent properties not detailed in subsection (1)(C) of this section. *(bold emphasis added)*

(G) A discussion of seismic hazards including seismic class, liquefaction susceptibility including probable depth to groundwater, fault rupture, ground shaking, slope failure, and settlement or subsidence.

(H) A summary of the site assessment and its conclusions, mentioning the presence or absence of geological hazards and site suitability. Determine the appropriate hazard category according to the classification of the geologically hazardous area consistent with Section 11.86.020. Include any recommendations for mitigation of potential hazards that can be dealt with without requiring a complete geotechnical report (control measures such as footing or intercept drainage systems, erosion control, debris catchment, vegetative management and restoration, and the probable need for engineering consultation and design). Include a recommendation whether additional study, including a geotechnical report pursuant to Section 11.86.070, is required.

(I) A topographic map showing the proposed development site location and approximate parcel shape location and boundaries.

(J) Provide a summary of readily available existing information for the site vicinity, including geological/geotechnical reports. Cite all references and information used in the assessment preparation, such as United States Geologic Survey (USGS) and Department of Natural Resources Geologic Maps and Bulletins, soil studies, surveys and previous reports.

(2) The geotechnical report determined to be required by the geologic site assessment shall include the following:

All of the information required for a geologic site assessment as well as the following:

(A) Determine the appropriate hazard category according to the classification of the geologically hazardous area consistent with Section 11.86.020.

(B) Evaluation of seismic hazards considering the proposed development.

(C) Determine the appropriate application of the performance standards of Section 11.86.060 and/or alternative mitigation measures that provide an equal or greater level of protection.

(D) Include a contour map of the proposed site, at a scale of one inch equals twenty feet or as deemed appropriate by the administrator. Slopes shall be clearly delineated for the ranges between fifteen and twenty-nine percent, and thirty percent or greater, including figures for a real coverage of each slope category on the site. When site-specific conditions indicate the necessity, the administrator may require the topographic data to be field surveyed.

(E) A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the location, size and type of any existing or proposed structures, off-site structures or facilities that could be impacted, impervious surfaces, wells, drainfields, drainfield-reserve areas, roads, easements, and utilities proposed or located on site.

(F) The location of springs, seeps, or other surface expressions of groundwater. The location of surface water or evidence of seasonal surface water runoff or groundwater.

(G) The extent and type of vegetative cover prior to development activity or site disturbance.

(H) The proposed method of drainage and locations of all existing and proposed surface and subsurface drainage facilities and patterns, and the locations and methods for erosion control.

(I) An identification of any modified ground including fill areas and assessment of potential hazards or recommendations for mitigation.

(J) Information demonstrating compliance with all applicable codes and ordinances for the proposed development permit.

(K) Recommendations for vegetation management or restoration or whether a vegetation specialist is required for a management plan.

(3) Geologic site assessments and geotechnical reports, when completed in accordance with this chapter, shall be valid for a period of five years. A qualified professional, as outlined in Section 11.86.065(2), may extend the applicability of a valid geologic site assessment or geotechnical report by five years by submittal of a letter stating the validity of the existing document and its application for the extension; provided, that such letter must address any changes in surrounding land use activity

or site conditions. (Res. 2021-54 (Att. A), 5/4/21; Res. 2007-97 (part), 7/2/07: Res. 2002-8 (part), 1/15/02; Res. 2000-129 (part), 10/17/00).

c. OTHER CODES APPLICABLE TO THE ADMIN. INPERPRETATION

CCC 14.98.550 Development.

"Development" means the construction or exterior alteration of a structure or structures, dredging, drilling, dumping, filling, removal of natural resources or vegetation, placing of obstructions, any project of a permanent nature or changes in the use of land or preparation for the change of use of land except as allowed by the provisions of this title. (Res. 2020-68 (Exh. C) (part), 6/16/20: Res. 2012-78 (part), 8/14/12).

CCC 14.98.1825 Structure.

"Structure" means that which is built, constructed, erected or any kind or any piece of work artificially built up or composed of parts joined together which requires location on the ground or attached to something having a location on the ground with the exception of retaining walls. Not included are structures or similar improvements less than four feet in height. (Res. 2020-68 (Exh. C) (part), 6/16/20: Res. 2014-100 (Atts. A, B) (part), 10/7/14: Res. 2012-78 (part), 8/14/12).

2. FUNDAMENTAL ANALYSIS OF THE CURRENT DEVELOPMENT-WIDE GEOTECHNICAL REPORT (1971 *LaChapelle* report) AND RESOLUTION 79-22, AND ANALYSIS UNDER CURRENT CODES:

1. Under Washington State Building Codes Sections IRC R104.1 and IBC 104.1, the Building Official is authorized to render interpretations of the adopted building codes and to adopt policies and procedures in order to clarify the applications of its provisions.

2. Chelan County still has a "Building Official" in 2021. However, in line of reporting and authority he is subordinate to the Director of Community Development under the provisions found in Chelan County Code (CCC) 14.04.020. That code vests administrative authority for the several county codes enumerated therein, including Title 3 where the building codes provisions are found, and Title 11 where zoning and land use codes are located. The "Building Official" has other state law and building code provisions that provide him certain authorities but, "*subject to appointing authority approval"*. The Director is that appointing authority and also has full authority in CCC 14.04.020 to administer the zoning code in CCC Title 11.

3. The validity and applicability of the *LaChapelle* avalanche risk report is not questioned here. And there is nothing in the record that challenges its ongoing validity nor applicability to specific Yodelin development parcels.

4. The Board passed Resolution 79-22 is still valid, in spite of several subsequent changes in county operation of building department(s), permit review and issuance processes, and who and where those actions occur. The building official may under that Resolution, deny a building permit. Several building code references in effect today also provide that authority, so the Resolution is effectively superseded by later code changes that grant that authority to that position.

    a. There is nothing found in the record that directly states the Resolution was specifically *targeted* at Yodelin development. As written rather, it provides authorization in general to the Building Official to deny permits for the stated environmental risks, but also does not direct him to do so.

5. There is no Board of Commissioners Resolution found in the record declaring any lots in Yodelin development as, “unbuildable”.

6. There is not a written Administrative Interpretation nor any Administrative Decision found in in the record that declares any lots in Yodelin as, “unbuildable.”

7. There is a GIS mapping overlay used and relied upon by the Department that shows a geological hazard zone covering the parcels that are recommended against development within the LaChapelle report. That overlay is based on avalanche hazard and is used to condition, issue, or deny land use and building permits in Yodelin development. The department has found no reason in any current on-site records not to continue to rely upon the current GIS overlay footprint when evaluating development activities, or permit applications within that mapped footprint.

8. The Department has placed “tags” on those parcels in the SmartGov permitting platform that states they are “unbuildable” based upon the entirety of the *LaChapelle* report and the avalanche risks believed to continue to exist on the site.

9. Since the avalanche incident and subsequent analysis and report in 1971, numerous building and land use codes have changed. Among them, is a zoning code that now has a “*Critical Areas Ordinance*” that includes *General Provisions and Administration* and specific *Geological Hazardous Area* provisions.

10. The fact that a known historic avalanche hazard exists on the parcels shown in the Geological Hazard map overlay covering large parts of Yodelin development means that the provisions in CCC 11.77 and CCC 11.86 apply in requiring an application be submitted, and the

Department review the application and, if appropriate, decide to grant approval before any of the enumerated activities listed in those codes take place.

11. The activity of building any structure (one requiring a building permit, or even a permit-exempt structure), and/or including and not limited to, altering the landscape or vegetation, road building, placement or removal of fill, and grading of land in place, placement of infrastructure, and other similar activities to alter the site, or such work within 500 feet of the footprint in the overlay, requires prior application for a "Critical Area Review" under CCC 11.77.030(2).

    a. Several parcels **not** within the GIS avalanche geological hazard mapping footprint are therefore *also* subject to the review requirement if they are within 500 feet of an avalanche area (Versus the general code requirement for review if within 250 feet of a critical area, per CCC11.86.020(1)(D)).

    b. Further development on the parcels within 500 feet *adjacent* to those in the *LaChapelle* report, may also have a development proposal approved, conditioned, or denied even though not within the actual GIS Geological Hazardous zone map footprint.

12. The Critical Area Review required within CCC 11.77 by the administrator may trigger additional geotechnical investigation and report requirements from licensed professionals that would then be used to approve, condition, or deny any development work.

    a. CCC Chapter 11.86 has significant references as to qualification requirements for professionals to provide analysis and reports, and the code prescribes the minimum performance requirements that the analysis and report must contain.

13. The application for a critical area review has a nominal fee that accompanies the application. The expense of providing the site analysis and reports is borne by the applicant .

    a. The Director may require even further investigation by independent qualified consultants, also at the expense of the applicant. (per CCC 11.77.060)

14. The Director/Administrator of the Critical Areas Ordinances has broad statutory discretionary authority in the review process. Nothing in the code requires the department to accept any geotechnical hazard analysis report as adequate to allow development to proceed, nor is he required to supersede any earlier hazard reports in the record.

3. FINAL ADMINSTRATIVE INTERPRETATION:

1. The Director has the authority to issue this Administrative Interpretation.
2. This Administrative Interpretation is specific to the Yodelin development and to the avalanche geological hazard overlay issue only.
3. This Administrative Interpretation is within the spirit and intent of Title 11, and is consistent with the intent, goals, and policies of the Chelan County Comprehensive Plan.
4. A record shall be kept of this Administrative Interpretation made by the administrator, and on any appeals to the hearing examiner. Such decisions shall be used for future administration and code amendments.
5. The Director has broad authority to permit, conditionally permit, or deny building construction and land uses under CCC Title 3 and Title11.
6. The Building Official has the authority to grant or deny building permits, under Resolution 79-22
    a. Resolution 79-22 is not specific to Yodelin development.
    b. Based upon how the building department has evolved and moved through time, that authority also extends to the current Department Director.
    c. Other subsequent CCC Title 3 codes adopted likely render the resolution moot.
7. Yodelin development, including parcels identified as recommended against development in the *LaChapelle* report are GIS mapped by Chelan County as within a geologically hazardous zone because of avalanche hazard.
8. As with other parcels in Chelan County, other county development codes exist that further affect development within Yodelin development (district use chart, setbacks, general zoning requirement, etc.).
9. Until an adequate geotechnical site analysis and report written subsequent to the existing *LaChapelle* avalanche hazard report is performed and accepted by the Director, <u>all</u> development or site alteration work on any parcels or roadways <u>within 500 feet</u> of the designated geological hazardous avalanche zone in Yodelin development must at least undergo a "*Critical Area Review*", before any work may occur.
    a. CCC 11.86.030 provides a process for an applicant to challenge a geological hazardous area classification determination.
    b. Until such a challenge were successful, the current status of the area will remain classified as a within a geologically hazardous zone because of ongoing avalanche risk.
10. As of now, a <u>new</u> geotechnical report would have to be submitted before any development work under county jurisdiction is to occur on, or within 500 feet of any parcels <u>or spaces</u> (such as shared access roads) identified as at risk/hazard of avalanche within or near Yodelin development, and that

report would have to be accepted by the Director as adequate before any lawful development or building work may occur.

a. The *LaChapelle* report's mapped hazardous lots are therefore presumed "*unbuildable*" for habitable structures unless someone first provides a geotechnical report, which identifies that the proposed development or site alteration work as submitted to the Department and has determined either, the parcel is specifically unbuildable or remains at risk of avalanche hazard, or that the report is found by the Director to be inadequate to make that determination.

b. The *avalanche* geotechnical report performance standards shall provide *additional* technical studies as required in CCC 11.86.060(1)(M).

    i. A geotechnical report covering all the area of avalanche risk within the GIS hazardous area layer and *LaChapelle* report designated lots GIS mapped footprint may be deemed adequate to inform whether certain site development work or site alteration may be performed and if building permits are deemed safe to issue for any lots.

    ii. There may be building and development possibilities through design options and infrastructure that can eliminate avalanche risks, and may be part of a submitted geotechnical report. (See CCC 11.86.060(1)(L)(ii))

c. Geotechnical reports expire after 5 years, with possible extension for an additional 5 years, as provided in CCC 11.86.070(3).

11. The 1971 Yodelin Development *LaChapelle* report shall continue to be relied upon by the Department to inform department decisions related to any proposed development or site alteration work, and will continue to be replied upon for any parcels not covered by a future unexpired geotechnical report.

    a. If there is no unexpired geotechnical report for a parcel, then the *LaChapelle* report is the reference document to be relied upon for that parcel unless successfully challenged under CCC 11.86.030 (or a subsequent similar code provision of the future).

    b. Future geotechnical reports will only be relied upon for the "footprint" that a report covers and will not be transferrable to other parcels beyond its analysis, subject to the report expiration provisions of the code.

    c. The *LaChapelle* report will also apply to proposed development to any lots or other spaces within 500 feet of those lots specifically flagged in that report. For those lots within 500 feet, the requirements of CCC11.86.020(1)(D) apply and a Critical Area

Review must first take place before any development approval and development action may occur.

November 18, 2021

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Jim Brown, Director Date of issuance

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Appeals: This written administrative interpretation is rendered pursuant to the provisions found in Chelan County Code 14.04.020, to interpret the meaning or application of the provisions of the code refences listed above.

Appeals of this administrative interpretation may be filed as provided in Chelan County Code 14.12.010 which states: *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.*