

**CHELAN COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
VAR24-372)	DECISION AND
Shugart)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Chelan County Hearing Examiner on November 20, 2024, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. An application for a variance was submitted to reduce the required front yard setback of 25 feet from the front property to 6 feet from the front property line in order to construct a new residence. The subject property is located within the within the Rural Waterfront (RW) zoning district.
2. Project Location: 6170 S. Lakeshore Road, Chelan, WA 98816
3. Parcel Number: 27-21-03-440-070
4. Legal Description: Lot 2 of SP 2016-089
5. Applicant/Owner: William and Shannon Shugart; 7352 56th Ave NE; Seattle, WA 98115
6. Agent: William Shugart; 7352 56th Ave NE; Seattle, WA 98115
7. Urban Growth Area: The proposed development is not within an Urban Growth Area.
8. Comprehensive Plan Designation: Rural Waterfront (RW)
9. Zoning District: Rural Waterfront (RW)
10. Existing Land Use: The subject property has an existing joint-use dock with a boatlift, two mooring buoys, and also shoreline access stairs that were all built/installed in 2024 (SDP 23-236 and BP 240567 respectively).
11. Site Physical Characteristics: From S. Lakeshore Road, the parcel slopes downward northward towards Lake Chelan. The subject property is partially forested with some native shoreline vegetation interspersed throughout.
12. Site Size: 0.61 acres
 - 12.1. Property North: Lake Chelan
 - 12.2. Property South: S. Lakeshore Road / Rural Waterfront (RW)
 - 12.3. Property East: Rural Waterfront (RW)
 - 12.4. Property West: Rural Waterfront (RW)
13. Aquifer Recharge Area: Exempt pursuant to Chelan County Code (CCC) Section 11.82.060(2)(A).
14. Fish & Wildlife Habitat Conservation Areas: Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property contains shrubsteppe and mule deer habitat. However, due to S. Lakeshore Road along the southern boundary of the subject property and

Lake Chelan to the north, any existing habitats on the subject property are severely fragmented and have no habitational value. Therefore, the provision of CCC Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.

15. Wetlands: Pursuant to National Wetlands Inventory Mapping prepared by the US Department of Fish and Wildlife Services, the subject property does not contain wetlands. Therefore, the provisions of CCC Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
16. Shoreline Master Program: The subject property is within the Urban jurisdiction of the Chelan County Shoreline Master Program (CCSMP). Therefore, the provisions of the CCSMP do apply.
17. Floodplain: Pursuant to the Federal Emergency Management Agency, FIRM Panel No. 5300150225A, the subject property is not within an identified flood hazard. Therefore, the provisions of CCC Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do not apply.
18. Geologically Hazardous Areas: Pursuant to CCC Chapter 11.86, the subject property contains erosive soils and is near the location where a known rock slide occurred. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply.
19. Cultural Resources: The proposed development lies in an area with no previously recorded historic or prehistoric sites and no comments were received from either DAHP or the Tribes. Therefore, staff recommended as a Condition of Approval that an inadvertent discovery plan be required at time of building permit submittal.
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 resource is maintained. Staff recommended notification if any artifacts are uncovered or discovered during the development of the proposed variance.
21. Construction Phasing/Timing: If the variance is approved, construction would commence once an approved building permit is issued.
22. Traffic Circulation: The subject property is accessed directly from S. Lakeshore Road and would require a driveway permit from the Washington State Department of Transportation (WSDOT) as part of any building permit submittal.
23. Domestic Water: The applicant would be required to ensure the proposed water source does not impact the potential drainfield and reserve area. A private well requires a 100 ft. setback from any drainfield and a 50 ft. setback from a septic tank.
24. Power: Chelan County PUD would supply power to the subject property.
25. Sanitation: The applicant would be required to demonstrate an adequate septic system drainfield and reserve area prior to building permit submittal. The required surface water setback is 100 ft.
26. Fire Protection: The property is located within Chelan County Fire District #7.
27. Noise: Any future development of the subject property must comply with the noise requirements of CCC Chapter 7.35 and RCW 70.107.
28. Visual Impact: The proposed residence would not exceed zoning height allowances or lot coverage requirements and would be similar to other residential structures in the surrounding area.
29. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. of right-of-way), jurisdictional agencies and departments of the County. These agencies and

surrounding property owners were notified on October 3, 2024 with comments due October 17, 2024. No public comments were received.

30. Agency comments were considered by the Hearing Examiner and, where appropriate, were made Conditions of Approval. The following summarizes responding agencies:

Agencies Notified	Response Date	Nature of Comment
Chelan County Building Official		No comment received.
Chelan County Fire Marshal		No comment.
Chelan County Public Works	9/18/2024	No comment. Defer to WSDOT for comments.
Fire District #7		No comment received.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.
Confederated Tribes of Colville		No comment received
Chelan-Douglas Health District	10/29/2024	Setback requirements for water source and septic system components.
Chelan County PUD	10/2/2024	Applicant would need to apply for power and easements may be necessary
WA State Dept. of Transportation (WSDOT)	7/12/2024 and 10/17/2024	Per the applicant's Initial consultation with WSDOT prior to application submittal, WSDOT stated that the following: <i>“WSDOT will require you (the property owner) to either move the concrete portion of the driveway as well any foundation structures located within WSDOT ROW entirely on to your property or work with the WSDOT Regional Real Estate Department for a long-term lease if possible.</i> <i>Access was already approved by Bill Gould for your property. Your driveway will need to meet design provided by such permit or the current standard of a paved approach per Chapter 1340 of WSDOT Design Manual, Exhibit 1340-1, from shoulder of SR-971 through WSDOT ROW to property line.”</i>

		For the actual project application, WSDOT stated “No comment. Any activities on WSDOT ROW needs to be coordinated through WSDOT. A lease may be required if any permanent structures are to be built on WSDOT ROW.”
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30.1. Public Comments: None received

31. SEPA Environmental Review: Pursuant to WAC 197.11.800(6)(b), variance requests that do not result in an increase in density are categorically exempt from the environmental review process.

32. APPLICATION AND PUBLIC HEARING NOTICE COMPLIANCE:

32.1. Application Submitted: September 18, 2024

32.2. Determination of Completeness issued: September 25, 2024

32.3. Notice of Application: October 3, 2024

32.4. Notice of Public Hearing: November 5, 2024

32.5. Public Hearing: November 20, 2024

32.6. Hearing Examiner Decision: The Hearing Examiner will issue a decision within 10 working days from the close of the hearing. This decision has a 21 day appeal period.

33. APPLICABLE LAND USE REGULATIONS AND PERMIT REQUIREMENTS:

33.1. Chelan County Comprehensive Plan:

33.1.1. The Comprehensive Plan has been reviewed; specifically, the goals and policies related to the Rural Waterfront (RW) designation for consistency with the proposed development which permits residential uses.

33.1.2. Chelan County Comprehensive Plan, Chapter 4 page 13, states the purpose of the Rural Waterfront (RW) designation is to “This designation will provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas provide a distinct water related lifestyle. Potential impacts to the surrounding area, critical areas, and water quality shall be addressed. These areas must be clearly identifiable as existing intensely developed rural shorelines; where a logical boundary can be delineated and set by the built environment. Such a boundary shall not permit or encourage a new pattern of sprawling low density or urban type development.”

33.1.2.1. Uses appropriate for these areas include: open space and developed open space; residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan.

33.1.3. Staff finds that the development, as conditioned, is consistent with the Comprehensive Plan based on the above bolded and underlined excerpts from the Chelan County Comprehensive Plan.

33.2. Chelan County Code:

33.2.1. Chelan County Code, Chapter 11.04 District Use Chart

33.2.1.1. Hearing Examiner Finding: The proposed development is associated with the RW zoning district, which allows residential structures as permitted uses.

33.2.1.2. Hearing Examiner Conclusion: The proposed use is consistent with the CCC.

33.2.2. Chelan County Code, Section 11.16.020 Standards

33.2.2.1. All development in this zone shall meet the applicable provisions of the CCC, including, but without limitation the following:

33.2.2.1.1. (5)(A) Front yard: twenty-five ft. from the front property line or fifty-five ft. from the street centerline, whichever is greater.

33.2.2.1.2. (5)(B) Rear yard: twenty ft. from the rear property line; although because the subject property is adjacent to Lake Chelan, the shoreline setback is 50 ft. from the OHWM.

33.2.2.1.3. (5)(C) Side Yard: five ft. from the side property line.

33.2.2.2. Hearing Examiner Finding: The applicant is requesting to reduce the required front yard setback of 25 ft. from the front property line to 6 ft. from the front property line. The applicant seeks this reduction in order to build a proposed residence.

33.2.2.3. CCC Section 11.88.040(2) does allow for reduction of front yard setback requirements due to slope; however, utilizing these provisions does not enable the applicant's proposed design to fit within the required setbacks. The parcel is along the shoreline of Lake Chelan and contains a regulatory shoreline buffer. The road setback reduction preserves shoreline buffer function and minimizes shoreline impacts.

33.2.2.4. Hearing Examiner Conclusion: According to the site plan of record, by reducing the front yard setback, the applicant would have enough room on the property to safely construct a new residence that is comparable to other residential structures on nearby properties and limit disturbance to the existing shoreline vegetation.

34. Chelan County Code, Chapter 11.95 Variances

34.1. 11.95.030 Evaluation criteria

34.1.1. No variance shall be granted unless it can be shown that all of the following conditions exist:

34.1.1.1. The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege.

34.1.1.1.1. Applicant's Response: None given.

34.1.1.1.2. Hearing Examiner Finding: The applicant is requesting to reduce the front yard setback in order to build a proposed single-family residence while preserving native shoreline vegetation existing on the property.

34.1.1.1.3. Hearing Examiner Conclusion: The requested variance of the front yard setback would not constitute a special privilege since other properties along the northside of S. Lakeshore Road that abut Lake Chelan have single-family residences built on them. The variance would preserve a right substantially the same as possessed by other property owners along S. Lakeshore Road and the proposed residence would be of similar size and design.

- 34.1.1.2. The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control.
- 34.1.1.2.1. Applicant's Response: We are requesting that the front yard setback from our property line be reduced from 12'-0" to 6'-0" due to steep slope and soil condition hardship. Our property contains two major challenges that are not self-imposed. The first challenge is the exceptionally steep slope of the site, which averages close to a 90% grade sloping down towards the lake at the location of the proposed structure. The second challenge is the soil conditions, with the first 20'-25' of soil depth being un-stabilized fill at the location of the proposed structure. After many discussions with structural and geotechnical engineers, the most practical and cost-effective way of getting out of the ground will be to build concrete grade beams with drilled micro-piles and tiebacks down to the bedrock below the un-stabilized fill. Our foundation system, as proposed by our geotechnical engineer, is expected to increase the overall site stability of the hillside.
- 34.1.1.2.2. This strategy, however, will involve extensive sitework to get the required equipment and heavy machinery down the slope safely to drill the micro-piles. With the steepness and instability of the slope, we desire to bring the sitework as far up the hill as possible and closer to the road. This will minimize the overall footprint of the sitework and be safer for everyone.
- 34.1.1.2.3. Hearing Examiner Finding: Due to the steeper slopes found on the property towards Lake Chelan (greater than 90% in places), the structure needs to be closer to the road in order to stay outside of the shoreline buffer.
- 34.1.1.2.4. Hearing Examiner Conclusion: The plight of the applicant is in part due to the existing shoreline buffer together with the lot topography, which creates limited possible building sites for a residence of which the applicant has no control.
- 34.1.1.3. The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
- 34.1.1.3.1. Applicant's Response: None given.
- 34.1.1.3.2. Hearing Examiner Finding: The hardship asserted by the applicant is not a result of the applicant's own actions but is the result of the physical constraints of the parcel and the strict application of this Chapter, which limits development within 25 ft of the front property line. The requested variance to the front yard setback is required in order to build the single-family residence. Lots along S. Lakeshore Drive can have steep slopes in their front yard setbacks and the proposed reduced front yard setback would not negatively affect the potential development of neighboring properties.
- 34.1.1.3.3. Hearing Examiner Conclusion: The hardship does not appear to be the result of the owner's actions. The plight of the applicant is in part due to the current alignment of S. Lakeshore Road as well as the approval of the 2016 short plat that created the subject property, both of which occurred prior to the Shugart's owning the subject property.
- 34.1.1.4. The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same

district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan.

- 34.1.1.4.1. Applicant's Response: Along with the safety and practicality benefits, we believe that a reduced front yard setback would also benefit the community and waterfront. The overall design and height of the house will not change regardless of whether we are granted the variance or not. The elevation of the main floor and garage is to be even with that of the road for ease of access to our property. The variance simply allows us to slide the house horizontally further into the hillside and away from the waterfront. We share the community's interest in preserving the waterfront as much as possible, and the granting of this variance would allow us to preserve the waterfront to a greater extent than if no variance is granted.
- 34.1.1.4.2. As for the community impact on the street side, our unique location makes it negligible. Currently with a 12'-0" front yard setback, the face of the proposed structure will stand roughly 46'-0" from the nearest edge of the SR 971 pavement. Reducing the front yard setback to 6'-0" will bring the proposed structure to be roughly 40'-0". This difference would be indistinguishable. Additionally, there is only a cliff face and no lot directly across SR 971.
- 34.1.1.4.3. Hearing Examiner Finding: The authorization of this variance would not be materially detrimental to the purpose of Title 11 of the CCC. In addition, the authorization of this variance would promote the goals and objectives of the Chelan County Comprehensive Plan. Goal CL 1 and Goal NS 2 of the Resource Element found within the Comprehensive Plan that address conserving natural areas within Chelan County. The proposed single-family residence is similar to other uses and structures within the same zoning district.
- 34.1.1.4.4. Hearing Examiner Conclusion: The authorization of the front yard variance would promote the development of the subject property with a planned single-family residence. The authorization of this variance would promote the goals and objectives of Title 11 and the County's Comprehensive Plan.
- 34.1.1.5. The hardship asserted by the application results from the application of this title to the property.
- 34.1.1.5.1. Applicant's Response: None given
- 34.1.1.5.2. Hearing Examiner Finding: Per CCC Section 11.14.020, a front yard setback of 25 ft. from the front property line. Due to the shoreline buffer constraints that exist on the property, the buildable area on the subject property is limited unless disturbance to the riparian vegetation within the shoreline buffer is proposed. By reducing the front yard setback instead of disturbing vegetation within the shoreline buffer, the applicant meets several goals outlined in the Chelan County Comprehensive Plan.
- 34.1.1.5.3. Hearing Examiner Conclusion: The hardship is a result of the application of the CCC to the subject property based on property topographic constraints and specific conditions, which does not factor in the CCSMP regulations or historically created parcels.
- 34.1.2. Variances granted from the provisions and criteria contained in Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District, and Chapter 11.80, Wetland Areas Overlay District, have addition variance criteria

- 34.1.2.1. Hearing Examiner Conclusion: These criteria do not pertain to the proposed development.
- 34.1.3. The granting of a variance should not:
 - 34.1.3.1. Be substantially based upon precedent established by illegal or nonconforming circumstances.
 - 34.1.3.1.1. Applicant's Response: None provided
 - 34.1.3.1.2. Hearing Examiner Finding: The variance request is based on the subject property's encumbrances due to the application of the Title 11 required zoning setbacks. The parcel was legally established pursuant to CCC 14.98.1090 definition of legal lot of record being as it was created through a short plat in 2016.
 - 34.1.3.1.3. Hearing Examiner Conclusion: The proposed variance is based on the zoning requirements of the RW zoning district.
 - 34.1.3.2. Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.
 - 34.1.3.2.1. Applicant's Response: None provided.
 - 34.1.3.2.2. Hearing Examiner Finding: The applicant indicates that the request is not based on economic return, but rather a reasonable use of the property in way similar to properties in the proximity.
 - 34.1.3.2.3. Hearing Examiner Conclusion: There is no claim of economic return. The reduced front yard setback would enable the owner/applicant to construct a single-family residence that would allow them to use the subject property at all times during the year.
 - 34.1.3.3. Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.
 - 34.1.3.3.1. Applicant's Response: None provided.
 - 34.1.3.3.2. Hearing Examiner finding: The owners acquired the property in 2019. The lot has been in existence since the recording of the 2016 short plat.
 - 34.1.3.3.3. Hearing Examiner Conclusion: The lot encumbrances existed at the time the applicant acquired the property.
 - 34.1.3.4. Result in a de facto zone reclassification.
 - 34.1.3.4.1. Applicant's Response: None provided.
 - 34.1.3.4.2. Hearing Examiner Finding: The proposed variance would not change the permitted land uses.
 - 34.1.3.4.3. Hearing Examiner Conclusion: This would not apply.
 - 34.1.3.5. Be substantially for the purpose of circumventing density regulations.
 - 34.1.3.5.1. Applicant's Response: None provided.
 - 34.1.3.5.2. Finding of Fact: The proposed variance would not affect density.
 - 34.1.3.5.3. Conclusion: This would not apply.
- 35. An open record public hearing was held, after legal notice, on November 20, 2024.

36. Appearing and testifying on behalf of the applicant was Charlie Shugart. Mr. Shugart testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. Mr. Shugart stated that they agreed with the representations set forth within the staff report and the proposed Conditions of Approval.
37. No member of the public testified at the hearing.
38. The following exhibits were admitted into the record:
 - 38.1. Ex. A Site Plan of Record, dated stamped September 18, 2024;
 - 38.2. Ex. B Chelan County Inadvertent Discovery Plan;
 - 38.3. Ex. C Staff Report;
 - 38.4. Ex. D Remainder of Planning Staff File.
39. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
40. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted the authority to render this decision.
2. As conditioned, this application is consistent with the Chelan County Code and Chelan County Comprehensive Plan.
3. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, VAR24-372 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

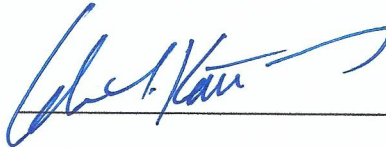
1. All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.
2. The development shall be in substantial compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
3. Pursuant to CCC 11.95.040, future development of the subject property shall proceed in substantial compliance with the application submitted on September 18, 2024 and the site plan of record, which is also date stamped September 18, 2024 (Exhibit A).
4. Pursuant to comments received from WSDOT on October 17, 2024, any activities within WSDOT right-of-way (R/W) would need to be approved by WSDOT and a lease may be required if any permanent structures would be constructed on WSDOT R/W.
5. Pursuant to WSDOT correspondence submitted with the application materials on September 18, 2024, any proposed driveway would need to meet the design provided by such permit or the current

standard of a paved approach per Chapter 1340 of WSDOT Design Manual, Exhibit 1340-1, from shoulder of SR-971 through WSDOT ROW to property line.

6. Pursuant to the October 29, 2024 comment letter from the Chelan-Douglas Health District, the applicant shall determine adequate locations for the proposed septic system drainfield and private well prior to building permit submittal.
7. Pursuant to CCC Section 11.95.050, in any case where a variance is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of this code. An appeal of the decision shall automatically stay the issuance of building or other permits until such appeal has been completed.
8. Pursuant to CCC Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
9. Pursuant to CCC Section 11.95.080, a variance shall become void three years after approval if no substantial construction has taken place or such other time period as established by the Hearing Examiner.
10. Pursuant to CCC Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
11. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within one thousand ft. of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
12. Pursuant to RCW 27.53.060, if any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
13. The applicants shall submit an Inadvertent Discovery Plan (Exhibit B) to Chelan County Community Development with the building permit application and kept onsite during all land disturbing activities.
14. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions 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 assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

Dated this 25 day of November, 2024

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.