

<b>IN THE MATTER OF</b> <b>PD 2008-002 / P 2008-009</b> <b>Planned Development / Major Subdivision</b> <b>Tuscan Village</b>	) ) ) )	<b>FINDINGS OF FACT,</b> <b>CONCLUSIONS OF LAW,</b> <b>AND DECISION</b>
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THIS MATTER, an application for a Planned Development and Major Subdivision, submitted by Erlandsen and Associates, agent on behalf of Tuscan Village, LLC.

**FINDINGS OF FACT**

1. **Planned Development:** Initial materials were received on July 16, 2007 and sent for agency compliance review on July 18, 2007 with comments due August 1, 2007. Application materials were received and deemed complete on March 4, 2008. The applicant asked the County to hold the application materials. Compliance Review noticing started on July 18, 2008 with comments due August 1, 2008. Notice of application was sent October 13, 2008 with comments due October 27, 2008.
2. **Preliminary Subdivision:** On September 22, 2008 pre-applications materials were sent out with the pre-application meeting occurring on October 9, 2008. Application was received October 17, 2008. Referrals were sent October 23, 2008 with comments due November 14, 2008.
3. The project is located on the south shore area of the City of Chelan UGA of Lake Chelan along HWY 97A immediately east of and adjacent to the intersection of HWY 97A and SR 971. Also known as, Assessor parcel numbers: 272216230075, 272216320052, 272216230150, 272216230200, 272216240300, 272216310100, 272216310050, 272216420200, 272216420150, 272216420100, 272216410350, 272216320150, 272216330050 and 272216240260.
4. A Determination of Complete Application was issued for Tuscan Village Planned Development (PD2008-002) on March 04, 2008 and for Tuscan Village Preliminary Subdivision (P2008-009) on October 27, 2008.
5. The Notice of Application was published in the Wenatchee World, posted on the project site and mailed to property owners within 1000 feet of the subject property on October 13, 2008. The agency and public comment period ended October 27, 2008. The Planned Development is a conceptual land use application which is vested with the preliminary subdivision therefore the preliminary subdivision notice of application is final for both applications.
6. The Tuscan Village at Lake Chelan is a mixed use resort that includes working vineyards and orchards, two wineries and an organic food center. The project is situated on approximately 272 acres roughly 375 feet upland from and on the south side of Lake Chelan. The development plan features the Tsillan Cellars Winery, Tunnel Hill Winery, Organic Sunshine Orchards

and Sunshine Farm Market, all of which are on site. Portions of the site will be planted to expand the vineyards. Built elements of the project would be dispersed in and around the working vineyards and orchards. The existing organic fruit and vegetable growing areas and the fruit market will be retained as part of the project. The project is intended to be pedestrian oriented, with trails and walkways connecting on-site residences, hotel, wineries, retail and open space areas. Resort components of the plan would include a boutique hotel with up to 288 rooms associated with the Tsillan Cellars Winery; multifamily and single-family units aimed at the short term occupancy, extended-stay, seasonal and second home tourist markets; and small scale retail associated with the wineries and resort hotel. Permanent single-family residences and retirement homes will make up the rest of the land use mix. Total number of resort and residential units is estimated at 954.

7. The development consists of establishing the Planned Development and fifteen lots. Eleven of the fifteen lots are recreational open space, agriculture open space, and current or proposed development. The remaining four lots will be subdivided at the time of future development to accommodate the Planned Development over the duration of five phases. Phasing is consistent with Chelan County Code 11.76.080. Phase 1 of the proposal establishes the fifteen lots, development standards, and constructs the primary road/trail system. It is required to be complete within five years. Additional time may be granted by the Administrator per Chelan County Code.
8. The original Plat application (P2008-009) identified fourteen lots, unintentionally leaving out "lot 15", which was later identified as containing an existing residential structure and shown on the Planned Development plan reviewed by the Hearing Examiner. The corrected site plan was submitted as part of an Addendum to the Final EIS. There was no change in density but the revision requires all roads to be dedicated as public, per Chelan County Code Chapter 8.24 and will require review by the Washington State Department of Transportation.
9. The subject property is located within the South Shore area of the City of Chelan's Urban Growth Area.
10. The City of Chelan Comprehensive Plan designations for the subject properties are Special Use District (SUD) and Single Family Residential (R-L).
11. The City of Chelan Zoning districts for the subject property are Special Use District (SUD) and Single Family Residential District (R-1)
12. Existing structures and uses on the subject property include agriculture, commercial winery and wine production, retail agricultural support, residential and open space.
13. Surrounding Uses:
  - a. North: Highway and residential shoreline along Lake Chelan
  - b. South: Large lot residential and natural open space
  - c. East: Large lot residential and natural open space

d. West: Highway, large lot residential and natural open space

14. The applicant submitted an Aquifer Recharge Disclosure Form, on December 12, 2007.
15. There are no identified Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property is within identified fish and wildlife habitat conservation areas for Mule Deer and Elk.
16. According to the Federal Emergency Management Agency FIRM maps there are no floods plain and/or floodways associated with the subject property.
17. According to Department of Natural Resources mapping, there are two water drainage courses on the property.
18. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, there is a wetland associated with the subject property.
19. According to the US Department of Agriculture Soil Conservation Soil Survey, the property consists of erodable soils.
20. A Critical Areas Assessment by Grette Associates, LLC, March 15, 2007 study was completed as part of the Draft Environmental Impact Statement (EIS), Appendix 20. A Geologic Site Assessment was completed by Bill Christman, Consulting Engineer on April 2007. Appropriate mitigation measures were incorporated into the Final Environmental Impact Statement (EIS). These mitigations measures are addressed as conditions of approval.
21. The subject site is not within the jurisdiction of the Chelan County Shoreline Master Program.
22. An Archaeological Survey was completed by Western Shore Heritage Services, Inc, on April, 18, 2007, Draft EIS Appendix 8. Mitigations measures are addressed as conditions of approval.
23. The site is accessed by Hwy 97A and SR971. The proposal reduces the number of access points affecting US97A to four points plus two agricultural accesses. The two agricultural access points were not adequately reviewed or addressed in the EIS or by the Washington State Department of Transportation.
24. Circulation within the site starts with a primary access road and trail system, to be built in Phase I prior to Final Plat approval. Future internal roads and an expanded trail system will be constructed at the time of future development of the four lots.
25. The proposed road profiles do not comply with Chelan County's adopted urban standards. A process for design deviation is provided for in Chelan County Code, Title 15. Compliance with code provisions and the EIS are addressed in the conditions of approval.
26. The Final EIS and Draft EIS along with the appendices, exhibits and figures of these documents address the water and sewer options, along with other environmental concerns. The site contains enough water rights for full build

- out of the project; however, the service provider is yet to be determined. Options include expansion of the surrounding service providers or the City of Chelan system. As identified in the Final EIS, each option is viable when appropriately conditioned. It will be up to the applicant to secure a water system prior to final plat approval. Mitigation measures identified in the Final EIS are included in the conditions of approval.
27. The site can handle an on-site sewage treatment system which would use treated water used for irrigation or infiltration as part of the open space. The development also has the option of connecting to the City of Chelan system, as deemed appropriate. It is understood that a portion of the single family residential development may use on-site septic systems until such time as either the on-site system or city connection is necessary. Each option, identified in the Final EIS is a viable choice. As conditioned, it will be up to the applicant to secure a State approved on-site system and management agreement or hook up to the city system prior to finalizing the plat. Mitigation measures identified in the Final EIS are included in the conditions of approval.
  28. Power is provided by the Chelan County Public Utility District. Mitigation measures identified in the Final EIS are included in the conditions of approval.
  29. The International Fire Code governs the proposed development. Fire suppression and emergency access are addressed in the adopted codes. Mitigation measures identified in the Final EIS are included in the conditions of approval.
  30. The subject site is not within an irrigation district boundary.
  31. The subject site is within the Chelan School District. Mitigation measures identified in the Final EIS are included in the conditions of approval.
  32. State Environmental Policy Act (SEPA): The Applicant submitted an Environmental Checklist on March 4, 2008. Pursuant to WAC 197-11-980 Determination of Significance and Scoping Notice (DS), Chelan County determined that this proposal is likely to have a significant adverse impact on the environment and an Environmental Impact Statement (EIS) was required under RCW 43.21C.030.
  33. On October 6, 2008, Chelan County issued a Determination of Significance and Request for Comments on Scope of EIS. The applicant and Chelan County held an Open House on the subject property on October 22, 2008. The comment period on the scope of the EIS ended on November 14, 2008. The Scoping Notice is identified as Appendix 1 in the Draft Environmental Impact Statement (EIS). As a result of the EIS Scope process, four public agencies, and the general public submitted comments prior to the expiration of the comment period. A comprehensive list of Scoping Items can be found in Appendix 2 of the Draft EIS.
  34. On June 16, 2009, Chelan County issued the Draft EIS followed by the 30 day comment period pursuant to WAC 197-11-455. The County received thirteen comment letters and e-mails in response to the Draft EIS. These comment letters and e-mails can be found in Exhibit A of the Final EIS. In accordance with WAC 197-11-5560, the Final EIS was prepared to respond

- to the comments received during the Draft EIS comment period. The County issued the Final EIS on September 16, 2009.
35. All mitigation measures and conditions of approval requirements identified in the EIS have been carried forward as conditions of approval for the Preliminary Subdivision and Planned Development.
  36. An Addendum to the EIS to correct a factual and/or non-consequential modification. Following the issuance of the Draft EIS, the applicant made modifications to the applications to the Subdivision P2008-009 which defined "Lot 15", as shown on the PD application, as its own lot. This increased the number of lots on the P2008-009; however, the underlying density did not change. On September 24, 2009 an Addendum to the Final EIS was issued which clarified the creation of Lot 15. Exhibit L of the Final EIS was revised/corrected to acknowledge an existing residence that was inadvertently left out of the site/lot configuration documentation. The overall residential/resort units remained at 954 units which is consistent with the original proposal.
  37. No SEPA appeal was filed.
  38. Notice of Public Hearing before the Hearing Examiner was published and sent (email or standard post) to interested parties and surrounding properties within 1000 feet on September 30, 2009. The Public Hearing was to be held on October 7, 2009.
  39. The City of Chelan requested an extension of time which was agreed to by the applicant and granted by the Hearing Examiner. The hearing was continued to October 21, 2009 at 9 am.
  40. At the beginning of the open record public hearing, the Hearing Examiner identified several individuals in the audience with whom the Hearing Examiner knew. The Hearing Examiner stated that any relationship he had with any person identified would not impact his ability to be fair and impartial. The Hearing Examiner also acknowledged on the record that he is the Hearing Examiner for the City of Chelan. The Hearing Examiner ask if, based on these disclosures, whether any person present had any objection to the Hearing Examiner continuing to serve as Hearing Examiner for this matter. No objection was raised.
  41. The entire File of Record and Chelan County Department of Community Development Staff Report with oral presentation were admitted into the record and considered by the Hearing Examiner. During the public hearing, public testimony and submitted materials were admitted into the record and considered by the Hearing Examiner.
  42. Testimony was provided at the public hearing. The following summarizes each testimony.
  43. Staff provided a general summary of the application and read into the record a Memo, dated October 21, 2009 with corrections and response to applicant and city letters. The Memo became a part of the file of record.

44. Testimony included Alexander (Sandy) W. Mackie representing the applicant. He provided general information and interviewed the following witnesses:
- a. Mark Peterson, attorney specializing in water rights addressed issues related to the conversion of water rights from Agricultural uses to domestic uses. The applicants have completed this conversion process. Mr. Peterson also spoke about his association with the Bear Mountain Water District and the District's willingness and ability to provide water service and potentially sewer service to the Tuscan proposed development.
  - b. Mark Esvelt, Engineer, spoke about the current water system and proposed water system outlined in the EIS.
  - c. Richard Esvelt, Engineer, spoke about the proposed on-site wastewater treatment system outlined in the EIS.
  - d. Mike Read, Civil Engineer, drafted the Transportation Impact Study. Mr. Read noted that the Transportation Impact Study did not identify two agricultural access points that will be necessary to serve the site. Mr. Read gave testimony regarding connectivity limitation with surrounding properties, especially to the east.
  - e. Buell Hawkins, former Chelan County Commissioner District 3, spoke about the history of creating the Interlocal Agreement; working with a consultant, Studio Cascade, to determine the Urban Growth Area expansion; and, thirdly a subarea planning process. He personally testified in favor of the application.
  - f. Guy Evans, owner, submitted **Exhibit 1**, a video titled "*Broken Limbs*" and testified to the challenges facing the agricultural industries and his desire to create sustainable agriculture.
  - g. Robert Jankelson, owner, testified regarding his vision for the Planned Development and the need for a certain level of marketability. He submitted **Exhibit 2**, a petition in favor of the Tuscan Village development. Mr. Jankelson addressed the need for sustainable development to be part of the vision. He also stated that the Chelan Valley was recently received a unique agricultural AVA (American Viticulture Area) designation, one of eleven within Washington State.
45. Janet Collins, resident spoke in favor of the application. She stated that the proposal was a good fit with the area, that the Final EIS was comprehensive. She stated that the next requirement will be to have good builders. She also stated that the applicants have both an emotional and financial interest in the community.
46. Tony Rose, Chelan Falls Community Council member, addressed the need for "green" options and increased agricultural tourism. He also noted that his community is the location for the City of Chelan's Secondary Wastewater Treatment Plant. Odors leaving the plant affect the area and he welcomes less treatment water coming down the system.

47. Bradley Ward, neighbor of Tuscan, submitted **Exhibit 3**, an Assessor's Plat map showing an access and water line easement, AFN 2113279. The easement provides parcels 27-22-16-240-255, 27-22-16-240-265 and 27-22-16-240-275 with access to a well and associated line located on parcel 27-22-16-240-250, owned by Todd Harrison. Mr. Harrison's property is not part of the Tuscan proposal.
48. Allan Galbraith, attorney for the City of Chelan and the Lake Chelan Sewer District, provided historical information about the Interlocal agreement and the Comprehensive Plan updates, along with other background information and interviewed the following witnesses:
- a. Randy Asplund, Licensed Engineer and Principle of RH2, a consultant engineering firm, stated that the Final EIS did not provide enough information to meet the State standards or requirements, such as a Geological study to determine if infiltration would work. Alexander Mackie, was given the opportunity to cross examine Mr. Asplund but declined.
  - b. Craig Gildroy, City of Chelan Planning Director, provided history regarding the creation of the Interlocal agreement and work done with Studio Cascade to review and update the City's and County's Comprehensive Plans to incorporate the Tuscan area in the Urban Growth Boundary. He entered **Exhibit 4**, *Preliminary Draft Lower Lake Chelan Basin Regional Strategic Action Plan*, into the record. Mr. Gildroy stated that the city reviewed this as a preliminary plan as understood by the City's code which would require additional review processes. He does not feel that the Tuscan plan is in harmony with the Comprehensive Plan. He referenced the draft standards in the Draft EIS, Appendix 6 with 100 foot height limitations. Alexander Mackie was given the opportunity to cross examine Mr. Gildroy but declined.
  - c. Dwayne Van Epps, City of Chelan Public Works Director, stated that the on-site septic mentioned in the Staff Report on page 14 was not addressed in the EIS. Mr. Van Epps spoke about the proposed systems and concerns regarding TMDL (total maximum daily load) requirements of treatment plants. Alexander Mackie, was given the opportunity to cross examine Mr. Van Epps but declined.
  - d. Charles Sablan, City of Chelan Parks Director, stated that he was not contacted about the most used park. Discussion about which park has the most use and how that determination is made occurred. Alexander Mackie, was given the opportunity to cross examine Mr. Sablan. Mr. Mackie questioned Mr. Sablan on adopted Level of Service standards and Impact Fees for Parks within the City of Chelan Urban Growth Area. Mr. Sablan was not aware of either.
49. Exhibits were submitted for the record: **Exhibit 5**, Map – Chelan Sewer District Boundaries; **Exhibit 6**, Water Quality Assessment Executive Summary (1989); **Exhibit 7**, Lake Chelan Water Quality Plan (1991); **Exhibit 8**, Department of Ecology, April 5, 1991, regarding Lake Chelan TMDL for

Total P; **Exhibit 9**, Memorandum of Understanding between CTED, City of Chelan and Chelan County; **Exhibit 10**, Comments by Randy Asplund (to be submitted October 22, 2009)

- a. Testimony continued with Allan Galbraith questioning Rick Esvelt, who was recalled to allow the City to address specific questions. Mr. Esvelt responded to questions regarding the source of water supply; the proposed wastewater treatment and examples of other communities. Concerns about the possible impacts to Lake Chelan were raised and addressed. Storage options and treatment were discussed. Mr. Asplund, at Allan Galbraith's request, proposed a question with the consent of the Applicant and the Hearing Examiner, regarding solid (bio-solids) disposals. Bio-solids may be a "class B" which can be used in wheat farming.
50. Staff provided minor clarification stating that on-site septic was an error in the staff report, as stated in the Memo; the Agricultural access points require review and approval by Washington State Department of Transportation; Mr. Bradley's need to retain access to his water well for maintenance should be a recommended condition of approval; clarification that the application is the responsibility of the County to process; Development Agreement requires clear parameters set by the Hearing Examiner; interconnectivity and emergency access needs to be consistent with Title 15; and, noting that page 18 and 19 of the Staff Report show that the proposal is harmonious with the surrounding environment.
  51. Alexander Mackie, provided the closing testimony for the applicant. Primarily discussing the next processes; timing of the infrastructure to be place; limitations on the existing City facilities; summary of Staff Report Attachment SR-5 shows Tuscan is a consistent land uses; no road/street to the east to connect to therefore no nexus to require the requirement; request that his suggested Findings of Fact in the October 9<sup>th</sup> and 16<sup>th</sup> letters be used in final determination.
  52. Based upon the testimony of Mr. Asplund, the Hearing Examiner finds as follows:
    - 51.1 That Lake Chelan is the third deepest and one of the clearest lakes in North America. Lake Chelan is classified as an ultra oligatrophic lake with average clarities of 19-22 meters. Ultra oligatrophic means that the lake is very nutrient poor which limits the growth of algae and other aquatic vegetation and in turn maintains the unique clarity in the water. Lake Chelan is considered a lake of both statewide and national significance due to its pristine characteristics. The lake is recognized as an extremely valuable water resource and is the only source of water for the City of Chelan, Lake Chelan Reclamation District and many public and private systems located in the lower basin.
    - 51.2 The WSDOE has established TMDL for phosphorus for Lake Chelan. A TMDL stands for "total maximum daily load" and is the measure of a pollutant into a water body that represents a change in condition; typically exceeding a water quality standard or MCL. TMDLs are also

established as part of cleanup plans when the pollutant of concern is identified, measured and regulated down to a level that meets the daily load limit or the assimilative capacity of the body of water. The Lake Chelan phosphorus TMDL, was developed with the objective of maintaining the lake's pristine water quality condition by managing watershed phosphorus inputs to the lake related to land use and sewage management

- 51.3 The TMDL for Lake Chelan is a preventative TMDL for phosphorus. Recent phosphorus levels in Lake Chelan have been between 2.3 and 3.2 ug/L as compared to the TMDL of 4.5 ug/L. Phosphorus was concluded to be the limiting nutrient for algae growth by DOE/Harper Owes in 1989. Subsequent expert opinions by Dr. Charles Goldman of UC Davis, lead research limnologist at Lake Tahoe, opined that the limiting nutrient balance for the lake may oscillate between phosphorus and nitrogen. There is no TMDL for nitrogen on Lake Chelan.
- 51.4 The Lake Chelan Water Quality Assessment in 1989 included within its recommendations the establishment of a committee of local stakeholders to take the results of the assessment and to develop a management plan to implement land use policy and ordinances that could be used to reduce the long term impact of development activities on the lake. In 1990, five local agencies (Chelan PUD, Chelan County, City of Chelan, Lake Chelan Reclamation District and Lake Chelan Sewer District) signed an Interlocal agreement to develop the Lake Chelan Water Quality Plan. RW Beck was hired to develop the plan which was adopted in February of 1992 by all five agencies.

The working relationships developed during the development of the plan and a recommendation from the plan to have an advisory committee to the agencies led to the formation of the Lake Chelan Water Quality Committee in the fall of 1992. The US Forest Service was added as a member to the committee in about 1994.

The Washington State Department of Ecology working with EPA and the local Lake Chelan Water Quality Committee proposed the adoption of a preventative TMDL for phosphorus in 1992. The science for the TMDL was based upon the Lake Chelan Water Quality Assessment done in 1989 by DOE and Harper/Owes. The TMDL has been approved by DOE and EPA.

The purpose of the Lake Chelan Water Quality Committee is to address many of the issues associated with preserving the water quality of the lake, from a both a health as well as an economic standpoint. These Agencies have invested millions of dollars over the last 20 years into studies, monitoring and infrastructure improvements to protect lake WQ.

- 51.5 The Lake Chelan Water Quality Assessment and Plan identified all development occurring within 0.6 miles of the lake to be within a

significant area of concern. Reclaimed water facilities are normally designed to address public health and safety. The nitrogen and phosphorus levels that are safe for public health are 1,000 times higher than the levels needed to protect eutrophication of Lake Chelan. To put this into perspective, the reclaimed water from the Snoqualmie Water Reclamation Facility has an average phosphorus concentration of 2.5-3 mg/l (permit level 3.8mg/l) Whereas the TMDL for Lake Chelan is based on a maximum concentration of 4.5 ug/l

- 51.6 The ability to export nutrients from the basin has been an overriding concern for years. The Lake Chelan Water Quality Plan identified significant expansions in sanitary sewer collection services with the ultimate goal of having all new major developments connect to the regional system and export nutrients out of the Chelan Basin and into the Columbia River where dilution and dispersion would minimize environmental impacts. The Plan recommends that all new multiple unit developments lying within 1,000 feet of a sewer line to connect to public sewers.
  
53. Discussion regarding an expanded time allowance for the Hearing Examiner to render his decision occurred with all parties, the applicant, the County and the City, agreed to extend the final decision from November 4, 2009 to November 18, 2009.
54. The FEIS identified a reasonable set of alternatives to be achieved and utilized before the final plat and PDD may be filed. Except as modified herein, (including specifically condition of approval #27), the conditions of the Plat and PDD shall follow the process identified in the FEIS.
55. The issue of temporary use of septic tanks as an interim measure to be used in conjunction with the development of a wastewater treatment system was raised and discussed in the FEIS. The FEIS, with the addition of condition of approval #27, requires the entire issue of water quality, safety and protection of the public and environment be addressed in a project specific environmental review at the time a specific system is chosen, but before final plat approval.
56. **Exhibit 11**, Map titled Preliminary Plat and Site Development Potential was entered into the record. This exhibit is nearly identical to Exhibit L of the Final EIS except that residential units are represented as whole numbers retaining the 954 total units proposed in the application and EIS.
57. **Exhibit 12**, Map – Tuscan Village A Planned Development at Lake Chelan (Figure 2, General Site Plan – Uses and Allocations.
58. With the exception of **Exhibit 10**, to be submitted by the City of Chelan October 22, 2009, the public record was closed.
59. The applications were vested under, the County's adopted regulations for the City of Chelan, which include the City's Zoning Code as of March 2008, specifically 17.52 Planned Development District and, as appropriate, 17.46

Special Use District, 17.20 Single Family Residential District and 17.48 Tourist Accommodations District.

60. The applications were reviewed for consistency with the City of Chelan's Comprehensive Plan adopted by Chelan County.
61. The applications were processed in accordance with the Chelan County Code Title 14 Development Permit Procedures and Administration.
62. A Development Agreement, as required by Chelan County Code Chapter 14.18, is required to be approved by the Chelan County Board of Commissioners and the Chelan City Council. As required by the Chelan County Code the Development Agreement is the legislative approval of the Preliminary Planned Development and establishes the development standards for the Planned Development.
63. The applications were reviewed under the County's Development Standards Title 15 which includes, but is not limited to, urban standards for road ways.
64. The City of Chelan and Chelan County entered into a Memorandum of Understanding, signed July 8, 2009.
65. The City of Chelan and Chelan County entered into an Interlocal agreement for the Southshore, recorded July 9, 2009 (hereinafter referred to as "Interlocal Agreement"). The Interlocal Agreement was a result of a Memorandum of Understanding, dated February 26, 2007, Exhibit 9 of the Hearing materials.
66. The request for continued the Hearing was granted by the Hearing Examiner in a letter, dated October 2, 2009. The letter requested that each party submit legal briefs by October 9, 2009 and any responses be filed by October 16, 2009.
67. A letter from the applicant agent, Alexander Mackie, was submitted on October 9, 2009. This letter is a part of the record. The letter recommended minor amendments or corrections to the staff report; addressed recommended Conditions of Approval number 2, 7, 9, and 12; requested clarification on a Final EIS mitigation measure regarding park impact fees; requested that connectivity and two access roads be reviewed under consideration of case law; and, addressed the need for bulk and density requirements.
68. A letter from the City of Chelan and Lake Chelan Sewer District, represented by Allan Galbraith, was submitted on October 9, 2009. This letter is part of the record. The letter generally provided some history on planning between the City and County along the south shore area; the City's and County's Comprehensive Plans; standards for approval; City's development standards; the Sewer Districts development standards; the development agreement processing requirements; City road standards; on-site septic concerns; questions regarding the development's harmony with surrounding area; purveyor of utilities should be the city; use of on-site reuse facility need to be environmentally reviewed; and, possible impacts to the City's downtown core.

69. A response letter from the applicant agent, Alexander Mackie, was submitted on October 16, 2009. This letter is a part of the record. The letter requested specific conditions of approval regarding city development standards, Sewer District's development standards, on-site systems, environmental review required for wastewater, harmony with surrounding area and downtown core, and appropriate utility purveyor; and a detailed response to the City's October 9, 2009 letter.
70. A response letter from the City of Chelan and Lake Chelan Sewer District, represented by Allan Galbraith, was submitted on October 16, 2009. This letter is a part of the record. The letter provided a response to the applicant's October 9, 2009 letter. The letter also addressed concerns about processing of the application; consistency with the City's Comprehensive Plan; City Council's role; dimensional and use standards; and, compliance with City Code 17.52.080.
71. Development permits, including building permits, subdivisions and binding site plans, will be necessary for full build out of the proposal and will require additional land use regulation reviews. These reviews may include updates to the Final EIS as well as compliance with the Development Agreement and other applicable regulations, as appropriate.
72. The Lake Chelan Sewer District system has no standards for on-site wastewater treatment reuse and recycling as identified by the applicant and the FEIS as the preferred model for the requested development.
73. There is no current, identified ability and/or capacity for the Lake Chelan Sewer District to serve the entire proposed PDD.
74. The Chelan County Board of Commissioners specifically addressed the issue of the applicability of the City of Chelan Development Standards to this Plat and PDD and specifically concluded that such standards would not be applicable to the area covered by the 2007 Interlocal Agreement. The City of Chelan's Development Standards were adopted after the 1997 Memorandum of Agreement and thus subject to independent review and potential disagreement.
75. Chelan County has not adopted the City of Chelan's Development Standards for the Southshore, as defined by the Interlocal Agreement.
76. Chelan County's Development Standards apply to this project.
77. The size, scale and nature of the PDD and proposed Plat are consistent with the Comprehensive Plan and vision expressed for desirable uses in the City designated Urban areas and are at a size and density consistent with the neighborhood and as conditioned, those uses are mitigated to protect known and potential adverse impacts.
78. The FEIS has identified a reasonable phased approach to identifying the appropriate utility purveyor for both sewer and water for the PDD and Preliminary Plat site.
79. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## **CONCLUSIONS OF LAW**

1. Referral agency comments, public comments, and the Draft EIS and Final EIS were considered in the review and conditioning of this proposal.
2. This proposal, as conditioned, is compatible with surrounding uses and will not harm the character of the area.
3. The proposal will achieve a public benefit as a result of deviations from the underlying zoning district through the creation of open space and a public facility, conservation of agricultural and other open spaces, superior project design and/or function, needed private facilities or otherwise and clearly implements the goals and policies of the City of Chelan comprehensive plan.
4. The Planned Development District requirements, as defined by City of Chelan Municipal Code Chapter 17.52 have been meet.
5. The proposal, as conditioned, is consistent with the City of Chelan Comprehensive Plan.
6. The applications were processed consistent with the Chelan County Code Title 12, Title 14 and Title 15.
7. The applications were processed consistent with the Chelan Municipal Code Title 17.
8. The proposal, as conditioned, is consistent with all other applicable Chelan County Code requirements.
9. The public use and interest will be served by the approval of the proposed Planned Development.
10. The proposed development, as conditioned, is a quality development that will be beneficial to the overall economy of the area as well as be environmentally sound and appropriate for the site.
11. The proposed development will be further conditioned, consistent with this decision and the Final EIS, through a Development Agreement per Chelan County Code Chapter 14.18.
12. The proposal contains adequate open space, recreation space and agricultural open space.
13. The proposal, as conditioned, provides for adequate public facilities and will not result in County, City, or other Utility District facilities being reduced below adopted levels of service.
14. The proposed phasing, Development Agreement, and conditions of approval provide for review of each land development to ensure compliance with adopted code provisions and building standards, including but not limited to landscaping and parking.
15. The proposed development, as conditioned, was reviewed and is consistent with the terms in the Interlocal Local Agreement between Chelan County and the City of Chelan.

16. The Chelan County Board of Commissioners decision of August 9, 2009 was not appealed and the Chelan County Hearing Examiner has no authority to reverse or alter that policy decision, and is bound by that policy decision in making his decision contained herein
17. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

### **DECISION**

Based upon the above noted Findings of Fact and Conclusions, PD 2008-002 and P 2008-009 are hereby **CONDITIONALLY APPROVED**, subject to the conditions noted herein. Unless otherwise noted, the conditions of approval shall be accomplished by the applicant and/or authorized agent prior to occupancy or use of the structure. The term "Applicant" includes all heirs, assigns and successors in interest

### **CONDITIONS OF APPROVAL**

1. The Applicant shall comply with all mitigation measures set forth in the Final Environmental Impact Statement prepared for this project.
2. Prior to any commercial or multiple family development on Lot 12, 13 and/or Lot 14, the properties must obtain approval of the South Shore Rezone from the City of Chelan currently expected by December 2009. If the approval is not granted the current underlying zone of R-1 shall be used to determine the appropriate permitted uses, consistent with the Planned Development. If the rezone is not approved, then the Development Agreement must identify the compatibility of the proposed project with the underlying zone of R-1. The Board of County Commissions may adopt separate findings regarding the allowable uses if the rezone is not approved.
3. Exhibit 11, presented at the Public Hearing on October 21, 2009 before the Hearing Examiner, shall be the approved list of allowable uses within the Tuscan Village Planned Development.
4. Prior to filing final plats and mylars for approval, the applicant shall comply with the requirements of Chelan County Code Title 12.
5. All construction plans that are to be reviewed by Chelan County Public Works shall be consistent with Chelan County Code Title 15. Design deviation shall be approved prior to finalizing the plat. If approved, the design deviation shall apply to the whole Planned Development area unless future design deviation or modification is approved, by the Chelan County Engineer, through a subsequent subdivision or binding site plan.
6. Dedication of all roads within the project boundaries shall be required consistent with Chelan County Code Chapter 8.24.
7. Connectivity of road and trail systems, to adjoining properties, shall be consistent with the requirements of Title 15 of the Chelan County Code and

- the International Fire Code, except where the applicant can bear the burden of proof acceptable to Public Works, that no connectivity can be achieved.
8. Prior to Final Plat approval, Washington State Department of Transportation shall review and approve all access easements. Dedication of land or easement required for road right of way and stormwater treatment may be required. All roads shall be review for public road standards, additional mitigation measures may be required by Washington State Department of Transportation to ensure all State standards are met.
  9. All permits shall be issued in accordance with the Hearing Examiner approved plans, the Board of County Commissioners approved Development Agreement, and in accordance with all other State, Federal and County regulations.
  10. No sale of lots shall be permitted which subdivides a lot in such a manner as will create a new lot line, except as following the approval of the Final Plat or approved in subsequent binding site plans or subdivisions within the plat.
  11. All lots or other divisions of land within the PD shall remain subject to compliance with the Hearing Examiner approved plans and the Board of County Commissioners approved Development Agreement. No subdivision shall be allowed on the open space and agriculture tracts. Agricultural tracts may be relocated through boundary line adjustments to meet changing circumstances so long as the total acreage devoted to agriculture remains the same and the parcel remaining after the adjustment is suitable for commercial agricultural purposes.
  12. Open Space and Agricultural tracts shall consist of: Agricultural Tracts A through E shall in total retain a minimum of 54.27 acres in agricultural activities. Residential lots shall retain a minimum of 20% in agricultural, park and open space. Tract F, 2.36 acres, is set aside for water/sewer infrastructure.
  13. Replacement or reconstruction of any buildings or improvements damaged or destroyed shall conform to the approved final development plan.
  14. The agricultural activities shall use best management practices and follow required label practices and appropriate techniques to avoid undue impacts to surrounding properties. Covenants may provide additional protections and warnings to assure the long-term viability of the proposed on-site agriculture and compatibility with adjoining land uses.
  15. The site shall maintain the character and components of the Planned Development as presented in the Final Environmental Impact Study (EIS), and as clarified by the Hearing Examiner, and Exhibits 12, which shows residential and mixed use development not exceeding 954 residential units.
  16. The developer shall, after determining the form of water and sewer system to be used, and subject further to Condition of Approval #27, submit with the engineer detail drawings, a separate SEPA Checklist which identifies any impacts as required by the SEPA process. It will be at the sole discretion of

- Chelan County whether an Addendum to the Final EIS can be issued or if a Supplemental EIS will need to be prepared.
17. Final plan and procedure shall conform to Chelan County Code 11.76.060(3) and Title 12 Subdivisions or the applicable code.
  18. All future subdivisions or binding site plans shall be processed in accordance with the adopted subdivision code.
  19. All property taxes and assessments, both current and delinquent must be paid prior to submitting the final plat, per RCW 84.56.345. Taxes not yet levied and certified shall be collected as an advance tax under RCW 58.08.040.
  20. Should the developers implement covenants, deed restrictions or reservations affecting use or title, a note shall be included in said document that "Chelan County is not responsible for notification or enforcement of covenants or deed restrictions 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 assumes all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations.
  21. Impact fees required by the mitigation measures of the Final EIS or subsequent short plat or binding site plans shall be established as outlined in RCW 82.02.050.
  22. The Planned Development shall be approved and finalized consistent with Chelan County Code Title 14 and Title 11.
  23. A Development Agreement shall be finalized prior to final plat approval and consistent with Chelan County Code Chapter 14.18. Section 14.18.020(4) allows for the Development Agreement to be established prior to, concurrent with, or following approval of the Planned Development. The Development Agreement is required to be consistent with CCC and incorporate the conditions of approval as adopted by or amended by the Board of County Commissioners.
  24. The Development Agreement shall be consistent with the application materials and conditions of approval, as modified herein by the Hearing Examiner.
  25. The Development Agreement is recommended to the Board of County Commissioners to conform, as appropriate, to the Conditions of Approval and Final EIS with specifications on the following:
    - a. List of permitted uses, residential densities and nonresidential densities, intensities as outlined in the proposal;
    - b. Zoning Standards, as outlined in the Draft EIS Appendix 6 with the bulk standard height limit of 50 feet;
    - c. Design standards;

- d. Covenants, Conditions and Restrictions (CC&R's) necessary to ensure that the future development is maintained and operates consistently with the conditions of approval and adheres to Chelan County and the City of Chelan's vision of the Tuscan Village Planned Development;
  - e. Provisions for the movement of permitted uses with in the site;
  - f. Provisions and requirements for future subdivisions and or binding site plans;
  - g. Open space, park and agricultural preservation measures;
  - h. Phasing of development;
  - i. Provisions for amendments to Planned Development to ensure adequate review or reissuance of the Development Agreement;
  - j. Specify a termination date upon which the agreement expires;and,
  - k. Reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
26. The Plat shall meet all requirements stated herein and be subject to the following conditions required in the Final EIS page 4:
- a. All roads, turnarounds and parking shall be reviewed for adherence to CCC standards and approval.
  - b. Traffic impacts for internal trips shall be determined and associated with proposed uses at full build out.
  - c. Secondary access requirements shall be reviewed at the time of development and or land division for each parcel.
  - d. Demonstrate connectivity and interconnectivity between the Primary Boulevard, secondary roadways, primary and secondary trail systems.
  - e. Address turning movement needs along secondary roadways.
  - f. Internal trips need to be acknowledged, associated with proposed uses and analyzed against initial traffic volumes for consistency.
  - g. Roadway geometric designs shall meet a minimum of 25 mph design speed.
  - h. Roadway channelization, illumination, striping and signing shall be meet the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).
  - i. All non-roadway signing shall adhere to Chelan County Code (CCC).
  - j. No road grade shall exceed 12%.
27. Prior to final plat approval, a specific independent study (or studies as may be appropriate), by a person (or persons) or organization (or organizations) selected by the applicant and approved by the County, shall be required to examine the hydrogeologic conditions, the interaction of reclaimed water with

the lake and examination of the potential impacts of both nitrogen and phosphorus loadings on lake water quality. Such studies shall specifically address the development of a groundwater monitoring plan and mitigation measures in order to insure the water quality of Lake Chelan is preserved. The applicant shall comply with all recommended mitigation measures.

Approved this 16<sup>th</sup> day of November, 2009.

CHELAN COUNTY HEARING EXAMINER



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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. Requests for Reconsideration and to Reopen the hearing must be timely filed and are governed by Chelan County Code 1.61.130 and 1.61.070.