

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

PD 2016-354

P 2016-355

Enchantment Meadows

RECEIVED  
JUL 24 2019  
CHELAN COUNTY  
COMMUNITY DEVELOPMENT

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, DECISION AND CONDITIONS  
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on July 17, 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. These are applications for a planned development and a plat to subdivide a 16.08 acre parcel into twelve (12) residential lots with an open space tract. Potable water would be supplied by a Group B water system and on-site septic systems would be utilized. The parcel is located adjacent to a regulated wetland and a Wetland Assessment was submitted with the application.
2. The applicant/owners are Larry and Greg Tonge, 1147 Rue Jolie, Wenatchee, WA 98801.
3. The agent is Dan Beardslee.
4. The project location is NNA Fish Hatchery Road, Leavenworth, WA 98826.
5. The legal descriptions and parcel numbers for the subject properties are:
  - 5.1 24-17-23-510-520 – Cascade Orchards, Block 6 and the south ½ of Lot 5
  - 5.2 24-17-23-510-530 – Cascade Orchards, Block 6 Lot 6
  - 5.3 24-17-23-510-540 – Cascade Orchards Block 6 Lot 9
  - 5.4 24-17-23-510-550 – Cascade Orchards Block 6 and the north ½ Lot 10
6. The property is not within an urban growth area.
7. The Comprehensive Plan designation is Rural Residential/Resource 2.5 (RR2.5)
8. The zoning is Rural Residential/Resource 2.5 (RR2.5)
9. The existing land use is vacant with pine trees, deciduous trees and grasses
10. The site is relatively flat, vacant land with trees, grasses and bare ground. A site visit by staff, conducted on May 5, 2018 revealed proposed Lots 2, 3 and 4 appear to have some ground type depression along the westerly boundary of these 3 lots. Later site visits by staff found standing water on the property, (see Public Works email dated May 11, 2018).
11. The four (4) Assessor's parcels, as noted above, combine to approximately 16 acres.

12. The property to the north is in residential use and is zoned Rural Residential/Resource 2.5 (RR2.5).
13. The property to the south is in residential use and is Fish Hatchery Road and the Leavenworth Fish Hatchery and is zoned Rural Public Lands and Facilities (RP).
14. The property to the west is a Chelan County gravel pit and is zoned Rural Residential/Resource 2.5 (RR2.5).
15. The property to the east is the Leavenworth Fish Hatchery and is zoned Rural Public Lands and Facilities (RP).
16. The Applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped December 21, 2016. Pursuant to Chapter 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply.
17. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150800A, the site does not contain identified 100 or 500-year flood plain or associated floodway. Therefore, Chelan County Code 11.84, Frequently Flooded Areas Overlay District does not apply.
18. Pursuant to the Chelan County Geographical Information System, the site does not contain potential geologic hazardous areas due to erosive soils or slopes. Therefore, Chelan County Code 11.86, Geologically Hazardous Areas Overlay District do not apply.
19. Pursuant to the National Wetlands Inventory Map, the site does not contain any known wetlands. A wetland delineation report prepared by Grette Associates dated August 22, 2016, notes there is a Category II wetland adjacent to the subject parcel. The associated wetland buffer impacts the subject site and the development shall comply with Chelan County Code Chapter 11.80.
20. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps and Chelan County Fish & Wildlife Overlay District, Chapter 11.78, the subject site does not contain any known habitat conservation areas. Therefore, the provisions of Chelan County Code Chapter 11.78 do not apply.
21. There are no known cultural resources located on the subject property. 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. Staff recommended notification if any artifacts are uncovered or discovered during the development of this proposal.
22. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps and Chelan County Fish & Wildlife Overlay District, Chapter 11.78, the subject site does not contain any known habitat conservation area. Therefore, the provisions of Chelan County Code Chapter 11.78 do not apply.
23. Pursuant to a letter from the Confederated Tribes of the Colville Reservation, dated May 24, 2018, their archaeological site records on file show no archaeological sites within the project area or within a mile of the area of potential effect. There are no known cultural resources located on the subject property.
24. 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. Staff recommended a condition of approval stating applicant shall notify the Department if any artifacts are uncovered or discovered during the development of this proposal.
25. The Chelan County Public Works comment letter, dated March 17, 2017, states the primary access to the project site is by Fish Hatchery Road and access to the new proposed lots would be

provided by a new private internal road system. Frontage improvements are required to Fish Hatchery Road.

26. The design and construction of the new proposed internal public road will be constructed to meet a Rural Emergency Vehicle Access Road. The Applicant may be required to construct shared residential driveways for the proposed lot access, if necessary, based on the new lot configuration consistent with this Decision.
27. The Chelan County Public Works comment letter, dated March 17 2017, states: "A perched water table has been observed over a portion of the subject property. It is highly recommended that this spring time occurrence is further examined and the results accounted for during the design phase of the subdivision." There are concerns about the highwater table which could render a storm water system ineffective. This will be addressed in the geotechnical analysis. A private storm water drainage system will be required for the proposed preliminary plat.
28. The Chelan-Douglas Health District comment letter, dated March 13, 2017, states domestic water service shall be by a new public supply that has yet to be developed. Individual service shall be available to each lot. This system may need to be reviewed and approved by Washington State Department of Health, based upon the reduced density authorized by this Decision.
29. The Chelan-Douglas Health District comment letter, dated March 13, 2017, states a soil/site evaluation for placement of on-site sewage systems was done by Tower Designs that showed the soils to be of Type 4, which exceeds the minimum lot size requirement per WAC 246-272A-0320(2)(c).
30. CDHD amended the referral comments on May 17, 2018, stating that since Chelan County Public Works indicated the presence of a potential geological hazard area for erosive soils along with some concerns of the presence of flood melt and potential floodways affecting some of the lots located in the proposed subdivision, dedicatory language should be included in the conditions of approval.
31. The proposed open space lot was not reviewed for domestic water and sewer as these lots (open space tracts, agricultural tracts, conservation easements, etc.) may be exempt under Chelan County Code Section 12.04.020(1)(E). Whether the open space component remains in the new lot configuration based on this Decision is up to the Applicant.
32. Cascade Orchard Irrigation District did not comment on this proposal. Pursuant to RCW 58.17.310, irrigation water is available and will be provided to all lots by the developer according to District specifications, prior to recording of the subdivision.
33. The Chelan County PUD No. 1 commented in a letter dated March 8, 2017, that additional easements will be necessary to install service lines and if those easements are not noted on the plat, new line extensions will require easement acquisition.
34. In a comment letter from Chelan County PUD No. 1 (power division) dated March 6, 2017, it was noted the proposal may require updating of current utility lines and an engineering study may be required.
35. The Chelan County Fire Marshal did not comment on the proposal. However, the proposal shall conform to all applicable requirements of the International Fire Code and International Building Code administered by the Chelan County Fire Marshal.
36. The Fire Chief's comments for Fire District No. 3, date stamped March 15, 2017 stated this project is 3.7 miles from the nearest fire station and the nearest fire hydrant is 528 feet away from the property boundary. There is adequate fire flow to serve the proposal. Additional fire hydrants will be necessary to service this project. They further stated existing roads are adequate for emergency vehicles. However, access and circulation via the proposed roads are not adequate for emergency

vehicles. NFPA 13D sprinkler systems are recommended, however, alternate fire flow provisions are acceptable.

37. The comment letter from Chelan County Assessor, dated stamped May 16, 2018, states the legal description appears to be correct and there are no delinquent taxes.
38. Noise impacts are addressed in Chelan County Code Chapter 7.35.
39. The applicant submitted an environmental checklist on December 21, 2016. 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 and a Determination of Non-significance (DNS) was issued on February 28, 2017 with the comment period ending March 17, 2017. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
40. The Notice of Application and environmental review was referred to agencies and departments on March 3, 2017 and surrounding property owners within 300' excluding 60' of right-of-way with comments due March 17, 2017. Agency comments are included, as appropriate, within this Decision and in the recommended Conditions of Approval.

The following agencies provided comments:

- 40.1 Chelan County Public Works responded on March 17, 2017 and May 11, 2018.
- 40.2 Chelan County Assessor responded on May 16, 2018.
- 40.3 Chelan-Douglas Health District responded on March 13, 2017 and May 17, 2018.
- 40.4 Leavenworth Fish Hatchery responded on March 17, 2017.
41. The following agencies were notified but did not respond:
  - 41.1 Chelan County Building & Fire Marshal
  - 41.2 Yakama Nation
  - 41.3 Department of Archaeology & Historic Preservation
  - 41.4 Department of Fish & Wildlife
42. Public comments were received by:
  - 42.1 A letter was received on March 17, 2017 from Julie K. Norton, Ogden Murphy Wallace, representing Loren Johnson and Barbara Rossing, owners of property located at 7785 East Leavenworth Road, Leavenworth, which is immediately adjacent to the proposed development.

On behalf of her clients, she states they oppose the PD application and respectfully request the County deny the application. She states the PD application is incomplete or deficient due to the failure to adequately address wetlands and storm water runoff.

Also discussed was the significant ponding or flooding in the northwest corner of the property during the spring caused by storm water runoff from the adjacent gravel pit. The clients are requesting a storm water drainage or control plan including construction documents, prepared by a certified engineer be submitted.

She notes the SEPA application is incomplete or inaccurate in reference to wetland and storm water issues on the property. It was noted the wetland delineation was done in the fall and one should be performed in the spring when the property is subject to storm water runoff and flooding.

Also discussed was the potential for damage to foundations, septic systems leaching and contaminating the water and soil, which may be hazardous to not only the development but adjacent lands as well.

She stated the proposed public benefit claims by the applicant regarding a public trail/parking, tax revenue/jobs, and needed housing in Leavenworth are unsupported, immaterial and largely erroneous.

Her clients are concerned with the possibility of larger homes in the neighborhood with the potential under the zoning code to also construct accessory dwelling units (ADU's) on each lot. They are concerned this type of development would interfere with the peaceful enjoyment of their property; impede scenic views; and result in significant noise, light and traffic.

The letter further states there is no demonstration of public benefit to justify deviation from the underlying zoning through a planned unit development.

Ms. Norton closed her letter by citing seven (7) mitigating measures her clients would like to see adopted, should the hearing examiner approve the proposal.

- 42.2 John Agnew & Patty Hebert responded on March 21, 2017.
- 42.3 Carl Babiar responded on March 16, 2017
- 42.4 Rose Babiar responded on July 18, 2018.
- 42.5 Carl & Sheila Bergren responded on March 16, 2017
- 42.6 Robin Boal responded on March 15, 2017
- 42.7 Brian Bohman responded on March 16, 2016
- 42.8 Mara Bohman responded on March 20, 2017
- 42.9 Gro Buer responded on March 21, 2017
- 42.10 Chris Clark responded on March 9, 2017
- 42.11 Gretchen Daiber responded on March 17, 2017
- 42.12 Stephen & Sylvia Deforest responded on March 17, 2017
- 42.13 Ardith Gordon responded on March 20, 2017
- 42.14 Philip Keeley responded on March 16, 2017
- 42.15 Dave & Milana Larson responded on March 17, 2017
- 42.16 Sharon Lunz responded on March 16, 2017
- 42.17 Susan Mitchell responded on May 31, 2018 & July 1, 2019
- 42.18 Judith Moser/Hank Thor responded on March 16, 2017
- 42.19 Patrick & Heather Murphy responded on March 20, 2017
- 42.20 Ahna O'Reilly responded on March 17, 2017
- 42.21 Wendy O'Reilly responded on March 16, 2017
- 42.22 Craig Root responded on March 16, 2017
- 42.23 Greg Steeber responded on March 16, 2017



- 42.24 Robert & Renate Vinje responded on March 17, 2017.
- 42.25 Bruce Williams responded on March 17, 2017 & July 10, 2019.
- 42.26 Jonathan & Marian Frerichs responded on March 17, 2017.
- 43. The application materials were submitted on December 21, 2016.
- 44. A Determination of Completeness was issued on January 17, 2017.
- 45. The SEPA Notice provided on February 28, 2017.
- 46. The Notice of Application was issued on March 3, 2017.
- 47. The Notice of Public Hearing was provided on June 21, 2019.
- 48. CCC 11.76.010 states the Board of County Commissioners intent in allowing for a Planned Unit Development Overlay District. This provision states in its entirety as follows:
  - 48.1 “The intent of this chapter is to provide a means of allowing development to occur that is not limited to the strict application of the Chelan County zoning resolution. **The careful use of discretion by the Hearing Examiner to approve, deny or modify the proposals submitted by the developer may be required to achieve the purposes of this chapter and to carry out the objectives and intent of the Comprehensive Plan.**” (emphasis added).
- 49. CCC 11.76.010 goes on to state that the intent of the chapter is to:
  - 49.1 “Allow some flexibility in design and development that will result in **a more desirable and efficient use of land** by reviewing developments on a project level rather than on a building-by-building or lot-by-lot basis typical of the rest of the zoning resolution. (emphasis added)
  - 49.2 Permit some flexibility of design, placement of improvements, use of open spaces, pedestrian and vehicular circulation, parking areas and other design elements **to better utilize unique site characteristics.** (emphasis added).
  - 49.3 Produce an integrated and balanced development of mutually supportive uses that might otherwise be inharmonious.
  - 49.4 Provide a guide for the development community and county representatives who review and approve development to ensure the standards and purposes of this chapter are met.
  - 49.5 Provide a variety of environments for living, and/or working, and/or recreational activities for the interest of the general public.”
- 50. In the Applicant’s application for a Planned Unit Development Overlay District, the Applicant is basing their increased density request solely on their claimed existence of a public benefit related to the creation of an entrance area into the development, 5 parking spots that could be used by the public or the residents or guests of the development, and an approximate ½ mile trail surrounding the development.
  - 50.1 It should be noted that this trail system does not connect to the Leavenworth National Fish Hatchery trail system.
  - 50.2 It should be noted that this trail system will be adjacent to other private properties to the north and the Chelan County gravel pit to the west.
  - 50.3 It should be noted that the Leavenworth National Fish Hatchery has an extensive trail system within the grounds of the hatchery property. The evidence before the Hearing

Examiner is that the trails through the Leavenworth National Fish Hatchery meander through forest and are adjacent to the Icicle River and are highly desired and used recreational trails.

51. The clear evidence before the Hearing Examiner is that additional parking for access to the Leavenworth National Fish Hatchery is simply not needed. Stated another way, there was no evidence submitted that the 5 parking spaces proposed by the Applicant are needed to supplement the available parking at the Leavenworth National Fish Hatchery. Testimony, both written and oral at the open record public hearing, provide substantial evidence that there are 30 to 40 parking spots available to the public 24 hours a day on the Leavenworth National Fish Hatchery property, as well as additional parking spaces within the interior of the Leavenworth National Fish Hatchery. These 5 additional parking spaces are a de minimis public benefit.
52. The overwhelming evidence from the neighbors of the subject property, presumably those people who would most likely use this trail system, is that they have absolutely no desire to use this trail system when the trail system at the Leavenworth National Fish Hatchery is so readily available to them.
53. The Applicant's position is essentially that, it is not the specific degree of the public benefit that needs to be demonstrated, but just that a generally adequate public benefit be demonstrated in order to support their increased density request.
54. Again, the Applicant's only evidence of a public benefit is the claimed open space related to the 5 parking spaces, the trail surrounding the development, and the entrance area on the inside of the development boundaries.
55. CCC 11.76.030 provides some guidance for the Hearing Examiner in determining whether the Applicant has demonstrated a public benefit. This code provision states in its entirety "Any Applicant for a Planned Unit Development will have the burden of demonstrating that their proposal will achieve a public benefit as a result of any deviation from the underlying zoning regulations through the creation of open space or public facilities, conservation, superior project design and/or function, needed private facilities or otherwise, and clearly implements the goals and policies of the Comprehensive Plan." (**emphasis added**)
56. The Hearing Examiner finds that a public benefit will not be achieved by the deviation in density for the underlying zoning district of RR 2.5 as a result of the proposed open space.
57. It is clear to the Hearing Examiner that the Applicant must demonstrate a public benefit that not only exists, but that is sufficient to justify, (in this case) the increased density levels requested by the Applicant.
58. The Hearing Examiner finds that this Planned Development, as proposed, does not better utilize any unique site characteristics as contemplated by CCC 11.76.010.
59. The Hearing Examiner finds that the Planned Development, as proposed, does not result in a more desirable and efficient use of land than the underlying zoning, as intended by CCC 11.76.010.
60. The proposed public benefit is not sufficient to justify the dramatic reduction of lot sizes proposed by this Planned Development when compared to the underlying zoning district.
61. Although there is some public benefit associated with the proposed trail and parking spaces, it is so insubstantial that it fails to justify the increased density as proposed by the Applicant.
62. The project is consistent with CCC Section 12.24.015 in the following respects:
  - 62.1 The approval given to a preliminary plat shall expire pursuant to Revised Code of Washington (RCW) 58.17.140 unless, within the allowed timeframe, a proposed final plat in proper form is filed with the administrator.

- 62.2 The applicant shall have five (5) years to final the plat from the date of preliminary approval.
- 63. The project is consistent with CCC Section 12.08 in the following respects:
  - 63.1 Review of the name will be required prior to final plat approval to determine that it does not match or is not similar to an existing plat name.
- 64. The project is consistent with CCC Section 12.08.030(1)(B) in the following respects:
  - 64.1 The Chelan County PUD No. 1 comment letter, dated March 6, 2017, states that electrical services are available. However, line extensions would be required.
- 65. The project is consistent with CCC Section 12.08.030(2) in the following respects:
  - 65.1 The applicant is proposing access by a private road and private driveways. Private road standards, as detailed in Title 15, apply to this development and require an approved maintenance agreement.
- 66. The project is consistent with CCC Section 12.08.030(3) in the following respects:
  - 66.1 All easement locations are required to be shown on the final plats, pursuant to CCC 12.08.030. Separate instruments recorded with the Chelan County Auditor should be referenced on the face of the final plat. Required easements, shall be reviewed with the blue line submittal.
- 67. The project is consistent with CCC Section 12.08.030(4) in the following respects:
  - 67.1 Easement locations and purpose(s) should be indicated on the final plat. Easements shall be reviewed with blue line submittal.
- 68. The project is consistent with CCC Section 12.08.040 in the following respects:
  - 68.1 The subject site is located in Fire District 3. The Chelan County Fire Marshal requires conformance with the International Fire Code. The nearest fire station is 3.7 miles from the subject property. At least one additional hydrant would be necessary to serve this project. Pursuant to Chelan County Code 3.04.010, State Building Code, all building permits require compliance with the International Fire Code(s), as adopted or amended by Chelan County.
- 69. The project is consistent with CCC Section 12.08.050 in the following respects:
  - 69.1 Chelan County Public Works comments state that the stormwater review is required prior to blue line review. Pursuant to Chelan County Code 13.16, a stormwater plan be prepared and implemented based on comments from Chelan County Public Works.
- 70. The project is consistent with CCC Section 12.08.060 in the following respects:
  - 70.1 The property is not impacted by a watercourse.
- 71. The project is consistent with CCC Section 12.08.080 in the following respects:
  - 71.1 Road Standards: All land divisions shall comply with Title 15.
- 72. The project is consistent with CCC Section 12.08.090 in the following respects:
  - 72.1 Per Title 15 of the Chelan County Code, monuments should be required prior to submittal of the final plat or as approved by Chelan County Public Works Department. Compliance with Chelan County Code Section 15.30.825 shall be a condition of approval.
- 73. The project is consistent with CCC Section 11.14.020(1)(A) in the following respects:



- 73.1 Pursuant to the review within this staff report, the proposed development is consistent with the applicable chapters of the zoning code for the Rural Residential 2.5 (RR 2.5) zoning district, together with Chelan County Code Section 11.76 Planned Development.
74. This project, without the increased density requested through the Planned Development Overlay, is consistent with CCC 12.12 as generally addresses major subdivisions and not cluster subdivisions.
75. A plat, without the Planned Development Overlay, on this site can comply with all Chelan County Development Standards set forth and applicable within CCC 15.30.
76. **CHELAN COUNTY CODE STORMWATER**
- Storm water will be required to meet the standards of Chelan County Code Title 13. Storm water will be required for the entire subdivision and all required infrastructure improvements placed prior to final plat approval.
77. Domestic water would be provided by a Group B water system, each lot will utilize on-site septic systems and irrigation will be provided from Cascade Orchard Company irrigation systems.
78. The subject property is adjacent to a wetland, confirmed by Grette Associates Ryan Walker. A digressional wetland was identified and located. Because the wetland is not located on the subject property the wetland could not be delineated but a category rating was conducted and determined per the Chelan County Code. The wetland rates as a category II per the 2015 Wetland Rating System for Eastern Washington. Pursuant to Chelan County Code 11.80.060, a category II wetland requires a 100' buffer for low intensity uses. The wetland edge is near the west property line and both the wetland boundary and the 100' buffer is labeled on the site plan date stamped December 21, 2019 and would be required to be labeled on the face of the final plat.
79. The proposed development is bordered by the Leavenworth National Fish Hatchery on the east, zoned Rural Public Lands and Facilities. The property to the west of the site is the Chelan County Gravel Pit, zoned RR 2.5. Both uses may be incompatible with new residential development.
80. The requested substantial deviation in density is not supported by a corollary substantial, or even adequate, public benefit.
81. Staff recommended **APPROVAL** of the Enchantment Meadows Planned Development/Subdivision, File # PD 2016-354/P 2016-355, subject to the recommended Conditions of Approval.
82. An open record public hearing after legal notice was provided was held on July 17, 2019.
83. The entire planning staff file was admitted into the record at this public hearing.
84. Appearing on behalf of the applicant was Quentin Batjer. Mr. Batjer initially did not provide testimony but supplied argument consistent with the application materials. Mr. Batjer indicated that the Applicant had no objection to any of the proposed Conditions of Approval.
85. In rebuttal, Mr. Batjer was sworn in as a witness. He indicated his client's objection to keeping the record open. Mr. Batjer submitted Exhibit 5 which was an unsigned and undated letter with an email. Mr. Batjer submitted Exhibit 6 which is draft protective covenants. Mr. Batjer indicated that he objected to any use restrictions such as nightly rentals, being imposed on the plat and instead should be left to protective covenants.
86. Testifying from the public were the following individuals:
- 86.1 Jim Craig, Acting Manager of Leavenworth Fisheries Complex. Mr. Craig testified consistent with his prior written comments.

- 86.2 Julie Norton, attorney for various opponents to the project. Ms. Norton testified consistent with her prior written comments.
- 86.3 Barbara Rossing. Ms. Rossing testified consistent with her written comments.
- 86.4 Phil Keeley. Mr. Keeley testified the trail would go right past his front door, and that if the road is widened he believes he will lose some of his property. He also testified about his observations of water on the site.
- 86.5 Loren Johnson. Mr. Johnson testified that this density of homes is inconsistent with other uses in the area.
- 86.6 Bruce Williams. Mr. Williams testified consistent with his written comments. Mr. Williams requested that the Hearing Examiner either continue the hearing or keep the record open to allow additional investigation by the project opponents. The Hearing Examiner denied this request.
87. The following exhibits were admitted into the record:
- 87.1 Exhibit 1: July 17, 2019 letter from attorney Julie Norton to the Hearing Examiner with attached Exhibits A, B, C and D.
- 87.2 Exhibit 2: Proposed Conditions of Development.
- 87.3 Exhibit 3: Written statements from Barbara Rossing dated July 17, 2019.
- 87.4 Exhibit 4: July 17, 2019 letter from Bruce Williams to the Hearing Examiner.
- 87.5 Exhibit 5: Undated, unaddressed letter from United States Department of Interior, Fish and Wildlife Service, Leavenworth Fisheries Complex, Dave Irving.
- 87.6 Exhibit 6: Proposed protective covenants for Enchantment Meadows.
88. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
89. 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. As conditioned, this project is consistent with a subdivision located on RR 2.5 zoned property, without increased density.
3. As conditioned, this subdivision, without a Planned Development, is consistent with the Chelan County Code and Chelan County Comprehensive Plan.
4. The proposed Planned Development does not provide an adequate public benefit to justify the requested increase in density.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## **DECISION**

Based upon the above noted Findings and Fact and Conclusions, PD 2016-354 is hereby **DENIED** and P 2016-355, 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.

## **CHELAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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 11.80.130, Subdivision Notation, the delineated wetland(s) boundary shall be shown on the final plat. The applicant shall ensure the following not shall be shown on the final plat:
  - 3.1. "Development within this plat is subject to the provisions of the Chelan County Code, Chapter 11.80, Wetland Areas Overlay District, together with the Wetland Classification Report prepared by Grette Associates, dated April 12, 2017 on file with application number PD 2016-354/P 2016-355, as amended."
4. Pursuant to Chelan County Code Section 12.08.030 and 12.24.020(3) and Chapter 15.30, all easement locations are required to be shown on final plats.
5. Pursuant the Chelan County Code Section 12.02.010(1), the following note shall be placed on the final plat mylar:
  - 5.1. "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."
  - 5.2. "Setbacks for structures shall be determined at time of building permit submittal."
  - 5.3. "Protective covenants for this subdivision of "Enchantment Meadows" are recorded under AFN: \_\_\_\_\_."
6. Pursuant to RCW 27.53.020, the applicant shall stop work and contact Community Development and the Department of Archaeology and Historic Preservation and other agencies as required, regarding the possible impact of construction activities on the state's archaeological resources.

7. Pursuant to RCW 84.56.345, all taxes, delinquent taxes, and assessments that are required by the Chelan County Treasurer are to be paid prior to final Plat recording.
8. Pursuant to Chelan County Code Section 12.24.015, the following note shall be placed on the final plat mylar:
  - 8.1. "Agricultural activities occur throughout the Chelan County and may or may not be compatible with residential with residential development."
9. Pursuant to the Revised Code of Washington, the following notes shall be placed on the final plat:
  - 9.1. "Noxious weed control is the responsibility of the individual lot owners, per RCW 17.10.140, as amended."
  - 9.2. "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."

**CHELAN COUNTY FIRE MARSHAL**

10. Only as apply to the preliminary plat approval, the subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal agency comment response dated April 1, 2019.

**CHELAN-DOUGLAS HEALTH DISTRICT**

11. Only as apply to the preliminary plat approval, 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 March 13, 2017 and May 17, 2018.

**CHELAN COUNTY PUBLIC WORKS DEPARTMENT**

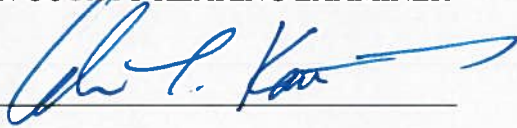
12. Only as apply to the preliminary plat approval, the subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan County Public Works Department, Engineer's Report dated March 17, 2017 and email dated June 10, 2019.

**CHELAN COUNTY PUBLIC UTILITY DISTRICT:**

13. Only as apply to the preliminary plat approval, the applicant shall provide electrical line extensions and upgrades, with easements, for the proposed development, prior to final plat approval. All improvements shall be approved and verified with applicable fees in writing by the Chelan County PUD No. 1.
14. Pursuant to CCC 11.14, this development shall comply with all of the zoning requirements for property zoned RR 2.5.

Approved this 24<sup>th</sup> day of July, 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.**