

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER  
RECEIVED

IN THE MATTER OF ) FINDINGS OF FACT, CONCLUSIONS  
AUG 26 2019 ) OF LAW, DECISION AND CONDITIONS  
)  
P 2019-005 ) OF APPROVAL  
CHELAN COUNTY )  
COMMUNITY DEVELOPMENT )  
Carl Peterson, WD Peterson Orchards, INC )

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on August 21, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

## FINDINGS OF FACT

1. This is an application for a cluster subdivision to divide approximately 26.76 acres into 5 residential lots with an open space tract. The smallest lot is proposed at approximately 1.03 acres and the largest lot is proposed at approximately 1.29 acres; the dedicated open space tract will be privately owned, will be maintained in agriculture use and is approximately 21.10 acres.
2. The applicant/owner is Carl Peterson, WD Peterson Orchards, Inc., PO Box 608, Chelan, WA 98816.
3. The surveyor is Chris D'Orazio, Erlandsen, PO Box 2029, Chelan, WA 98816.
4. The subject site is located at NNA Lower Joe Creek Road, Manson, WA 98831.
5. The subject parcel number for the property is 28-21-15-420-050.
6. The subject property is located outside of the Urban Growth Area.
7. The current Comprehensive Plan and zoning designations are Commercial Agricultural Lands (AC).
8. The subject property is currently used for agriculture.
9. The subject property is generally undisturbed with ongoing orchard production activities. The proposed building lots have portions of steep slopes and moderate slopes; the slopes generally dip toward the southeast.
10. The subject property is a total of 26.76 acres.
11. The property to the north of the subject property is in agricultural use and is zoned Commercial Agricultural Lands (AC).
12. The property to the south of the subject property is Lower Joe Creek Road, a public county right of way and is zoned Commercial Agricultural Lands (AC).
13. The property to east of the subject property is undeveloped hillside and agriculture and is zoned Commercial Agricultural Lands (AC)
14. The property to west of the subject property is in agricultural use and is zoned Commercial Agricultural Lands (AC).

15. The applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped March 14, 2019. Pursuant to Chelan County Code Section 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply.
16. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150225A, the subject property does not contain identified 100 or 500-year flood plain or associated floodway; therefore, Chelan County Code Chapter 11.84, Frequently Flooded Areas Overlay District does not apply.
17. According to the Chelan County GIS mapping, the property contains potential geologic hazardous areas. The applicant submitted a Geological Site Assessment, dated May 4, 2019 prepared by Bill Christman, PE. The report includes several recommendations for construction which should be adhered to for the design and construction of the proposed subdivision and subsequent development. Overall, he found that the soils are not erosive.
  - 17.1 Pursuant to Chelan County Code Chapter 11.86, a note on the final plat mylar should be required, identifying this subdivision as being located in a potential geologically hazardous area.
18. Pursuant to the National Wetlands Inventory Map, the subject property is located adjacent to known wetlands associated with Wapato Lake. The applicant submitted a Wetland Determination, dated April 23, 2019. The wetland across Lower Joe Creek Road rates as a Category II lake-fringe wetland. The associated wetland buffer is 100ft.
  - 18.1 Pursuant to Chelan County Code Chapter 11.80, a note on the final plat mylar should be required to list the classification of the wetland.
19. Based on the Washington State Department of Natural Resources FPARS stream typing map, a stream was identified running south along the eastern edge of the subject property. A stream typing that was conducted during the above mentioned Wetland Determination, the report concluded that there was not a stream on site.
  - 19.1 Therefore, the provisions of Chelan County Code Chapter 11.78 for riparian areas, do not apply.
20. Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resources is maintained.
21. Permits and applications on record for the subject property include:
  - 21.1 BLA 2018-259—2 Lot BLA, recorded December 28, 2018 under AFN: 2489872.
22. On April 25, 2019, a pre-application meeting was held to discuss the proposed cluster subdivision.
23. The proposed subdivision fronts on Lower Joe Creek Road. Lower Joe Creek Road is a 60ft.+ right of way and is classified as a Rural Local Access Road in the county road system. Lower Joe Creek Road is a 22ft. paved roadway providing single travel lanes for both directions with no curb, gutter, or sidewalk. Existing guardrail runs along the northeasterly side of the roadway of the subject property.
24. The applicant is required to submit a sight distance analysis for the existing/proposed access point off Lower Joe Creek Road.
25. With the development, a new internal road is proposed. The proposed road will be required to be built to meet a Rural Emergency Vehicle Access Road with an emergency vehicle turnaround.

26. The comment letter from Chelan County Public Works, dated June 24, 2019, states a private stormwater drainage system is required with an Operation and Maintenance Agreement of the drainage system and recorded with the final plat.
27. Domestic water is to be provided by the Lake Chelan Reclamation District.
28. Sanitation will be provided via on-site septic systems.
29. Power will be provided via an extension of the Chelan County PUD.
30. The subject property benefits from irrigation water from the Lake Chelan Reclamation District.
31. Noise impacts are addressed in Chelan County Code Chapter 7.35.
32. The applicant submitted an environmental checklist on March 14, 2019. Pursuant to WAC 197-11 and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed. A Determination of Non-significance (DNS) was issued on July 8, 2019 with comments due by July 25, 2019. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
33. The Notice of Application was referred to agencies and departments on June 12, 2019 and surrounding property owners within 300 ft. excluding 60 ft. of right-of-way with comments due June 26, 2019. Agency comments are included, as appropriate, within this staff report and in the recommended Conditions of Approval.
34. The following agencies and County departments provided comments:
  - 34.1 Chelan County Assessor responded on June 12, 2019.
  - 34.2 Chelan County Fire Marshal responded on June 12, 2019.
  - 34.3 Chelan-Douglas Health District responded on June 18, 2019 & June 25, 2019.
  - 34.4 Chelan County Public Works responded on June 24, 2019.
  - 34.5 Lake Chelan Reclamation District responded on June 12, 2019.
  - 34.6 Fire District #5 responded on June 21, 2019.
  - 34.7 Manson Community Council responded on June 26, 2019.
  - 34.8 Dept. of Ecology responded on June 21, 2019.
35. The following agencies were provided notice and did not respond:
  - 35.1 Manson School District
  - 35.2 WA Dept. of Archaeology & Historic Preservation
  - 35.3 Yakama Nation
  - 35.4 Confederated Tribes of the Colville Reservation
  - 35.5 Chelan County Natural Resources
36. Public comments were received from the following individuals:
  - 36.1 Brian Patterson on June 24, 2019, during Notice of Application concerned with soil contamination, required agricultural setbacks, and worker safety regulations.
  - 36.2 Brian Patterson on July 17, 2019, during SEPA comment period, concerned that the County's SEPA process is not adequate.
37. The application materials were submitted on March 14, 2019.

38. A Determination of Completeness was issued on June 7, 2019.
39. The Notice of Application was provided on June 12, 2019.
40. SEPA DNS was issued on July 8, 2019, allowing a comment period until July 25, 2019.
41. The Notice of Public Hearing was issued on August 9, 2019.
42. The Comprehensive Plan has been reviewed. Specifically the goals and policies related to the Commercial Agricultural Lands Comprehensive Plan designation for consistency with residential and agricultural land uses.
43. The Hearing Examiner finds that the proposed subdivision, as conditioned, is consistent with the Chelan County Comprehensive Plan.
44. The proposed lots would be for residential use. The applicant is proposing lots ranging in size from 1.03 acres to 1.29 acres with the average lot size of approximately 1.13 acres through a cluster subdivision. All proposed lots exceed the minimum lot width of 150 ft. at the front building line. Building setbacks, height, and lot coverage would be reviewed at the time of building permit application.
45. The Hearing Examiner finds that the proposed cluster subdivision, as conditioned, is consistent with the provisions of Chelan County Code Section 11.30.020.
46. The project is consistent with Chelan County Code (CCC) Section 12.04.020 in the following respects:
  - 46.1 As submitted, the proposed cluster subdivision is consistent with the provisions of this section.
47. The project is consistent with Chelan County Code (CCC) Section 12.08 in the following respects:
  - 47.1 Based on an email received August 5, 2019, the proposed subdivision is to be named Wapato Heights Subdivision, which does not appear to be similar to the name of any other subdivision in the county.
  - 47.2 The proposed lots were reviewed for consistency with the cluster subdivision standards and appear that they are of an adequate size to accommodate residential development within the dimensional standards of the AC zoning district. Each lot is to be provided access by an internal private road off of Lower Joe Creek Road, dedicated through the proposed plat.
48. A Geologic Hazard Assessment prepared by Bill Christman, PE, dated May 4, 2019 was submitted with the application. Staff recommended as a condition of approval that a note be placed on the face of the plat stating the subject property is within an erosion hazard area and that all development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended, as well as compliance with the recommendations of the Geologic Hazard Assessment prepared by Bill Christman, PE or as amended with a site specific geological site assessment.
49. Based on the site plan of record, dated May 15, 2019, the proposed subdivision would not result in barrier to the development of the adjacent lots.
50. Pursuant to RCW 58.17.255 and WAC 332-130-040, all easement locations are required to be shown on the final Short Plat. Separate instruments recorded with the Chelan County Auditor should be referenced on the final Short Plat. Easements will be reviewed with blueline submittal.

51. The subject property is within Fire District 5. The proposed subdivision and all future building permits must conform to all applicable requirements of the International Fire Code and International Building Code administered by the Chelan County Fire Marshal.
52. Comment letter from Chelan County Public Works, dated June 24, 2019, states that the proposed subdivision must comply with the stormwater standards per Chelan County Code Chapters 13.12; 13.14; 13.16; & 13.18.
53. The project is consistent with Chelan County Code (CCC) Section 12.12 in the following respects:
  - 53.1 Cluster subdivisions may occur within the AC zoning district on parcels greater than 150% of the minimum required area and at least result in two buildable lots and one open space tract. The applicant is proposing 5 lots and one open space tract on approximately 26.76 acres. The proposed open space tract would be developed consistent with Chelan County Code Section 12.12.050(4)(B), for individually owned open space for agricultural use.
  - 53.2 Based on the site plan of record, the lots are grouped and configured in a way which would allow for the retention of agricultural lands for production.
  - 53.3 The proposed open space tract would be approximately 21.10 acres, which is approximately 79% of the subject property; therefore, the additional 9% of gross land dedicated to open space results in an additional 30% bonus density. The density allowed by the cluster subdivision provisions for the subject property is 5 buildable lots  $[(26.76/10) \times 180\% = 4.81 \text{ rounds to } 5]$ . The open space tract does apply to the density pursuant to Chelan County Code Section 12.12.040(3).
  - 53.4 The proposed lot sizes range for 1.03 acres to 1.29 acres. Site evaluations were provided by Tower Designs, Inc. which determined based on the test holes that the site is suitable for subdivision utilizing on-site sewage disposal systems. The Chelan-Douglas Health District provided comment that proposed lots meet or exceed this minimum size requirement of on-site sewage disposal system.
  - 53.5 Per Chelan County Code Section 12.12.050(3)(B), setbacks for the portion of the development that is on the perimeter of the project area shall be setback as required by the underlying zone. The AC zoning district requires a 100ft. setback from property zoned commercial agricultural lands for dwelling units; based on the site plan of record, there appears to be adequate building area outside of the 100ft. perimeter setback from commercial agricultural lands zoning. Additionally, setbacks for structures internal to the development may be altered to the extent as allowed by Chelan County Code, Title 11 Zoning. Staff is recommending as a condition of approval, a notice to title be recorded prior to the finalization of the proposed subdivision that would allow for the required 100ft. setback from internal property lines to be waived to the minimum standards as allowed per Chelan County Code, Section 11.30.020(5).
54. Staff reviewed the application and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended **APPROVAL of PLAT 2019-005** subject to proposed Conditions of Approval.
55. An open record public hearing after legal notice was provided was held on August 21, 2019.
56. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
57. Appearing and testifying on behalf of the applicant was Carl Peterson. Mr. Peterson testified that he was the property owner and Applicant. Mr. Peterson testified that the applicant concurred with the



all of the representations set forth in the staff report and had no objections to any of the proposed conditions of approval.

58. No member of the public testified at the hearing.
59. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has authority to render this Decision.
2. The Chelan County Hearing Examiner has been granted the authority to render this decision pursuant to Chelan County Code Section 1.61.080 Duties and Powers.
3. The subject application demonstrates consistency with the development standards and procedural requirements of Chelan County Code Title 11 Zoning, Title 12 Land Divisions, Title 14 Development Permit Procedures and Administration, and Title 15 Development Standards.
4. The application, as conditioned, demonstrates consistency with the goals and policies as set forth in the Chelan County Comprehensive Plan.
5. The application, as conditioned, demonstrates consistency with adopted levels of service for roads, utilities, fire protection facilities, schools and other public and private facilities needed to serve the development, with assurance of concurrency.
6. The public interest will be served by the subdivision.
7. The application, as conditioned, is compatible with adjacent uses and will not harm or change the character of the surrounding area.
8. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated by herein as such by this reference.

### **DECISION**

Based upon the above noted Findings and Fact and Conclusions, P 2018-178 is hereby APPROVED, subject to the conditions noted below.

### **CONDITIONS OF APPROVAL**

All conditions imposed herein shall be binding on the "Applicant." "Applicant" shall mean terms, which include the owner or owners of the property, heirs, assigns, and successors.

1. Pursuant to RCW 58.17, the project shall conform to all applicable local, state, and federal regulations, statutes, rulings, and requirements. The proposal shall be subject to approval that may be required under permits licenses or approvals by any other local, state, or federal jurisdictional agency.

2. All conditions imposed herein shall be binding on the Applicant. "Applicant" shall mean terms, which include the owner or owners of the property, heirs, assigns and successors.
3. Pursuant to Chelan County Code, Section 12.24.040, the final Plat shall be designed in substantial conformance with the Preliminary Plat of record, date stamped May 15, 2019, on file with the Chelan County Department of Community Development, except as modified herein. No increase in density or number of lots shall occur without a re-submittal of a Plat application.
4. Pursuant to Chelan County Code Section 12.24.015 and RCW 58.17.140, all requests for final Plat approval must be submitted within five (5) years from the date of preliminary approval, unless an extension is granted.
5. Pursuant to RCW 58.17.255 and WAC 332-130-040, all easement locations are required to be shown on the final Plat. Separate instruments recorded with the Chelan County Auditor shall be referenced on the final Plat.
6. Pursuant to RCW 84.56.345, all taxes, delinquent taxes, and assessments that are required to be paid by the Chelan County Treasurer shall be paid prior to final Plat recording.
7. Pursuant to Chelan County Code Section 11.30.020, the following note shall be placed on the final Plat:
  - 7.1. **"The subject property is located within or near designated long-term commercial agricultural lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration"**
8. Pursuant to Chelan County Code Section 11.30.020(1), the minimum lot size may be modified one time for a cluster subdivision. The following note shall be placed on the final Plat:
  - 8.1. **"The lots associated with this plat shall not be further subdivided utilizing the cluster subdivision criteria."**
9. Pursuant to Chelan County Code Section 11.80.130, the following note shall be placed on the final Plat:
  - 9.1. **"The subject property is located within or near a categorized wetland buffer. Subsequent development shall be consistent with Chelan County Code, Chapter 11.80 Wetland Areas Overlay District, as amended; and the Wetland Determination prepared by Grette Associates, LLC on April 23, 2019, as amended."**
10. Pursuant to Chelan County Code Section 11.86.080, the following note shall be placed on the final Plat:
  - 10.1. **"All or part of this area may be located within a suspected or known geologically hazardous area. Subsequent development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended; and the Geologic Hazard Assessment prepared by Bill Christman, PE dated May 4, 2019 or with a site-specific geological site assessment."**
11. Pursuant to Chelan County Code, Section 12.12.050(3), a notice to title shall be recorded prior to the finalization of the proposed subdivision, that would allow for the required 100ft. setback from internal property lines to be waived to the minimum standards as allowed per Chelan County Code, Section 11.30.020(5).

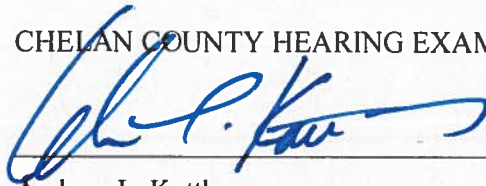
12. Pursuant to Chelan County Code, Section 12.12.050, the open space accumulated shall be clearly labeled and numbered as a tract with an approved open space management plan; the following language inserted on the final Plat filed for record under this chapter:
  - 12.1. **"This tract is held in reserve as open space designated for agricultural use on which a variety of commercial activities (accessory dwelling and accessory uses normally incidental to single family dwellings within agricultural districts) may occur that are not compatible with residential development for certain periods of limited duration. Open space set aside for agricultural purposes may allow improvements that are associated with the agricultural operations, such as barns, outbuildings, storage facilities, and other related facilities provided they are incidental and do not take up more than ten (10) percent of the open space. Commercial operations associated with agricultural activities shall be prohibited. This tract is held in reserve as open space with provision for building consistent with the approved open space management plan AFN \_\_\_\_\_, or as legally amended."**
13. Pursuant to Chelan County Code Title 12, the following note shall be placed on the final Plat:
  - 13.1. **"Chelan County is not responsible for notification or enforcement of covenants to deed restriction or reservations affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant /owner assume all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations."**
  - 13.2. **"Based on historical agricultural use of this land, there is possibility the soils contains residual concentrations of pesticides. The WA State Dept. of Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the MTCA cleanup levels, the WA State Dept. of Ecology recommends that the potential buyers be notified of their occurrence."**
14. Pursuant to the Revised Code of Washington, the following notes shall be placed on the final Plat:
  - 14.1. **"Noxious weed control is the responsibility of the individual lot owners, per RCW 17.10.140, as amended."**
  - 14.2. **"If any Native American grave sites or archaeological resources are discovered or excavated, the owner/developer/contractor shall stop work immediately and notify Chelan County Department of Community Development and the Washington State Department of Archaeology and Historic Preservation in conformance with RCW 27.53.020."**
15. Prior to final approval of this subdivision, applicant must obtain a release from Lake Chelan Reclamation District which states that irrigation shares have been segregated. RCW 58.17.310 prohibits any city, town or county from approving a final Plat for property in the District unless the entity has provided an irrigation water easement for each parcel of land. Rights-of-way must be shown on the final Plat submitted for recording.
16. Pursuant to Chelan County Code Section 12.08.030, the applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1. All easements shall be denoted on the final Plat.



17. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Agency Comments dated June 12, 2019 (Exhibit B).
18. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan-Douglas Health District memorandum dated June 18, 2019 (Exhibit C).
19. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan County Public Works Department Agency Comments dated June 24, 2019.

Approved this 22<sup>nd</sup> day of August, 2019.

CHELAN COUNTY HEARING EXAMINER

  
\_\_\_\_\_  
Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.